

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
JUNE 29, 2021**

**INCLUDES INFORMATION
FOR THE FOLLOWING MEETINGS:**

**9 A.M. – NATURAL RESOURCES COMMITTEE
(ENDS NOT LATER THAN 10:50 A.M.)**

**11 A.M. – FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
(ENDS NO LATER THAN 12:45 P.M.)**

**1:45 P.M. – CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE
(ENDS NO LATER THAN 2:10 P.M.)**

**2:15 P.M. - COMMITTEE OF THE WHOLE
(ENDS NO LATER THAN 5 P.M.)**

6 P.M. - COUNCIL

PARTICIPATE IN VIRTUAL COUNCIL MEETINGS

THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY

**VIEW MEETING SCHEDULES, AGENDAS, MINUTES, VIDEOS, AND ARCHIVES AT
[WHATCOM.LEGISTAR.COM](https://www.whatcom.legistar.com)**

**FOR INSTRUCTIONS ON HOW TO WATCH OR PARTICIPATE IN COMMITTEE AND
COUNCIL MEETINGS, PLEASE VISIT
[WHATCOMCOUNTY.US/3415/PARTICIPATE-IN-VIRTUAL-COUNCIL-MEETINGS](https://www.whatcomcounty.us/3415/participate-in-virtual-council-meetings)
OR CONTACT THE COUNCIL OFFICE AT 360.778.5010**

COMMITTEE AGENDAS

COUNCIL NATURAL RESOURCES COMMITTEE

9:00 A.M. TUESDAY, June 29, 2021 (ENDS NO LATER THAN 10:50 A.M.)

Virtual Meeting

Call To Order

Roll Call

Announcements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360.778.5010 at least 96 hours in advance.

Special Presentation

1. AB2021-373 Presentation on potential property acquisition for Squires Lake Park
Pages 1 - 2

Committee Discussion

1. AB2021-367 Discussion of proposed ordinance amending the Whatcom County Code and Comprehensive Plan, requiring a site-specific geotechnical analysis when mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline
Pages 3 - 25

Committee Discussion and Recommendation in Council

1. AB2021-364 Discussion and Motion to recognize the intent of PLN2019-00011 - Surface Mining of Dry Meander Zones has been achieved
Pages 26 - 28
2. AB2021-366 Discussion and Motion for PLN2017-00004 Countywide Review of Designated Mineral Resource Lands
Pages 29 - 94

Items Added by Revision

Other Business

Adjournment

COUNCIL FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE

11:00 A.M. TUESDAY, June 29, 2021 (ENDS NO LATER THAN 12:45 P.M.)

Virtual Meeting

Call To Order

Roll Call

Announcements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360.778.5010 at least 96 hours in advance.

Committee Discussion and Recommendation in Council

1. AB2021-327 Ordinance amending the Whatcom County Budget, request no. 10, in the amount of \$744,800
Pages 95 – 134
2. AB2021-328 Resolution amending the Flood Control Zone District and subzones 2021 budgets, request no. 1, in the amount of \$15,415 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 135 – 141
3. AB2021-340 Ordinance suspending Whatcom County Code 1.28 to update the Correctional Facilities operational standards
Pages 142 – 166
4. AB2021-342 Request authorization for the County Executive to enter into a Memorandum of Understanding between Whatcom County and Sudden Valley Community Association
Pages 167 – 174
5. AB2021-343 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and DH to implement the COVID-19 IRL Campaign in the amount of \$106,250 for a total amended contract amount of \$306,250
Pages 175 – 181
6. AB2021-347 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and SeaMar Community Health Centers to provide oversight and assistance at the COVID-19 Temporary Housing Facility in the amount of \$95,460 for a total amended contract amount of \$453,436
Pages 182 – 187
7. AB2021-355 Request authorization for the County Executive to enter into a contract between Whatcom County and Lighthouse Mission Ministries to provide oversight and assistance at the COVID Temporary Housing Facility, in the amount of \$89,674
Pages 188 – 207
8. AB2021-372 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to operate the Whatcom Homeless Service Center in the amount of \$930,003 for a total amended contract amount of \$2,324,075
Pages 208 – 223

Council "Consent Agenda" Items

1. AB2021-338 Request authorization for the County Executive to enter into a contract between Whatcom County and Opportunity Council to provide housing case management services, in the amount of \$262,341
Pages 224 – 258
2. AB2021-344 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and the North Sound Accountable Communities of Health to supervise Whatcom Unified Command's (WUC) Volunteer Branch in the amount of \$8,000 for a total amended contract amount of \$63,000
Pages 259 – 264
3. AB2021-348 Request authorization for the County Executive to enter into a contract between Whatcom County and Catholic Community Services to provide housing case management services, in the amount of \$168,339
Pages 265 – 296

4. AB2021-349 Request authorization for the County Executive to enter into a contract between Whatcom County and Lydia Place to provide housing case management services in the amount of \$203,602
Pages 297 – 328
5. AB2021-350 Request authorization for the County Executive to enter into a contract between Whatcom County and Northwest Youth Services to provide housing case management services, in the amount of \$178,771
Pages 329 – 359
6. AB2021-351 Request authorization for the County Executive to enter into a contract between Whatcom County and Cascade Connections to provide services to individuals with developmental disabilities, in an estimated amount of \$1,321,837
Pages 360 – 388
7. AB2021-352 Request authorization for the County Executive to enter into a contract between Whatcom County and Kulshan Supported Employment to provide services to individuals with developmental disabilities, in an estimated amount of \$1,150,942
Pages 389 – 417
8. AB2021-353 Request authorization for the County Executive to enter into a contract between Whatcom County and Washington Vocational Services to provide services to individuals with developmental disabilities, in an estimated amount of \$268,910
Pages 418 – 446
9. AB2021-354 Request authorization for the County Executive to enter into a contract between Whatcom County and Work Opportunities to provide services to individuals with developmental disabilities, in an estimated amount of \$686,136
Pages 447 – 475
10. AB2021-362 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bennett Engineering, LLC to update the Dept of Ecology-Central Shop Industrial Stormwater Pollution Prevention Plan (SWPPP), in the amount of \$30,850.00 for a total amended contract amount of \$55,035
Pages 476 – 486

Items Added by Revision

Other Business

Adjournment

COUNCIL CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE
1:45 P.M. TUESDAY, June 29, 2021 (ENDS NO LATER THAN 2:10 P.M.)
Virtual Meeting

Call To Order

Roll Call

Announcements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-778-5010 at least 96 hours in advance.

Special Presentation

1. AB2021-358 Report from the Public Defenders Office
Page 487

Items Added by Revision

Other Business

Adjournment

COUNCIL COMMITTEE OF THE WHOLE
2:15 P.M. TUESDAY, June 29, 2021 (ENDS NO LATER THAN 5:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Announcements

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-778-5010 at least 96 hours in advance.

Committee Discussion

1. AB2020-219 Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)
Pages 488 – 513
2. AB2021-382 Discussion regarding proposed Comprehensive Plan and Whatcom County Code (WCC) amendments, primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area and various land uses on a countywide basis
Pages 514 – 549
3. AB2021-378 Discussion and request for direction regarding hearing examiner contract for 2022
Pages 550 - 551
4. AB2021-369 Discussion of proposed ordinance and program guide establishing a Commercial Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County
Pages 552 – 628

Items Added by Revision

Other Business

Adjournment

County Council

**REGULAR COUNCIL MEETING
6:00 P.M. TUESDAY, June 29, 2021
Virtual Meeting**

CALL TO ORDER

ROLL CALL

FLAG 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.

Individuals who require special assistance to participate in the Council's meetings are asked to contact the Council Office at 360-778-5010 at least 96 hours in advance.

The County is accepting applications from county residents to fill vacancies on several boards, commissions, and committees spanning a wide range of important local issues. For more information, visit the Boards and Commissions vacancies webpage on the County website at www.co.whatcom.wa.us, or call the County Council Office or County Executive's Office.

COUNTY EXECUTIVE'S REPORT

SPECIAL PRESENTATION

1. AB2021-368 Report from the Health Department on the Behavioral Health Program Fund 2020 Annual Report
Pages 629 – 632

MINUTES CONSENT

1. MIN2021-050 Special Committee of the Whole for June 15, 2021
Pages 633 – 636
2. MIN2021-051 Committee of the Whole for June 15, 2021
Pages 637 – 643
3. MIN2021-052 Regular County Council for June 15, 2021
Pages 644 – 658

PUBLIC HEARINGS

To participate, please see instructions at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010. All speakers should state their name for the record and optionally include city of residence. Speakers will be given three minutes to address the Council. Council staff will keep track of time limits and inform speakers when they have thirty seconds left to conclude their comments.

1. AB2021-296 Ordinance adopting amendments to the Purchase of Development Rights Program
Pages 659 – 882

OPEN SESSION (20 MINUTES)

To participate, please see instructions at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010. All speakers should state their name for the record and optionally include city of residence. Speakers will be given three minutes to address the Council. Council staff will keep track of time limits and inform speakers when they have thirty seconds left to conclude their comments.

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)

1. AB2021-338 Request authorization for the County Executive to enter into a contract between Whatcom County and Opportunity Council to provide housing case management services, in the amount of \$262,341
 Pages 224 – 258
2. AB2021-344 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and the North Sound Accountable Communities of Health to supervise Whatcom Unified Command's (WUC) Volunteer Branch in the amount of \$8,000 for a total amended contract amount of \$63,000
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Pages 476 - 486

OTHER ITEMS

(From Council Natural Resources Committee)

1. AB2021-364 Discussion and Motion to recognize the intent of PLN2019-00011 - Surface Mining of Dry Meander Zones has been achieved
Pages 26 - 28
2. AB2021-366 Discussion and Motion for PLN2017-00004 Countywide Review of Designated Mineral Resource Lands
Pages 29 - 94

(From Council Finance and Administrative Services Committee)

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Pages 95 - 134
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Pages 208 – 223

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2021-303 Appointment of Starck Follis and Carolyn Mason to the Criminal Justice Treatment Account panel
Pages 883 – 884
2. AB2021-341 Appointment to the Flood Control Zone District Advisory Committee as an alternate member - Applicant: Daniel Dahlquist (Council Acting as the Flood Control Zone District Board of Supervisors)
Pages 885 – 889

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

1. AB2021-371 Request confirmation of the County Executive's reappointments of Georgiann Dustin, Shirley Forslof, Denise Irely, and Kathleen O'Connor to the Northwest Senior Services Board
Pages 890 – 892
2. AB2021-379 Request confirmation of the County Executive's appointment of William Zidel to the Point Roberts Community Advisory Committee
Pages 893 – 896

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. AB2021-346 Ordinance amending the project budget for the Silver Lake Park Improvement Fund, request no. 3
Pages 897 – 901
2. AB2021-363 Ordinance amending the Whatcom County Code and Comprehensive Plan, requiring a site-specific geotechnical analysis when mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline
Pages 902 – 924
3. AB2021-365 Ordinance amending the Whatcom County Budget, request no. 11, in the amount of \$5,728,416
Pages 925 – 939

4. AB2021-370 Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County
Pages 940 – 1016
5. AB2021-375 Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership
Pages 1017 – 1019
6. AB2021-380 Ordinance adopting amendments to the Whatcom County Comprehensive Plan relating to density credits, PDRs, and TDRs
Pages 1020 – 1202
7. AB2021-381 Ordinance adopting Whatcom County Comprehensive Plan amendments concerning the Lummi Island Ferry, modifying Policy 6A-1 relating to ferry level of service and deleting Policy 6C-9 relating to a ferry feasibility study
Pages 1203 – 1216

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: AB2021-373

File ID:	AB2021-373	Version:	1	Status:	Agenda Ready
File Created:	06/18/2021	Entered by:	SBatdorf@co.whatcom.wa.us		
Department:	Parks and Recreation Department	File Type:	Presentation		
Assigned to:	Council Natural Resources Committee				Final Action:
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Presentation on potential property acquisition for Squires Lake Park

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Presentation on potential property acquisition for Squires Lake Park

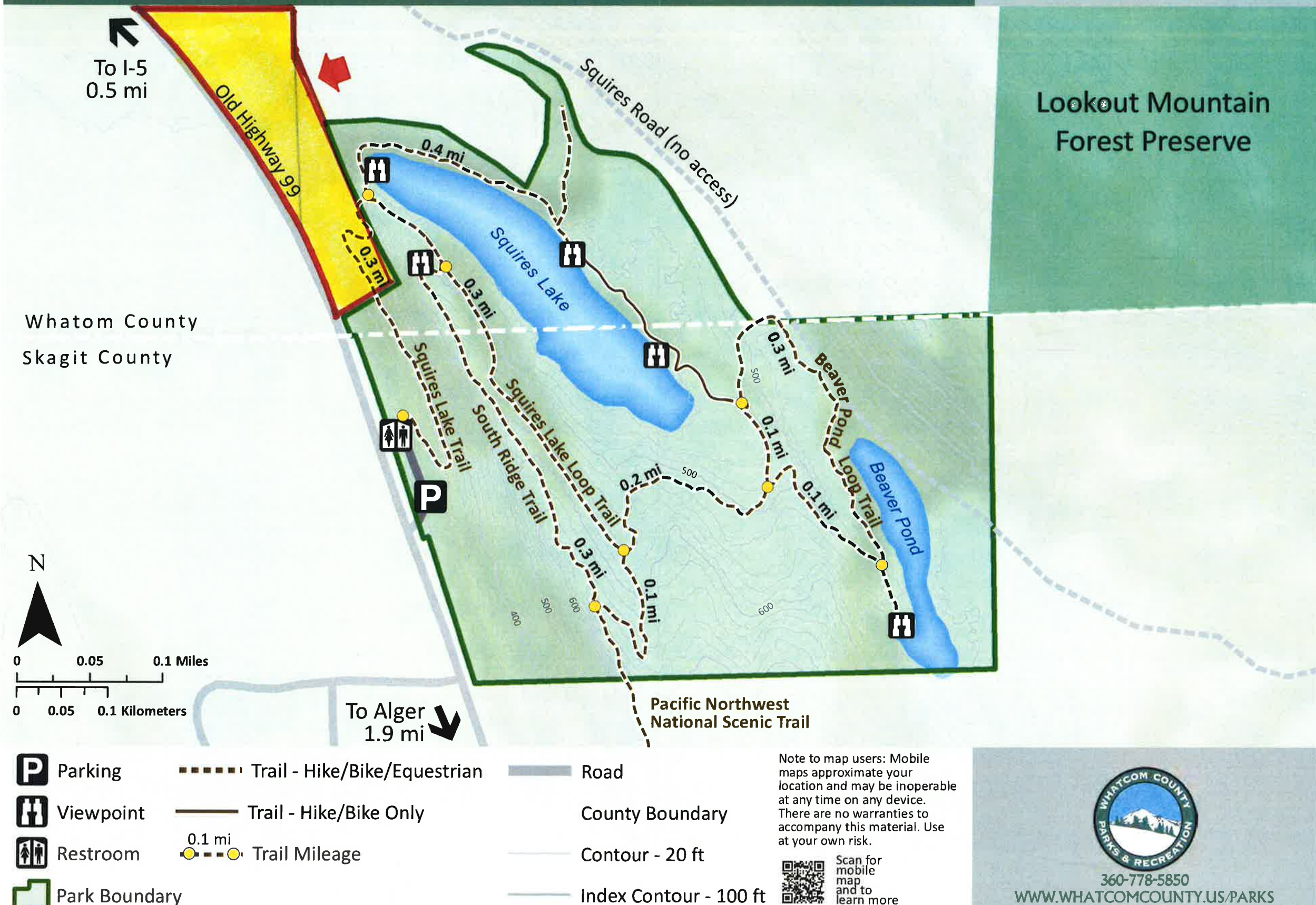
HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
<hr/>			

Attachments: Squires Lake Park Map

Squires Lake Park

Whatcom County
Parks & Recreation





Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-367

File ID:	AB2021-367	Version:	1	Status:	Agenda Ready
File Created:	06/16/2021	Entered by:			
Department:		File Type:	Discussion		
Assigned to:	Council Natural Resources Committee	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion of proposed ordinance amending the Whatcom County Code and Comprehensive Plan, requiring a site-specific geotechnical analysis when mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A zoning code amendment and comprehensive plan text amendment requiring a site-specific geotechnical analysis when mineral resource extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, in response to a Council directive to determine the minimum safe distance between surface mining and pipelines to ensure pipeline integrity during seismic events. Final approval of these amendments would occur as part of concurrent review of comprehensive plan amendments from 2021.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Memo, Staff Report, Proposed Ordinance



Memorandum

TO: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Joshua Fleischmann, Planner

THROUGH: Mark Personius, Director

DATE: June 15, 2021

SUBJECT: PLN2019-00010 - Surface Mining Pipeline Buffer

This memo is intended to provide background on a docketed amendment for surface mining near gas or petroleum transmission pipelines. We request your consideration of proposed amendments to the zoning code related to the docketed proposal, which states:

Amend the Whatcom County Comprehensive Plan and Whatcom County Code to determine the minimum safe distance to allow surface mining to be conducted from a petroleum pipeline to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer. Determination should be based on independent sources where possible and assume a magnitude 9.0 or greater earthquake could occur.

In response to the proposal, staff reached out to multiple jurisdictions and pipeline operators in an attempt to find out if there is a minimum safe distance presently in use. The result of the inquiry is that there is not.

BP's response was the most thorough, stating:

"...we gathered a cross-functional team that included representatives from BP Operations and Maintenance, Engineering, Damage Prevention and Right of Way. The team ultimately concluded that the safe distance between surface mining and pipelines is case specific. There are too many variables - including the type of surface mining, location of the earthquake's epicenter, soil conditions, and topography - that preclude us from providing a universal answer that is scientifically supportable. Indeed, it is difficult to predict with certainty how a 9.0+ earthquake would affect any infrastructure including roads, power lines, and pipelines."¹

In response, without examples of minimum standards, the following language was drafted by PDS staff to be an additional Conditional Use Permit approval criterion for surface mining subject to the surface mining act:

WCC 20.73.153(9)

¹ Horn, Marc, District Operations Manager, BP USPL, "Horn Letter to Fleischmann 05.30.2019"

When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

In the proposed code language (above), "2 percent probability of exceedance in 50 years" is an industry standard for seismic designs that must consider large-magnitude, low-frequency seismic events. It is the common design standards for developments like essential or emergency facilities. By considering seismic events with this low recurrence potential, both on local crustal faults and at the Cascadia Subduction Zone, the required assessment essentially addresses a worst case scenario²

The Surface Mining Advisory Committee (SMAC) voted unanimously in support of forwarding this language to the Planning Commission for their review and recommendation to the County Council.

The Planning Commission held a public hearing on June 10th. As a result of public comment, additional language was proposed in WCC 20.81.030.A, requiring that transmission pipeline operators are provided 15 days to provide comments to Whatcom County on surface mining applications within 500 feet of the centerline of a pipeline corridor.

Additionally, the Planning Commission forwarded the following Comprehensive Plan policy amendment, as included in Exhibit A, for consideration by the County Council.

Policy 8L-9

Through a site specific geotechnical analysis of potential impacts, ensure mineral extraction within 500 feet of gas or petroleum transmission pipelines will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake.

Final approval of Comprehensive Plan Policy 8L-9 would occur as part of concurrent review of comprehensive plan amendments from 2021.

I look forward to discussing the merits of this recommendation with you.

² Wiser, Andy. "Earthquake Frequency." Received by Joshua Fleischmann, 6 Jun. 2019.

**WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT**

I. OVERVIEW

File # PLN2019-00010

File Name: Surface Mining Pipeline Buffer

Applicant: Whatcom County Council

Summary of Request: Amend the Whatcom County Comprehensive Plan and Whatcom County Code to determine the minimum safe distance to allow surface mining to be conducted from a petroleum pipeline to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer. Determination should be based on independent sources where possible and assume a magnitude 9.0 or greater earthquake could occur.

Location: Countywide

Staff Recommendation: Approval

History: In response to the proposed amendment, staff reached out to multiple jurisdictions and pipeline operators in an attempt to find out if there is a standard minimum safe distance presently in use. The result of the inquiry is that there is not.

In response, without examples of minimum standards, the language within Exhibit A was drafted by PDS staff to be an additional Conditional Use Permit approval criterion for surface mining subject to the surface mining act.

In the proposed code language, "2 percent probability of exceedance in 50 years" is an industry standard for seismic designs that must consider large-magnitude, low-frequency seismic events. It is the common design standard for developments like essential or emergency facilities. By considering seismic events with this low recurrence potential, both on local and crustal faults and at the Cascadia Subduction Zone, the required assessment essentially addresses a worst case scenario.

The Surface Mining Advisory Committee (SMAC) voted unanimously in support of forwarding this language to the Planning Commission for their review and recommendation to the County Council.

II. ZONING CODE EVALUATION

In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan (WCC 20.10.060(2)).

The following goals and policies of the Comprehensive Plan apply to the subject zoning text amendments.

Natural Gas and Hazardous Liquid Transmission Pipelines

Goal 5M: Protect the citizens and the environment of Whatcom County through informational, educational, and regulatory measures

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Policy 5N-8: Require expanded land uses and facilities located nearer than 500 feet from the centerline of a transmission pipeline to not increase the level of risk from a pipeline failure and use site design, building, technological, and/or operational techniques to reduce or minimize risk

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Mineral Resources

Goal 8L: Ensure mineral extraction industries do not adversely affect the people and other properties in the vicinity, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Policy 8L-1: Avoid significant impacts on adjacent or nearby land uses, public health and safety, or natural resources from mineral extraction.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Policy 8L-3: Avoid adversely impacting ground and surface water quality. The protection of aquifers and recharge zones should have precedence over

surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using best management practices for reclamation or on-site storage.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Environmental Management

Goal 10A: Protect natural resources and systems, life, and property from potential hazards

Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Surface Water and Groundwater

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

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

Policy 10G-1: Maintain as a high priority the protection of water quality and quantity.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation,

enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

III. COMPREHENSIVE PLAN EVALUATION

In order to approve the proposed Comprehensive Plan amendments, pursuant to Whatcom County Code (WCC) 22.10.060, the planning commission and county council must find:

- 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.

A. That 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.

The proposal conforms to the requirements of the Growth Management Act outlined in the planning goals and comprehensive plan mandatory elements as described below.

RCW 36.70A.020 - Planning Goals:

GMA planning goal #10 states: "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water" (RCW 36.70A.020(10)).

Staff Comment: This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

RCW 36.70A.070 - Comprehensive plans - Mandatory elements:

RCW 36.70A.070(1) - Land Use Element

The land use element states, in part: "The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies.

Staff Comment: This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

RCW 36.70A.070(5) - Rural Element

The rural element shall (in part): "include measures that apply to rural development and protect the rural character of the area, as established by the county, by protecting critical areas...and surface water and groundwater resources." (RCW 36.70A.070(5)(c)(iv))

Staff Comment: This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

County-Wide Planning Policies

County-Wide 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. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.

Staff Comment: This amendment will require a site specific geotechnical analysis as part of the zoning regulations to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

Interlocal Agreement

Staff Comment: Staff is not aware of any interlocal agreements affecting the proposed amendments.

B. That further studies made or accepted by the department of planning and development services indicate changed conditions that show the need for the amendment.

There have been no studies made or accepted by PDS that indicate changed conditions that show the need for the amendments. However, seismic events are known to impact the structural integrity of infrastructure. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event

C. That 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:

1. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

Staff Comment: There would be no appreciable anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.

2. The anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

Staff Comment: There is no appreciable anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.

3. Anticipated impact upon designated agricultural, forest and mineral resource lands.

Staff Comment: There is no appreciable anticipated impact upon designated agricultural or forest lands. The proposal requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The findings of the geotechnical

analysis may require a larger area of separation between mining activities and pipelines than would presently be required. This may protect the public interest of uncontaminated aquifers, as intended by the proposal.

D. That the amendment does not include nor facilitate illegal spot zoning.

According to the Official Whatcom County Zoning Ordinance:

“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).

Staff Comment: The proposed amendments do not change the zoning of any area, therefore the amendment does not include nor facilitate illegal spot zoning.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. The proposed amendments were docketed by the Whatcom County Council on March 12, 2019.
2. The Surface Mining Advisory Committee recommended approval of the proposed amendments for approval on June 26, 2019.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 29, 2021. The associated comment period ended May 13, 2021, and the appeal period concluded May 24, 2021.
4. A comment was received by the Department of Ecology on May 13, 2021, recommending clarification on current issues with mineral extraction near pipelines, potential and actual incidents resulting in damage to pipelines or support structures due to mineral extraction, current restrictions on mineral extractions within the vicinity of pipelines, and suggesting consideration of additional safeguards.
5. A Revised DNS was issued on May 25, 2021, in response to Department of Ecology comments.
6. The Planning Commission held a duly noticed public hearing on the proposed amendments on June 10, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on April 21, 2021.
8. On April 21, 2021, the Department of Commerce acknowledged receipt of the

notice, and that a copy of the notice had been forwarded to other state agencies.

9. The Growth Management Act (GMA) includes a planning goal that is relevant to the proposed comprehensive plan amendment.
10. GMA Planning Goal #10: Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

11. The Growth Management Act (GMA) includes comprehensive plan mandatory elements that are relevant to the proposed comprehensive plan amendment and ensure coordination between communities and jurisdictions to reconcile conflicts.
12. Comprehensive Plan Land Use Element states, in part: The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

13. Comprehensive Plan Rural Element shall, in part: "include measures that apply to rural development and protect the rural character of the area, as established by the county, by protecting critical areas...and surface water and ground water resources.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

14. Whatcom County's County-Wide Planning Policy N-2 states: 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. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.

This amendment will require a site specific geotechnical analysis as part of the zoning regulations to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from petroleum pipelines to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

15. There are no interlocal agreements affecting the proposed amendments.
16. Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
17. Goal 5M: Protect the citizens and the environment of Whatcom County through informational, educational, and regulatory measures.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

18. Policy 5N-8: Require expanded land uses and facilities located nearer than 500 feet from the centerline of a transmission pipeline to not increase the level of risk from a pipeline failure and use site design, building, technological, and/or operational techniques to reduce or minimize risk.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

19. Policy 8L-1: Avoid significant impacts on adjacent or nearby land uses, public health and safety, or natural resources from mineral extraction.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

20. Policy 8L-3: Avoid adversely impacting ground and surface water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using best management practices for reclamation or on-site storage.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

21. Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

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

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

23. Policy 10G-1: Maintain as a high priority the protection of water quality and quantity.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

24. There have been no studies made or accepted by PDS that indicate changed conditions that show the need for the amendments. However, seismic events are known to impact the structural integrity of infrastructure. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
25. There would be no appreciable anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as anticipated in the Comprehensive Plan as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
26. There is no appreciable anticipated effect upon the ability of the County and/or other services 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 as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
27. There is no appreciable anticipated impact upon designated agricultural or forest lands. The proposal requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The findings of the geotechnical analysis may require a larger area of separation between mining activities and pipelines than would presently be required. This may protect the public interest of uncontaminated aquifers, as intended by the proposal.
28. The amendment does not include nor facilitate illegal spot zoning.

V. PROPOSED CONCLUSION

The subject comprehensive plan amendments and zoning text amendments are consistent with the approval criteria of WCC 22.10.060.

VI. RECOMMENDATION

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

ATTACHMENTS

1. Draft Ordinance
2. Exhibit A - DRAFT Comprehensive Plan and Zoning Code Regulations

PROPOSED BY: _____
SPONSORED BY: _____
INTRODUCTION DATE: _____

**ORDINANCE NO. 2021-
AMENDING WHATCOM COUNTY CODE TITLE 20 AND THE COMPREHENSIVE
PLAN REGARDING SURFACE MINING APPLICATIONS WITHIN 500 FEET OF
GAS OR PETROLEUM PIPELINES.**

WHEREAS, Whatcom County Council docketed a proposal to amend the Whatcom County Comprehensive Plan and Whatcom County Zoning Code to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer; and

WHEREAS, the proposed amendment has been reviewed under the State Environmental Policy Act (SEPA); and

WHEREAS, in accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed zoning text and comprehensive plan amendments; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald; and

WHEREAS, the Whatcom County Planning Commission held a work session on the proposed amendment; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the Whatcom County Council has reviewed the Planning Commission recommendation; and

WHEREAS, the Whatcom County Council held a work session in the Natural Resources Committee; and

WHEREAS, the Whatcom County Council held a public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

FINDINGS

1. The proposed amendments were docketed by the Whatcom County Council on March 12, 2019.
2. The Surface Mining Advisory Committee recommended approval of the proposed amendments for approval on June 26, 2019.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 29, 2021. The associated comment period ended May 13, 2021, and the appeal period concluded May 24, 2021.
4. A comment was received by the Department of Ecology on May 13, 2021, recommending clarification on current issues with mineral extraction near pipelines, potential and actual incidents resulting in damage to pipelines or support structures due to mineral extraction, current restrictions on mineral extractions within the vicinity of pipelines, and suggesting consideration of additional safeguards.
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7. Notice of the proposed amendment was sent to the Department of Commerce on April 21, 2021.
8. On April 21, 2021, the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
9. The Growth Management Act (GMA) includes a planning goal that is relevant to the proposed comprehensive plan amendment.
10. GMA Planning Goal #10: Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the

likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

11. The Growth Management Act (GMA) includes comprehensive plan mandatory elements that are relevant to the proposed comprehensive plan amendment and ensure coordination between communities and jurisdictions to reconcile conflicts.
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15. There are no interlocal agreements affecting the proposed amendments.
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impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using best management practices for reclamation or on-site storage.

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21. Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

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

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

23. Policy 10G-1: Maintain as a high priority the protection of water quality and quantity.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

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allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.

25. There would be no appreciable anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as anticipated in the Comprehensive Plan as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
26. There is no appreciable anticipated effect upon the ability of the County and/or other services 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 as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
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28. The amendment does not include nor facilitate illegal spot zoning.

CONCLUSIONS

1. The subject comprehensive plan amendments and zoning text amendments are consistent with the approval criteria of WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit A.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan is hereby amended as shown in Exhibit A

BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid

or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

ADOPTED this _____ day of _____, 2021

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Royce Buckingham
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied Date

Signed: _____

Exhibit A

Whatcom County Code

Chapter 20.73 Mineral Resource Lands Special District (MRL)

20.81.030

A. Land Divisions, High-Consequence Land Uses, ~~and~~ Essential Public Facilities and Surface Mining.

20.73.150 Conditional uses.

. **153** Surface mining subject to Washington State's Surface Mining Act (Chapter [78.44](#) RCW); provided, that:

(9) When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

Whatcom County Comprehensive Plan

Chapter 8 - Resource Lands

Goal 8L: Ensure mineral extraction industries do not adversely affect the people and other properties in the vicinity, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Policy 8L-9: Through a site specific geotechnical analysis of potential impacts, ensure mineral extraction within 500 feet of gas or petroleum transmission pipelines will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-364

File ID:	AB2021-364	Version:	1	Status:	Agenda Ready
File Created:	06/15/2021	Entered by:	JFleisch@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Request for Motion		
Assigned to:	Council Natural Resources Committee	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion and Motion to recognize the intent of PLN2019-00011 - Surface Mining of Dry Meander Zones has been achieved

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A Council directive to amend the Whatcom County Comprehensive Plan and Whatcom County Code to allow the seasonal extraction of sand and gravel from dry upland areas under certain conditions. No amendments to the Whatcom County Comprehensive Plan or Whatcom County Code are proposed.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo

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

Memorandum

TO: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Joshua Fleischmann, Planner

THROUGH: Mark Personius, Director

DATE: June 15, 2021

SUBJECT: Surface Mining of Dry Meander Zones (PLN2019-00011)

BACKGROUND

In 2019 the County Council placed the following proposal (PLN2019-00011) on the docket:

Amend the Whatcom County Comprehensive Plan and Whatcom County Code to allow the seasonal extraction of sand and gravel from dry upland areas located within the 1,000 year meander zone of the Nooksack River, provided that such extraction has no negative impact on salmon spawning habitat. The intent is to (a) reduce the conversion of land currently used for farming, forestry and wildlife habitat into gravel pits, and (b) safely remove some of the significant sediment load that enters the Nooksack River every year in an effort to reduce flooding and the need to build higher flood prevention berms along the river as the climate continues to change.

ANALYSIS

Preliminarily we would note that the "1,000-year meander zone" appears to be an undefined term. Regulatory terms used to denote geomorphic areas around rivers and shorelines include, but are not limited to: floodplain, floodway, shoreline jurisdiction, channel migration zone, historic migration zone, erosion hazard area, avulsion hazard area, etc. Whatcom County regulates activities as they relate to these areas, but not a 1,000-year meander zone. Since "1,000-year meander zone" appears to be undefined, staff has interpreted that the intended activities of the docketed amendment would be regulated through the Shoreline Management Program (SMP)

We would like to note that existing Whatcom County Comprehensive Plan goals (Goal 8Q) and policies (Policy 8Q-1 thru 8Q-9), as well as the existing SMP code¹, support and offer permitting pathways to conditionally allow sand and gravel extraction within shoreline jurisdiction.

Furthermore, the draft 2020 SMP code amendments², which the Planning Commission voted unanimously to approve at the May 13, 2021 meeting, will continue to allow these activities, consistent with the Shoreline Conditional Use permit requirements, even though the language is being revised for consistency with appropriate RCW and WAC requirements.

¹ WCC 23.100.080.B.1, WCC 23.100.080.B.2, WCC 23.100.080.B.9.a, WCC 23.90.120.B.1.f

² See SMP Update Exhibit D, §23.40.140, (Mining), §23.40.080 (Dredging and Dredge Material Disposal), and §23.40.100 (Flood Control Works and Instream Structures)

Finally, while both the existing and proposed SMP code allows for sand and gravel extraction within shoreline jurisdiction, an extensive permitting/authorization process (and associated costs) at the State and Federal level continues to be the primary impediments to these activities.

RECOMMENDATIONS

Surface Mining Advisory Committee (SMAC)

At their June 26, 2019 meeting, the SMAC reviewed this matter and stated their understanding that no changes were necessary to the SMP code in order to allow for extraction of sand and gravel from dry upland areas located within shoreline jurisdiction and/or the FEMA 100 year floodplain. Furthermore, it was confirmed that the lack of recent sand and gravel extraction within the Nooksack River shoreline jurisdiction/FEMA floodplain/floodway is primarily a function of the time and costs for studies associated with permitting and review at the state and federal level, compared to the economic return on investment.

Planning and Development Services (PDS)

In a February 4, 2021 memo to the Planning commission, staff recommended that the PC include a Finding of Fact in the SMP adopting ordinance that the code would meet Council's intent to allow sand and gravel extraction within shoreline jurisdiction under certain circumstances as described in PLN2019-00011.

Planning Commission (PC)

At their May 13, 2021 meeting, the Planning Commission voted unanimously to approve the 2020 Shoreline Management Program Periodic Update, as amended, including the following finding of fact:

14. As evidenced by the recommendation of the Surface Mining Advisory Committee, Title 23 already meets Council's intent to allow sand and gravel extraction within shoreline jurisdiction under certain circumstances as described in PLN2019-00011 and thus no amendments are proposed to achieve this.

CONCLUSION

No further action is required to achieve the intended outcome of docketed item PLN2019-00011. Therefore, we request a motion recognizing the intent of PLN2019-00011 - Surface Mining of Dry Meander Zones has been achieved.



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2021-366

File ID:	AB2021-366	Version:	1	Status:	Agenda Ready
File Created:	06/16/2021	Entered by:	JFleisch@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Request for Motion		
Assigned to:	Council Natural Resources Committee	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion and Motion for PLN2017-00004 Countywide Review of Designated Mineral Resource Lands

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion and Motion for County Council preferred approach to addressing work item
PLN2017-00004 Countywide Review of Designated Mineral Resource Lands

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Review of Designated Mineral Resource Lands, Exhibits, Figures, Tables, Memo from Agricultural Advisory Committee, Memo from Forestry Advisory Committee

WHATCOM COUNTY

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Mark Personius, AICP
Director

Memorandum

TO: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Joshua Fleischmann, Planner

THROUGH: Mark Personius, Director

DATE: June 15, 2021

SUBJECT: PLN2017-00004 - Countywide Review of Designated Mineral Resource Lands

The purpose of this memo is to provide background information on the Whatcom County-led, countywide review of potential resource areas for inclusion in the Whatcom County Comprehensive Plan as Designated Mineral Resource Lands (MRLs), and to request direction for a County Council preferred approach.

BACKGROUND

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

- Policy 8R-1: Through a county-led countywide assessment, seek to identify and designate potential commercially significant mineral resource lands, to meet future demand, compatible with water resources, agricultural lands, forest lands and other GMA goals.

Support for this process was further displayed through the docketing process in 2017 (PLN2017-00004).

APPROACH

In proceeding with this work item, Planning and Development Services (PDS) staff worked with the Whatcom County Surface Mining Advisory Committee (SMAC) to identify which potential resource areas should be considered for designation as MRLs. The attached white paper provides background on the SMAC recommendation, as well as identifying issues and providing alternative approaches for your consideration.

At the May 27, 2021 Planning Commission work session, PDS staff provided a presentation on the SMAC recommendation, including alternative mapping and regulatory approaches discussed in the white paper. The goal, at the conclusion of the work session, was a policy level recommended approach from the Planning Commission to the County Council for your consideration in requesting PDS to continue processing the docketed proposal. As the Commissioners discussed the alternatives, they concluded their preferred approach was Alternative #2 - Localized Expansion, as provided in the MRL White Paper background document. The Commission specifically supported limiting potential MRL expansion to areas

within 1/2 mile of existing MRL designations, while allowing for landowners to opt out of the MRL designation process.

At the June 10, 2021 Planning Commission work session, the following motion was approved:

After holding 2 work sessions and accepting public comment as part of the work sessions on the countywide review of Designated Mineral Resource Lands, the Planning Commission recommends the County Council request Planning and Development Services to continue processing PLN2017-00004, limiting the scope of review to the Surface Mining Advisory Committee recommendation within 1/2 mile of existing Designated MRLs. Further, the Planning Commission recommends considering allowing for landowners to opt out of MRL Designation process proposed through PLN2017-00004.

NEXT STEPS

Upon consideration of the SMAC recommendation, Planning Commission recommendation, and other potential alternatives, PDS requests direction from the County Council on a preferred approach. With this direction, PDS will engage in a more targeted analysis of parcels potentially suitable for MRL expansion that can meet the MRL designation criteria in the Comprehensive Plan. Staff would then conduct outreach to the public and incorporate public feedback into potential options, before returning to the Planning Commission for public hearings, work sessions and ultimately a recommendation to the County Council for final adoption.

I look forward to discussing this topic with you and answering any questions you may have.

Countywide Review of the Comprehensive Plan Designation Process for Mineral Resource Lands of Long-Term Commercial Significance

The purpose of this paper is to discuss options for designating Mineral Resource Lands (MRLs) at the countywide level. Designating MRLs at the countywide level is consistent with the requirements of the Growth Management Act (GMA) for protection of natural resource lands. Additionally, by designating MRLs at the countywide level, the unpredictable nature of the landowner initiated designation process that presently exists may be eliminated for areas where potential resources have already been identified. Upon designation, mineral extraction companies will be required to obtain operating permits, but will not be required to apply for comprehensive plan amendments with unpredictable outcomes. The paper will discuss both potential mapping of countywide resources, as well as the development regulations necessary to assure the conservation of MRLs of long-term commercial significance.

Background

GMA and Whatcom County Approach

One of the goals of the 1990 Growth Management Act (GMA) is to maintain and enhance natural resource industries of long-term commercial significance, including agricultural, forestry and mineral resources.

The GMA requires that counties classify and designate MRLs of long-term commercial significance for the extraction of minerals and implement development regulations to ensure the protection of the resource from incompatible uses¹.

To address the mandates of the GMA, Whatcom County formed a Surface Mining Advisory Committee (SMAC) in the 1990s to produce, through a consensus process, the issues, goals, and policies for designating MRLs of long-term significance. The County Council adopted the final version in chapter 8 of the 1997 Comprehensive Plan, which includes policies establishing MRL designation criteria (Exhibit A) and 24 Mineral Resource Land site-specific designations covering nearly 4,200 acres on the Comprehensive Plan Land Use Map. The 1997 Comprehensive Plan Land Use Map MRL designations essentially covered only existing mining operations. Since then, the MRL designation criteria and land use map have undergone minor amendments, but are generally the same as adopted in 1997. Protection of the MRL designations is achieved through the MRL Zoning Overlay (WCC 20.73) by

¹ Revised Code of Washington (RCW) 36.70A.170; RCW 36.70A.060; Washington Administrative Code (WAC) 365-190

allowing mineral resource extraction and other the types of activities that encourage and support the opportunity for extraction of minerals, while discouraging incompatible uses from locating within MRLs where extraction may be anticipated.

Since the adoption of the Whatcom County Comprehensive Plan in 1997, there have been three minor changes to the Designated MRLs. Each of these Comprehensive Plan Land Use Map and Zoning Map amendments were applicant-initiated:

- Ordinances 2003-008 and 2003-009 expanded the Killam MRL by ~85 acres, near Telegraph Rd south of Sumas.
- Ordinance 2005-003 created a new ~37-acre MRL near the corner of North Star and Brown Roads.
- Ordinance 2012-006 eliminated the ~90-acre MRL on Aldrich Rd, just south of King Tut Rd.

Existing MRL designations on the Comprehensive Plan Land Use Map are shown in Figure 1.

Need for New Approach

Since 2005, two proposed applicant-initiated Comprehensive Plan amendments to expand existing MRL designations have been denied. Each of these amendments met the designation criteria outlined in the Comprehensive Plan and been recommended for approval by Whatcom County Planning and Development Services (PDS) staff and the Whatcom County Planning Commission. Nonetheless, each of these applications was ultimately denied by the County Council through the legislative process largely as a result of significant neighborhood opposition to expanded mining operations.

In response, the surface mining industry voiced frustration at an unpredictable process where time and money are invested, the approval criteria are met, recommendations of approval are made, but applications are still denied.

Subsequently, as part of the review of MRL Comprehensive Plan and Zoning Text amendments in October 2014, the Whatcom County Planning Commission strongly recommended that Whatcom County take a lead role in designating MRLs of long-term commercial significance in order to protect the resource from incompatible uses, as opposed to the presently unpredictable process of landowner initiated amendments. During the 2016 Comprehensive Plan update, the County Council adopted policies supporting a more proactive approach to MRL designation, including Policy 8R-1 which states:

Through a county-led countywide assessment, seek to identify and designate potential commercially significant mineral resource lands, to meet future demand, compatible with water resources, agricultural lands, forest lands and other GMA goals.

In 2017, the County Council formally docketed a request for PDS to engage in a countywide MRL designation process (PLN2017-00004).

Because MRL designation on the Comprehensive Plan Land Use Map is necessary in order to apply for a Conditional Use Permit for mineral extraction, this countywide approach could greatly reduce the instances of the unpredictable landowner initiated designation process. Additionally, the surface mining industry would have more areas that have been identified as appropriate for submitting mining applications.

The purpose of this paper is to outline considerations for designating MRLs at the countywide level, including potential comprehensive plan amendments (both text and map) and development regulations necessary to assure the conservation of MRLs of long-term commercial significance.

County-Wide MRL Designation Processes

In 2003, a report authored by GeoEngineers² identified potential aggregate reserve areas (PRAs) that could be used to meet a then stated policy to "Designate a 50 year supply of commercially significant construction aggregate supply". As part of a 2014 update to the study, Element Solutions³ identified additional Potential Resource Areas (PRAs) where commercially significant aggregate (e.g., sand and gravel) reserves and bedrock may occur. These combined PRAs were the starting point in discussion on where to review potential Designated MRLs at a countywide level.

Planning and Development Services provided staff support to the SMAC in developing their recommendation for the county-wide designation process. Throughout their discussions, a couple key considerations were identified:

- The purpose of the countywide review is to protect the identified resource. Therefore, when deliberating how to proceed, attempt to protect maximum amount of the resource.
- While this is a countywide approach, there should remain a process for future landowner-initiated applications. Not all existing designation criteria apply to both situations equally. Some criteria cannot feasibly or realistically apply to the countywide approach.

The result of the SMAC's work is a map of potential Designated MRLs (Figure 2), comprehensive plan amendments (Exhibit B) and zoning code amendments (Exhibit C). These recommendations are provided below.

Additionally, multiple Comprehensive Plan Land Use Map, Zoning Map, and Zoning Code amendments have been applied for and/or docketed by the County Council over the past 8

² GeoEngineers, Inc., *Engineering Geology Evaluation Aggregate Resource Inventory Study, Whatcom County Washington*, for Whatcom County Planning and Development Services, File No. 0484-040-00/093003, September 2003.

³ Element Solutions, *Aggregate Resource Inventory 2014 Study Update, Whatcom County, Washington*, prepared for Whatcom County Department of Planning and Development Services, December 22, 2014.

years. Two separate Comprehensive Plan Map/Zoning Map amendments have been docketed by the County Council. These docketed items include:

- PLN2012-00009 - North Star Rd - Comprehensive Plan Map/Zoning Map
Expansion of existing MRL to include a ~20 acre parcel immediately adjacent to the south. Expansion would include a new parcel currently designated Rural on the Comprehensive Plan Land Use Map.
- PLN2019-00002 - Rd - Comprehensive Plan Map/Zoning Map
Expansion of existing MRL to include ~22.8 acres immediately adjacent to the south. Expansion would include a new parcel currently designated Rural on the Comprehensive Plan Land Use Map, as well as a portion of a parcel that is already partially designated MRL.

A third Comprehensive Plan Map/Zoning Map amendment was applied for but was not docketed by the County Council in 2019:

- PLN2019-00001 - E Pole Road - Comprehensive Plan Map/Zoning Map
Expansion of existing MRL to include ~21.7 acres immediately adjacent to the east. Expansion would include a portion of a parcel that is currently designated Rural and already partially designated MRL.

These three proposed Comprehensive Plan Map/Zoning Map amendments are briefly discussed below in both the section on the SMAC Comprehensive Plan Map amendments and the section on Potential Alternatives and Amendments.

Finally, two separate Zoning Code amendments were docketed by the County Council in 2019. The following docketed items are discussed at the end of this paper:

- PLN2019-00010 - Surface Mining Pipeline Buffer
- PLN2019-00011 - Surface Mining of Dry Meander Zones

SMAC Recommended Designated MRL Map Amendments.

The SMAC recommended Designated MRL Map (see Figure 2) was developed by reviewing the PRAs identified by GeoEngineers and Element Solutions and applying the existing MRL designation criteria⁴ to either include or exclude areas, consistent with the criteria. While discussing the criteria it became clear that certain criteria were not applicable to a county-wide review. Ultimately, areas that were excluded from potential designation include lands outside of Whatcom County regulatory jurisdiction (federal, tribally owned, cities, etc.), lands identified in another GMA required element (park and recreation), areas negotiated in conjunction with other jurisdictions as required by GMA (Urban Growth Areas, Urban Growth Area Reserves), and other designations identified through Growth Management Hearings Board appeals and decisions (e.g., Limited Areas of More Intense Rural Development).

⁴ Whatcom County Comprehensive Plan, Chapter 8

One result of this PRA mapping exercise is that some areas would require a new MRL Comprehensive Plan Map designation. In this scenario, where the PRAs overlap Rural designations, for example, the MRL designation would replace the Rural designation⁵. Other areas, such as Designated Agriculture, Designated Commercial Forestry or Designated Rural Forestry resource lands, may have dual designations with MRL. According to state guidance on designating natural resource lands under the GMA, “[i]f two or more natural resource land designations apply (i.e. meets designation criteria for multiple resource land categories), counties must determine if the designations are incompatible. If they are incompatible, counties should examine the criteria to determine which has the greatest long-term commercial significance and that resource use should be assigned to the lands being designated”.⁶ Under these scenarios, the underlying zoning district (e.g., rural, agriculture) is not proposed to change, meaning that the existing uses allowed within the zone as it exists now will continue to be allowed.

However, the MRLs Special District zoning overlay (WCC 20.73) would allow for site-specific applications to be submitted for surface mining subject to the Washington State Surface Mining Act (SMA). The SMA is a statewide law requiring the coordination between local jurisdictions and the State for the extraction of mineral resources (e.g. sand, gravel, bedrock) and subsequent reclamation to an ultimate end use.

In total, this scenario, if implemented, would result in a total of ~122,993 acres (~10,000 parcels) of Designated MRL. Presently ~4,133 acres (~231 parcels) are Designated MRL. The change in the amount of acreage for each Comprehensive Plan Land Use Map designation under this scenario is shown in Table 1.

Table 1 - Approximate CP Designation Acreage presently vs SMAC recommendation

CP Designation	Current	SMAC Recommendation	After
AG	85,821	-36,799	49,022
CF	186,474	-32,548	153,926
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-3,494	3,535
MRL	4,133	+118,860	122,993
PUBLIC-REC	4,812	0	4,812
RF	35,383	-14,460	20,923
RURAL	121,175	-30,180	90,995
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-1,283	1,789
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	96	-96	0

⁵ RCW 36.70A.070(5)

⁶ WAC 365-190-040(7)(b)

Landowner initiated amendments under this scenario

PLN2012-00009 - North Star Rd (Docketed)

If the SMAC recommendation is approved, the expansion proposed with this application would be included and become Designated MRL.

PLN2019-00002 - Breckenridge Rd (Docketed)

If the SMAC recommendation is approved, the expansion proposed with this application would be included and become Designated MRL.

PLN2019-00001 - E Pole Road (Not Docketed)

If the SMAC recommendation is approved, the expansion proposed with this application would be included and become Designated MRL.

SMAC Recommended Comprehensive Plan Policy Amendments

The discussion on comprehensive plan policy or text amendments focuses on the MRL designation criteria (Exhibit A). In order to fully address the proposed SMAC recommended changes to the designation criteria, comprehensive plan policies would need to be modified as shown in Exhibit B.

As mentioned above, not all the existing designation criteria are applicable or feasible as part of a countywide review. What quickly became apparent is if all designation criteria were to be applied, a given designation criterion may result in another criterion not being met.

For example, if all parcels containing PRAs were mapped for potential designation, many parcels throughout the county would enclose upon non-designated parcels by greater than 50%. This would appear to be inconsistent with Criterion #9 which states "MRL Designation should not enclose by more than 50% non-designated parcels." If an "enclosing" parcel was removed from potential designation in order to address this criterion, inevitably the "enclosing" parcel (now no longer proposed for designation) would become enclosed upon by other potentially designated parcels. Continuing this cycle would result in a time consuming, site-specific process that would not appear to meet the intention of the countywide review.

Consequently, the SMAC recommended that amendments to the designation criteria would only be applied to any future landowner-initiated site-specific MRL map amendment applications—not those considered as part of this countywide MRL review process.

While reviewing the existing MRL designation criteria, the SMAC identified criteria that could be addressed through Comprehensive Plan policies and at the site-specific project permitting stage, rather than through the Comprehensive Plan MRL Land Use Map

designation process. For example, the intent of existing designation Criterion #9 (discussed above) appears to be to prevent mining operations from surrounding properties that are not involved in mining. Similarly, Criterion #7 appears to intend that mining not occur within or abutting developed residential zones or subdivisions platted at urban densities. The SMAC proposed deleting Criterion #7 and amending Comprehensive Plan policies and conditional use permit criteria within the zoning code to capture the intent of the designation criterion. The SMAC also proposed deleting Criterion #9 and amending the Comprehensive Plan policies to capture the intent of the designation criterion, but were unable to develop clear zoning code language for implementing the intent of the existing designation criterion at the project permitting stage.

Another designation criterion proposed for deletion by the SMAC is Criterion #8. This criterion states "MRL Designations must not occur within the 10-year zone of contribution for designated wellhead protection areas..." Wellhead protection areas are "The surface and subsurface areas surrounding a water well, or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach the well or well field."⁷ The intent appears to be to prohibit the extraction of mineral resources within the 10-year wellhead protection areas. However, the Whatcom County Critical Areas Ordinance already appears to meet the intention of this designation criterion by prohibiting metal and hard rock mining and new sand and gravel mining within the 10-year travel time zone of wellhead protection areas within new MRLs.

The only other proposal to the existing designation criteria is to amend Criterion #6 to allow for a greater ratio of overburden-to-resource. The rationale is that even if it is a 50/50 resource-to-overburden ratio, rather than the existing 80/20 ratio, there are commercial uses for the overburden that would allow mining to be economically feasible.

SMAC Recommended Whatcom County Zoning Code Amendments

SMAC proposed amendments to the Whatcom County zoning code (see Exhibit C) have primarily resulted from proposed changes to the comprehensive plan (discussed above). However, a few amendments to the zoning code are not a direct result of the proposed changes to the comprehensive plan, while one zoning code amendment is recommended because of a proposed change to the comprehensive plan map.

While the CAO prohibits mining subject to the Surface Mining Act within wellhead protection areas within new Designated MRLs, as discussed above, that prohibition is not clearly spelled out in the zoning code. In fact, the zoning code presently states "Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table"⁸. The SMAC recommendation includes language clarifying that mineral extraction subject to the Surface

⁷ Washington State Department of Health. "Washington State Wellhead Protection Program Guidance Document." June 2010.

⁸ Whatcom County Code (WCC)20.73.153(2)

Mining Act is prohibited within the 10-year zone of contribution within MRLs designated after January 1, 2020.

Another set of proposed amendments are the creation of lot clustering requirements for subdivisions within MRLs. Presently, no division of land within the MRL Special District which creates any parcel of less than 20 acres is permitted. Without changes to the zoning code, any property zoned R2, R5, or R10, for example, would not be able to subdivide below 20 acres if the property were to become Designated MRL through this countywide review. In order to allow for subdivisions at the current overall densities while also protecting MRLs from incompatible uses, lot clustering requirements similar to the Agricultural Protection Overlay (APO) are proposed. One notable exception to the lot clustering requirement would be for parcels that are wholly within the 10-year zone of contribution for designated wellhead protection areas. Since the purpose of lot clustering would be to provide a reserve tract for mineral resource protection and potential future extraction, it is not rational to require clustering within areas where mineral extraction is prohibited.

One final zoning code amendment recommended by the SMAC is a conditional use criterion for when the underlying zoning district is Agriculture, or when the subject parcel is within an area identified by the Rural Land Study Update where agricultural land protection efforts should be strengthened. In situations such as these, mining and reclamation to agricultural uses shall occur consistent with the Washington State Department of Natural Resource (DNR) "Best Management Practices for Reclaiming Surface Mines in Washington and Oregon", Revised Edition December 1997, or as further revised. Key factors to consider from the DNR best management practices document are further discussed below under Potential Alternatives.

Potential Alternatives and Amendments

Planning and Development Services is aware of potential impacts that may result from utilizing PRAs solely for designation of MRLs. These include but are not necessarily limited to:

- MRL designation in areas where surface mining has not historically been encountered;
- Designation changes from other natural resource lands with well-documented long-term conservation goals (100k acres of agricultural land)⁹;
- MRL designation where surface mining is ultimately unlikely due to existing development patterns, land-ownership, or other constraints;
- Potential conflicts with neighbors (domestic wells not protected as Group A and Group B, dust, noise (see about protections within CAO.); and
- Impacts on growth of cities surrounded by PRAs and agricultural lands.

⁹ Whatcom County Comprehensive Plan, Policy 8A-2

PDS staff have identified potential alternatives to the exclusive PRA approach to MRL amendments that could address some of those issues. These alternatives are discussed below. Please note that each alternative is discussed independently. If a combination of alternatives is used, things like acreage and parcels impacted will change.

These alternatives would not protect as much of the PRAs as the SMAC recommendation. They could, however, substantially increase the acreage of Designated MRLs available for submittal of surface mining applications while reducing the need for landowner initiated comprehensive plan map amendment applications and their inherent costs and unpredictable outcomes.

Alternatives for MRL Designation

Alternative 1: Do not include zones with 20-acre or greater minimum lot sizes

While RCW 36.70A.170 directs counties to designate MRLs of long-term commercial significance in order to protect the resource from incompatible uses, the designation itself does not protect the resource. Rather, it is the development regulations adopted consistent with RCW 36.70A.060 (WCC 20.73 Zoning Overlay in Whatcom County) that protect the resource. This protection comes in the form of a 20-acre minimum lot size on subdivisions, which limits new development (people) from locating on lands that may be necessary for mineral extraction in the future.

If a 20-acre minimum lot size on subdivisions successfully protects mineral resources from incompatible uses locating upon the land, it follows that Rural Forestry (20-acre minimum lot size), Commercial Forestry (40-acres) and Agriculture (40-acres) zones also successfully protect mineral resources. Thus, if the purpose of the countywide review is to protect the resource from incompatible uses, rather than allow mining applications to be submitted, the Rural Forestry, Commercial Forestry and Agriculture zones protect the resource and do not need to be mapped as Designated MRLs.

Rural Forestry, Commercial Forestry, and Agriculture designated parcels encompass ~83,807 acres of the SMAC recommendation. Removing these natural resource zoned lands from the SMAC recommendation would result in ~35,053 acres (~7,100 parcels) of new Designated MRL (from formerly Rural, Major/Port Industrial, and Rural Neighborhood designations), rather than the ~122,993 acres recommended by the SMAC (see Figure 3). A change in the amount of acreage for each Comprehensive Plan designation under this scenario is shown on Table 2.

Table 2 - CP Designation Acreage presently vs SMAC recommendation Minus AG, CF, RF

CP Designation	Current	SMAC Recommendation	After
AG	85,821	0	85,821
CF	186,474	0	186,474
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352

MAJ/PORT-IND-UGA	7,029	-3,494	3,535
MRL	4,133	+35,053	39,186
PUBLIC-REC	4,812	0	4,812
RF	35,383	0	35,383
RURAL	121,175	-30,180	90,995
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-1,283	1,789
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	96	-96	0

If this is the preferred policy approach, PDS recommends an additional policy statement or other mechanism that would prioritize consideration for MRL designation on any Rural Forestry, Commercial Forestry or Agriculture lands identified as PRAs, if these lands are proposed for a redesignation or rezone that would allow subdivisions below 20 acres.

Landowner initiated amendments under this scenario

PLN2012-00009 - North Star Rd (Docketed)

If this alternative approach is taken, the expansion proposed with this application would be included and become Designated MRL.

PLN2019-00002 - Breckenridge Rd (Docketed)

If this alternative approach is taken, the expansion proposed with this application would be included and become Designated MRL.

PLN2019-00001 - E Pole Road (Not Docketed)

If this alternative approach is taken, the expansion proposed with this application would be included and become Designated MRL.

Alternative #2: Localized Expansion

The SMAC recommendation would result in ~122,993 acres of Designated MRL, an increase of ~118,860 acres (~9,769 parcels). This means that over 9,500 parcels would be owned by citizens who did not anticipate surface mining activities being allowed on, or maybe near, their properties at the time they purchased them. One approach to limit the number of property owners impacted would be to limit the proposed MRL designations to areas in close proximity to existing MRL designations.

Limiting new MRL designations to SMAC recommended areas within 1 mile of existing MRL designations would result in a total of ~45,862 acres (~3,765 parcels) of Designated MRL, as shown in Figure 4. A change in the amount of acreage for each Comprehensive Plan designation under this scenario is shown on Table 3.

Table 3 - CP Designation Acreage presently vs SMAC recommendation within 1 mile existing MRL

CP Designation	Current	SMAC Recommendation within 1 Mile of existing MRL	After
AG	85,821	-9,895	75,926
CF	186,474	-10,752	175,722
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-816	6,213
MRL	4,133	+41,729	45,862
PUBLIC-REC	4,812	0	4,812
RF	35,383	-7,342	28,041
RURAL	121,175	-12,397	108,778
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-475	2,597
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	52	-52	0

If the distance was increased to limit new MRL designations to SMAC recommended areas within 2-miles of existing MRL designations, a total of ~77,089 acres (~6,166 parcels) would be Designated MRL as shown in Figure 5. A change in the amount of acreage for each Comprehensive Plan designation under this scenario is shown on Table 4.

Table 4 - CP Designation Acreage presently vs SMAC recommendation within 2 mile existing MRL

CP Designation	Current	SMAC Recommendation	After
AG	85,821	-15,431	70,390
CF	186,474	-19,588	166,886
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-3,454	3,575
MRL	4,133	+72,956	77,089

PUBLIC-REC	4,812	0	4,812
RF	35,383	-13,909	21,474
RURAL	121,175	-19,799	101,376
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-699	2,373
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	76	-76	0

If the distance was decreased to limit new MRL designations to SMAC recommended areas within 1/2 mile of existing MRL designations, a total of ~25,220 acres (~1,773 parcels) would be Designated MRL as shown in Figure 6. A change in the amount of acreage for each Comprehensive Plan designation under this scenario is shown on Table 5.

Table 5 - CP Designation Acreage presently vs SMAC recommendation within 1/2 mile existing MRL

CP Designation	Current	SMAC Recommendation within 1/2 mile of existing MRL	After
AG	85,821	-4,785	81,036
CF	186,474	-5,301	181,173
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-155	6,874
MRL	4,133	+21,087	25,220
PUBLIC-REC	4,812	0	4,812
RF	35,383	-3,919	31,464
RURAL	121,175	-6,893	114,282
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-31	3,041
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	3	-3	0

While this approach would not designate all the identified PRAs, designating parcels within 1 mile of existing MRL designations would result in roughly 10x more land designated as MRL than exists now. It should be noted that while this would be a substantial increase in the size of Designated MRL, these areas include natural features, lot configurations and lot ownerships, among other considerations, that may reduce the amount of land where mining is feasible. For example, 1-acre and 2-acre lots just east of Wiser Lake, DNR and land trust

lands on the southern portion of Lummi Island, and land within the Nooksack River Floodplain/Floodway are located within 1 mile of existing MRLs.

Landowner initiated amendments under this scenario

PLN2012-00009 - North Star Rd (Docketed)

If this alternative approach is taken, the expansion proposed with this application would be included and become Designated MRL in either the 1-mile or 2-mile localized expansion.

PLN2019-00002 - Breckenridge Rd (Docketed)

If this alternative approach is taken, the expansion proposed with this application would be included and become Designated MRL in either the 1-mile or 2-mile localized expansion.

PLN2019-00001 - E Pole Road (Not Docketed)

If this alternative approach is taken, the expansion proposed with this application would be included and become Designated MRL in either the 1-mile or 2-mile localized expansion.

Alternative 3: Mineral Resource Protection Overlay (MRPO)

A conceptual Mineral Resource Protection Overlay (MRPO) would be a mapped area where subdivisions would be required to cluster the residential lots and reserve tract building areas. Similar to the Agricultural Protection Overlay (APO), cluster subdivision would leave a large portion of the original parcel in a reserve tract for natural resource protection, while overall densities would be maintained for the owner/developer of a property. Where the purpose of the APO is to protect agricultural land, the MRPO would be for protection of future access to mineral resources within the reserve tract.

The MRPO would add a new section to the zoning code (see WCC 20.73.250 in Exhibit C) that would protect mineral resources in a similar fashion to the SMAC recommendation of amending the MRL Special Zoning District section of the zoning code to require lot clustering for subdivisions within Designated MRLs. The key difference between the SMAC recommendation and the conceptual MRPO is that the MRPO would protect future access to the mineral resources without specifically allowing for the extraction of mineral resources, as allowed within the current MRL Special Zoning District.

The SMAC recommended PRA to MRL designation scenario would result in new areas designated as MRL that would allow for the extraction of mineral resources in areas where landowners did not anticipate such activities. The MRPO could be used as a tool to protect PRAs without allowing unanticipated activities, while limiting development patterns to protect mineral resources for future access for extraction.

When a parcel would be subject to both the MRPO and APO, the applicants may choose to subdivide with the protection overlay of their choosing.

Landowner initiated amendments under this scenario

PLN2012-00009 - North Star Rd (Docketed)

If this alternative approach is taken, the expansion proposed with this application would be subject to cluster subdivision requirements of WCC 20.73.250 in Exhibit C.

PLN2019-00002 - Breckenridge Rd (Docketed)

If this alternative approach is taken, the expansion proposed with this application would be subject to cluster subdivision requirements of WCC 20.73.250 in Exhibit C.

PLN2019-00001 - E Pole Road (Not Docketed)

If this alternative approach is taken, the expansion proposed with this application would be subject to cluster subdivision requirements of WCC 20.73.250 in Exhibit C.

Alternative 4: Dual Designation with Agriculture

Existing MRL designation Criterion #15 prohibits MRL designations in areas Designated Agriculture by the Whatcom County Comprehensive Plan that contain "Prime Farmland Soils" determined by the Natural Resource Conservation Service (NRCS). In the SMAC recommendation, many areas presently designated as Agriculture were also identified as areas for designation as MRL.

Washington Administrative Code (WAC) 365-190-040(7)(b) addresses the process for overlapping natural resource land designations, stating: *"If two or more natural resource land designations apply, counties and cities must determine if these designations are incompatible. If they are incompatible, counties and cities should examine the criteria to determine which use has the greatest long-term commercial significance, and that resource use should be assigned to the lands being designated."*

In Whatcom County, prime agricultural lands often overlap with areas identified as PRAs. The sand and gravel deposits that are valuable to the mineral resource industry for extraction are also extremely valuable to the agricultural industry for the service they provide, namely well-draining soils.

When determining whether agriculture or mineral resource extraction has the greatest long-term commercial significance, many factors come into play. For the purpose of this exercise, staff will discuss impacts to mineral resources if the Agricultural designation and zoning remains, as well as impacts to agriculture if these lands are re-designated to MRL with an MRL zoning overlay. These discussions are not applicable to the entire Agricultural designation/zone. Rather they are applicable solely where the current Agriculture

designation/zone coincides with PRAs. It is estimated that there are currently 85,821 acres of Designated Agriculture lands in the county and ~32.6% (27,991 acres) of those agricultural lands are also identified as PRAs.

Maintain Agriculture designation:

If the agricultural designation and associated zoning are not changed, mineral resource extraction would continue to be prohibited. Exceptions to this prohibition currently allowed on agricultural lands include small-scale (< 3 acres) surface mining of knolls and ridges for farm enhancement purpose (with conditions and review criteria).

While extraction for larger-scale commercial purposes would continue to be prohibited, protection of the resource would continue to be met through the large (40 acre) minimum lot sizes of the agricultural zone as discussed above.

If maintaining the existing Agriculture designation is the preferred policy approach to also protecting the underlying mineral resources, PDS recommends an additional policy statement or other mechanism that would prioritize consideration for MRL designation when designated resources outside of the Agriculture zone are nearing depletion. "Nearing Depletion" would need to be defined.

Re-designate to MRL:

If the agricultural designation and associated zoning that coincide with PRAs are changed to MRL with a MRL zoning overlay, surface mining subject to the surface mining act would be an allowed use through the conditional use process. It is important to note that existing activities taking place on these lands can continue to be the primary activities in the future.

While applications for mineral extraction may be submitted under this scenario, land ownership patterns, costs associated with studies/permitting, and existing permitted reserves will likely limit the extent and number of applications, thereby limiting impacts to agricultural lands of long-term commercial significance.

It is only when surface mining within formerly designated/zoned agricultural lands would occur that direct impacts to agricultural lands of long-term commercial significance may occur. While many factors are important to productive agriculture, two primary contributors are, or may be, directly impacted by the act of surface mining: 1) soil; and 2) water (drainage).

Soils are negatively impacted by the act of mining. Soils are created over long periods of time through physical, chemical and biological interactions with a parent material (rocks). According to the Natural Resources Conservation Service (NRCS), *"Managing for soil health (improved soil function) is mostly a matter of maintaining suitable habitat for the myriad of creatures that comprise the soil food web. This can*

*be accomplished by disturbing the soil as little as possible...*¹⁰ During mining, soils are stripped and stockpiled, disrupting the physical, chemical and biological properties that are the makeup of the soil. The extent of disruption can be minimized by taking care to remove topsoil, subsoil and overburden separately, and constructing soil storage piles to minimize size and compaction.¹¹ Even if care is taken while removing and stockpiling soils, amending or manufacturing soils may be necessary so that reconstructed soils have the same characteristics as the original topsoil. A soil health assessment score coupled with agronomic productivity would provide good information on soil quality and whether there have been impacts to the soil that could limit or reduce the ability for long-term commercial agriculture upon completion of reclamation.

There are many soil health/soil quality scoring systems that could help to ensure soil quality has not been diminished upon completion of reclamation. The "Cornell Comprehensive Assessment of Soil Health - The Cornell Framework", for example, identifies soil health as *"a concept that deals with the integration and optimization of the chemical, physical, and biological processes of soil that are important for sustained productivity and environmental quality."*¹² These characteristics include, but are not limited to available water capacity, surface hardness, organic matter, soil respiration, active carbon, pH and plant nutrients, bulk density, porosity, among others. With agronomic productivity, the same crops would be planted before mining and after reclamation to make sure the 5-year yield averages before and after are comparable.¹³

Another concern for reclamation to agriculture is the potential impact to drainage. If wet mining (mining of sand and gravel resources below the water table) is conducted, importing materials must be done selectively so that new confining layers are not created. If sand and gravel deposits are replaced with silt and clay-rich soils, the likelihood of a confining layer and associated perched water table (and reduced drainage) occurring is increased, making reclamation to agriculture more difficult.

The Washington State Department of Natural Resources, which oversees reclamation of surface mining subject to the Surface Mining Act, has published a document titled "Best Management Practices for Reclaiming Surface Mines in Washington and Oregon." In the section titled "Agricultural and Forestry Subsequent Uses", under "Factors to Consider", the document states *"From an agricultural standpoint, at least 8 inches of topsoil with suitable subsoils or a minimum of 3 feet of combined topsoil*

¹⁰ Natural Resources Conservation Service, Soil Health Management, "<https://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/health/mgmt/>" Accessed May 8, 2020.

¹¹ Norman, David K, and Peter J. Wampler, Allen H. Throop, E. Frank Schnitzer, and Jaretta M. Roloff. "Best Management Practices for Reclaiming Surface Mines in Washington and Oregon." Washington Division of Geology and Earth Resources, Open File Report 96-2. Revised Edition December 1997.

¹² Moebius-Clune, B.N., D.J. Moebius-Clune, B.K. Gugino, O.J. Idowu, R.R. Schindelbeck, A.J. Ristow, H.M. van Es, J.E. Thies, H.A. Shayler, M.B. McBride, K.S.M Kurtz, D.W. Wolfe, and G.S. Abawi. "Comprehensive Assessment of Soil Health – The Cornell Framework, Edition 3.2." Cornell University, Geneva, NY. 2016.

¹³ LaHue, Gabriel. "Re: Soils Question." Received by Joshua Fleischmann, 13 March. 2020.

*and subsoil overlying a zone of saturation with water is needed for most plants during the growing season. Therefore mineral extraction should not occur below the water table.”*¹⁴ Throughout most of the Sumas-Blaine Aquifer (which includes most of the Agriculture zone in northern Whatcom County), the depth to groundwater is typically less than 10 feet, with the exception of certain areas near Sumas and the eastern margin of the aquifer. Given that the best management practices for reclamation to agriculture discourage mining below the water table and given that the water table is typically less than 10 feet in depth, commercially significant surface mining is unlikely to be feasible following guidance within this document for reclamation to agriculture.

Taking into account the guidance for reclamation within the DNR BMP document (mining should not occur below water table) coupled with high groundwater depths throughout much of the agriculture zone, and considering the potential impacts of mining to the soil and water resources necessary for agricultural production, the Agriculture and MRL designations may be incompatible.

Given the limitations on mineral resource extraction and the potential impacts to agricultural resources, and given that agricultural designation and associated activities do not preclude or diminish future access or value of mineral resources, agriculture may have a greater long-term commercial significance.

If the determination is made that designated agriculture and mineral resource lands are incompatible and that agriculture has greater long-term commercial significance, PDS recommends an additional policy statement or other mechanism that would prioritize consideration for MRL designation when designated resources outside of the Agriculture zone are nearing depletion. “Nearing Depletion” would need to be defined.

Landowner initiated amendments under this scenario

PLN2012-00009 - North Star Rd (Docketed)

The discussion on overlapping natural resource land designations is not applicable to this application since the proposed MRL expansion would be in the Rural designation.

PLN2019-00002 - Breckenridge Rd (Docketed)

The discussion on overlapping natural resource land designations is not applicable to this application since the proposed MRL expansion would be in the Rural designation.

PLN2019-00001 - E Pole Road (Not Docketed)

The discussion on overlapping natural resource land designations is not applicable to this application since the proposed MRL expansion would be in the Rural designation.

¹⁴ Ibid. 11

Alternative 5: Rural Study Areas

Rural Study Areas (RSA) were identified through the 2007 "Whatcom County Rural Land Study: A Collaborative Report Identifying Rural Areas of Agricultural Significance" which identified ~21,000 acres within the Rural 5 and Rural 10 zoning districts that are of agricultural significance and that may require additional protection for long-term agricultural viability. The RSA have been subsequently re-evaluated, adding an additional ~8,000 acres of land identified for enhanced agricultural protection. With less than 90,000 acres of zoned agricultural lands, the Rural Study Areas and any enhanced protections they afford are important for meeting the stated goal of a minimum 100,000 acres of land available for agricultural use.

Unlike the Agriculture zone, which protects access to mineral resources through minimum lot sizes greater than required by the MRL zoning overlay, the RSA provides no such protection of mineral resources. Additionally, while WAC 365-190-040(7)(b) provides guidance for dual designation of overlapping resource lands, the GMA does not appear to allow for the dual designation of MRLs and a Rural designation.¹⁵ Therefore, in order to protect rural designated areas that have been identified as important to the agricultural land base of Whatcom County, as well as protecting the underlying mineral resource, RSAs may be an appropriate geographical area for implementing the Mineral Resource Protection Overlay (MRPO).

There are 19 RSAs that include some lands identified as PRAs. Combined, these areas of overlap account for over ~12,157 acres and ~1,627 parcels. If these parcels were to become Designated MRL, or subject to a theoretical MRPO, ~1,373 parcels would be unaffected, as they cannot presently subdivide further. The remaining ~254 parcels that would presently be able to subdivide would be impacted as shown below:

	Parcels Able to Subdivide	Parcels Unable to Subdivide	Potential Lots	Potential Lots Eliminated
Mineral Resource Protection Overlay (required clustering)	~254	~0	~1,068	~0
Designated MRL (20-acre minimum lot size)	~35	~219	~85	~983

A breakdown by affected RSA is included as Table 6.

Landowner initiated amendments under this scenario

¹⁵ Butler, Steven. "Response regarding Rural Elements and MRLs." Received by Joshua Fleischmann, 29 April. 2020.

PLN2012-00009 - North Star Rd (Docketed)

The subject parcel is not located within a Rural Study Area. This alternative does not impact the application.

PLN2019-00002 - Breckenridge Rd (Docketed)

The subject parcel is not located within a Rural Study Area. This alternative does not impact the application.

PLN2019-00001 - E Pole Road (Not Docketed)

The subject parcel is not located within a Rural Study Area. This alternative does not impact the application.

Alternatives for Regulating MRL Mining Activities

Strengthening the Conditional Use Permit Approval Criteria

It is important to remember that the MRL designation itself does not protect the resource. Rather, it is the MRL Zoning Overlay (WCC 20.73), through its 20-acre minimum lot sizes on subdivisions, that protects mineral resources from incompatible uses. It is also through the MRL Zoning Overlay that Conditional Use Permit (CUP) applications for mineral extraction can be submitted.

It has been stated that MRL designation (and associated MRL overlay) is not a right to mine, and that CUP applications must still be submitted and reviewed for approval. This is true. However, outside of the SEPA Environmental Impact Statement (EIS) process, it would be difficult to deny a CUP, as the present approval criteria (WCC 20.84.220) are somewhat vague and qualitative.

Without a clear mechanism to deny permits, MRL designation and associated zoning may be a de-facto right to mine for any future proposal that does not receive a SEPA Threshold Determination of Significance (DS) (albeit potentially heavily conditioned and possibly modified from the original proposal).

It should be noted that even if an EIS is required, it is a costly, time consuming process that may not provide the mineral resource industry with the predictability they desire, as the scope of the review is not determined until initiation of the EIS.

Consequently, creation of strict CUP criteria specific to mineral resource extraction may be necessary to clearly identify thresholds to approve or deny mining permits more predictably.

Example criteria could include strict interpretation of the critical areas ordinance mitigation sequencing (i.e. avoidance can always be accomplished by not mining the critical area and/or buffer), or limiting the acreage or depth that mining can occur. While creating permit approval criteria with the purpose of having the ability to deny a permit may not be

preferred by the surface mining industry, it may provide some predictability in whether to apply for a permit, as well as support the claims that MRL designation and zoning is not a right to mine.

Strengthening the Conditional Use Permit Approval Criteria to Protect Agricultural Land

The SMAC recommendation for mining and reclamation within the Agricultural zone and Rural Study Areas (RSA) requires that the mining activities be consistent with the DNR document "Best Management Practices for Reclaiming Surface Mines in Washington and Oregon", Revised Edition December 1997, or as revised. However, the document states "The techniques and guidance provided in this manual should not be construed as rules or laws, but merely the most effective and economical reclamation and mining practices known...at the present time." Because mining is under the regulatory jurisdiction of Whatcom County and reclamation is under the regulatory jurisdiction of DNR, in order to require that mining is conducted in a manner consistent with the guidance for reclamation to agriculture, staff recommends additional conditional use approval criteria within the Agriculture zone and RSAs if the preferred policy approach is to allow expanded mining activities in these areas.

Potential criteria to consider from within the DNR BMP document include:

- Mineral extraction will not occur below the water table (pg. 7.17)
- Live topsoiling, avoid compaction of pit floors (pg. 7.17)
- Require concurrent/progressive or segmental reclamation (pg. 3.2, 3.3)
- Limit a "segment" to no more than 7-acres (pg. 3.4)
- Topsoil, subsoil and overburden will be removed separately (pg. 3.13)
- Require topsoil and overburden to be stockpiled in separate, stable storage areas for later use in reclamation or immediately moved to reclaim adjacent depleted segments. (pg. 3.6)
- Topsoil cannot be sold, removed from the site, mixed with sterile soils or used to create screening berms. (pg. 3.6)
- Limit timing of soil removal, as porosity, or structure, can be permanently damaged if soils are stripped when they are excessively wet or dry (Pg. 3.13)
- Subsoils capable of supporting vegetation must be salvaged to a depth of 4 feet and stored in a stable area if not immediately used for reclamation (pg. 3.14)
- Limit soil storage piles to no more than 25 feet in height. Available plant material such as grasses, shrubs, and chipped tree limbs will be incorporated into the piles. Require aeration by deep ripping, discing and tilling every 2 or 3 years to retain soil microbes (pg. 3.15)
- Understanding the approximate fertility level of each soil type and different soil horizons will contribute to wise use of the resource (pg. 3.13). Reconstructed soils will have the same soil characteristics as topsoil. Soil characteristics that have the greatest effect on plant growth are the amount of organic matter, moisture-holding capacity, drainage, and available nutrients (pg. 4.6)

Other potential criteria to consider

- A soil health assessment score, coupled with agronomic productivity, for gauging extent of impacts to soil. Prior to mining subsequent segments, require that reclaimed soils have comparable characteristics, composition, and agricultural productivity as the soils had prior to mining. May require amending or manufacturing soil (adding organic matter, improving moisture holding capacity, improving drainage
- Involve WSU Extension or Whatcom Conservation District staff in reclamation planning or defining "successful reclamation to agriculture".

Landowner initiated amendments under this scenario

PLN2012-00009 - North Star Rd (Docketed)

The subject parcel is not located within a Rural Study Area or Designated Agriculture zone. This alternative does not impact the application.

PLN2019-00002 - Breckenridge Rd (Docketed)

The subject parcel is not located within a Rural Study Area or Designated Agriculture zone. This alternative does not impact the application.

PLN2019-00001 - E Pole Road (Not Docketed)

The subject parcel is not located within a Rural Study Area or Designated Agriculture zone. This alternative does not impact the application.

Docketed Zoning Code Amendments

PLN2019-00010 - Surface Mining Pipeline Buffer

The docketed item PLN2019-00010 proposes to:

Amend the Whatcom County Comprehensive Plan and Whatcom County Code to determine the minimum safe distance to allow surface mining to be conducted from a petroleum pipeline to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer. Determination should be based on independent sources where possible and assuming a magnitude 9.0 or greater earthquake could occur.

Earthquakes impact land differently based on site specific variables, such as soil, underlying geology, topography, etc. This makes it difficult to develop a standard safe distance between mining and pipelines that is scientifically supportable.¹⁶

Additionally, the distance from the epicenter of an earthquake and the characteristics of the fault would also play a role in the shaking intensity and ground motion following an earthquake. For example, roughly 2/3 of Whatcom County may expect higher Modified

¹⁶ Horn, Marc, District Operations Manager, BP USPL, "Horn Letter to Fleischmann 05.30.2019"

Mercalli Shaking Intensity from a 6.8 earthquake originating from the Boulder Creek fault than from a 9.0 earthquake originating from the Cascadia subduction zone.¹⁷

Rather than amending the comprehensive plan or zoning code to incorporate a "one-size-fits-all" setback between mining and pipelines, staff recommends amending the zoning code to require a site specific geotechnical analysis on the potential impacts to pipelines that would result through a combination of nearby mining and potential earthquake intensity. The geotechnical analysis would be required when a conditional use permit is submitted.

The following code language was drafted by staff, including consultation with the Planning and Development Services geologist, in an attempt to meet the intention of the proposed docket amendment:

WCC 20.73.153(9)

When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

In this proposed code language, "2 percent probability of exceedance in 50 years" is an industry standard for seismic designs that must consider large-magnitude, low-frequency seismic events. It is the common design standard for developments like essential or emergency facilities. By considering seismic events with this low recurrence potential, both on local crustal faults and at the Cascadia Subduction Zone, the required assessment essentially addresses a worst case scenario.¹⁸

At the June 26, 2019 SMAC meeting, the committee voted unanimously in support of forwarding this language onto the Planning Commission for their review and recommendation to the County Council.

The draft language is included in Exhibit C

PLN2019-00011 - Surface Mining of Dry Meander Zones

The docketed item PLN2019-00010 proposes to:

Amend the Whatcom County Comprehensive Plan and Whatcom County Code to allow the seasonal extraction of sand and gravel from dry upland areas located within the 1,000 year meander zone of the Nooksack River, provided that such extraction has no negative impact on salmon spawning habitat. The intent is to (a)

¹⁷ FEMA. "DRAFT - Risk Report FEMA Region X - Whatcom County Washington." 2016.

¹⁸ Wiser, Andy. "Earthquake Frequency." Received by Joshua Fleischmann, 6 June. 2019.

reduce the conversion of land currently used for farming, forestry and wildlife habitat into gravel pits, and (b) safely remove some of the significant sediment load that enters the Nooksack River every year in an effort to reduce flooding and the need to build higher flood prevention berms along the river as the climate continues to change.

Preliminarily we would note that the "1,000 year meander zone" appears to be an undefined term. Similar regulatory terms used throughout the country include, but are not limited: floodplain, floodway, shoreline jurisdiction, channel migration zone, historic migration zone, erosion hazard area, avulsion hazard area, etc. Whatcom County regulates activities as they relate to floodplains/floodways and shoreline jurisdiction, rather than a 1,000 year meander zone.

Additionally, it should be noted that mining and dredging are presently allowed through Shoreline Substantial Development and Shoreline Conditional Use permits (WCC 23.100.010) on the North Fork from just upstream of Maple Falls, on the Middle Fork below the Mosquito Lake Rd Bridge, on the South Fork below the Saxon Rd Bridge, and on the mainstem, with minor geographical exceptions.

Within the floodplain/floodway, the applicant would need to demonstrate to Whatcom County (and applicable federal agencies), through a biological opinion consistent with Section 7 of the Endangered Species Act, that the proposed action will not adversely affect essential fish habitat for endangered salmonid species. Additionally, it would need to be demonstrated that mining will not have an adverse impact on flooding.

Notwithstanding that the intent of the proposed amendment appears to be met by existing code, the Shoreline Management Plan 2020 Periodic Update is currently in process for review and consistency with the Revised Code of Washington (RCW) and Washington Administrative Code (WAC). As proposed, consistency with the RCW will remove the requirement that the mining activity has a flood control/flood reduction nexus, but will still require no net loss of shoreline ecological functions.

Exhibit A - Current MRL Designation Criteria

Mineral Resource Lands (MRL) – Designation Criteria

Non-Metallic Mineral Deposits

General Criteria

1. Non-metallic deposits must contain at least 1,000,000 cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation.
2. Minimum MRL Designation size is twenty acres.
3. Expansion of an existing MRL does not need to meet criteria 1 or 2.
4. MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.
5. All pre-existing legal permitted sites meeting the above criteria will be designated.
6. The site shall have a proven resource that meets the following criteria:
 - Construction material must meet current WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot).
7. MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.
8. MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.
9. MRL Designation should not enclose by more than 50% non-designated parcels.
10. Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse

environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.

11. MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan.
12. Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations.

Additional Criteria for Designated Urban and Rural Areas

13. Abutting parcel size density must not exceed one unit per nominal five acres for more than 25% of the perimeter of the site unless project specific mitigation is created.

Additional Criteria for Designated Forestry Areas

14. Must demonstrate higher value as mineral resource than forestry resource based upon:
 - soil conditions.
 - quality of mineral resource.
 - sustainable productivity of forest resource.

Additional Criteria for Designated Agricultural Areas

15. Prohibit MRL designations in areas designated Agriculture by the Whatcom County Comprehensive Plan that contain "Prime Farmland Soils" determined by the Natural Resource Conservation Service.

River and Stream Gravel

16. MRL Designation status applies to river gravel bars possessing necessary permits and containing significant quality reserves.
17. MRL Designation status may apply to those upland sites located in proximity to river gravel sources and used primarily for handling and processing significant amounts of river gravel.

Metallic and Industrial Mineral Deposits

18. For metallic and rare minerals, mineral designation status extends to all patented mining claims.
19. Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance.
20. All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 15, as applicable.

Mineral Resources – Site Selection Method

1. Sites meeting Mineral Resources Designation Criteria 1-5 (and areas enclosed by these sites greater than 50%).
2. Sites requested by owner or operator meeting designation criteria.

Exhibit B - SMAC recommended Comprehensive Plan amendments.

Comprehensive Plan Amendments

Mineral Resources

Introduction

Purpose

Process

In 1990, the Washington State Legislature passed the Growth Management Act. One of the goals of the act is to maintain and enhance resource-based industries.

The Act mandates that each county planning under the Act classify and designate mineral resource lands of long term commercial significance.

To address the mandates of the Growth Management Act, Whatcom County formed a Surface Mining Citizens' Advisory Committee in the 1990s to produce, through a consensus process, the issues, goals, and policies found in this chapter. Planning staff drafted the sub-section on mineral designations following review and comments from the committee.

In 1992, Whatcom County adopted an Interim Classification of Mineral Resources provided by the Washington State Department of Natural Resources. This classification system, as well as existing resource information, was used for the interim designation of mineral resource lands of long-term commercial significance. Through their involvement, the Surface Mining Advisory Committee recommended a longer planning horizon, which would require additional mineral resource areas. Additional MRLs were, in fact, designated when the Comprehensive Plan was adopted in 1997.

Since 1997, amendments for MRL designation have been landowner initiated, including two proposed Comprehensive Plan amendments to expand existing MRL designations which met designation criteria but were ultimately denied through the legislative process..

In response, as part of the review of MRL comprehensive Plan and Zoning Text amendments in October 2014, the Whatcom County Planning commission strongly recommended that Whatcom County take a lead role in designating mineral resource lands of long-term commercial significance in order to protect the resource from incompatible uses, as opposed to the presently unpredictable landowner initiated amendments. During the 2016 Comprehensive Plan update, the County Council adopted policies supporting a more pro-active approach to MRL designation. In 2018, the Whatcom County Surface Mining Advisory Committee began a countywide assessment seeking to identify and designate potential commercially significant mineral resource lands.

GMA Requirements

Background Summary

Issues, Goals and Policies

General Issues

Goal 8K: **Sustain and enhance, when and where appropriate, Whatcom County's mineral resource industries, support the conservation of productive mineral lands, and discourage incompatible uses upon or adjacent to these lands.**

Policy 8K-4: Support the implementation of clustering at the time of subdivision or parcel boundary alteration. The clustering provisions allow development on one portion of a parcel, while leaving the remainder of the parcel available for mineral resource productivity.

Goal 8L: **Ensure mineral extraction industries do not adversely affect the people and other properties in the vicinity, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.**

Policy 8L-9: Surface mining subject to the Surface Mining Act should be prohibited within the 10-year travel time zone of wellhead protection areas, as approved by the State Department of Health for Group A systems and by the Whatcom County Health Department for Group B systems.

Rural and Urban Areas

Many of the rural areas in Whatcom County have been and are being used for mineral extraction. Low density rural areas with potential natural resources such as sand and gravel may be able to accommodate a variety of uses, and surface mining has been a traditional use. Significant mineral deposits occur in certain parts of the rural areas. Some of these areas have higher surrounding residential densities than others, and many rural residents expect less intrusive forms of land uses. Determining which areas are the most appropriate for mineral extraction is a difficult and challenging task.

Goal 8M: **Achieve a balance between the conservation of productive mineral lands and the quality of life expected by residents within and near the rural and urban zones of Whatcom County.**

Policy 8M-6 Excluding MRLs designated prior to January 1, 2020, surface mining should not be within residential zones or subdivisions platted at urban densities. When

lands subject to mining permits abut residential zones or subdivisions platted at urban densities, project specific mitigation to limit potential impacts to residential zones or subdivisions platted at urban densities is required.

Policy 8M-7 Excluding MRLs designated prior to January 1, 2020, surface mining should not enclose upon adjacent parcels that do not have active surface mining permits by greater than 50% of the enclosed parcel's perimeter, unless project specific mitigation can be achieved.

Mineral Resource Lands (MRL) – Designation Criteria

Non-Metallic Mineral Deposits

General Criteria

1. Non-metallic deposits must contain at least 1,000,000 cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation.
2. Minimum MRL Designation size is twenty acres
3. Expansion of an existing MRL does not need to meet criteria 1 or 2.
4. MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.
5. All pre-existing legal permitted sites meeting the above criteria will be designated.
6. The site shall have a proven resource that meets the following criteria:
 - construction material must meet current WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80/50% (1280 cy/acre/foot).
- ~~7. MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.~~
- ~~8. MRL Designations must not occur within the 10-year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within the designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.~~
- ~~9. MRL Designation should not enclose by more than 50% non-designated parcels.~~
10. Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.

11. MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that MRL designation does not preclude achievement of other parts of the comprehensive plan.
12. Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations.

Additional Criteria for Designated Urban and Rural Areas

13. Abutting parcel size density must not exceed one unit per nominal five acres for more than 25% of the perimeter of the site unless project specific mitigation is created.

Additional Criteria for Designated Forestry Areas

14. Must demonstrate higher value as mineral resource than forestry resource based upon
 - soil conditions
 - quality of mineral resource
 - sustainable productivity of forest resource.

Additional Criteria for Designated Agricultural Areas

15. Prohibit MRL designations in areas designated Agriculture by the Whatcom County Comprehensive Plan that contain "Prime Farmland Soils" determined by the Natural Resource Conservation Service.

River and Stream Gravel

16. MRL Designation status applies to river gravel bars possessing necessary permits and containing significant quality reserves.
17. MRL Designation status may apply to those upland sites located in proximity to river gravel sources and used primarily for handling and processing significant amounts of river gravel.

Metallic and Industrial Mineral Deposits

18. For metallic and rare minerals, mineral designation status extends to all patented mining claims.
19. Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance.
20. All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 12, as applicable.

Mineral Resources – Site Selection Method

1. Pre-existing MRL Designations

~~2. Sites identified as potential resource areas in the Report Engineering Geology Evaluation Aggregate Resource Inventory Study Whatcom County, Washington (GeoEngineers, Inc., Sept. 30, 2003) and updated in the Aggregate Resource Inventory 2014 Study Update Whatcom County, Washington (Element Solutions, December 22, 2014). Sites meeting Mineral Resources Designation Criteria 1-5 (and areas enclosed by these sites greater than 50%.~~

~~2-3. Sites requested by owner or operator meeting designation criteria.~~

- ~~3. Sites that are regionally significant meeting designation criteria.~~
- ~~4. Sites adjacent to both roads and other proposed MRL sites meeting designation criteria.~~

Exhibit C - SMAC recommended Zoning Code amendments

Chapter 20.73

MINERAL RESOURCE LANDS SPECIAL DISTRICT (MRL)

Sections:

- 20.73.010 Purpose.
- 20.73.020 Application.
- 20.73.050 Permitted uses.
- 20.73.100 Accessory uses.
- 20.73.130 Administrative approval uses.
- 20.73.150 Conditional uses.
- 20.73.200 Prohibited uses.
- 20.73.250 Minimum lot size.
- 20.73.650 Development criteria.
- 20.73.651 Road access.
- 20.73.652 Repealed.
- 20.73.700 Performance standards.
- 20.73.701 Noise.
- 20.73.702 Surface mining operations within critical aquifer recharge areas.
- 20.73.703 Public safety.

20.73.010 Purpose.

The primary purpose of this district is to implement the mineral resource lands designation of the Comprehensive Plan, established pursuant to RCW [36.70A.170](#), by allowing the type of activity that encourages and supports the opportunity for the extraction of minerals in areas of Whatcom County designated as containing resources viable for long-term commercial extraction; further protect open space resources within Whatcom County. This district is also designed to discourage incompatible uses from locating upon mineral resource lands where the extraction of minerals occurs or can be anticipated. (Ord. 2005-079 § 1, 2005; Ord. 97-069, 1997; Ord. 92-029, 1992).

20.73.130 Administrative approval uses.

The following uses are permitted subject to administrative approval pursuant to WCC [20.84.235](#):

.131 All administrative approval uses in the underlying zone districts shall remain administrative approval uses unless expressly prohibited or made conditional, or further conditioned by this chapter.

20.73.150 Conditional uses.

.153 Surface mining subject to Washington State's Surface Mining Act (Chapter [78.44](#) RCW); provided, that:

(2) At minimum, the activity adheres to the development and performance standards of WCC [20.73.650](#) and [20.73.700](#). In addition, no excavation shall occur within the five-year zone of contribution for designated wellhead protection areas. Excavations may occur within the 10-year zone of contribution outside of the five-year zone of contribution if they are not within 10 vertical feet of the seasonal high water table; provided that, excluding MRLs designated prior to January 1, 2020, surface mining subject to the Surface Mining Act shall be prohibited within the 10-year travel time zone of wellhead protection areas, as approved by the State Department of Health for Group A systems and by the Whatcom County Health Department for Group B systems. If a fixed radii method is used to delineate a wellhead protection area, the surface mining applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the surface mining applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.

(9) When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

(10) Mining permits should not be within residential zones or subdivisions platted at urban densities. Mining permits abutting residential zones or subdivisions platted at urban densities shall have project specific mitigation. This criterion shall not apply within MRLs designated prior to January 1, 2020.

(11) When the underlying zoning district is Agriculture (AG), or when the subject parcel is within an area identified by the Rural Land Study Update where

agricultural land protection efforts should be strengthened, mining and subsequent reclamation shall occur consistent with Washington State Department of Natural Resources "Best Management Practices for Reclaiming Surface Mines in Washington and Oregon", Revised Edition December 1997, or as revised. This criterion shall not apply within MRLs designated prior to January 1, 2020.

20.73.250 Minimum lot size.

The provisions in this section apply to all designated Mineral Resource Lands (MRL) with a MRL zoning overlay. Divisions of land, exempt land divisions, and boundary line adjustments resulting in parcels of 20 acres or larger are exempt from the cluster subdivision requirements.

.251 All divisions of land, boundary line adjustments or exempt land divisions in the Mineral Resource Lands Special District shall be approved in accordance with the local and state subdivision laws. ~~No division which creates any parcel of less area than 20 acres, less roads, shall be permitted except when the underlying zone is agricultural or Commercial Forestry; then it shall be 40 acres, less roads~~ (Ord. 97-069, 1997; Ord. 92-079, 1992; Ord. 92-029, 1992), provided that:

(1) Parcels that are wholly within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by Whatcom County Health Department for Group B systems, may subdivide consistent with the maximum density and minimum lot size provisions of the underlying zone.

(2) Parcels that are not wholly within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by Whatcom County Health Department for Group B systems, shall subdivide consistent with the maximum density and development and use standards outlined below.

.252 Maximum density shall be the same as in the underlying zone district.

.253 Development and use standards

Subdivisions or segregations shall be clustered. Development on all parcels subject to this section shall follow the requirements below:

(1) The clustered residential lot(s) shall not exceed 25 percent of the gross acreage of the original parent parcel, regardless of the number of separate subdivision events; and

(2) Shall not interfere with the resource productivity and mineral resource use of the mineral resource reserve tract; and

(3) If the parent parcel contains an area that is of lower mineral resource quality or where mineral extraction would be more difficult, and if this area is large enough to contain or partially contain the clustered residential lots, then the clustered residential lots shall be located on this lower quality resource or area where mineral extraction would be more difficult, unless restricted by physical constraints or unless the placement of said lots would be contrary to subsection (2) of this section; and

(4) Minimum lot size shall comply with the underlying zoning districts lot clustering provisions, unless a larger lot is required as determined by the requirements of the Bellingham-Whatcom County Sanitary Code for on-site septic disposal; provided, however, separate drainfield tracts and common drainfields shall be allowed consistent with the sanitary code. Drainfields serving the cluster development may be located within the required building setback, but not within the reserve tract; and

(5) In order to preserve rural character, no more than 16 residential lots shall be permitted in one cluster and there shall be at least 500 feet of separation between any new clusters; and

(6) All wells for potable water within the cluster subdivision shall be kept a minimum of 100 feet from the property line of an existing mineral resource extraction operation or any parcel or portion thereof which is designated as the mineral resource reserve tract; and

(7) The 25 percent of a parcel available for development may be contiguous or in separate clusters so long as the requirements of this section are met; and

(8) At the time of the initial development of a parcel under this section the entire parcel shall be included within the plat or tract map recorded, including the clustered residential parcel or parcels, and the reserve tract. Modifications to the plat or tract map shall be made in accordance with state law and county codes and ordinances, and shall be permitted, so long as the provisions of this section are met as applied to the original parcel; and

(9) A statement that the property is subject to the mineral resource land subdivision standards (WCC 20.73.250) shall be recorded on the face of the tract map, or short plat; and

(10) For purpose of determining additional development density should a rezone take place, the original (pre-subdivided) parent parcel acreage must be included in the total acreage calculation and the original development density shall be subtracted from the increased total development density, assigned to the original parent parcel, to obtain remaining density.

Chapter 20.42
RURAL FORESTRY (RF) DISTRICT

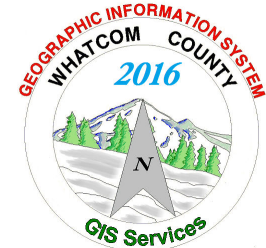
.058 Surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.09 RCW); ~~provided, that a conditional use permit is required for accessory rock crushing activities located within 2,000 feet from a rural or residential district.~~

Chapter 20.42
RURAL FORESTRY (RF) DISTRICT

.055 Surface mining, rock crushing, washing and sorting subject to the Forest Practices Act (Chapter 76.09 RCW); ~~provided, that a conditional use permit is required for accessory rock crushing activities located within 2,000 feet from a rural or residential district.~~

Figure 1 - Existing MRL designations on the Comprehensive Plan Land Use Map

Map 2-1 Comprehensive Plan Designations

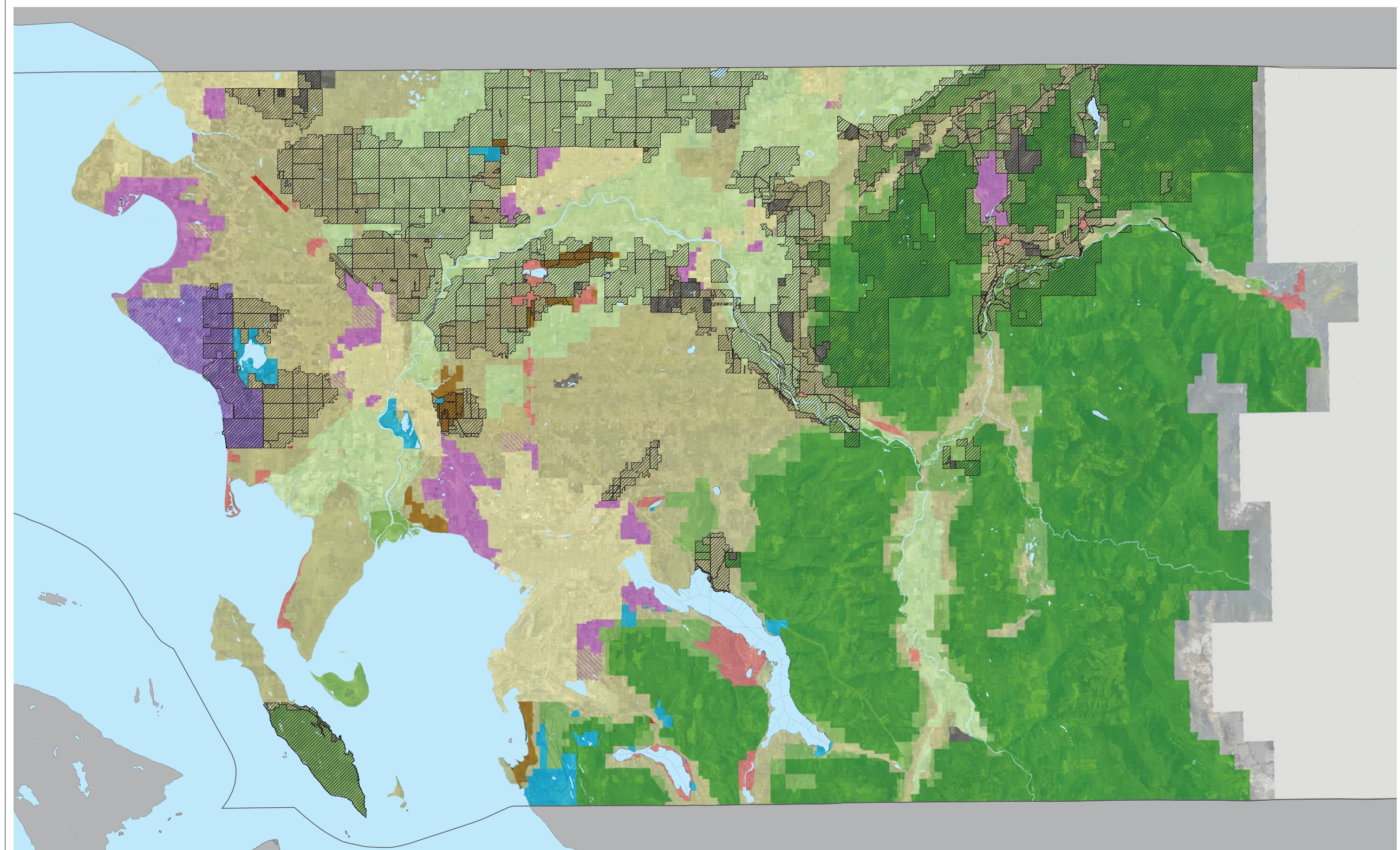


- | | | | | | | | |
|---|---------------------------|---|--------------------|---|------------------------|---|-------------------|
|  | Incorporated City |  | Rural |  | Agriculture |  | Public Recreation |
|  | Urban Growth Area |  | Rural Neighborhood |  | Rural Forestry | | |
|  | Urban Growth Area Reserve |  | Rural Community |  | Commercial Forestry | | |
|  | Major/Port Industrial UGA |  | Rural Business |  | Mineral Resource Lands | | |

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

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Figure 2 - SMAC recommended Designated Mineral Resource Lands Map



Surface Mining Advisory Committee Recommendation for Designated Mineral Resource Lands

Comprehensive Plan Designations

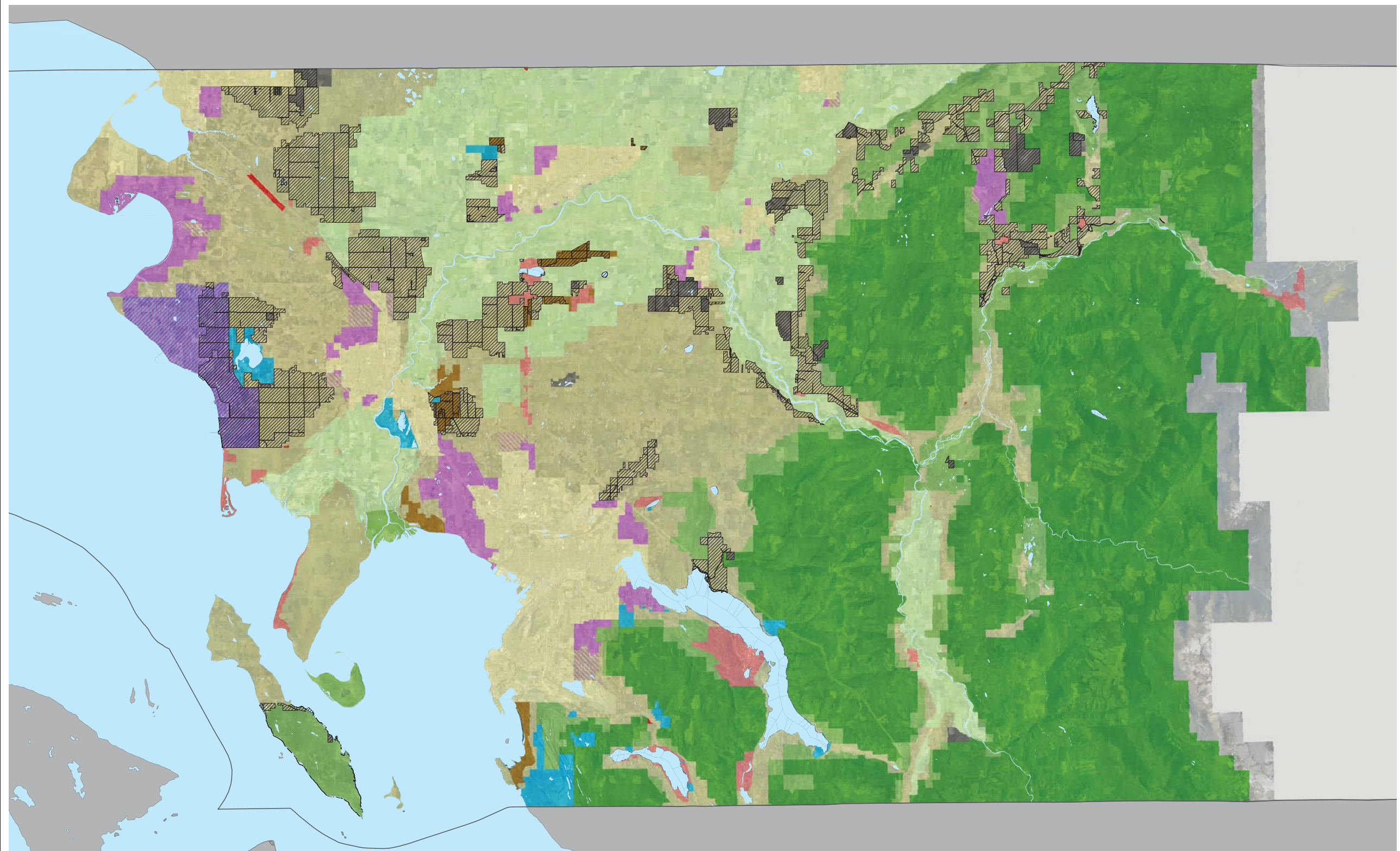
	Incorporated City Limits		Rural		Rural Forestry
	Federal		Rural Neighborhood		Commercial Forestr
	Urban Growth Area		Rural Community		Mineral Resource Lands (MRL)
	Urban Growth Area Reserve		Rural Business		Public Recreation
	Major/Port Industrial UGA		Agriculture		SMAC Recommendation

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0 0.5 1 2 3 4 Miles

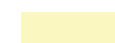











Figure 3 - No Resource Lands - SMAC recommendation minus AG, CF, RF








NO RESOURCE LANDS Surface Mining Advisory Committee Recommendation Minus Designated Agriculture, Commercial Forestry, and Rural Forestry Lands

Comprehensive Plan Designations

	Incorporated City Limits
	Federal
	Urban Growth Area
	Urban Growth Area Reserve
	Major/Port Industrial UGA

	Rural
	Rural Neighborhood
	Rural Community
	Rural Business
	Agriculture

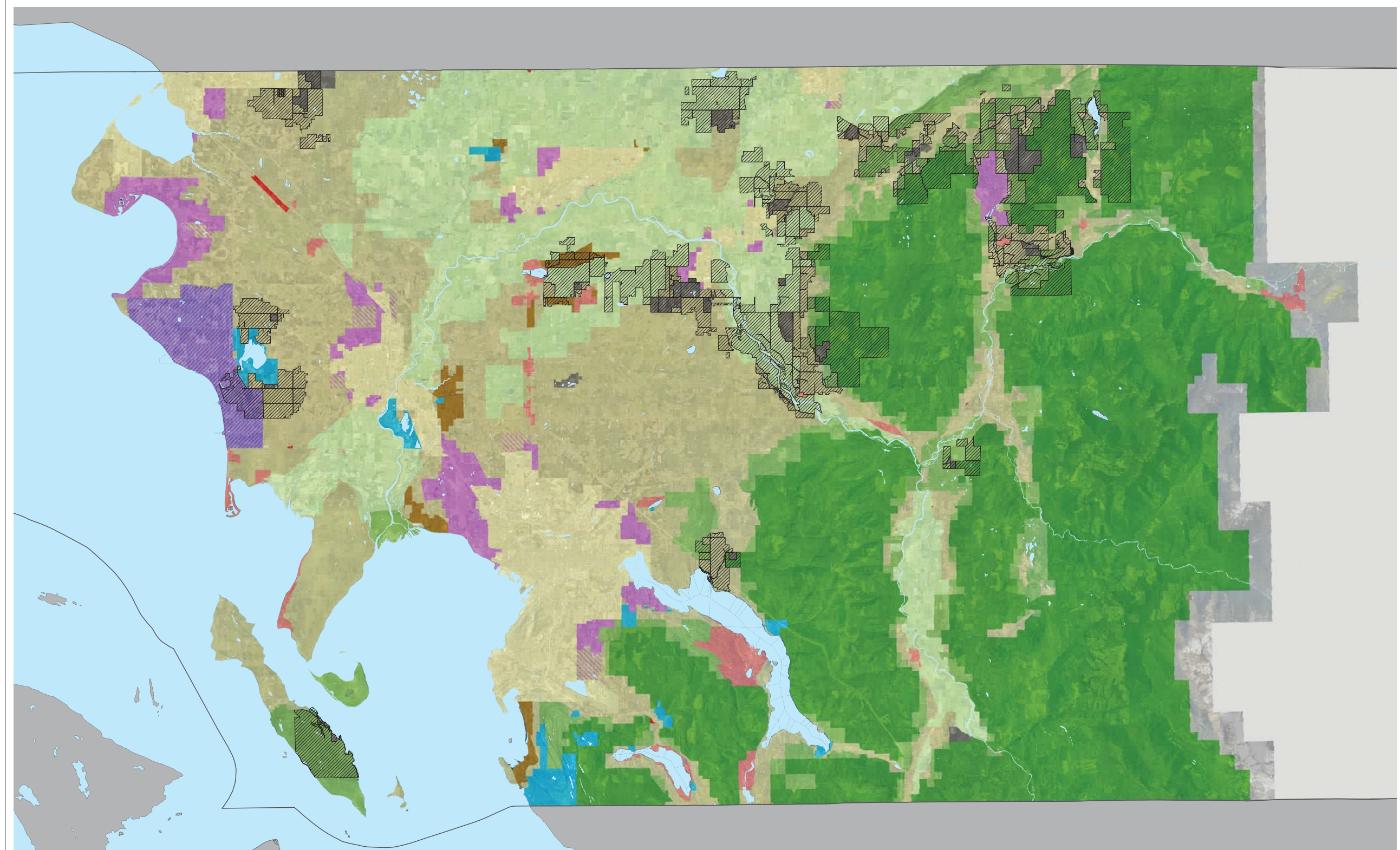
	Rural Forestry
	Commercial Forestr
	Mineral Resource Lands (MRL)
	Public Recreation
	SMAC Recommendation - No AG, CF, RF



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













Figure 4 - Localized Expansion - SMAC recommendation within 1 mile of existing MRL



LOCALIZED EXPANSION Surface Mining Advisory Committee Recommendation Within 1 mile of Existing Mineral Resource Lands

Comprehensive Plan Designations

	Incorporated City Limits		Rural		Rural Forestry
	Federal		Rural Neighborhood		Commercial Forestr
	Urban Growth Area		Rural Community		Mineral Resource Lands (MRL)
	Urban Growth Area Reserve		Rural Business		Public Recreation
	Major/Port Industrial UGA		Agriculture		SMAC Recommendation 1-Mile

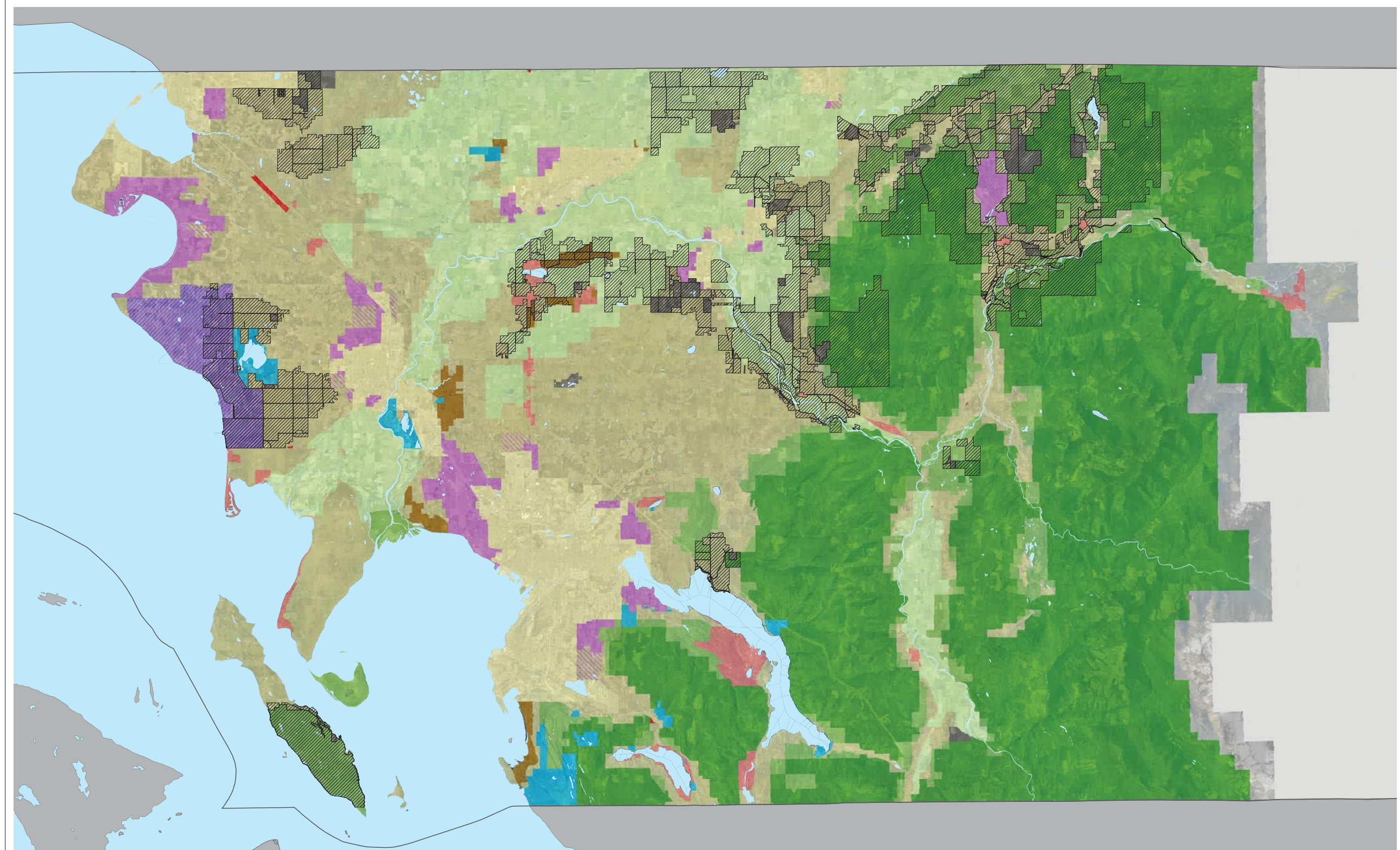


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0 0.5 1 2 3 4 Miles


















Figure 5 - Localized Expansion - SMAC recommendation within 2 miles of existing MRL



LOCALIZED EXPANSION Surface Mining Advisory Committee Recommendation Within 2 miles of Existing Mineral Resource Lands

Comprehensive Plan Designations

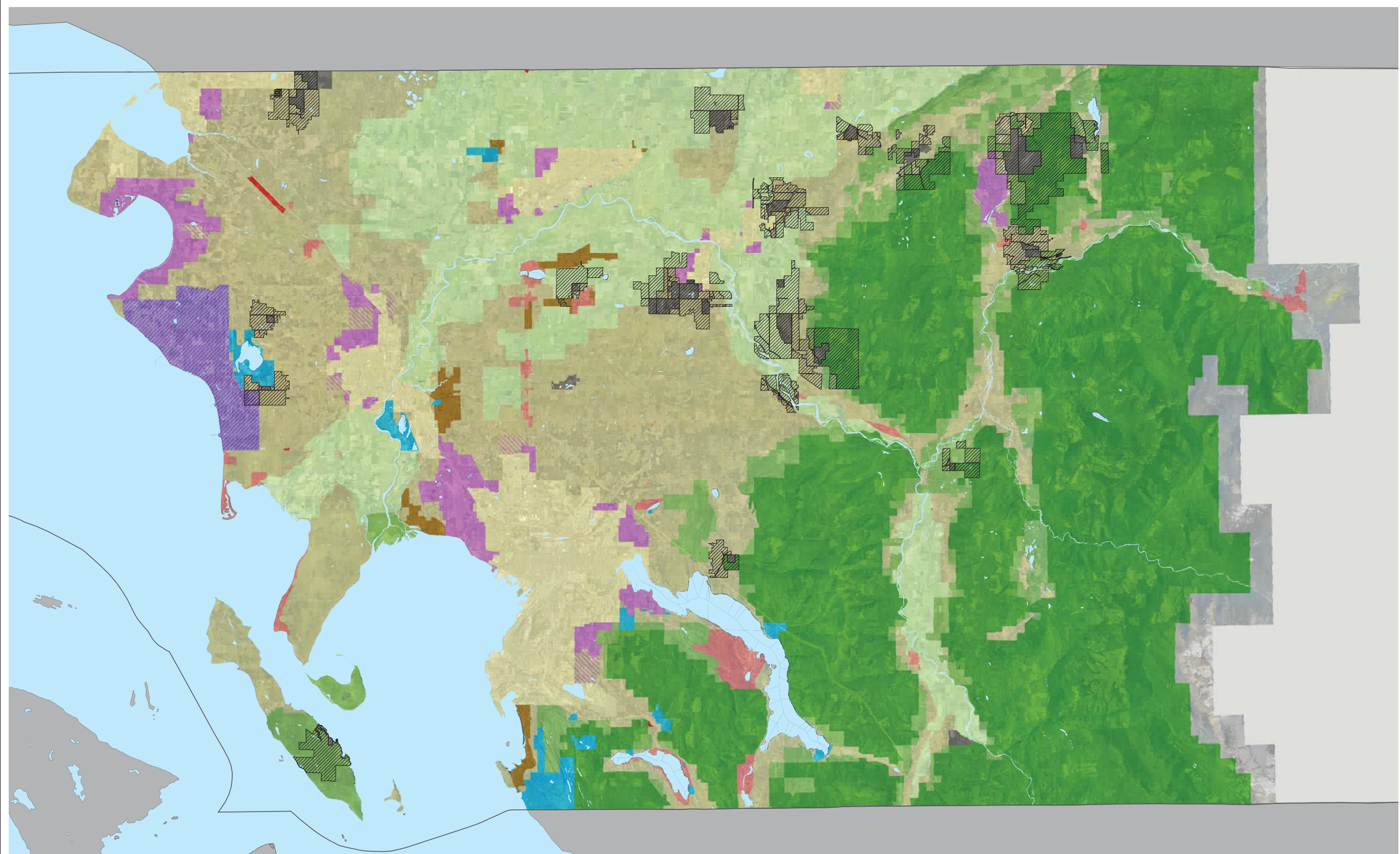
	Incorporated City Limits		Rural		Rural Forestry
	Federal		Rural Neighborhood		Commercial Forestr
	Urban Growth Area		Rural Community		Mineral Resource Lands (MRL)
	Urban Growth Area Reserve		Rural Business		Public Recreation
	Major/Port Industrial UGA		Agriculture		SMAC Recommendation 2-Mile



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



Figure 6 - Localized Expansion - SMAC recommendation within 1/2 mile of existing MRL



Localized Expansion Surface Mining Advisory Committee Recommendation Within 1/2 Mile of Existing Mineral Resource Lands

Comprehensive Plan Designations

	Incorporated City Limits		Rural		Rural Forestry
	Federal		Rural Neighborhood		Commercial Forest
	Urban Growth Area		Rural Community		Mineral Resource Lands (MRL)
	Urban Growth Area Reserve		Rural Business		Public Recreation
	Major/Port Industrial UGA		Agriculture		SMAC Recommendation 1/2 Mile



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Table 1 - Approximate CP Designation Acreage presently vs SMAC recommendation

CP Designation	Current	SMAC Recommendation	After
AG	85,821	-36,799	49,022
CF	186,474	-32,548	153,926
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-3,494	3,535
MRL	4,133	+118,860	122,993
PUBLIC-REC	4,812	0	4,812
RF	35,383	-14,460	20,923
RURAL	121,175	-30,180	90,995
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-1,283	1,789
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	96	-96	0

Table 2 - CP Designation Acreage presently vs SMAC recommendation Minus AG, CF, RF

CP Designation	Current	SMAC Recommendation	After
AG	85,821	0	85,821
CF	186,474	0	186,474
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-3,494	3,535
MRL	4,133	+35,053	39,186
PUBLIC-REC	4,812	0	4,812
RF	35,383	0	35,383
RURAL	121,175	-30,180	90,995
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-1,283	1,789
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	96	-96	0

Table 3 - CP Designation Acreage presently vs SMAC recommendation within 1 mile existing MRL

CP Designation	Current	SMAC Recommendation within 1 Mile of existing MRL	After
AG	85,821	-9,895	75,926
CF	186,474	-10,752	175,722
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-816	6,213
MRL	4,133	+41,729	45,862
PUBLIC-REC	4,812	0	4,812
RF	35,383	-7,342	28,041
RURAL	121,175	-12,397	108,778
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-475	2,597
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	52	-52	0

Table 4 - CP Designation Acreage presently vs SMAC recommendation within 2 mile existing MRL

CP Designation	Current	SMAC Recommendation within 2 miles of existing MRL	After
AG	85,821	-15,431	70,390
CF	186,474	-19,588	166,886
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-3,454	3,575
MRL	4,133	+72,956	77,089
PUBLIC-REC	4,812	0	4,812
RF	35,383	-13,909	21,474
RURAL	121,175	-19,799	101,376
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-699	2,373
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	76	-76	0

Table 5 - CP Designation Acreage presently vs SMAC recommendation within 1/2 mile existing MRL

CP Designation	Current	SMAC Recommendation within 1/2 mile of existing MRL	After
AG	85,821	-4,785	81,036
CF	186,474	-5,301	181,173
CITY	35,282	0	35,282
FEDERAL	857,352	0	857,352
MAJ/PORT-IND-UGA	7,029	-155	6,874
MRL	4,133	+21,087	25,220
PUBLIC-REC	4,812	0	4,812
RF	35,383	-3,919	31,464
RURAL	121,175	-6,893	114,282
RURAL BUSINESS	194	0	194
RURAL COMMUNITY	8,861	0	8861
RURAL NEIGHBORHOOD	3,072	-31	3,041
SMALL TOWN	211	0	211
UGA	12,713	0	12,713
UGAR	1,947	0	1947
MISC (WATER)	3	-3	0

Table 6 - DP Designation Acreage now vs SMAC recommendation in RSAs

	Acreage of Parcels intersecting PRA/RSA	Avg Parcel Size	# Parcels Impacted – MRPO (Subdivision would require clustering)	# Parcels impacted – MRL Overlay (Subdivision requires 20 acre minimum)	# Parcels not impacted (Cannot presently subdivide further or have no minimum lot size)
Harksell	~2,907.7	~5.8 Acres	61 Parcels - 263 Clustered lots	61 -54 cannot subdivide, potentially eliminating 186 lots. -7 can subdivide into 16 lots, which is less than the 77 presently allowed, potentially eliminating 61 lots.	442 of 503
Lawrence	~501.6 acres	~6.9 Acres	13 Parcels - 58 Clustered lots	13 -10 cannot subdivide, potentially eliminating 29 lots. -3 can subdivide into 7 lots, which is less than the 29 presently allowed, potentially eliminating 22 lots.	60 of 73
Loomis Trail	~2,884.0 acres	~7.0 acres	65 Parcels - 290 Clustered Lots	65 -57 cannot subdivide, potentially eliminating 205 lots. -8 can subdivide into 18 lots, which is less than the 85 presently allowed, potentially eliminating 67 lots.	348 of 413

Guide/Aldrich	~3,055.3 acres	~6.9 Acres	48 Parcels - 152 Clustered Lots	48 -43 cannot subdivide, potentially eliminating 115 lots. -5 can subdivide into 15 lots, which is less than the 37 presently allowed, potentially eliminating 22 lots.	398 of 446
East Badger	~331.5 acres	19.5 Acres	1 Parcel - 3 Clustered Lot	1 cannot subdivide, potentially eliminating 3 lots.	16 of 17
Ten Mile	~257.9 acres	10.7 Acres	7 Parcels - 26 Clustered Lots	7 cannot subdivide, potentially eliminating 26 lots.	17 of 24
Reese Hill Rd	~145.8 acres	~29.2 acres	5 Parcels - 20 Clustered Lots	5 -3 cannot subdivide, potentially eliminating 8 lots. -2 can subdivide into 4 lots, which is less than the 12 presently allowed, potentially eliminating 8 lots.	0 of 5
Leibrant	~95.5 acres	~11.9 acres	3 Parcels - 12 Clustered Lots	3 -2 cannot subdivide, potentially eliminating 4 lots. -1 can subdivide into 2 lots, which is less than the 8 presently allowed, potentially eliminating 6 lots.	5 of 8
Lake Terrell	~551.5 acres	~25.1 acres	13 Parcels - 97 Clustered Lots	13 -9 cannot subdivide, potentially eliminating 44 lots.	9 of 22

				-4 can subdivide into 11 lots, which is less than the 53 presently allowed, potentially eliminating 42 lots.	
Jackman Rd	~54.0 acres	~6.7 acres	1 Parcel - 3 Clustered Lots parcels	1 cannot subdivide, potentially eliminating 3 lots.	7 of 8
Guide/Pole	~25.5 acres	~25.5 acres	1 Parcel - 5 Clustered Lots	1 cannot subdivide, potentially eliminating 5 lots.	0 of 1
Ferndale	~251.6 acres	~19.4 acres	10 Parcels - 43 Clustered Lots	10 -9 cannot subdivide, potentially eliminating 34 lots. -1 can subdivide into 2 lots, which is less than the 9 presently allowed, potentially eliminating 7 lots.	3 of 13
Elder Rd	~42.4 acres	~42.4 acres	1 Parcel - 8 Clustered Lots	1 can subdivide into 2 lots, which is less than the 8 presently allowed, potentially eliminating 6 lots.	0 of 1
Eastwood Rd	~375.2 acres	~12.5 acres	7 Parcels - 21 Clustered Lots	7 cannot subdivide, potentially eliminating 21 lots.	23 of 30
Deming	~134.3 acres	~7.1 acres	4 Parcels - 14 Clustered Lots	4 cannot subdivide, potentially eliminating 14 lots.	15 of 19
Birch Bay/Lynden	~261.3 acres	~7.1 acres	8 Parcels - 24 Clustered Lots	8 cannot subdivide, potentially eliminating 24 lots.	29 of 37
Miniker	~110.9 acres	~55.4 acres	2 Parcels - 10 Clustered Lots	2 -1 cannot subdivide, potentially eliminating 2 lots.	0 of 2

				-1 can subdivide into 4 lots, which is less than the 8 presently allowed, potentially eliminating 4 lots.	
Grandview	~42.5 acres	~14.2 acres	2 Parcels - 7 Clustered Lots	2 cannot subdivide, potentially eliminating 7 lots.	1 of 3
Custer	~128.8 acres	~64.4 acres	2 Parcel - 12 Clustered Lots	2 can subdivide into 4 lots, which is less than the 12 presently allowed, potentially eliminating 8 lots.	0 of 2
Total RSA/PRA	~12,157.3 acres	~7.5 Acres	254 Parcels - 1,068 Clustered Lots	254 -219 cannot subdivide, potentially eliminating 730 lots. -35 can subdivide into 85 lots, which is less than the 338 presently allowed, potentially eliminating 253 lots.	1,373 of 1,627

MEMORANDUM

TO: Whatcom County Council
FROM: Matthew McDermott, Chair, Agricultural Advisory Committee Chair
DATE: December 16, 2020
SUBJECT: Countywide Review of Designated Mineral Resource Lands

The Whatcom County Agricultural Advisory Committee (AAC) would like to take this opportunity to provide feedback on the countywide review of Designated Mineral Resource Lands (MRL) that the Whatcom County Surface Mining Advisory Committee (SMAC) has been working on, specifically with regards to potential impacts to agricultural lands which may occur as a result.

First, we would like to recognize the enormity of the task the SMAC has undertaken, and to acknowledge the need for sand, gravel, and bedrock resources. In addition to general societal uses of these resources, they are also of value for their ability to contribute to a healthy agricultural economy.

That said, it is the understanding of the AAC that the SMAC recommendation may result in nearly 50,000 acres (~37,000 Designated Agricultural Lands and ~12,000+ acres of Rural Study Areas) of lands that have been identified as important toward supporting an economically viable agricultural industry, being re-designated to MRL. This change would allow for mining to be permitted by Whatcom County on prime agricultural lands through a Conditional Use Permit (CUP), and require reclamation subject to the Washington State Surface Mining Act (SMA), as administered by the Washington State Department of Natural Resources (DNR). Members of this committee are unaware of examples where the types of highly impactful mining operations, as may be permitted within Designated MRL, have been successfully reclaimed to agricultural lands approaching the quality/productivity of the pre-disturbed site. With a lack of examples, we remain skeptical that it can be done.

Therefore, we view these types of activities as conversions of agricultural lands and would request that agricultural mitigation strategies, including but not limited to Purchase of Development Rights (PDR), perpetual agricultural conservation easements over undeveloped parcels, fee in-lieu program, or other protective measures, be included as a requirement for approval through the CUP process.

Under current Whatcom County Code, small-scale (up to 500 cubic yards/year) non-commercial mineral extraction for farm enhancement purposes (e.g. levelling knolls/ridges) is allowed outside of MRLs (and without being subject to the SMA). Successful reclamation to agriculture from these activities may occur, but significant challenges remain, as evidenced by the findings of a gravel mine reclamation field trip to Abbotsford, British Columbia (BC) in July 2000. This field trip, hosted by the BC Ministry of Agriculture and attended by staff from Whatcom County Planning and Development Services (PDS) and the Natural Resource Conservation Service, among others, toured multiple reclaimed sites where subsequent agricultural activities were noticeably less productive and versatile, seemingly due to impacts to soils and drainage from the mining activity.

Meanwhile, levelling of knolls and ridges is relatively minor in comparison to the types of mining activities subject to the SMA. Mining subject to the SMA has the ability to substantially alter landscapes,

similar to operations within existing MRLs, to a point where reclamation to productive agriculture may not be feasible.

By nature, sand and gravel extraction must disturb one of the single most important factors of productive agriculture, the soil. Great care must be taken when disturbing, moving, storing, and replacing topsoil for successful reclamation. However, potentially detrimental impacts to successful reclamation are not limited to soil.

As surface mines are reclaimed, offsite materials would need to be brought in to replace the extracted sands and gravels prior to replacing the topsoil. Where sand and gravel seemingly provide important drainage capacity, the reclamation materials may not. If sands and gravels are replaced with finer silts and clays, limited drainage may result.

Finally, members of the committee are concerned with the potential impacts to agriculture that may occur from resource extraction below the water table. Best Management Practices (BMP) identified by DNR for reclamation to agriculture discourage, but do not outright prohibit, mineral extraction below the water table. If mineral extraction occurs below the water table, the committee would be concerned with impacts to drainage, as discussed above, as well as potential impacts to water resources in general.

Access to water resources (both quantity and quality) has been at the center of long-standing discussions between multiple stakeholders for greater than 20 years. This committee is concerned with how access to water for irrigation purposes may be impacted if surface mining within shallow aquifers were to occur, and how the ongoing water resource discussions may be impacted.

If you have any questions, please do not hesitate to contact Joshua Fleischmann, the AAC's Planning and Development Services staff contact, at 360-778-5952

Respectfully submitted:



Matthew McDermott, Chair
Agricultural Advisory Committee

Signed on behalf of the other Agricultural Advisory Committee Members:

Jeff Rainey	Dave Buys	Jagjiwan Brar	Steven Groen	Melodie Kirk
Barb Hento		Dakota Stranik	Robin Fay	Larry Davis



Memorandum

TO: Whatcom County Council

FROM: Joshua Fleischmann on behalf of the Forestry Advisory Committee

DATE: April 21, 2021

SUBJECT: PLN2017-00004 - Countywide Review of Designated Mineral Resource Lands

This memo is intended to convey the voice of the forestry industry as it relates to proposed changes to the Rural Forestry and Commercial Forestry Comprehensive Plan designations as a result of the countywide review of potential resource areas for designation as Mineral Resource Lands. Membership on the Forestry Advisory Committee (FAC) is not presently sufficient to provide a committee approved memo consistent with their adopted business rules. However, I have provided this memo to present and past members of the committee for their review in an attempt to capture their collective voice. I have also invited them to provide individual feedback directly to you.

The Surface Mining Advisory Committee (SMAC) recommendation as part of the countywide review of Designated Mineral Resource Lands (MRL) would result in ~47,000 acres of Designated Rural Forestry and Commercial Forestry becoming Designated MRL. This change would allow for mining to be permitted by Whatcom County on productive forestlands through a Conditional Use Permit (CUP), and require reclamation subject to the Washington State Surface Mining Act (SMA), as administered by the Washington State Department of Natural Resources (DNR).

In May of 2018 the Forestry Advisory Committee (FAC) met to discuss how the forestry industry may be impacted by a potential change in comprehensive plan designations from either Commercial Forestry or Rural Forestry to Designated Mineral Resource Lands (MRL). At that time, the FAC was cautiously supportive of the ability of a landowner to mine presently designated forestlands. However reclamation of mined areas to forestlands was one of the most important factors in whether the committee would support or oppose a change in designation.

This caution was consistent with the feelings of the committee in 2014, where, in a memo to the Whatcom County Council, the FAC conveyed their concerns over the loss of forestland and its impact on the long term viability of the forestry industry.

In December 2019, the Forestry Advisory Committee, Agricultural Advisory Committee and Surface Mining Advisory Committee met with a representative of DNR to discuss reclamation of surface mining. At the time, presuming that reclamation could return mined lands to forestland, the greatest concern from the FAC was whether there would be changes to presently allowed uses as a result of a change in designation to MRL, which there would not.

Since that time I have had occasional communications with DNR to help me understand how mining and the reclamation process may impact agriculture and forestry. Generally, upon

reclamation, forestlands would be negatively impacted by bedrock quarries, but steps can be taken so that the impacts may be minimal. As part of a change in designation and subsequent potential land uses, considerations to limit impacts to forestlands may include:

- MRL designation directed to areas with lower quality forestland.
- Average size of quarry is ~30-40 +/- acres. It may be worth collecting income on a few million tons of rocks in lieu of a single harvest rotation and then reclaim at a potentially less productive level.
- The floor of quarries could be returned to forestry production, limiting the loss of forestland.
- Requirement for mitigation as part of a mining permit. Mitigation could include, but is not limited to, conservation easements and afforestation of previously converted lands, removal of development rights from forest lands at risk of conversion, fee in-lieu program, or other protective measures.

Ultimately, past and present members of the Forestry Advisory Committee recognize the benefit of mineral resource lands to Whatcom County; they support flexibility in how landowners choose to manage their land; they are more concerned with other increasingly impactful influences to forest management than potential mineral extraction; and they cautiously support the SMAC recommendation.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-327

File ID:	AB2021-327	Version:	1	Status:	Introduced
File Created:	06/04/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance amending the Whatcom County Budget, request no. 10, in the amount of \$744,800

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #10 requests from the General Fund and other county funds:

1. To appropriate \$543,102 to fund a 2% COLA increase for the Master, WSNA, PROTEC 17 bargaining units and unrepresented employee group.

From the General Fund:

2. To appropriate \$36,272 in Sheriff to fund Fraternal Order of Police and Undersheriff longevity premiums inadvertently omitted from the 2021 budget.

From the Whatcom County Jail Fund:

3. To appropriate \$165,426 to fund the Corrections Deputies bargaining unit 2021 wage settlement.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Ordinance, Budget summary, Supplemental requests, Notice of Action Proposed on
06.015.2021.pdf

PROPOSED BY: Executive
INTRODUCTION DATE: 06/15/21

**ORDINANCE NO.
AMENDMENT NO. 10 OF THE 2021 BUDGET**

WHEREAS, the 2021-2022 budget was adopted November 24, 2020; and,

WHEREAS, changing circumstances require modifications to the approved 2021-2022 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 2021-2022 Whatcom County Budget Ordinance #2020-068 is hereby amended by adding the additional amounts to the 2021 budget as outlined in Exhibit A to this ordinance.

ADOPTED this ____ day of _____, 2021.

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: _____

EXHIBIT A

Fund	Expenditures	Revenues	Net Effect
General Fund			
Assessor	19,553	-	19,553
Auditor	5,931	-	5,931
Council	5,514	-	5,514
County Clerk	12,787	-	12,787
District Court	10,487	-	10,487
District Court Probation	13,259	-	13,259
Executive	3,635	-	3,635
Health	76,979	(25,660)	51,319
Hearing Examiner	715	-	715
Juvenile	30,262	-	30,262
Parks	20,237	-	20,237
Planning & Development	36,974	-	36,974
Prosecuting Attorney	44,195	-	44,195
Public Defender	30,581	-	30,581
Sheriff	50,291	-	50,291
Superior Court	10,253	-	10,253
Treasurer	7,261	-	7,261
WSU Extension	1,347	-	1,347
Total General Fund	380,261	(25,660)	354,601
Road Fund	95,227	-	95,227
Election Reserve Fund	3,162	-	3,162
Whatcom County Jail Fund	177,108	-	177,108
Stormwater Fund	3,966	-	3,966
Behavioral Health Fund - Superior Court	3,405	-	3,405
Mental Health/Developmental Disabilities Fund	717	-	717
Countywide Emergency Medical Services Fund	2,870	-	2,870
Solid Waste Fund	1,739	-	1,739
Victim Witness Fund	1,223	-	1,223
Whatcom County Emergency Management Fund	3,934	-	3,934
Conservation Futures Fund	554	-	554
Ferry Fund	715	-	715
Equipment Rental & Revolving Fund	10,734	-	10,734
Administrative Services Fund	59,185	-	59,185
Total Supplemental	744,800	(25,660)	719,140

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 10				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Assessor	To fund Master and Unrep COLA increase	19,553	-	19,553
Auditor	To fund Master and Unrep COLA increase	5,931	-	5,931
Council	To fund Unrep COLA increase	5,514	-	5,514
County Clerk	To fund Master and Unrep COLA increase	12,787	-	12,787
District Court	To fund Master and Unrep COLA increase	10,487	-	10,487
District Court Probation	To fund Master and Unrep COLA increase	13,259	-	13,259
Executive	To fund Unrep COLA increase	3,635	-	3,635
Health	To fund Master, WSNA, Local 17 and Unrep COLA increase	76,979	(25,660)	51,319
Hearing Examiner	To fund Master COLA increase	715	-	715
Juvenile	To fund Master and Unrep COLA increase	30,262	-	30,262
Parks	To fund Master and Unrep COLA increase	20,237	-	20,237
Planning & Development	To fund Master and Unrep COLA increase	36,974	-	36,974
Prosecuting Attorney	To fund Master and Unrep COLA increase	44,195	-	44,195
Public Defender	To fund Master and Unrep COLA increase	30,581	-	30,581
Sheriff	To fund Master and Unrep COLA increase; Fraternal Order of Police and Undersheriff longevity premiums	50,291	-	50,291
Superior Court	To fund Master and Unrep COLA increase	10,253	-	10,253
Treasurer	To fund Master and Unrep COLA increase	7,261	-	7,261
WSU Extension	To fund Master COLA increase	<u>1,347</u>	<u>-</u>	<u>1,347</u>
Total General Fund		380,261	(25,660)	354,601
Road Fund	To fund Master and Unrep COLA increase	95,227	-	95,227
Election Reserve Fund	To fund Master and Unrep COLA increase	3,162	-	3,162
Whatcom County Jail Fund				
Sheriff-Corrections	To fund Master and Unrep COLA increase	11,682	-	11,682
Sheriff-Corrections	To fund Deputies 2021 wage increase	<u>165,426</u>	<u>-</u>	<u>165,426</u>
Total Whatcom County Jail Fund		177,108	-	177,108
Stormwater Fund	To fund Master and Unrep COLA Increase	3,966	-	3,966
Behavioral Health Fund - Superior Court	To fund Master and Unrep COLA Increase	3,405	-	3,405
Mental Health/Developmental Disabilities Fund	To fund Master COLA increase	717	-	717
Countywide Emergency Medical Services Fund	To fund Master and Unrep COLA Increase	2,870	-	2,870
Solid Waste Fund	To fund Master COLA increase	1,739	-	1,739

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 10				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
Victim Witness Fund	To fund Master COLA increase	1,223	-	1,223
Whatcom County Emergency Management Fund	To fund Master and Unrep COLA Increase	3,934	-	3,934
Conservation Futures Fund	To fund Master COLA increase	554	-	554
Ferry Fund	To fund Master COLA increase	715	-	715
Equipment Rental & Revolving Fund	To fund Master and Unrep COLA Increase	10,734	-	10,734
Administrative Services Fund	To fund Master and Unrep COLA Increase	<u>59,185</u>	<u>-</u>	<u>59,185</u>
Total Supplemental		<u>744,800</u>	<u>(25,660)</u>	<u>719,140</u>

Supplemental Budget Request

Status: Pending

Assessor

Suppl ID # 3221 Fund 1 Cost Center 300 Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Assessor's Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$16,464
	6210	Retirement	\$1,748
	6230	Social Security	\$1,261
	6255	Other H&W Benefits	\$42
	6269	Unemployment-Interfund	\$38
	Request Total		\$19,553

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 3222 Fund 1 Cost Center Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Auditor's Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$4,983
	6210	Retirement	\$543
	6230	Social Security	\$380
	6255	Other H&W Benefits	\$14
	6269	Unemployment-Interfund	\$11
	Request Total		\$5,931

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Council

Suppl ID # 3223

Fund 1

Cost Center 1100

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Council Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$4,571
	6210	Retirement	\$558
	6230	Social Security	\$350
	6255	Other H&W Benefits	\$23
	6269	Unemployment-Interfund	\$12
	Request Total		\$5,514

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

County Clerk

Suppl ID # 3224 Fund 1 Cost Center 3150 Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Clerk's Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$10,786
	6210	Retirement	\$1,126
	6230	Social Security	\$825
	6255	Other H&W Benefits	\$26
	6269	Unemployment-Interfund	\$24
	Request Total		\$12,787

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

District Court

Suppl ID # 3226

Fund 1

Cost Center 1300

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: District Court COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$8,828
	6210	Retirement	\$937
	6230	Social Security	\$676
	6255	Other H&W Benefits	\$23
	6269	Unemployment-Interfund	\$23
	Request Total		\$10,487

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

District Court Probation

Suppl ID # 3225

Fund 1

Cost Center 1310

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: District Ct Probation COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$11,178
	6210	Retirement	\$1,175
	6230	Social Security	\$857
	6255	Other H&W Benefits	\$22
	6269	Unemployment-Interfund	\$27
	Request Total		\$13,259

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Executive

Suppl ID # 3227 Fund 1 Cost Center 1200 Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Executive Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$3,012
	6210	Retirement	\$369
	6230	Social Security	\$230
	6255	Other H&W Benefits	\$16
	6269	Unemployment-Interfund	\$8
	Request Total		\$3,635

1a. Description of request:

Record 2% COLA increase for Unrep group

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Health

Administration

Suppl ID # 3228

Fund 1

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Health Dept COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4333.2110	COVID-19 Local CARES	(\$25,660)
	6110	Regular Salaries & Wages	\$64,795
	6210	Retirement	\$6,910
	6230	Social Security	\$4,958
	6255	Other H&W Benefits	\$145
	6269	Unemployment-Interfund	\$171
	Request Total		\$51,319

1a. Description of request:

Record 2% COLA increase for Master, WSNA, Local 17 and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund and federal funding from COVID recovery funds

Supplemental Budget Request

Status: Pending

Hearing Examiner

Suppl ID # 3229 Fund 1 Cost Center 1600 Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Hearing Examiner Office COA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$604
	6210	Retirement	\$62
	6230	Social Security	\$46
	6255	Other H&W Benefits	\$1
	6269	Unemployment-Interfund	\$2
	Request Total		\$715

1a. Description of request:

Record 2% COLA increase for Master group

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Juvenile

Administration

Suppl ID # 3230

Fund 1

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Juvenile Division COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$25,525
	6210	Retirement	\$2,668
	6230	Social Security	\$1,954
	6255	Other H&W Benefits	\$48
	6269	Unemployment-Interfund	\$67
	Request Total		\$30,262

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Parks & Recreation

Suppl ID # 3231	Fund 1	Cost Center	Originator: M Caldwell
Year 1	2021	Add'l FTE <input type="checkbox"/>	Priority 1

Name of Request: Parks & Rec COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$17,007
	6210	Retirement	\$1,838
	6230	Social Security	\$1,302
	6255	Other H&W Benefits	\$45
	6269	Unemployment-Interfund	\$45
	Request Total		\$20,237

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Planning & Development Services

Administration

Suppl ID # 3232

Fund 1

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: PDS COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$31,178
	6210	Retirement	\$3,271
	6230	Social Security	\$2,388
	6255	Other H&W Benefits	\$58
	6269	Unemployment-Interfund	\$79
	Request Total		\$36,974

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Prosecuting Attorney

Suppl ID # 3233 Fund 1 Cost Center Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Prosecuting Attorney's Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$36,814
	6210	Retirement	\$4,312
	6230	Social Security	\$2,819
	6255	Other H&W Benefits	\$153
	6269	Unemployment-Interfund	\$97
	Request Total		\$44,195

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Public Defender

Suppl ID # 3234 Fund 1 Cost Center Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Public Defender's Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$25,486
	6210	Retirement	\$2,973
	6230	Social Security	\$1,950
	6255	Other H&W Benefits	\$102
	6269	Unemployment-Interfund	\$70
	Request Total		\$30,581

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Sheriff

Administration

Suppl ID # 3235

Fund 1

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Sheriff's Office COLA & Longevity

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$43,746
	6210	Retirement	\$2,989
	6230	Social Security	\$3,345
	6255	Other H&W Benefits	\$99
	6269	Unemployment-Interfund	\$112
	Request Total		\$50,291

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups. \$14,019

In addition, the Fraternal Order of Police bargaining unit and Undersheriff longevity premiums were inadvertently left out of the 2021 budget. \$36,272

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Superior Court

Suppl ID # 3236

Fund 1

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Superior Court COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$8,520
	6210	Retirement	\$1,020
	6230	Social Security	\$653
	6255	Other H&W Benefits	\$37
	6269	Unemployment-Interfund	\$23
	Request Total		\$10,253

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Treasurer

Suppl ID # 3237 Fund 1 Cost Center 3300 Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Treasurer's Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$6,111
	6210	Retirement	\$651
	6230	Social Security	\$467
	6255	Other H&W Benefits	\$16
	6269	Unemployment-Interfund	\$16
	Request Total		\$7,261

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

WSU Extension

Suppl ID # 3238

Fund 1

Cost Center 2000

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: WSU Extension Office COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$1,138
	6210	Retirement	\$117
	6230	Social Security	\$87
	6255	Other H&W Benefits	\$2
	6269	Unemployment-Interfund	\$3
	Request Total		\$1,347

1a. Description of request:

Record 2% COLA increase for Master group

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Supplemental Budget Request

Status: Pending

Public Works

Administration

Suppl ID # 3239 Fund 108 Cost Center Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Road Fund COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$80,179
	6210	Retirement	\$8,507
	6230	Social Security	\$6,148
	6255	Other H&W Benefits	\$180
	6269	Unemployment-Interfund	\$213
	Request Total		\$95,227

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Road Fund

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 3240

Fund 109

Cost Center 10904

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Elections Division COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$2,650
	6210	Retirement	\$295
	6230	Social Security	\$203
	6255	Other H&W Benefits	\$8
	6269	Unemployment-Interfund	\$6
	Request Total		\$3,162

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Elections Fund

Supplemental Budget Request

Status: Pending

Jail

Suppl ID # 3241	Fund 118	Cost Center	Originator: M Caldwell
Year 1	2021	Add'l FTE <input type="checkbox"/>	Priority 1

Name of Request: Corrections Master/Unrep COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$9,809
	6210	Retirement	\$1,067
	6230	Social Security	\$752
	6255	Other H&W Benefits	\$28
	6269	Unemployment-Interfund	\$26
	Request Total		\$11,682

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Whatcom County Jail Fund

Supplemental Budget Request

Status: Pending

Jail

Suppl ID # 3258

Fund 118

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Record Correction Deputies Settlement

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$139,662
	6210	Retirement	\$14,510
	6230	Social Security	\$10,685
	6255	Other H&W Benefits	\$206
	6269	Unemployment-Interfund	\$363
	Request Total		\$165,426

1a. Description of request:

Corrections Deputies bargaining unit settlement for 2021 adopted 2/9/21 - 2.5% increase

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:

Whatcom County Jail Fund

Supplemental Budget Request

Status: Pending

Public Works

Stormwater

Suppl ID # 3242

Fund 123

Cost Center 123101

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Stormwater COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$3,332
	6210	Retirement	\$363
	6230	Social Security	\$255
	6255	Other H&W Benefits	\$8
	6269	Unemployment-Interfund	\$8
	Request Total		\$3,966

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Stormwater Fund

Supplemental Budget Request

Status: Pending

Superior Court

Suppl ID # 3243 Fund 124 Cost Center Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Drug Ct COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$2,862
	6210	Retirement	\$310
	6230	Social Security	\$219
	6255	Other H&W Benefits	\$7
	6269	Unemployment-Interfund	\$7
	Request Total		\$3,405

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Behavioral Health Programs Fund

Supplemental Budget Request

Status: Pending

Health

Administration

Suppl ID # 3244

Fund 127

Cost Center 127200

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: MH/DD Fund COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$606
	6210	Retirement	\$62
	6230	Social Security	\$46
	6255	Other H&W Benefits	\$1
	6269	Unemployment-Interfund	\$2
	Request Total		\$717

1a. Description of request:

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:

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3245 Fund 130 Cost Center Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Countywide EMS Fund COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$2,402
	6210	Retirement	\$269
	6230	Social Security	\$184
	6255	Other H&W Benefits	\$8
	6269	Unemployment-Interfund	\$7
	Request Total		\$2,870

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Countywide EMS fund

Supplemental Budget Request

Status: Pending

Health

Administration

Suppl ID # 3247

Fund 140

Cost Center 140000

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Solid Waste COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$1,470
	6210	Retirement	\$151
	6230	Social Security	\$112
	6255	Other H&W Benefits	\$2
	6269	Unemployment-Interfund	\$4
	Request Total		\$1,739

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Solid Waste Fund

Supplemental Budget Request

Status: Pending

Prosecuting Attorney

Suppl ID # 3248

Fund 142

Cost Center 14200

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Victim Witness COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$1,034
	6210	Retirement	\$106
	6230	Social Security	\$79
	6255	Other H&W Benefits	\$2
	6269	Unemployment-Interfund	\$2
	Request Total		\$1,223

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Victim Witness Fund

Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3249

Fund 167

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Emergency Management COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$3,276
	6210	Retirement	\$383
	6230	Social Security	\$251
	6255	Other H&W Benefits	\$14
	6269	Unemployment-Interfund	\$10
	Request Total		\$3,934

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Emergency Management Fund

Supplemental Budget Request

Status: Pending

Planning & Development Services

Administration

Suppl ID # 3251

Fund 175

Cost Center 17550

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Conservation Future Fund COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$468
	6210	Retirement	\$48
	6230	Social Security	\$36
	6255	Other H&W Benefits	\$1
	6269	Unemployment-Interfund	\$1
	Request Total		\$554

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Conservation Futures Fund

Supplemental Budget Request

Status: Pending

Public Works

Ferry & Docks

Suppl ID # 3253

Fund 444

Cost Center 444100

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: PW-Ferry Fund Master COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$604
	6210	Retirement	\$62
	6230	Social Security	\$46
	6255	Other H&W Benefits	\$1
	6269	Unemployment-Interfund	\$2
	Request Total		\$715

1a. Description of request:

Record 2% COLA increase for Master group

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:

Ferry Fund

Supplemental Budget Request

Status: Pending

Public Works

Equipment Services

Suppl ID # 3254

Fund 501

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: ER&R Fund COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$9,053
	6210	Retirement	\$948
	6230	Social Security	\$691
	6255	Other H&W Benefits	\$18
	6269	Unemployment-Interfund	\$24
	Request Total		\$10,734

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

ER&R Fund

Supplemental Budget Request

Status: Pending

Administrative Services

Administration

Suppl ID # 3255

Fund 507

Cost Center

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Admin Services Fund COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$49,564
	6210	Retirement	\$5,539
	6230	Social Security	\$3,796
	6255	Other H&W Benefits	\$158
	6269	Unemployment-Interfund	\$128
	Request Total		\$59,185

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Admin Services Fund



Beaufort Gazette
Belleville News-Democrat
Bellingham Herald
Bradenton Herald
Centre Daily Times
Charlotte Observer
Columbus Ledger-Enquirer
Fresno Bee

The Herald - Rock Hill
Herald Sun - Durham
Idaho Statesman
Island Packet
Kansas City Star
Lexington Herald-Leader
Merced Sun-Star
Miami Herald

el Nuevo Herald - Miami
Modesto Bee
Raleigh News & Observer
The Olympian
Sacramento Bee
Fort Worth Star-Telegram
The State - Columbia
Sun Herald - Biloxi

Sun News - Myrtle Beach
The News Tribune Tacoma
The Telegraph - Macon
San Luis Obispo Tribune
Tri-City Herald
Wichita Eagle

AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
25579	84401	Print Legal Ad - IPL0028766		\$376.35	3	6.41

Attention: NaDean Hanson

WHATCOM CO COUNCIL
311 GRAND AVE STE 105
BELLINGHAM, WA 982254038

AB2021- 340
AB2021- 327
AB2021- 328
AB2021- 360

ACTION TAKEN

The Whatcom County Council adopted the following at its June 15, 2021, meeting:

ORDINANCE (2021-036) ESTABLISHING THE AMERICAN RESCUE PLAN ACT FUND AND ESTABLISHING A BUDGET FOR THE AMERICAN RESCUE PLAN ACT FUND (AB2021-310) This ordinance establishes a fund to account for the County's American Rescue Plan Act (ARPA) allocation and establishes an initial budget of \$1,732,850 to reinstate positions left unfunded due to COVID-19 economic impacts. In addition, the requested budget will fund seven months of operations at the County's Isolation & Quarantine Facility. Ordinance introduced June 1, 2021.

ORDINANCE (2021-035) AMENDING THE 2021 WHATCOM COUNTY BUDGET, REQUEST NO. 9, IN THE AMOUNT OF \$1,138,322 (AB2021-307) This ordinance amends the 2021 Whatcom County Budget as follows: From the General Fund - appropriate \$23,936 in Non Departmental to fund transfer in support of public safety radio tower leases, appropriate \$76,335 in Assessor to fund reinstatement of two "frozen" positions from American Rescue Plan (ARP) funding, appropriate \$32,722 in Auditor to fund reinstatement of one "frozen" position from ARP funding, appropriate \$153,980 in Planning & Development to fund reinstatement of three "frozen" positions from ARP funding, appropriate \$67,476 in Sheriff to fund reinstatement of two "frozen" positions from ARP funding, appropriate \$53,321 in County Clerk to fund reinstatement of 1.5 FTE "frozen" positions from ARP funding; from the Road Fund - appropriate \$31,786 in Public Works Administration to fund reinstatement of one "frozen" position from ARP funding; from the Whatcom County Jail Fund - appropriate \$237,214 in the Sheriff's Corrections Bureau to fund reinstatement of five "frozen" deputy positions from ARP funding; from the Behavioral Health Programs Fund - appropriate \$44,711 to fund reinstatement of one "frozen" Mental Health Court position from ARP funding, appropriate \$50,000 to fund GRACE program from PeaceHealth donation, appropriate \$140,000 to fund GRACE program from additional City of Bellingham funding; from the Countywide Emergency Medical Services Fund - appropriate \$60,000 to fund EMS records management system software maintenance contract amendments; from the Whatcom County Emergency Management Fund - appropriate \$23,936 to fund public safety radio tower leases from general fund transfer; from the Administrative Services Fund - appropriate \$142,905 to fund reinstatement of three "frozen" positions from ARP funding. Ordinance introduced June 1, 2021.

ACTION PROPOSED (INTRODUCED)

The Whatcom County Council will consider adopting and may amend the following at its 6 p.m. meeting on June 29, 2021, or at a later date: **ORDINANCE SUSPENDING WHATCOM COUNTY CODE 1.28 TO UPDATE THE CORRECTIONAL FACILITIES OPERATIONAL STANDARDS (AB2021-340)** This ordinance suspends Whatcom County Code (WCC) Chapter 1.28 in its entirety for up to an additional eighteen months. The Whatcom County Sheriff's Office correction facility operational standards would continue to be temporarily adopted in place of WCC 1.28. The following notation would be included in the County Code in place of WCC 1.28: "Whatcom County code Chapter 1.28 is temporarily suspended for up to eighteen months beginning July 8, 2021. The Whatcom County Sheriff's Office correctional facility standards, as collectively established through various documents, including, but not limited to, written general policies, corrections bureau operational policies, and procedures, the Sheriff's Office Rules and Regulations Manual, and the Uniform Building Code, are temporarily adopted in its place." Ordinance introduced June 15, 2021.

ORDINANCE AMENDING THE WHATCOM COUNTY BUDGET, REQUEST NO. 10, IN THE AMOUNT OF \$744,800 (AB2021-327) This ordinance amends the 2021 Whatcom County Budget as follows: From the General Fund and other county funds - appropriate \$543,102 to fund a 2% COLA increase for the Master, WSNA, PROTEC 17 bargaining units and unrepresented employee group; from the General Fund - appropriate \$36,272 in Sheriff to fund Fraternal Order of Police and Undersheriff longevity premiums inadvertently omitted from the 2021 budget; from the Whatcom County Jail Fund - appropriate \$165,426 to fund the Corrections Deputies bargaining unit 2021 wage settlement. Ordinance introduced June 15, 2021.

RESOLUTION AMENDING THE FLOOD CONTROL ZONE DISTRICT AND SUBZONES 2021 BUDGETS, REQUEST NO. 1, IN THE AMOUNT OF \$15,415 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS) (AB2021-328) This resolution amends the Flood Control Zone District and Subzones 2021 budget as follows: From the Flood Control Zone District Fund appropriate \$14,634 in Public Works - Flood to fund Master bargaining unit and unrepresented employee group 2% COLA increase; from the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District Fund appropriate \$781 in Public Works - BBWARM to fund Master bargaining unit 2% COLA increase. Resolution introduced June 15, 2021.

ORDINANCE TO ESTABLISH AN INDEPENDENT REVIEW OF THE COMMUNITY RESPONSE TO THE COVID-19 PANDEMIC (AB2021-360) This ordinance establishes a County Commission to review the community's response to the COVID-19 Pandemic. An independent Special Commissioner would be hired to examine the makeup of the County Health Board, Unified Command, County policy related to open communications with the public, expanding the designated senior county emergency advisory positions and community sectors represented. The Special Commissioner would deliver a report to the County by October 31, 2021. Ordinance introduced June 15, 2021.

Due to COVID-19, public documents are currently unavailable for review in the Council Office. Please call 360-778-5010 if you have questions, or visit www.whatcomcounty.us/council. View meeting schedules, agendas, minutes, videos, documents and archives at www.whatcom.legistar.com. The Council is currently holding all meetings remotely. For instructions on how to watch or participated in this meeting, please visit us at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360-778-5010. Signed and attested: Council and FCZDBOS Chair Barry Buchanan, Clerk of the Council Dana Brown-Davis.
Publish June 20, 2021
IPL0028766
Jun 20 2021

Islamae Brown, being duly sworn, deposes and says: That he/she is the Principal Clerk of The Bellingham Herald, a daily newspaper printed and published in Bellingham, Whatcom County, State of Washington, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of six months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Bellingham Herald, as amended, for:

No. of Insertions: 1

Beginning Issue of: 06/20/2021

Ending Issue of: 06/20/2021

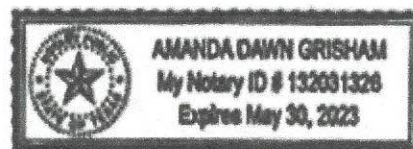
Islamae Brown

(Principal Clerk)

Subscribed and sworn on this 21th day of June in the year of 2021 before me, a Notary Public, personally appeared before me Islamae Brown known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Amanda Grisham

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.
Legal document please do not destroy!



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-328

File ID:	AB2021-328	Version:	1	Status:	Introduced
File Created:	06/04/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Resolution (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Resolution amending the Flood Control Zone District and subzones 2021 budgets, request no. 1, in the amount of \$15,415 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

1. To appropriate \$14,634 in Public Works - Flood to fund Master bargaining unit and unrepresented employee group 2% COLA increase.

From the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District Fund:

2. To appropriate \$781 in Public Works - BBWARM to fund Master bargaining unit 2% COLA increase.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Resolution, Budget summary, Supplemental requests, Notice of Action Proposed on
06.015.2021.pdf

PROPOSED BY: Public Works
INTRODUCTION DATE: 06/15/21

RESOLUTION NO. _____

(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 1 OF THE 2021 BUDGET

WHEREAS, the 2021 budget for the Whatcom County Flood Control Zone District and Subzones was adopted November 24, 2020; and,

WHEREAS, changing circumstances require modifications to the approved 2021 budget; and,

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

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that the 2021 budget as approved in Resolution 2020-050 is hereby amended by adding the following additional amounts to the budgets included therein:

	Expenditures	Revenues	Net Effect
Flood Control Zone District Fund	14,634	-	14,634
Birch Bay Watershed and Aquatic Resource Management District Fund	781	-	781
Total Supplemental	15,415	-	15,415

ADOPTED this ____ day of _____, 2021

ATTEST:

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of Board of Supervisors

APPROVED AS TO FORM:

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

2021 Flood Control Zone District and Subzones Budgets Amendment #1				
		Expenditures	Revenues	Fund Balance
Flood Control Zone District Fund	To fund Master and Unrep COLA Increase	14,634	-	14,634
Birch Bay Watershed and Aquatic Resource Management District Fund	To fund Master COLA Increase	781	-	781
Total Supplemental		15,415	-	15,415

Supplemental Budget Request

Status: Pending

Public Works

Flood Control Zone District

Suppl ID # 3250 Fund 169 Cost Center Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: FCZD COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$12,324
	6210	Retirement	\$1,309
	6230	Social Security	\$945
	6255	Other H&W Benefits	\$25
	6269	Unemployment-Interfund	\$31
	Request Total		\$14,634

1a. Description of request:

Record 2% COLA increase for Master and Unrep groups

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:

Flood Control Zone District

Supplemental Budget Request

Status: Pending

Public Works

Flood Control Zone District

Suppl ID # 3256

Fund 16925

Cost Center 169250

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: BBWARM Fund COLA Increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$660
	6210	Retirement	\$68
	6230	Social Security	\$50
	6255	Other H&W Benefits	\$1
	6269	Unemployment-Interfund	\$2
	Request Total		\$781

1a. Description of request:

Record 2% COLA increase for Master group

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:

BBWARM



Beaufort Gazette
Belleville News-Democrat
Bellingham Herald
Bradenton Herald
Centre Daily Times
Charlotte Observer
Columbus Ledger-Enquirer
Fresno Bee

The Herald - Rock Hill
Herald Sun - Durham
Idaho Statesman
Island Packet
Kansas City Star
Lexington Herald-Leader
Merced Sun-Star
Miami Herald

el Nuevo Herald - Miami
Modesto Bee
Raleigh News & Observer
The Olympian
Sacramento Bee
Fort Worth Star-Telegram
The State - Columbia
Sun Herald - Biloxi

Sun News - Myrtle Beach
The News Tribune Tacoma
The Telegraph - Macon
San Luis Obispo Tribune
Tri-City Herald
Wichita Eagle

AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
25579	84401	Print Legal Ad - IPL0028766		\$376.35	3	6.41

Attention: NaDean Hanson

WHATCOM CO COUNCIL
311 GRAND AVE STE 105
BELLINGHAM, WA 982254038

AB2021- 340
AB2021- 327
AB2021- 328
AB2021- 360

ACTION TAKEN

The Whatcom County Council adopted the following at its June 15, 2021, meeting:

ORDINANCE (2021-036) ESTABLISHING THE AMERICAN RESCUE PLAN ACT FUND AND ESTABLISHING A BUDGET FOR THE AMERICAN RESCUE PLAN ACT FUND (AB2021-310) This ordinance establishes a fund to account for the County's American Rescue Plan Act (ARPA) allocation and establishes an initial budget of \$1,732,850 to reinstate positions left unfunded due to COVID-19 economic impacts. In addition, the requested budget will fund seven months of operations at the County's Isolation & Quarantine Facility. Ordinance introduced June 1, 2021.

ORDINANCE (2021-035) AMENDING THE 2021 WHATCOM COUNTY BUDGET, REQUEST NO. 9, IN THE AMOUNT OF \$1,138,322 (AB2021-307) This ordinance amends the 2021 Whatcom County Budget as follows: From the General Fund - appropriate \$23,936 in Non Departmental to fund transfer in support of public safety radio tower leases, appropriate \$76,335 in Assessor to fund reinstatement of two "frozen" positions from American Rescue Plan (ARP) funding, appropriate \$32,722 in Auditor to fund reinstatement of one "frozen" position from ARP funding, appropriate \$153,980 in Planning & Development to fund reinstatement of three "frozen" positions from ARP funding, appropriate \$67,476 in Sheriff to fund reinstatement of two "frozen" positions from ARP funding, appropriate \$53,321 in County Clerk to fund reinstatement of 1.5 FTE "frozen" positions from ARP funding; from the Road Fund - appropriate \$31,786 in Public Works Administration to fund reinstatement of one "frozen" position from ARP funding; from the Whatcom County Jail Fund - appropriate \$237,214 in the Sheriff's Corrections Bureau to fund reinstatement of five "frozen" deputy positions from ARP funding; from the Behavioral Health Programs Fund - appropriate \$44,711 to fund reinstatement of one "frozen" Mental Health Court position from ARP funding, appropriate \$50,000 to fund GRACE program from PeaceHealth donation, appropriate \$140,000 to fund GRACE program from additional City of Bellingham funding; from the Countywide Emergency Medical Services Fund - appropriate \$60,000 to fund EMS records management system software maintenance contract amendments; from the Whatcom County Emergency Management Fund - appropriate \$23,936 to fund public safety radio tower leases from general fund transfer; from the Administrative Services Fund - appropriate \$142,905 to fund reinstatement of three "frozen" positions from ARP funding. Ordinance introduced June 1, 2021.

ACTION PROPOSED (INTRODUCED)

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Publish June 20, 2021
IPL0028766
Jun 20 2021

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No. of Insertions: 1

Beginning Issue of: 06/20/2021

Ending Issue of: 06/20/2021

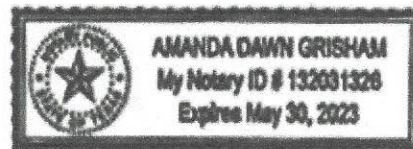
Islamae Brown

(Principal Clerk)

Subscribed and sworn on this 21th day of June in the year of 2021 before me, a Notary Public, personally appeared before me Islamae Brown known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Amanda Grisham

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.
Legal document please do not destroy!



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-340

File ID:	AB2021-340	Version:	1	Status:	Introduced
File Created:	06/09/2021	Entered by:	LReid@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Ordinance		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance suspending Whatcom County Code 1.28 to update the Correctional Facilities operational standards

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachment

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Staff Memo, Ordinance, May 2019 Code language prior to being suspended

**WHATCOM COUNTY
SHERIFF'S OFFICE**

BILL ELFO
SHERIFF



PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4038
(360) 778-6600

TO: Whatcom County Council

FROM: Sheriff Bill Elfo

DATE June 8, 2021

RE: Request to Extend the Deadline for Whatcom County Ordinance 2019-047

The accompanying ordinance seeks an additional 18-month extension for the completion of the review and revision of Sheriff's Office policies.

It was anticipated that the original extension would provide an adequate period to complete this project. Unfortunately, several challenges coupled with COVID-19 pandemic, have impacted our ability to meet this timeline. These include:

The COVID Pandemic and its impact on the Criminal Justice system: For the Corrections Bureau, this has included a COVID outbreak at the Work Center, a restructuring of intake procedures and housing schema, mass testing of all offenders and staff, vaccination clinics for staff, the development of a vaccination program for offenders, and retrofitting of some areas of the jail to decrease the chance of viral transmission.

Personnel: Due to retirements, targeted recruitment of the Corrections staff by law enforcement agencies, extended medical leaves and positions that were frozen during the Biannual budget process, we are currently down 13 Corrections Deputies. Deputies are working significant amounts of overtime in order to cover minimum staffing levels for the shifts, making it difficult to break Deputies free to participate in the policy development meetings.

Change in Legislation and Community focus: Over the past year there has been an increasing emphasis on issues such as behavioral health, police reform, and increasing options for jail diversion. This has led to legislative changes in State law that need to be incorporated into policy, training and reporting requirements. Many of these changes will become effective on July 25, 2021 with the remaining legislation going into effect in January 2022. While the changes to law will occur soon, model policies and guidance from the state are not required until next year. These changes impact both current and newly revised policies, or will require new policies.

These mandated legislative changes have become a primary focus for the Sheriff's Office and will require additional reallocation of limited resources. Many of the policy changes we had already made are now having to be reviewed and may need to be rewritten. In addition, it is anticipated that Lexipol will be updating their policies in response to the numerous changes in statutes. While no timeline for updates has been provided, Lexipol has communicated that they are aware of the changes to our state law.

Public Records Requests (PDR's) for the Sheriff's Office: The Sheriff's Office has averaged about 60 PDR's per year for the past several years. Since 2020, the Sheriff's Office has experienced a significant increase in large and often complicated PDR's. The individual who

conducts the research and provides responses to these requests is also the individual responsible for the policy development process.

As of this writing, 80 out of approximately 180 policies have been through the review process within the Sheriff's Office and been sent out to the bargaining units for review and feedback. Once they are returned to the Sheriff's Office, additional changes may need to be made. Due to recent and significant legislation related to police tactics and use of force, many of those policies may have to be reviewed and amended to comply with the new laws and collective bargaining agreements.

In recognition of the disruption caused as a result of the COVID pandemic and the other factors outlined above, we are requesting that the Whatcom County Council further extend the temporary suspension of WCC (Whatcom County Code) 1.28. Based on the experience gained over this past year, we would like to set a new deadline of January 1, 2023.

The Sheriff's Office has transferred some responsibilities from Office of Professional Responsibility to allow the Chief Inspector more time to focus on the updated policy project. This should give the Sheriff's Office the time we will need to complete a thoughtful and in-depth review/revision/creation process for the Corrections policies, work with the Law and Justice Committee, and County Council to address any concerns, questions or suggestion, and give the County IT department the time they will need to facilitate an on-line presence.

PROPOSED BY: Sheriff's Office____
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**SUSPENDING WHATCOM COUNTY CODE 1.28 TO UPDATE THE CORRECTIONAL
FACILITIES OPERATIONAL STANDARDS**

WHEREAS, in 1977, chapter 70.48 RCW, the City and County Jails Act, was initially adopted; and

WHEREAS, in 1979, the Washington State Correctional Facilities Standards were developed by the Corrections Standards Board and codified in Title 289 of the Washington Administrative Code (WAC) as a guide to counties and cities to satisfy the mandates under the Act; and

WHEREAS, in 1987, a new section, RCW 70.48.071, was added to chapter 70.48 RCW that specifically mandated that "units of local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988..."; and

WHEREAS, to comply with RCW 70.48.071, the Whatcom County Council adopted the standards in Title 289 WAC by enacting Ordinance No. 87-85 in December 1987, later codified as Whatcom County Code (WCC) 1.28 - *Standards for Correctional Facilities*; and

WHEREAS, in 2006, Title 289 WAC was decodified without replacement as it was obsolete and the Corrections Standards Board ceased to exist; and

WHEREAS, the identical standards in WCC 1.28 are likewise obsolete; and

WHEREAS, RCW 70.48.071 authorizes the County to establish operational standards for its own correctional facilities in either its code, through the correctional facilities department policies and standards, or a combination thereof; and

WHEREAS, the Whatcom County Sheriff's Office correctional facility operational standards are collectively established through various documents, including, but not limited to, written general policies, corrections bureau operational policies and procedures, medical policies and procedures, the Sheriff's Office Rules and Regulations Manual, and the Uniform Building Code; and

WHEREAS, the Whatcom County Council temporarily suspended WCC 1.28 for up to twelve months on July 8, 2019; and

1 **WHEREAS**, the COVID-19 pandemic has continued to cause a drastic disruption of
2 Whatcom County Sheriff's Office operations; and
3

4 **WHEREAS**, it is anticipated that an additional eighteen-month suspension of WCC 1.28
5 would allow the Whatcom County Sheriff's Office to complete the review and revision creation
6 process for Corrections policies, and to coordinate with the Law and Justice Committee and
7 Whatcom County Council to address concerns, questions, or suggestions, and to provide
8 Whatcom County Information Technology appropriate time to publish the final standards on the
9 Whatcom County website; and
10

11 **WHEREAS**, the Whatcom County Council deems it necessary to extend the suspension
12 of WCC 1.28 for up to an additional eighteen (18) months to provide adequate time for the Law
13 and Justice Committee and the County Council to review the correctional facilities operational
14 standards and proposals; and
15

16 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that WCC
17 1.28 is hereby suspended in its entirety for up to an additional eighteen months, and that the
18 Whatcom County Sheriff's Office correctional facility operational standards, as described above,
19 continue to be temporarily adopted in place of WCC 1.28.
20

21 **BE IT FINALLY ORDAINED** that the following notation shall be included in the
22 County Code in place of WCC 1.28:
23

24 *Whatcom County code Chapter 1.28 is temporarily suspended for up to eighteen months,*
25 *beginning July 8, 2021. The Whatcom County Sheriff's Office correctional facility standards, as*
26 *collectively established through various documents, including, but not limited to, written general*
27 *policies, corrections bureau operational policies and procedures, the Sheriff's Office Rules and*
28 *Regulations Manual, and the Uniform Building Code, are temporarily adopted in its place.*
29

30 **ADOPTED** this ____ day of _____, 20____.

31
32 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

33
34
35 _____
Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

36
37 WHATCOM COUNTY EXECUTIVE
38 APPROVED AS TO FORM:
39

WHATCOM COUNTY, WASHINGTON

40
41 _____
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

42
43
44
45 Date Signed: _____

1.28.010

is a nuclear free zone by public vote on November 6, 1984.”

C. No county resources shall be used to aid, directly or indirectly, in the manufacture, siting, or testing of nuclear weapons. (Res. 85-29).

Chapter 1.28

STANDARDS FOR CORRECTIONAL FACILITIES

Sections:

- 1.28.010 General.
- 1.28.020 Definitions.
- 1.28.030 Physical plant standards.
- 1.28.040 General administration.
- 1.28.050 Staff positions.
- 1.28.060 Training.
- 1.28.070 Records.
- 1.28.080 Emergency procedures.
- 1.28.090 Fire prevention – Suppression.
- 1.28.100 Overcrowding.
- 1.28.110 Use of force.
- 1.28.120 Admissions.
- 1.28.130 Preclassification.
- 1.28.140 Orientation.
- 1.28.150 Classification – Segregation.
- 1.28.160 Good time.
- 1.28.170 Release and transfer.
- 1.28.180 Transportation.
- 1.28.190 Staffing.
- 1.28.200 Supervision – Surveillance.
- 1.28.210 Critical articles.
- 1.28.220 Prisoner rights.
- 1.28.230 Discipline.
- 1.28.240 Grievance procedure.
- 1.28.250 Responsible physician and licensed staff.
- 1.28.260 Health care policy and procedures.
- 1.28.270 Health screening.
- 1.28.280 Access to health care.
- 1.28.290 Health care training.
- 1.28.300 Medications control.
- 1.28.310 Health care records.
- 1.28.320 Special medical issues.
- 1.28.330 Access to facilities.
- 1.28.340 Food.
- 1.28.350 Clothing – Bedding – Personal items.
- 1.28.360 Sanitation.
- 1.28.370 Services.
- 1.28.380 Programs.
- 1.28.390 Telephone usage.
- 1.28.400 Mail.
- 1.28.410 Visitation.
- 1.28.420 Severability.

1.28.010 General.

A. The rules set forth in this chapter shall apply to correctional facilities generally within Whatcom County, but shall not apply to holding facilities, detention facilities, work release facilities or juve-

nile facilities unless they are specifically mentioned in the provisions set forth in this chapter.

B. When the word “shall” is used in this chapter it is used as an imperative and must be considered mandatory; whereas when the term “may” is used in this chapter it is used as directory only and is not mandatory but rather permissive. (Ord. 87-85 (part)).

1.28.020 Definitions.

The following words and phrases shall have the meaning indicated whenever used in this chapter unless a different meaning is specifically indicated:

A. “Correctional facility” means a facility operated by a governing unit primarily designed, staffed and used for housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction and rehabilitation following conviction of a criminal offense.

B. “Detention facility” means a facility operated by a governing unit primarily designed, staffed and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing of persons serving terms not to exceed 90 days.

C. “Holding facility” means a facility operated by a governing unit primarily designed, staffed and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed 30 days.

D. “Juvenile facility” means a facility separated or removed from any jail or police station, which is in charge of a matron, wherein all children within the provision of RCW Title 13 shall be sheltered. (Ord. 87-85 (part)).

1.28.030 Physical plant standards.

1. Functional Areas. Sleeping and living areas shall be designed to provide adequate confinement, reasonable prisoner-to-prisoner privacy, sight and sound surveillance and protection for prisoners and staff.

2. Single Occupancy Cells. Seventy-two square feet or larger with not less than eight-foot ceilings. A single occupancy cell should contain not less than 50 square feet of clear floor space.

3. Day Room Areas. A minimum of 35 square feet per prisoner, but not less than a total of 144 square feet.

4. Dormitories, When Included. A minimum and maximum capacity of eight to 10 males or four

to 10 females and 60 square feet of floor space per prisoner in semiprivate sleeping areas. The dormitory shall also include day room space, and not less than 10-foot ceiling if double bunks are used.

5. Program, Recreation and Exercise Areas. Detention and correctional facilities shall provide adequate indoor program and recreation area(s) and a multipurpose outdoor exercise and activity area.

6. Kitchen and Dining Facilities. When kitchen facilities are included, such facilities shall be adequate for the sanitary preparation of three nutritionally balanced meals per day.

7. Dining area(s) shall allow conversational opportunities in adequate surroundings. Meals shall not be served in cells, except where necessary for the health, security and/or well-being of prisoners and staff.

8. Examining Room, Infirmary and Medical Isolation. Detention and correctional facilities shall provide space to be used as a medical examining room. This space may be multipurpose, but when used as an examining room it shall provide sight and sound privacy and be equipped with natural spectrum fluorescent lighting, a hand-washing lavatory with a gooseneck spout, either foot, knee, push plate, electric eye beam or equivalent faucet controls, and sufficient lockable storage for medical equipment and supplies.

9. When an infirmary is located within the facility space it shall allow a minimum of three feet between the perimeter of each bed and walls, beds and any fixed obstruction; provided, that this three-foot requirement does not apply to the distance between the head of a bed and the wall. The infirmary shall be equipped with its own lavatory, toilet, shower and bathtub.

10. Visitation and Confidential Consultation. Space for visitation shall be included in detention and correctional facilities. Such space shall allow surveillance and the degree of control over physical contact deemed necessary by jail management for visible control, and shall simultaneously provide adequate seating for prisoners and their visitor(s).

11. Detention and correction facilities shall provide adequate facilities for confidential consultation(s).

12. Laundry. If laundry facilities are provided within the jail, such facilities shall be adequate for sanitary washing and drying of the jail laundry. Separate areas should be arranged for storage and sorting of soiled laundry and for the sorting, folding and storage of clean laundry.

13. Storage. Detention and correctional facilities shall include one or more secure storage area(s) for the storage of prisoner personal clothing and property and for necessary jail equipment and supplies.

14. Supervisory Stations. Sufficient space and equipment for the facility supervisor shall be provided in an area secure from prisoner access. An adequate control room shall be secure from an unauthorized access and it shall be capable for controlling access to and facility by the general public.

15. Sight-and-sound surveillance equipment, when used, shall be monitored in the control room or at the control panel and remote control operating devices shall also be in the control room. The control room shall be equipped with a sink and toilet.

16. Booking and Reception Areas. The booking area(s) shall include, but not be limited to, rest-room facilities with shower, a "strip search" room, holding cell(s) (may be multiple occupancy), telephone and space for photographing, fingerprinting, delousing, intoxication determinations and health screening.

17. Building Codes. All standards contained in the current Washington building code established by RCW 19.27.030, the electrical wiring provisions of RCW Chapter 19.28, and more restrictive local standards shall be followed in all new jail construction.

18. Materials for Walls, Floors and Ceiling. In all jail facilities, walls, floors and ceilings shall be constructed with materials adequate to attain the degree of security required for each area of the facility. Such materials shall be easily cleanable, provide minimum sound transmission and fire protection. Polyurethane, neoprene or similar type materials shall not be used in padded cells. All paint used in a jail facility shall be fire-resistant and nontoxic.

19. Entrances and Exits. Detention and correctional facilities shall have two secure vestibules for ingress and egress.

20. Elevators shall have no less than six feet by four feet inside dimensions.

21. A secure area shall be provided for loading and unloading prisoners.

22. Windows and/or Skylights. Windows and/or skylights shall be sufficient to provide natural light to all living areas, yet locations shall assure security from escape and introduction of contraband.

23. Noise Level. Noise level shall conform to the requirements of Chapter 173-60 WAC (Maximum environmental noise levels).

24. Prisoner living areas, inspection corridors and vestibules shall have secure lights with outside switch control. No electrical conduit shall be accessible from any cell, though each living unit may contain outlets and switches, provided they are unilaterally controllable by staff.

25. Lighting. Illumination at all times shall be adequate for security and surveillance, and daytime and evening illumination shall be sufficient to permit prisoners to read in their cells (30 footcandles at 30 inches minimum, 100 footcandles at 30 inches for medical examining areas, 50 footcandles at 30 inches for work areas).

26. Water Supply. There shall be an adequate supply of sanitary hot and cold water available at all times to prisoners. Hot water for general use shall be adequate.

27. Plumbing – Toilets, Lavatories, Showers and Floor Drains. There shall be at least one toilet and lavatory for every eight prisoners. Separate facilities shall be provided for each sex.

28. A minimum of one shower head shall be provided for every 10 prisoners.

29. Floor drains shall be constructed to serve all cells, dormitories and other areas where necessary to facilitate cleaning. Floor drains shall be located outside the cell space to reduce the incidence of tampering and flooding. Plumbing connection and pipes shall be secure from uncontrolled access by prisoners.

30. Heating, Ventilation and Air Conditioning. The systems shall maintain mean temperatures between 65 and 85 degrees Fahrenheit.

31. The ventilating system shall provide for the number of air changes per hour as specified in the Uniform Building Code.

32. Support Systems – Fire Detection and Suppression. All correction facilities and detention facilities shall have smoke and fire detection and alarm equipment. Fire alarm systems shall conform to all state and local fire regulations. Sprinklers shall not be required within-cells and conflicting requirements of local code provisions are preempted, when all other applicable code provisions relating to fire safety are met and an effective smoke control system is incorporated in the facility design.

33. Emergency Power. All detention and correctional facilities shall be equipped with emergency power sources with sufficient capacity to maintain communications and alarm systems, to move one jail elevator, where one exists, to provide minimum lighting within the facility and perimeter, and for the preparation of a light meal.

34. Minimum Security Facilities. Jail facilities shall be constructed to totally separate areas for housing prisoners who are allowed to go outside the jail regularly from all other prisoner areas. (Ord. 87-85 (part)).

1.28.040 General administration.

A. The chief law enforcement officer or his designee shall develop and maintain an organizational chart and an operations manual of policies and procedures.

B. Such chart and manual shall be reviewed by all staff and such review noted by signature prior to any assignment.

C. All jail policies and procedures should be reviewed and revised as appropriate on a continuing basis but at least annually. (Ord. 87-85 (part)).

1.28.050 Staff positions.

A. Written job descriptions shall define the responsibilities and designate the qualifications for each staff position.

B. Qualifications for correctional officers who have direct responsibility over prisoners and who are hired on or after the effective date of these minimum standards shall include, but not be limited to, a high school diploma, or equivalent.

C. All jail staff shall be selected in accordance with RCW Chapter 41.14 and/or other applicable legal requirements and shall be retained upon proven ability to perform.

D. Appropriate physical fitness standards should be set and enforced for all jail staff. (Ord. 87-85 (part)).

1.28.060 Training.

All correctional facilities shall provide preservice orientation to each newly hired jail staff member prior to being assigned to duty, regardless of his or her previous training or experience, prior to the assignment of any jail duties. Such training may be provided either by existing jail staff or other qualified persons, and must be verified by a written outline, and shall include, but not necessarily be limited to:

A. Review and understanding of all policies and procedures relating to his/her job responsibilities, specifically:

1. Agency organization,
2. Admission and release procedures,
3. Security and safety procedures,
4. Contraband control, definition of, etc.,
5. Prisoner discipline,
6. Medical and mental health procedures,
7. Use of force,

8. Confidentiality of jail records;

B. Review of the Washington criminal justice system and custodial care standards as they relate to jail duties;

C. Identification and understanding of the function of agencies whose authority may extend to the jail's prisoners;

D. Appropriate training and qualifications in the use of weapons when jail duties include possession or carrying of a firearm;

E. All persons directly responsible for the supervision of prisoners shall successfully complete the Washington State Criminal Justice Training Commission basic correctional academy within the first six months of their employment, as required by WAC 139-36-010, unless such training has already been received;

F. Staff training shall further include such training as required by Section 1.28.290. (Ord. 87-85 (part)).

1.28.070 Records.

A. The chief law enforcement officer or his designee for each correctional facility shall establish a records system which shall comply with the requirements of this section.

B. Fiscal. Each detention and correctional facility shall maintain records which clearly indicate facility operation and maintenance costs according to generally accepted accounting principles. Such records shall separate specific jail functions from other department functions.

C. Confidentiality. All jail facility personnel shall be advised of the statutory provisions for confidentiality of jail records under RCW 70.48.100(2).

D. Individual Prisoner Records. The information required by the booking and release form shall be obtained for each booking and release. Such information will be retained in written form or within computer records. Other information retained in each prisoner's jail records shall include, but not be limited to, reports of disciplinary actions and/or unusual occurrences, and, in case of death, disposition of prisoner's property and remains.

E. Medical. Health care records shall be maintained separately in accordance with Section 1.28.310, to the extent necessary to maintain their confidentiality.

F. Prisoner Access. Each prisoner shall be permitted reasonable access to his jail record, or reasonable access to information contained therein, and such access may be limited only on substantial grounds of institutional security.

G. Transfer. When a prisoner is transferred to another facility, copies or summaries of all health records shall be transferred to the receiving facility; provided, that the requirements of Section 1.28.310 regarding confidentiality are followed. Applicable court orders shall be transferred. Summaries or copies of disciplinary records shall be transferred where such information may serve a substantial governmental interest in the safety or security of the receiving institution.

H. Population Reports. Each correction facility shall complete monthly reports on its population and shall be kept in accordance with the record retention schedule.

I. Population Accounting. Each correctional facility should, in addition, maintain an ongoing and a permanent accounting of its population by its own confinement categories, location or classification within the jail.

J. Jail Register. Each jail shall maintain an accurate jail register as required by RCW 70.48.100.

K. Infraction and Disciplinary. The chief law enforcement officer or his designee shall maintain a written record of all incidents which result in substantial property damage or bodily harm, or serious threat of substantial property damage or bodily harm. Major infraction reports and disciplinary actions shall become part of the prisoner's jail record.

L. Incidents and Emergencies. All serious incidents and emergencies shall be recorded. For purposes of this section, the term "serious incidents and emergencies" includes, but is not limited to any death which occurs within a jail, attempted suicides, epidemics, completed escapes, any completed assault upon staff or prisoners, fires which result in any property damage or when any person is injured, flooding or other natural disasters or riots.

M. Incident Reports. An incident report shall be completed on any death, completed escape or fire. All such incident reports for a given month shall be maintained on a monthly basis with a monthly population accounting form. A copy of all incident reports shall be retained at the jail.

N. Activity Log. All jails should keep a log of daily activity within the facility for future accountability.

O. Personnel Training. Training records shall be maintained for each staff member employed by a detention or correctional facility.

P. Personnel Performance. Performance records should be maintained for each staff member employed by a detention or correctional facility

and should be kept in their personnel file. (Ord. 87-85 (part)).

1.28.080 Emergency procedures.

A. The chief law enforcement officer or his designee shall formulate written emergency procedures relative to escapes, riots, rebellions, assaults, injuries, suicides or attempted suicides, outbreak of infectious disease, fire, acts of nature, and any other type of major disaster or disturbance. The emergency plan shall outline the responsibilities of jail facility staff, evacuation procedures and subsequent disposition of the prisoners after removal from the area or facility. Such plan shall be formulated in cooperation with the appropriate supporting local government units.

B. Emergency plans shall always be available to the officer in charge of the jail, and all personnel shall be aware of, and trained in, the procedures. (Ord. 87-85 (part)).

1.28.090 Fire prevention – Suppression.

A. The department of corrections or chief law enforcement officer shall consult with the local fire department having jurisdiction over the facility in developing a written fire prevention and suppression plan which shall include, but not be limited to:

1. A fire prevention plan to be part of the operations manual of policies and procedures;

2. A requirement that staff are alert to fire hazards during their daily rounds;

3. Fire prevention inspections at least semi-annually by the fire department having jurisdiction; provided, that when such inspections cannot be obtained from such fire department the facility shall provide such inspections by an independent, qualified source;

4. A regular schedule for inspections, testing and servicing fire suppression equipment.

B. Results of all fire department inspections shall be kept on file at the jail, together with records of actions taken to comply with recommendations from such reports. (Ord. 87-85 (part)).

1.28.100 Overcrowding.

A. No prisoner shall be required to sleep directly on the floor for any length of time, or on a mattress on the floor in excess of one 72-hour period, unless there are reasonable grounds to believe that such provisions are necessary to prevent the prisoner from damaging property, inflicting bodily harm to himself or others, or substantially compromising the security of the jail.

B. Existing Jails. The chief law enforcement officer or his designee shall propose a maximum

capacity for each detention or correctional facility within his or her jurisdiction. This capacity shall reflect a judgment as to the maximum number of prisoners who may be housed within the facility in a humane fashion.

C. Overcrowding. The maximum capacity may be exceeded to the extent that the average daily population for any calendar month does not exceed the established maximum capacity.

D. Any report of conditions of overcrowding required under this section shall be considered as a notice of an emergency suspension of standards.

E. The chief law enforcement officer or his designee shall establish, with the cooperation of the presiding judge of the superior court, a procedure for release of prisoners before the end of their term or the transfer to other approved facilities when overcrowding occurs as defined in this chapter.

F. In the event of overcrowding caused in part by the existence of state prisoners, the chief law enforcement officer or his designee shall contact the state department of corrections in an effort to have such prisoners removed.

G. In the event of overcrowding caused in part by the existence of federal prisoners, the chief law enforcement officer or his designee shall contact the appropriate federal agency in an effort to have such prisoners removed. (Ord. 87-85 (part)).

1.28.110 Use of force.

A. The chief law enforcement officer or his designee shall establish and maintain written policies and procedures regarding the use of force and the use of deadly force, which shall be consistent with this section.

B. Only lawful and reasonable force to the person of a prisoner shall be used.

C. Deadly force shall not be used on a prisoner unless the person applying the deadly force believes that the prisoner poses an immediate threat of death or grievous physical injury to an officer or employee of a jail or any other person, or to prevent the escape of a prisoner arrested for a felony, and that the officer believes that other reasonable and available alternatives would be effective.

D. A written report on the use of such force or deadly force shall be made. In the case of deadly force a written report shall be made by each staff member involved or observing the use of such force. The report(s) shall be reviewed by the chief law enforcement officer or his designee who shall, if appropriate, investigate the incident further and make a determination whether appropriate, justi-

fied or reasonable force was used. Said determination shall be made a matter of record.

E. The "carotid sleeper hold" means any hold or restraint specifically designed to inhibit blood flow through the carotid arteries of the neck without inhibiting breathing by compression on the airway in the neck and without compression of the larynx or trachea. The carotid sleeper hold shall be considered to be deadly force.

F. The "choke hold" means any hold or restraint specifically designed to inhibit breathing by compression of the airway in the neck. The choke hold shall be considered to be deadly force.

G. The carotid sleeper hold generally presents less danger of causing serious injury or death than the choke hold and therefore is generally preferred over the choke hold in situations where such holds are permissible.

H. No neck hold shall be used, except by persons instructed in the dangers of the neck holds, its definition as deadly force, and the proper use and constraints of the carotid sleeper hold, by someone specifically trained in the use and dangers of neck holds. Refresher training shall be provided on at least an annual basis.

I. Medical attention shall be administered to the prisoner by a qualified medical professional as soon as possible after the use of the carotid sleeper hold or the choke hold. (Ord. 87-85 (part)).

1.28.120 Admissions.

1. General. The receiving officer shall determine that the arrest and confinement of each prisoner is being accomplished by a duly authorized officer, and a copy of all documents that purport to legally authorize the confinement shall become part of the prisoner's jail record.

2. The delivery officer shall remain at the jail facility until the jail staff has accepted the prisoner.

3. Each prisoner, after completion of booking, shall be advised of his right to, and be allowed to complete, at least two telephone calls to persons of his choice who may be able to come to his assistance. If the prisoner chooses not to place the calls allowed, this information shall be noted on the booking form.

4. Reasonable provisions for communicating with non-English speaking, handicapped or illiterate prisoners shall be provided concerning the booking process, rules of the facility, privileges and other information pertinent to his rights and well-being while confined.

5. The booking process should be completed promptly unless the physical or mental condition of the prisoner necessitates delay.

6. Search/examination, When Allowed. The chief law enforcement officer or his designee shall establish and maintain written policies and procedures regarding pat searches, strip searches and body cavity searches, which shall be consistent with this section.

7. Each prisoner shall be searched for contraband in such a manner consistent with this subsection and written policies and procedures established thereunder, as is necessary to protect the safety of prisoners, staff and institutional security.

8. No strip search shall be conducted except pursuant to the written policies and procedures required by subsection 6 of this section.

9. No prisoner, other than a person committed to incarceration by order of a court or a person held for post-conviction incarceration for a criminal offense, shall be strip searched without a warrant except where reasonable suspicion exists. A prisoner taken into custody pursuant to an arrest warrant or other court order issued before the person was arrested or otherwise taken into custody shall not be considered as committed to incarceration by order of a court for purposes of this section unless the court issuing the warrant has determined that the person shall not be released on personal recognition, bail, or bond. No strip search shall be authorized or conducted unless a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, when appropriate, do not satisfy the safety, security or evidentiary concerns of the jail. Physical examination by licensed medical professionals solely for public health purposes shall not be considered strip searches. A prisoner may be strip searched if:

a. There is reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other things concealed on the body of the person to be searched, that constitute a threat to the security of the facility;

b. There is probable cause to believe that a strip search is necessary to discover other criminal evidence concealed on the body of the person to be searched, but not constituting a threat to facility security; or

c. There is reasonable suspicion to believe that a strip search is necessary to discover a health condition requiring immediate medical attention.

10. The determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be based on consideration of all information and circumstances known to the officer authorizing the strip search, including but not limited to the following factors:

a. The nature of the offense for which the person to be searched was arrested;

b. The prior criminal record of the person to be searched; and

c. Physically violent behavior of the person to be searched, during or after arrest;

d. Reasonable suspicion shall be deemed to be present when the prisoner has been arrested for:

i. A violent offense as defined in RCW 9.9a.030 (17) or any successor statute,

ii. An offense involving escape, burglary or the use of a deadly weapon, or

iii. An offense involving possession of a drug or a controlled substance under RCW Chapter 69.41, 69.50, 69.52 or any successor statute.

11. A written record or records of any strip search shall be maintained in the individual file of each person strip searched, which record(s) shall contain the following information:

a. The name and serial number of the officer conducting the strip search and of all others present or observing any part of the strip search;

b. The time, date and place of the strip search; and

c. Any weapons, criminal evidence, other contraband or other thing or health condition discovered as a result of the strip search. Where reasonable suspicion is deemed present because of the nature of the arrest offense, the record shall contain the offense(s) for which the person searched was arrested. In other cases where reasonable suspicion or probable cause is found to be present the report shall also contain:

i. The name of the supervisor authorizing the strip search, and

ii. The specific facts constituting reasonable suspicion to believe the strip search was necessary.

12. No body cavity search shall be conducted except pursuant to a valid search warrant. No search warrant for a body cavity search shall be sought without prior authorization of the ranking shift supervisor, pursuant to the written policies and procedures required by Section 1.28.120(6). Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, secu-

rity or evidentiary concerns of the law enforcement agency.

13. Search procedures, to all strip searches and body cavity searches shall be conducted in a professional manner which protects the prisoner's dignity to the extent possible.

14. A strip search or body cavity search, as well as presearch undressing or postsearch dressing shall occur at a location made private from the observation of persons not physically conducting the search, except that a strip search to search for and seize a weapon may be conducted at other than a private location if there arises a specific threat to institutional security that reasonably requires such a search, or if all persons in the facility are being searched for the discovery of weapons or contraband. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals or when necessary to assure the safety of the prisoner or any person conducting the search.

15. No person may be present or observe during a strip search or body cavity search unless the person is necessary to conduct the search or to ensure the safety of those persons conducting the search except at the request of the person being searched.

16. When a strip search or a body cavity search of a prisoner is conducted, it should include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars and injuries; "health tags"; and body vermin. Less complete searches should include the same checks to the extent possible.

17. Persons conducting a strip search or body cavity search shall not touch the person being searched except as reasonably necessary to effectuate the search of the person.

18. Body Cavity Searches. A body cavity search may be conducted only pursuant to subsection 1.28.120(11). Any body cavity search shall be performed under sanitary conditions and conducted by a physician, registered nurse, or registered physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search.

19. When a body cavity search is conducted by a licensed medical professional of the opposite sex, an observer of the same sex as the prisoner should be present.

20. Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a

person being held in custody by a law enforcement agency.

21. The officer requesting the body cavity search shall prepare and sign a report, which shall include:

- a. A copy of the warrant and any supporting documents required;
- b. The name and sex of all persons conducting or observing the search;
- c. The time, date, place and description of the search; and
- d. A statement of the results of the search and a list of any items removed from the person as a result of the search. The report shall be retained as part of the agency's records.

22. All physical markings and "health tag" identifications shall be recorded and made available to the appropriate jail employees and the medical professionals responsible for care of the prisoner under Section 1.28.250.

23. Particularly when force has been used during arrest, all visible injuries should be photographed.

24. Body Vermin. Any person with body vermin shall be treated appropriately.

25. Medical Complaints. Complaints of illness or injury expressed or observed during booking shall be checked promptly.

26. Communicable Diseases. A prisoner suspected of having a communicable disease shall be isolated without delay. Arrangements shall be made for his immediate transfer to a facility equipped to handle the suspected disease, unless the admitting facility can safely and effectively segregate and maintain the medically prescribed treatment.

27. Personal Property. The admitting officer shall record and store the prisoner's personal property and issue the prisoner a witnessed receipt.

28. Prisoner Weight. Each prisoner's weight should be measured and recorded upon admission.

29. Photographs and Fingerprints. Front-view and side-view identification photographs of each prisoner should stipulate the arresting agency or the booking agency and the date of arrest or the date of the photograph.

30. Copies of fingerprints shall be forwarded to the proper state and federal authorities.

31. Issuances. The correctional facility should establish its own policy on prisoners' use of personal clothing or jail uniforms.

32. At a reasonable time after the completion of booking, each prisoner shall be issued clean bedding, as well as such personal care items as required under Section 1.28.350.

33. Upon prisoner request, a reasonable supply of writing material shall be furnished to indigent prisoners. (Ord. 87-85 (part)).

1.28.130 Preclassification.

A. Prior to classification, reasonable precautions shall be taken to insure the safety and welfare of prisoners and the security of the institution.

B. Prisoners who, upon screening, appear to have serious and potentially dangerous problems with drugs, including alcohol, or signs of serious mental illness, shall be closely observed. Persons qualified and trained to evaluate such prisoners shall be contacted without delay.

C. Any prisoner suspected of being assaultive shall be housed separately prior to classification except where continual direct observation is maintained.

D. No prisoner known or suspected to be a danger to himself may be housed alone without continual direct observation. (Ord. 87-85 (part)).

1.28.140 Orientation.

As soon after booking as possible each prisoner shall receive an oral or written orientation. The orientation shall provide information regarding the prisoner's confinement including, but not limited to:

A. Rules of prisoner conduct; including possible disciplinary sanctions, as provided in Section 1.28.220;

B. Procedures and conditions regarding classification and reclassification, as provided in Section 1.28.150;

C. Staff expectations of prisoner responsibilities, including if applicable, cleaning of prisoner living areas;

D. Prisoner rights and privileges;

E. The means of access to health care as required by Section 1.28.280, and other services;

F. An opportunity to ask and receive answers to questions shall be provided within a reasonable time. (Ord. 87-85 (part)).

1.28.150 Classification – Segregation.

A. Classification. The chief law enforcement officer or his designee shall establish written classification and reclassification procedures which shall be included in the manual of policies and procedures.

B. Upon entry, the on-duty supervisor shall be designated as responsible for classification of prisoners confined in the facility in accordance with such written procedures.

C. For each prisoner confined in a detention or correctional facility, those responsible for classification shall determine the degree of security required, housing assignment, program eligibility, and regulations for association within and outside the confinement area.

D. Classification Procedures. Each prisoner confined in a detention or correctional facility shall be interviewed at booking for classification determinations.

E. Each prisoner shall be classified as soon as reasonably possible.

F. The prisoner shall be promptly informed of any classification housing assignment decision other than "general population," and of his right to have that decision reviewed upon making a request. Such notice shall also be given with regard to any classification action.

G. A prisoner who is dissatisfied with his housing assignment shall be entitled to a review of the decision by the chief law enforcement officer or his designee upon making a written request, and shall be promptly informed of this right. Such request shall be reviewed by the chief law enforcement officer, or a designated staff member.

H. Criteria for Prisoner Classification. The primary criteria for classification shall be safety of the prisoner and the security of the institution.

I. Juveniles. No juvenile shall be held in a jail without sight-and-sound separation from adult prisoners. For purposes of this standard, a juvenile is a person under the chronological age of 18, who has not been transferred previously to adult courts. Provided, that no person under the chronological age of 16 shall be held in a jail or holding facility for adults. Provided further, that this standard does not preclude or prohibit the housing of remanded pretrial prisoners under the chronological age of 18 within juvenile detention facilities rather than city or county adult detention facilities. A juvenile shall not be considered "transferred previously to adult court" unless a juvenile court has held a hearing under RCW 13.40.110 or successor statute and ordered the juvenile transferred for adult criminal prosecution. The exercise of jurisdiction by a limited-jurisdiction court in traffic, fish, boating or game offenses or infractions pursuant to RCW 13.04.030(6)(c) or successor statute does not constitute a "transfer."

J. A juvenile shall not be confined in a jail or holding facility for adults, except:

1. For a period not exceeding 24 hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a

juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

2. For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

K. Females shall be segregated from visual communication and physical contact with male prisoners except under the direct supervision of a staff person.

L. Special problem prisoners who endanger the health and safety of other prisoners or themselves shall be segregated and closely supervised.

M. Prisoners on work release or weekend confinement programs, and any other prisoners who have regular contact outside the jail shall be segregated from other prisoner categories.

N. Factors to be considered in classification shall include, but are not limited to, age, type of crime, pretrial versus post-trial status and offender sophistication.

O. Administrative Segregation. The chief law enforcement officer shall establish written procedures governing the use of administrative segregation which are consistent with this subsection.

P. Administrative segregation shall only be used when the presence of the prisoner in general population poses a serious threat of death or injury to himself or others, damage to property, or the security or orderly operation of the facility. Written documentation shall be maintained citing the reasons for each case of a prisoner placed in administrative segregation. Written procedures shall permit the prisoner an opportunity to appeal within 72 hours (exclusive of weekends and holidays) the decision of placement in administrative segregation to the person(s) designated as responsible for classification. A hearing shall be conducted whenever a prisoner appeals placement in administrative segregation and the prisoner shall be afforded the same rights as those required for disciplinary hearings. Each prisoner in administrative segregation shall have his case reviewed at least every 30 days by the persons responsible for classification. Prisoners shall be held in administrative segregation only as long as the reason(s) for their initial placement there remains valid. (Ord. 87-85 (part)).

1.28.160 Good time.

The chief law enforcement officer or his designee shall develop written policies regarding time off for good behavior. Such policies shall insure that good time, when authorized by sentencing

court, is given on a consistent basis, and in accordance with RCW 70.48.210 and 9.92.150. (Ord. 87-85 (part)).

1.28.170 Release and transfer.

A. Release. The releasing officer shall positively determine prisoner identity and ascertain that there is legal authority for the release.

B. The information required at the time of release shall be recorded for each prisoner released from the facility.

C. All prisoners being released shall sign a witnessed receipt for personal property returned.

D. Each prisoner discharged should receive a visual body check to detect changes from his admitting physical record.

E. Transfer. In addition to the release procedures designated above, the releasing officer shall determine that the receiving unit or person has the authority to accept custody. (Ord. 87-85 (part)).

1.28.180 Transportation.

When jail facility staff are responsible for prisoner transportation and when the prisoner is still in the custody and under the supervision of the jail, the chief law enforcement officer or his designee of each detention and correctional facility shall develop and maintain written instructions which insure the safety of the prisoners and staff shall be maintained. (Ord. 87-85 (part)).

1.28.190 Staffing.

At all times in all jails, at least one staff member shall be awake, alert and directly responsible for supervision and surveillance.

A. At all times a staff member of the same sex as the prisoner(s) shall be on duty or available within a reasonable time, which staff member shall be directly responsible for supervision which involves intimate physical contact or activities commonly afforded reasonable protection against opposite-sex observation or supervision; provided, that this does not preclude jail staff from performing nonjail functions or being relieved from direct duties and remaining on call; provided, further, that personal observation of prisoners for purposes of this section or other sections of these standards may be by opposite-sex staffing as long as opposite-sex privacy concerns are given appropriate protection.

B. There shall be continual sight and/or sound surveillance of all prisoners.

C. Such surveillance may be by remote means, provided there is the ability of staff to respond face-to-face to any prisoner within three minutes;

provided, that special problem prisoners are subject to the more stringent personal observation and supervision requirements of other sections.

D. In the absence of unusual behavior or other concerns for prisoner security and health, personal observation of prisoners by staff may be reduced to, but shall not be less frequent than, at least once within every 60-minute period.

E. Personal staff observations of prisoners should be recorded in writing and retained in the jail records.

F. Staff should be alert to prisoner depression, dissension, family rejection, loneliness, resistance to staff or programs, and the effects of use of substances prohibited by facility rules or by law. When such symptoms are discovered, such persons should be closely observed. (Ord. 87-85 (part)).

1.28.200 Supervision – Surveillance.

A. General Security.

1. All jails shall establish a positive means of identifying prisoners.

2. Perimeter security shall be maintained.

3. Security devices shall be maintained in proper working condition at all times.

4. No prisoner shall be permitted to have authority over other prisoners.

5. Prisoner Counts. Detention and correctional facilities shall develop a system for taking and recording prisoner counts. This procedure shall be followed at shift changes and at other regular or irregular times.

B. Contraband Control.

1. Any item or person entering or leaving a jail shall be subject to search.

2. When housed in a correctional facility, work-release prisoners and prisoners who have regular contact with other prisoner classifications or entrance to areas frequented by other prisoners shall be subject to search.

3. There shall be irregularly scheduled searches for contraband in detention and correctional facilities and all areas frequented by prisoners.

4. Conspicuously posted signs shall display the statutory penalty for giving or arranging to give anything to a prisoner without official authorization (RCW 9A.76.010, 9A.76.140, 9A.76.150, 9A.76.160). Non-English-speaking visitors shall be informed of the statutory penalty either verbally or by posted signs in the appropriate language. (Ord. 87-85 (part)).

1.28.210 Critical articles.

A. All detention and correctional facilities shall establish written procedures to insure that weapons shall be inaccessible to prisoners at all times.

B. Weapon lockers shall be located outside of the booking and confinement areas.

C. Whenever possible, keys to weapon lockers should be located outside of booking and confinement areas.

D. Keys and Locking Devices. Key regulations shall be established by the chief law enforcement officer and read and initialed by all staff.

E. A control point shall be designated for key cataloguing and logging the distribution of keys.

F. There shall be at least two sets of jail facility keys, one set in use and the other stored securely but easily accessible to staff for use in the event of an emergency.

G. All keys not in use shall be stored in a secure key locker inaccessible to prisoners.

H. Emergency keys shall be marked and placed where they may be quickly identified in case of an emergency.

I. Keys to locks on doors inside the security area of a jail should be on a separate ring from keys to locks on doors or gates to the outside of the jails. At no time should both rings be carried by a person inside the jail simultaneously.

J. Keys shall be accounted for at all times and the distribution certified at each shift change.

K. Jail facility keys shall never be issued to a prisoners.

L. If electronic devices are used in place of keys, there shall be key or other manual override capabilities available for immediate use in case of an emergency and/or a failure of the system.

M. Protective Equipment. Protective equipment, tear gas and any other chemical suppressing agent shall be kept in a secure area, inaccessible to prisoners and unauthorized persons, but quickly accessible to officers of the facility.

N. Kitchen Utensils, Tools and Toxic Substances. Dangerous kitchen utensils and tools shall be marked for identification, recorded and kept in a secure place.

O. Toxic substances shall be kept in locked storage, and use of toxic substances shall be strictly supervised. Such substances, including cleaning supplies, shall be stored in a separate area from food supplies. (Ord. 87-85 (part)).

1.28.220 Prisoner rights.

A. The chief law enforcement officer or his designee shall establish uniform rules and disciplinary sanctions to guide the conduct of all prisoners,

which rules shall designate major and minor infractions.

B. Printed rules and possible disciplinary sanctions shall be given to each prisoner and/or posted conspicuously throughout the jail. Non-English-speaking prisoners shall be informed of the rules either orally, in writing or by posted signs in the appropriate language.

C. Rules of Conduct.

1. All major infractions of the rules shall be reported in writing to the supervisor prior to shift change by the staff member observing or discovering the act. Such reports shall become a part of the prisoner's jail record.

2. Minor Infractions. Minor violations of the rules may be handled informally by any staff member by reprimand, warning or minor sanction as defined by local rules. Such incidents may become part of the prisoner's record only with the approval of the supervisor and verbal notification to the prisoner. (Ord. 87-85 (part)).

1.28.230 Discipline.

A. Disciplinary Committee.

1. The chief law enforcement officer or such person's designee or designees, shall hear and decide all charges or major violation of facility rules and impose sanctions.

2. Any facility staff member involved in a charge shall not be allowed to participate as a hearing officer with respect to that charge.

B. Disciplinary Procedures.

1. Any charges pending against a prisoner shall be acted on as soon as possible and no later than 72 hours (exclusive of Saturdays, Sundays and holidays) after observation or discovery of the infraction. Action in this context means either a disciplinary hearing or a decision not to impose any sanction requiring a hearing.

2. At least 24 hours prior to hearing, the prisoner shall receive a copy of the written infraction report made in conformance with Section 1.28.220C. If the prisoner is illiterate, the infraction report shall be read to him.

3. The prisoner alleged to have committed a major infraction shall have, and be promptly advised of, the following rights:

a. The prisoner shall have the right to be present at all stages of the hearing, except during the decisional deliberations;

b. The prisoner shall be allowed to appear on his own behalf, to present witnesses, and to present documentary evidence unless the exercise of such rights would be unduly hazardous to institutional safety or correctional goals, in which

case the prisoner shall be given a written statement of the reasons for such judgments and the prisoner's record shall contain a statement with regard to such grounds;

c. A prisoner who is unable to represent himself in such a hearing shall be informed of this right to be assisted by another person in understanding and participating in the proceedings;

d. The prisoner shall be advised of the decision in a written notice giving the reasons for the disciplinary action, if any, and evidence relied on; and

e. The prisoner shall be permitted to appeal the disciplinary hearing decision to the department of corrections or the chief law enforcement officer or his or her designee in accordance with appeal procedures established by each facility and included in the printed rules. All disciplinary proceedings shall be recorded.

4. There shall be a finding of guilt based on the preponderance of evidence before imposition of a sanction.

C. The above provisions do not preclude imposition of administrative segregation, according to procedures required by Section 1.28.150, or other appropriate limitations on freedom of the prisoner involved prior to such disciplinary proceeding; provided, that each such restriction shall be in accordance with the other provisions in these standards; provided further, that any such restrictions shall be based on legitimate grounds of institutional security or prisoner safety, and such action shall be noted in the prisoner's records.

D. Corrective Action or Forms of Discipline.

1. Nonpunitive corrective action should be the first consideration in all disciplinary proceedings.

2. When punitive measures are imposed, such measures shall be in accordance with law and recommended sanctions, appropriate to the severity of the infraction, and based on considerations of the individual involved.

E. Acceptable forms of discipline shall include the following:

1. Loss of privileges;

2. Removal from work detail or other assignment;

3. Recommendation of forfeiture of good time credit; and

4. Transfer to the maximum security or segregation section.

F. Limitations on Punishment.

1. No prisoner or group of prisoners shall be given authority to administer punishment to any other prisoner or group of prisoners.

2. Deprivation of regular feeding, clothing, bed, bedding or normal hygienic implements and facilities shall not be used as a disciplinary sanction.

3. Correspondence privileges shall not be denied or restricted, except in cases where the prisoner has violated correspondence regulations. In no case shall the correspondence privilege with any member of the bar, holder of public office, the courts or the department of corrections or chief law enforcement officer be suspended.

4. Restrictions on Visitation.

a. Visitation privileges should not be denied or restricted as a sanction for infractions of rules of the institution unrelated to visitation.

b. Under no circumstances shall attorney-client visits be restricted.

G. No prisoner shall be held in disciplinary segregation for more than 15 days for any one violation and no more than 30 days for all violations arising out of one incident. Continuous confinement for over 30 days must be approved by the director of the department of corrections or the chief law enforcement officer or such person's designee.

H. Corporal punishment and physical restraint e.g., handcuffs, leather restraints and strait jackets, shall not be used as sanctions. (Ord. 87-85 (part)).

1.28.240 Grievance procedure.

The chief law enforcement officer for each jail, correctional facility, detention facility or juvenile facility should develop and maintain procedures for the collection of prisoner grievances. Such procedures should provide for persons to whom grievances are to be directed, for timely review of grievances, and for written notification of action taken regarding the grievance. (Ord. 87-85 (part)).

1.28.250 Responsible physician and licensed staff.

A. The facility shall have a designated health authority with responsibility for health care services pursuant to a written agreement, contract or job description. The health authority may be a physician, health administrator or agency. When this authority is other than a physician, final medical judgments shall rest with a single designated responsible physician licensed in the state of Washington.

B. Matters of medical and dental judgment shall be the sole province of the responsible physician and dentist respectively; security regulations applicable to facility personnel shall also apply to health personnel.

C. The responsible physician or medical authority should submit a quarterly report on the health delivery system and health environment and an annual statistical summary to the chief law enforcement officer.

D. State licensure and/or certification requirements and restrictions shall apply to health care personnel.

E. All medical personnel shall practice within the scope of their license. Where applicable, treatment shall be performed pursuant to a written standing or direct order.

F. Verification of current licensing and certification credentials should be on file in the jail. (Ord. 87-85 (part)).

1.28.260 Health care policy and procedures.

A. Written standard operating procedures approved by the responsible physician and governing unit or official designated by it shall consist of but not be limited to the following:

1. Receiving screening;
2. Health appraisal data collection;
3. Nonmerchantable medical services;
4. Deciding the emergency nature of illness or injury;
5. Availability of dental referral examination, and treatment;
6. Provision of medical and dental prostheses;
7. First aid;
8. Notification of next of kin or legal guardian in case of serious illness, injury or death;
9. Providing chronic care;
10. Providing convalescent care;
11. Providing medical preventive maintenance;
12. Screening, referral and care of mentally ill and retarded inmates and prisoners under the influence of alcohol and other drugs;
13. Implementing the special medical program;
14. Delousing procedures;
15. Detoxification procedures; and
16. Pharmaceuticals.

B. The work of qualified medical personnel shall be governed by written job descriptions which shall be approved by the responsible physician. (Ord. 87-85 (part)).

1.28.270 Health screening.

A. Receiving screening shall be performed on all prisoners upon admission to the facility before being placed in the general population or housing

area, and the findings recorded on a printed screening form. The screening shall include inquiry into:

1. Current illness and health problems including those specific to women;
2. Medications taken and special health requirements;
3. Screening of other health problems designated by the responsible physician;
4. Behavioral observation, including state of consciousness and mental status;
5. Notation of body deformities, trauma markings, bruises, lesions, ease of movement, jaundice, and other physical characteristics;
6. Conditions of skin and body orifices, including rashes and infestations; and
7. Disposition/referral of inmates to qualified medical personnel on an emergency basis.

B. The health appraisal data collection should be completed for each prisoner within 14 days after admission to the facility in accordance with the adopted standard operating procedures; provided, that this subsection does not apply to prisoners who are able to receive medical care in the community.

C. Such health appraisal should include, at a minimum, a physical assessment by a licensed health care provider, recording of vital signs and a general review of mental status; provided, that such appraisal is not intended to be a standard "annual physical" but rather such minimum physical review as is necessary to detect any major problems. As appropriate, laboratory and diagnostic tests to detect communicable disease, including venereal diseases and tuberculosis, and other tests and appraisals should be included within such appraisal.

D. Health history and vital signs should be collected by medically trained or qualified medical personnel who are properly licensed, registered or certified as appropriate to their qualifications to practice. Collections of all other health appraisal data should be performed only by qualified medical personnel. Review of the results of the medical examination, tests and identification of problems should be made by a physician or designated qualified medical personnel. All health appraisal data should be recorded on the health data forms approved by the responsible physician. (Ord. 87-85 (part)).

1.28.280 Access to health care.

A. If medical services are delivered in the jail, adequate equipment supplies and materials shall be provided for the performance of primary health care delivery.

B. At the time of admission to the facility, prisoners shall receive a written communication consistent with the provisions of Section 1.28.120, explaining the procedures for gaining access to medical services.

C. Prisoners' medical complaints shall be collected daily and acted upon by the medically trained personnel. An appropriate priority shall be established and treatment by qualified medical personnel follow.

D. Work-release prisoners should be allowed to see their own physicians outside of the jail and to receive consistent care within the jail.

E. Sick Call. Sick call shall be conducted by a physician and/or other qualified medical personnel and shall be available to each prisoner as follows:

1. In facilities of less than 50 prisoners, at least once per week at a minimum;
2. Facilities of 50 to 200 prisoners at least three times per week; and
3. Facilities of over 200 prisoners at least five times per week; provided, that the average daily population may be calculated exclusive of work-release prisoners when they receive their care in the community.

F. When sick call is not conducted by a physician, the responsible physician shall arrange for the availability of a physician at least once each week to respond to prisoner complaints regarding services which they did or did not receive from other medical providers; further, regardless of complaints, the responsible physician shall review the medical service delivered, as follows:

1. At least once per month in jails with less than 50 prisoners;
2. At least every two weeks in facilities of 50 to 200 prisoners; and
3. At least weekly in facilities of over 200 prisoners.

G. Medical and dental prostheses shall not be denied when the health of the inmate-patient would otherwise be adversely affected as determined by the responsible physician.

H. Emergency Care.

1. First aid kit(s) shall be conveniently available in all jails.
2. The responsible physician shall approve the contents, number, location and procedure for periodic inspection of the kit(s).
3. Emergency medical and dental care shall be available on a 24-hour basis in accordance with a written plan which includes:

a. Arrangements for the emergency evacuation of the prisoner from the jail;

b. Arrangements for the use of an emergency medical vehicle; and

c. Arrangements for the use of one or more designated hospital emergency rooms, other appropriate health facilities, or on-call physician and dentist services. (Ord. 87-85 (part)).

1.28.290 Health care training.

A. Jail personnel shall be trained in standard first-aid equivalent to that defined by the American Red Cross and usual emergency care procedures prior to employment or during the probationary period. Written standard operating procedures and training of staff shall incorporate the following steps:

1. Awareness of potential medical emergency situations;
2. Notification or observation determination that a medical emergency is in progress;
3. First aid and resuscitation;
4. Call for help; and
5. Transfer to appropriate medical provider.

B. At least one person per shift within sight or sound of the prisoner shall have trained in receiving screening and basic life support cardiopulmonary resuscitation (CPR).

C. Jail personnel shall be given training regarding the recognition of general symptoms of mental illness and retardation.

D. All persons responsible for the delivery of medications shall have training regarding the medical, security and legal aspects of such activity. (Ord. 87-85 (part)).

1.28.300 Medications control.

A. The jail's standard operating procedures for the proper management of pharmaceuticals shall include:

1. A formulary specifically developed for the facility when stock medications are maintained within the jail. Such formulary shall be in accordance with WAC 360-16-070 (clinic dispensary);
2. A policy that jails with an on-site pharmacy shall adhere to regulations established by the state board of pharmacy. Such policy shall require, as a minimum, a consulting pharmacist for the operation of the pharmacy or the dispensing shall be done by each prescribing physician in person (WAC 360-16-070);
3. A policy regarding the prescription of all medications with particular attention to behavior-modifying medications and those subject to abuse;
4. A policy regarding medication dispensing and administration which shall include, but not be limited to:

a. Nonmedical jail personnel delivering medication(s) to prisoners,

b. Disposition of medication(s) brought in by prisoners at the time of admission to the facility,

c. Packaging of medication(s): The medications system shall insure that all medications are kept in container which have been labeled securely and legibly by a pharmacist or the prescribing physician, or in their original containers labeled by their manufacture. Medications shall not be transferred from the original container except for the preparation of a dose administration,

d. Safeguards with regard to delivery of medications to prisoners, and

e. Disposition of unused medication(s);

5. A policy regarding the maximum security storage and weekly inventory of all controlled substances, nonprescription medication(s), syringes, needles and surgical instruments. Jails that do not have an on-site pharmacy shall provide for a consulting pharmacist to determine that medication(s) have been properly managed.

B. The person delivering medication(s) shall be accountable for following the orders of medical staff. (Ord. 87-85 (part)).

1.28.310 Health care records.

A. The responsible physician shall be responsible for maintaining patient medical record files. Such files shall contain the completed receiving screening form, health appraisal data collection forms, all findings, diagnoses, treatments, dispositions, prescriptions and administration of medications, notes concerning patient education, notations of place, date and time of medical encounters and terminations of treatment from long-term or serious medical or psychiatric treatment.

B. The responsible physician shall insure the confidentiality of each prisoner's medical record file and such file shall be maintained separately to the extent necessary to maintain their confidentiality.

C. The responsible physician or medical staff designated by him shall communicate information obtained in the course of medical screening and care to jail authorities when necessary for the protection of the welfare of the prisoner or other prisoners, management of the jail, or maintenance of jail security and order.

D. A copy or summary of the medical record file shall routinely be sent to any jail or correctional institution to which a prisoner is transferred at the time of such transfer. A copy of such file or parts

thereof shall also be transmitted upon the written authorization of a prisoner to designated physicians and medical facilities.

E. The person delivering medications shall record the actual time of the delivery in a manner and on a form approved by the responsible physician. (Ord. 87-85 (part)).

1.28.320 Special medical issues.

A. Informed Consent.

1. All examinations, treatments and procedures affected by informed consent standards in the community shall likewise be observed for prisoner care.

2. No prisoner shall be given medical treatment against his will except as necessary to prevent the spread of communicable disease, to relieve imminent danger to the life of the prisoner, or, in the case of serious mental disorders, to prevent imminent danger to the life of his or her person or to the lives of others. All procedures required by RCW Chapter 71.05 shall be followed in any case of involuntary commitment or involuntary treatment of mentally ill persons within jails.

3. In case of minors, the informed consent of parent, guardian or legal custodian applies where required by law.

B. In all cases, the responsible physician shall give a clear statement to the prisoner patient of his diagnosis and treatment.

C. Special Medical.

1. Jail staff shall report any symptoms of prisoner mental illness or retardation to medical personnel for appropriate evaluation and treatment.

2. A special program shall exist for prisoners requiring close medical supervision. A written individual treatment plan for each of these patients shall be developed by a physician which includes directions to medical and nonmedical personnel regarding their roles in the care and supervision of these patients.

3. Programs for the prevention of suicide, to include early identification of risk, appropriate diagnosis and referral, and close observation as required by Section 1.28.190 should be developed by medical staff.

4. Appropriate medical supervised treatment in accordance with written procedures established under Section 1.28.260 shall be given in the jail to prisoners determined to be mentally ill or under the influence of alcohol, opiates, barbiturates and similar drugs when such care is not provided in a community health facility.

D. Reasonable physical restraint when necessary for medical reasons shall be medically

directed, except that in an emergency reasonable physical restraint may be used to control a grossly disturbed or violent prisoner, but the review and direction of the health care staff or local mental health professionals shall be properly obtained. (Ord. 87-85 (part)).

1.28.330 Access to facilities.

A. Regular bathing (shower) shall be permitted at least twice each week.

B. Each prisoner shall have access to toilet, sink, drinking water and adequate heat and ventilation. (Ord. 87-85 (part)).

1.28.340 Food.

A. General Food Requirements.

1. At least three meals a day shall be served at regular intervals. The morning meal shall be served within 14 hours of the previous day's evening meal.

2. Jails may arrange for prepared meal service or serve frozen packaged meals, provided these meals conform to the requirements of this section.

B. Nutritional and Caloric Intake.

1. Jail menus shall be reviewed by the local county health department, the county extension service or other qualified nutrition consultant to insure that diets approximate the dietary allowances specified.

2. Diets ordered by medical staff shall be strictly observed. (Ord. 87-85 (part)).

1.28.350 Clothing – Bedding – Personal items.

A. Clothing.

1. Provision shall be made for separate insect-proof clothing storage to prevent migration of lice from infested clothing.

2. Each jail shall insure that prisoners' outer garments are laundered and made available to them at least once a week, and that prisoners' undergarments and socks are laundered and made available to them at least twice a week.

3. Detention and correctional facilities shall, if necessary, clean and sanitize personal clothing prior to storage.

B. Bedding.

1. Each prisoner shall be issued clean bed linens for the first night's detention and at least once a week thereafter. Bed linens shall include:

- a. One detachable cloth mattress cover and one sheet; or
- b. Two sheets; or
- c. One double-size sheet.

C. Mattresses shall have a washable surface and be sanitized at least semiannually.

D. Blankets shall be issued upon arrival and shall be washed at frequent intervals to maintain a clean condition, but at least once every 60 days, and always before reissue.

E. Personal Care Items.

1. Personal care items issued to each prisoner in detention and correctional facilities shall include, but not be limited to soap and towel. Female prisoners shall be supplied with necessary feminine hygiene items.

2. Toothpaste or powder, toothbrush and comb shall be available for purchase by all prisoners, provided, that prisoners without funds shall have access to these minimum items without cost.

3. Each prisoner shall be permitted to have a reasonable number of additional personal items, the possession of which does not substantially impede jail management or security. (Ord. 87-85 (part)).

1.28.360 Sanitation.

A. General.

1. All jails shall be kept in a clean and sanitary condition, free from any accumulation of dirt, filth, rubbish, garbage or other matter detrimental to health.

2. Jail staff shall insure that each prisoner shall clean his own living area daily. Convicted prisoners may be required to clean other space within the confinement area and pretrial detainees may be permitted to do so voluntarily.

B. Insects, Rodents and Pets.

1. Insects and rodents shall be eliminated by safe and effective means. Prisoners shall be removed from areas in which insecticides and rodenticide are being used.

2. Pets shall not be allowed in the jail facilities.

C. Laundry. Each jail shall arrange for adequate laundry services. (Ord. 87-85 (part)).

1.28.370 Services.

A. Commissary.

1. The department of corrections or chief law enforcement officer of each detention or correctional facility shall either establish, maintain and operate a commissary, or provide prisoners with a list of approved items to be purchased at least once a week at local stores.

2. Commissary items shall include books, periodicals and newspapers, or the facility shall make arrangements to order any such items from publishers and/or local newsstands.

B. Proceeds from a jail facility store shall be used for operation and maintenance of the commissary service and/or prisoner welfare expenses.

C. If jail rules do not permit prisoners to keep money on their persons, payments for commissary purchases shall be made by debit on a cash account maintained for the prisoner. All expenditures from a prisoner's account shall be accurately recorded and receipted.

D. Basic Hair Care. All jails shall make reasonable arrangements to provide basic hair care.

E. Library Services. In consultation with state and/or local library service units, each jail shall make provision for library services.

F. Legal Assistance.

1. When adequate professional legal assistance is not available to prisoners for purposes of preparing and filing legal papers, a jail shall provide access to necessary law books and reference materials.

2. Facility rules shall not prohibit one prisoner from assisting another in the preparation of legal papers.

G. Religious Services.

1. Upon request from a prisoner, the jail facility shall arrange religious services or confidential religious consultation.

2. Detention and correctional facilities with an average daily population of 25 or more shall arrange for weekly religious services.

3. Prisoners should be permitted to observe religious holidays and receive sacraments of their faith.

4. Attendance at religious services shall be voluntary and prisoners who do not wish to hear or participate shall not be exposed to such services.

H. Counseling, Guidance and Ancillary Services. Counseling services should be available to provide prisoners in detention or correctional facilities with an opportunity to discuss their problems and interests.

I. The chief law enforcement officer may utilize volunteer counseling resources available in the community.

J. Professionals should serve in an advisory capacity when jail facility personnel or community volunteers engage in counseling.

K. Counselors may submit written recommendations to the chief law enforcement officer or disciplinary review body.

L. Prisoners shall not be required to receive counseling services unless ordered by the appropriate court or the disciplinary review body. (Ord. 87-85 (part)).

1.28.380 Programs.

A. Each prisoner shall be allowed three hours per week of physical exercise, to be scheduled no less than three separate days. Outdoor as well as indoor exercise shall be provided.

B. Work Programs. The chief law enforcement officer may establish work programs.

C. Participation in work programs by pretrial detainees shall be voluntary.

D. Education and Training Programs.

1. The chief law enforcement officer should arrange for the development of an education and training program, utilizing local school districts, colleges, trade schools, unions, industry, interested citizens and other available community, state and federal resources.

2. Jails should provide courses to prepare qualified prisoners for the General Education Development test, and provide the opportunity to take the test.

E. Leisure-Time Activity Programs.

1. Detention or correctional facilities should provide opportunities for all prisoners to participate in leisure-time activities.

2. Volunteers may be used to plan and supervise exercise programs and other leisure-time activities, but paid staff member(s) should have designated responsibility for supervision of such program. (Ord. 87-85 (part)).

1.28.390 Telephone usage.

A. The governing unit shall establish and post rules which specify regular telephone usage times and the maximum length of calls (not to be less than five minutes).

B. Telephone usage hours shall include time during the normal work day and time during the evening, at least once a week per prisoner; provided, that established social telephone usage hours shall not preclude reasonable access to a telephone to contact the prisoner's attorney or legal representation.

C. Calls shall be at the prisoner's expense or collect; provided, that appropriate protection of access to an attorney shall be maintained for prisoners without funds.

D. Location of telephone facilities shall insure reasonable privacy, and telephone conversations shall not be monitored, tape recorded, or spot-checked except by court order.

E. Reasons for calls shall be the personal concern of the prisoner, except in consideration of requests for emergency calls beyond normal telephone hours. (Ord. 87-85 (part)).

1.28.400 Mail.

A. Newspapers, Books, Periodicals and Other Printed Materials and Photographs.

1. Prisoners shall generally be permitted to subscribe to and otherwise receive books, newspapers, periodicals and other printed materials or photographs which may lawfully be delivered through the United States mails. Such materials shall be denied a prisoner only if such denial furthers a substantial governmental interest in jail security or the welfare of prisoners or staff.

2. When such materials are withheld from a prisoner:

a. The prisoner shall receive immediate written notice that the publication is being denied, accompanied by an explanation of the reason(s) for the denial;

b. The affected prisoner shall be promptly informed of his right to have such decision reviewed by the disciplinary hearing body, the department of corrections, or the chief law enforcement officer upon written request;

c. A written decision of the review of the denial, including reason(s) shall be given to the prisoner requesting review.

B. General Correspondence.

1. Incoming or outgoing mail shall be retained no more than one business day.

2. Except in the case of prisoners without funds, prisoners shall be permitted to mail out any number of letters. Prisoners without funds shall be permitted to mail up to three letters per calendar week at public expense, provided upon proper showing the number may be increased. Each prisoner shall be permitted to mail out any number of letter to his attorney, and the courts.

3. No restriction shall be placed on the number of letters a prisoner may receive or on the persons with whom he may correspond, except by court order of a court of competent jurisdiction, or as provided under subdivision C.3 of this section.

4. These rules shall not preclude a prisoner being required to place his name and a return post office address on outgoing mail.

C. Opening or Censoring Mail.

1. No general restriction of the number of letters prisoners may receive or of classes of persons with whom they may correspond shall be made by facility rule or policy.

2. Incoming mail shall not be censored, but may be opened and inspected for contraband, cash and checks and may be perused for content when the responsible staff person designated by the chief law enforcement officer or his designee has reasonable grounds to believe that the content of a letter

may present a clear and present danger to institutional security, or violates state or federal law. Whenever mail is not delivered by the jail staff directly to the prisoner to whom it is addressed, it shall be resealed.

3. Except by order of a court of competent jurisdiction, outgoing mail shall not be opened unless the responsible staff person designated by the chief law enforcement officer or his designee has reasonable grounds to believe that the content of a letter may present a clear and present danger to institutional security, or violates state or federal law.

D. Notice of Disapproval of Prisoner Mail.

1. When a prisoner is prohibited from sending a letter, the letter and a written and signed notice stating the reason for disapproval, and indicating the portion(s) of the letter causing disapproval, shall be given to the prisoner.

2. When a prisoner is prohibited from receiving a letter, the letter and a written signed notice stating reason(s) for denial and indicating the portion(s) of the letter causing the denial shall be given the sender. The prisoner shall be given notice in writing that the letter has been prohibited, indicating the reason(s) and the sender's name.

3. When a prisoner is prohibited from sending or receiving mail, the affected prisoner is entitled to have such decision reviewed by the disciplinary hearing body, the chief law enforcement officer or his designee upon written request and shall be promptly informed of this right.

4. A written decision of the review of such denial shall be promptly delivered to the prisoner.

E. Limitations.

1. Incoming mail of post-conviction prisoners that is clearly marked as coming from an attorney, court, or elected federal, state, county or city official shall be opened only in the presence of the addressee.

2. Mail to or from attorneys, courts or elected federal, state, county or city officials shall not be read.

3. There shall be no additional restrictions on prisoner correspondence for disciplinary or punishment purposes, unless the prisoner has violated rules as to correspondence. Upon proper showing of the alleged violation, the prisoner's mail may be restricted for a limited time, but such restriction shall not apply to attorney-client mail or correspondence with the courts.

F. Packages.

1. Incoming.

a. If a facility allows prisoners to receive packages, all packages shall be opened and inspected.

b. Packages may be received only if the contents conform to rules adopted by the chief law enforcement officer or his designee, and a witnessed receipt for permissible items shall be promptly delivered to the prisoner, unless such package is opened in the presence of the prisoner and all items are given directly to him.

2. Outgoing packages of prisoner's personal property shall be inspected to insure ownership and compliance with United States postal regulations.

G. Contraband. Items which are not permitted by jail rules may be destroyed upon the prisoner's written request, placed in the prisoner's personal property box, or returned collect to the sender. A receipt for permissible items received in the mail, including money or checks shall be signed by a staff member and a copy thereof promptly delivered to the prisoner. Contraband, as defined in RCW 9A.76.010, shall be turned over to the property authorities, for handling as evidence, for disciplinary action or possible prosecution under RCW 9A.76.140, 9A.76.150, 9A.76.160, or other applicable statutes. (Ord. 87-85 (part)).

1.28.410 Visitation.

A. General contact visitation should be provided for those prisoners determined to present a minimal degree of risk to the safety and security of the institution.

B. The degree of security required for each prisoner during visitation shall be determined by the person or persons responsible for classification under Section 1.28.150.

C. Social Visits.

1. The chief law enforcement officer or his designee shall establish and post rules governing regular visits and specifying times therefor.

2. All unsentenced prisoners and sentenced prisoners who have been in custody for more than 30 days shall be allowed a minimum of three hours total visitation per week. Those prisoners who have been in custody for less than 30 days shall be allowed a reasonable amount of visitation.

3. Preference on who visits will be determined by the inmate.

4. Except for immediate family members, visitors 17 years of age and under shall be accompanied by a parent or guardian.

D. The chief law enforcement officer or his designee may grant special visitation privileges to visitors who have traveled long distances, to visitors

for hospitalized prisoners, and for other unusual circumstances.

E. Business and Professional Visits. Each prisoner shall be allowed confidential visits from his attorney or legal assistants and his pastor.

F. By prior arrangement with the chief law enforcement officer or his designee, a prisoner shall be allowed confidential visits for business or educational reasons.

G. Law enforcement professionals shall be allowed to interview prisoners at reasonable times and with prior notice, unless it appears circumstances do not permit delay.

H. Visitor Regulations.

1. Signs giving notice that all visitors and their accompanying possessions are subject to search shall be conspicuously posted at the entrances to the facility and at the entrance to the visiting area.

2. Any person may refuse a search, but subsequent to such refusal may then be denied entrance.

3. Other reasons for denying entrance to visitors shall include but not be limited to:

a. An attempt, or reasonable suspicion of an attempt to bring contraband into the facility;

b. Obvious influence or effect of alcohol or controlled substances;

c. Request from the prisoner's physician;

d. Request from the prisoner;

e. Reasonable grounds to believe a particular visit would present a substantial danger to jail security or management or the welfare of prisoners, staff or other visitors.

I. Whenever a visitor is refused admittance during regular visiting hours, the prisoner shall receive notice of the refusal stating the reason(s) therefor. The affected prisoner is entitled to have such decision reviewed by the disciplinary hearing body, the chief law enforcement officer or his designee upon written request and shall be promptly informed of this rights. A written decision of the reviewing body's determination stating the reason(s) therefor, shall be furnished to the prisoner who requested such review. (Ord. 87-85 (part)).

and null and void insofar as they are in conflict therewith and shall be modified to conform to such statutory provision. (Ord. 87-85 (part)).

1.28.420 Severability.

Should any part of this chapter be declared illegal, the validity of the remaining provisions shall not be affected. And should it appear that any provision of this chapter is in conflict with any statutory provision of the state of Washington, then said chapter provision shall be deemed to be inoperative



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-342

File ID:	AB2021-342	Version:	1	Status:	Agenda Ready
File Created:	06/10/2021	Entered by:	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Memorandum of Agreement		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a Memorandum of Understanding between Whatcom County and Sudden Valley Community Association

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This is a request for approval by the Whatcom County Council that authorizes the County Executive to enter into a Memorandum of Understanding Agreement for capital stormwater projects between Whatcom County and the Sudden Valley Community Association

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Memorandum

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings
Director**



STORMWATER
322 N. Commercial, Suite 224
Bellingham, WA 98225
Main: (360) 778-6230
FAX: (360) 778-6201
www.whatcomcounty.us

MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Kraig Olason, Stormwater Program Manager *KO*

DATE: June 4, 2021

RE: **Memorandum of Understanding:** Whatcom County and Sudden
Valley Community Association

Requested Action

An approval by the Whatcom County Council that authorizes the County Executive to enter into a Memorandum of Understanding (MOU) agreement for capital stormwater projects between Whatcom County (County) and the Sudden Valley Community Association (SVCA).

Background and Purpose

Sudden Valley is the largest development in the Lake Whatcom watershed with over 7,000 residents that provide a significant portion (>50%) of the total collected revenues by the Lake Whatcom Stormwater Utility. Implementing treatment and best management practices in stormwater capital projects in Sudden Valley is critical for meeting TMDL objectives

Through executing this MOU, the SVCA will grant permanent easements to the County for treatment facilities and allow access for inspection, repair, and maintenance. The County will collaborate and coordinate projects with SVCA's long term capital program. Individual addendums will be created for each specific project and will be signed by the SVCA's general manager and the County's Public Works Director.

Funding Amount and Source

Capital projects funding sources and amounts are determined on the 6-year Water Resources Improvements Plan (WRIP). This MOU only describes the collaborative process and requirements of defining and constructing capital stormwater project between the County and the SVCA.

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

Encl.

**MEMORANDUM OF UNDERSTANDING FOR
CAPITAL PROJECT COORDINATION WITHIN THE LAKE WHATCOM WATERSHED**

between

WHATCOM COUNTY ("County"), a political subdivision of the State of Washington, and
the Sudden Valley Community Association ("SVCA")

WHEREAS, Lake Whatcom is the drinking water source for approximately 100,000 Whatcom County residents, including the residents of Sudden Valley; and

WHEREAS, the Sudden Valley Community Association (SVCA) is the largest development in the Lake Whatcom watershed; and

WHEREAS, the SVCA has been an active stakeholder participating in the Lake Whatcom Management Program since 1999; and

WHEREAS, County Council Resolution 2008-036 establishes a comprehensive stormwater management plan for the county portion of the Lake Whatcom watershed; and

WHEREAS, the United States Environmental Protection Agency (USEPA) approved the final Lake Whatcom Total Maximum Daily Load (TMDL) Water Quality Improvement Report and Implementation Strategy for phosphorus and fecal coliform bacteria in April 2016, which requires the City of Bellingham and the County to develop a response strategy; and

WHEREAS, the County utilizes the Lake Whatcom Comprehensive Stormwater Management Plan to guide the building of capital improvement projects to improve water quality from stormwater runoff; and

WHEREAS, the plan recommends water quality improvement projects to reduce phosphorus from entering Lake Whatcom from areas within the SVCA drainages; and

WHEREAS, the County and SVCA (collectively referred to herein as the "Parties") share a common interest in working cooperatively to protect and enhance surface waters discharging to Lake Whatcom;

NOW THEREFORE, WHATCOM COUNTY AND THE SVCA AGREE AS FOLLOWS:

1.) Purpose. The purpose of this Agreement is to identify the Parties' respective roles and obligations related to agreed-upon stormwater capital projects ("Projects"), which endeavor to protect and improve Lake Whatcom water quality. Both the County and SVCA intend to be legally bound to the responsibilities contained herein until such time as the Agreement ends or is otherwise terminated pursuant to the terms of this Agreement.

2.) Project Design. The County will manage the design and permitting of those Projects agreed-upon by the parties and will incorporate SVCA comments into those designs where

appropriate. . This will include a public involvement component with assistance from the SVCA.

3.) Project Construction The County will advertise for construction bids, and will award construction contracts under the County's purchasing requirements. The County will fund construction of water quality treatment facilities.

4.) Right-of-Way and Permits. SVC agrees to grant all necessary rights-of-way, easements, permits and approvals deemed necessary by the County necessary for the Projects.

5.) Construction Administration. The County will serve as the lead agency in administering the design and construction contracts for all projects, and will perform all construction-phase engineering, inspection and documentation for the project.

6.) Individual Projects to be Included as Addendums to This Agreement. Due to the need for specific information and details associated with each Project constructed under this agreement, each Project will be defined and incorporated into this agreement as an addendum. Each addendum will include specific information regarding the size, location and specific agreement details regarding project financing, permanent and temporary easements, design and construction considerations.

7.) Responsible Persons. The person responsible for the administration of this Agreement on behalf of Whatcom County shall be the Director of Public Works. The person responsible for administration of this Agreement on behalf of the SVCA shall be the SVCA General Manager. Responsible parties identified herein are authorized to execute and bind their respective party to execute those Addendums referred to in paragraph 6 herein unless otherwise precluded by local, state, or federal law.

8.) Ownership and Maintenance of Facilities.

- a) The County shall own the stormwater water quality treatment facilities installed as part of any Project, and as defined in their respective facility specific permanent easements constructed under this agreement. The SVCA shall provide the County with dedicated access and maintenance easements at 30% design. The County shall provide or pay for operation, inspection, maintenance and repair of all water quality treatment facilities installed by the County, as described in future addenda.
- b) SVCA will manage their existing drainage conveyance systems and new drainage conveyance systems installed as a component of water quality treatment facilities as constructed under this agreement in a manner that will protect the County water quality treatment facilities from excessive fouling from sediment laden stormwater. Upon notification by the County, SVCA will address conditions that are generating excessive sediments entering the surface flows that contribute to County owned water quality treatment facilities.

9.) Dispute Resolution

a.) Arbitration. The Parties mutually covenant to work cooperatively to timely resolve any issues that may arise between the Parties concerning this agreement. However, any dispute or claim shall be submitted to mandatory, conclusive and binding arbitration under the rules and procedures of Whatcom County Mandatory Arbitration Rules (WCMAR). The parties shall jointly stipulate to an arbitrator, or one will be selected in accordance with WCMAR. The arbitrator's award shall not be limited by otherwise applicable MAR rules. The prevailing party shall be entitled to reasonable attorney's fees and costs. The arbitrator's decision may only be appealed pursuant to RCW 7.04.

b.) Governing Law and Venue. The Parties agree that any dispute shall be governed by the law of the State of Washington and shall be heard in Whatcom County Superior Court.

10.) County and SVCA as Additional Insureds. The County shall require the construction contractor who is ultimately awarded the contract to provide the County and the SVCA with a certificate of insurance and endorsement specifically naming the County and the SVCA as additional insureds prior to the contractor commencing work on the construction project. The contractor will provide at least \$1,000,000.00 per occurrence in commercial general liability coverage and shall also provide proof of automobile insurance coverage and workers' compensation coverage. Such insurance shall be primary and non-contributory to any coverage carried by the County and the SVCA.

11.) Mutual Termination for Convenience. The County or SVCA may terminate this agreement, without cause, upon 30 days written notice to the non-terminating party subject to the following limitation: Termination for convenience may not occur until the completion of any pending or active Project identified by an executed addendum as provided for herein in paragraph 6.

11.)Administration. The parties do not intend to create any new or separate legal or administrative entity by this agreement but, rather, intend for this mutual Agreement to govern the SVCA financial commitment to support the project. The terms and conditions contained herein reflect the voluntary participation of the parties. This agreement shall be in effect until both parties mutually agree to dissolve the agreement.

12.)Relationship to Other Agreements. The entire agreement between the parties hereto relative to the specified projects is contained in this Agreement. This Agreement is in addition to, and is not intended to replace or substitute for any other agreement between Whatcom County and the SVCA. Those other agreements continue in effect according to the terms of those agreements.

DATED this _____ day of _____, 2021.

Glenn Ahuff
SVCA General Manager

IN WITNESS WHEREOF, the parties have executed this agreement in Bellingham, Washington, to exchange certain engineering and construction services on the day and year herein indicated.

DATED this 22 day of April, 2021,

[Signature]
SVCA Vice President
Board of Commissioners

STATE OF WASHINGTON)

: ss

COUNTY OF WHATCOM)

Josh Brown

Vice President

On this day personally appeared before me _____, to me known to be the _____ of the Board of Commissioners of SVCA, the SVCA that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the water district, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of said SVCA.

WITNESS my hand and official seal this 22 day of April, 2021.



[Signature]

NOTARY PUBLIC in and for the State of

Washington: Residing at Bellingham

My Commission Expires: 6-24-23

Approved as to form:

A handwritten signature in blue ink, appearing to be "Jill [unclear]", written over a horizontal line.

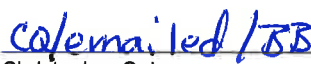
WSBA 22940, Attorney for SVCA

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year herein indicated.

Departmental Approval:


Jon Hutchings, Public Works Director
6/11/12
Date

Approved as to form:


Christopher Quinn
6/11/12
Date
Senior Deputy Prosecuting Attorney-Civil Division

WHATCOM COUNTY:

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 _____



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-343

File ID:	AB2021-343	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and DH to implement the COVID-19 IRL Campaign in the amount of \$106,250 for a total amended contract amount of \$306,250

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Amendment

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: DH – COVID-19 IRL Social Marketing Campaign Phase II
Contract Amendment #1
DATE: June 11, 2021

Attached is a contract amendment between Whatcom County and DH for your review and signature.

▪ **Background and Purpose**

This contract provides funding to broaden existing efforts to communicate with young adults, ages 18-26, in Whatcom County about COVID-19, using a social marketing framework. The intent of this campaign is to educate young adults through a tailored social marketing campaign and influence them to adopt behaviors that will reduce the spread of COVID-19 and maintain masking and social distancing practices through the vaccination phase of the pandemic. This population is least likely to be engaged through traditional local government communication channels and faces unique barriers and motivators that influence their behavior relative to COVID-19. The purpose of this amendment is to extend the contract through 09/30/2021 and increase the budget by \$106,250 for the extended contract period.

▪ **Funding Amount and Source**

Funding for this contract may not exceed \$306,250. Funds under this contract are made available by a grant awarded by the US Department of Treasury and 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, passed through the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES and Vaccine Services-CARES Grants (CFDA 21.019 & 93.268). These funds are included in the 2021 budget. Council approval is required as additional funding exceeds 10% of the approved budget.

Please contact Erika Lautenbach, Director at 360-778-6005 (ELautenb@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
202102022 – 1

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Administration / 851000 Administration	
Contract or Grant Administrator:		Melissa Morin	
Contractor's / Agency Name:		DH	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		202102022
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	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?	If yes, grantor agency contract number(s):		CFDA#: 21.019 & 93.268
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		201801023
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):		Contract Cost Center: 660430 / 627221
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	21-03		
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> 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: <ol style="list-style-type: none"> 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. 	
\$ 200,000			
This Amendment Amount:			
\$ 106,250			
Total Amended Amount:			
\$ 306,250			
Summary of Scope: This contract provides funding for a social marketing campaign geared toward youth and the spread of COVID-19.			
Term of Contract:	8 Months	Expiration Date:	09/30/2021
Contract Routing:	1. Prepared by:	JT	Date: 06/02/2021
	2. Health Budget Approval	KR/JG	Date: 06/08/2021
	3. Attorney signoff:	RB	Date: 06/29/2021
	4. AS Finance reviewed:	M Caldwell	Date: 6/9/21
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):	AB2021-343	Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

WHATCOM COUNTY CONTRACT AMENDMENT

PARTIES:

Whatcom County
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

AND CONTRACTOR:

DH
315 W Riverside Avenue, Suite 200
Spokane, WA 99201

CONTRACT PERIODS:

Original: 02/01/2021 – 06/30/2021

Amendment #1: 07/01/2021 – 09/30/2021

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Extend the term of the contract through 09/30/2021.
2. Replace Exhibit B – Compensation, to reflect the budget for the extended contract period.
3. Funding for the total contract period (02/01/2021 – 09/30/2021) is not to exceed \$306,250.
4. All other terms and conditions remain unchanged.
5. The effective start date of the amendment is 07/01/2021.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. 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 bind the party thereto.

DEPARTMENT HEAD APPROVAL: _____
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: _____
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

	Michelle Hege, CEO	
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
--------------------------------------	------

CONTRACTOR INFORMATION:

DH
315 W Riverside Avenue, Suite 200
Spokane, WA 99201
509-444-2350
michelleh@wearedh.com

EXHIBIT “B” – Amendment #1
(COMPENSATION)

I. **Budget and Source of Funding:** Funding for this contract may not exceed \$306,250. Funds under this 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 a grant awarded by the US Department of the Treasury. Grant funds are administered by the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES and COVID-19 Vaccine Services-CARES Grants (CFDA 21.019 & 93.268).

Item/Task (T) #	Documents Required Each Invoice	Estimated Hours	Total Budget*
Paid Media Buys – T1	Paid invoices or receipts	N/A	\$131,250
Community Partner Toolkit Printing – T3		N/A	\$20,000
Community Partner Coordination/Management – T2	GL Detail; approved progress reports and verification of deliverables completed, as indicated in Exhibit A – Reporting Requirements	255	\$43,400
Social Media Management and Microsite Development – T4		108	\$25,850
Creative Production – T5		132	\$22,500
Video Production/Animation – T6		475	\$37,000
Account/Project Management	GL Detail	154	\$26,250
TOTAL			\$306,250

Changes to the line item budget that exceed 10% of the line item amount, must be approved in writing by the County.

Project Staff	Billing Rate/Hour	Project Staff	Billing Rate/Hour
Partner	\$225	Media Buy Coordination	\$150
Vice President	\$200	Account Executive/Senior Designer	\$150
Account Director/Art Director	\$170	Account Coordinator/Designer	\$135
Copywriter	\$170	Crisis Rate – <i>Work performed under this rate must be approved in writing by the County via email, before commencement</i>	\$300
Media Strategy	\$170		

*Included in the proposed costs above are the following agency fees, where applicable:

Contractor will include a Technology Fee of 8% to all hourly rates (excluding hard costs and other fees) to offset internal and administrative expenses to develop final work product (i.e. subscriptions to media buying and audience intelligence software like PrimeLingo, earned media monitoring software like Cision, Adobe Cloud applications, photo subscriptions, maintaining mobile communication for 24/7 client service, overnight delivery fees, etc).

Contractor will apply a fee when the agency purchases advertising or promotional media on behalf of the client. The fee may be in the form of a (1) Digital Media Management Fee, which is calculated at 20% of gross media buy budget (~25% of net media buy) for digital media (social media, display advertising, SEM advertising, pre-roll or digital video advertising, digital radio advertising, OTT media [HULU, ROKU, etc.] and other digital advertising tactics); or a (2) Traditional Media Management Fee, which is calculated as 15% of gross media buy budget (~17.65% of net media buy) for traditional advertising (newsprint, static billboards, out-of-home displays, AM/FM radio advertising, direct mail and other traditional advertising tactics.)

Contractor will apply a fee of 15% when the agency purchases hard costs and goods on behalf of the client. These hard costs or goods may include rentals, software or subscriptions, swag or promotional items, video or photo production costs, campaign-partner fees, etc. The fee is calculated as 15% of the gross hard cost budget (~17.65% of net hard cost buy).

II.Invoicing

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include the items identified in the table above.
2. The Contractor shall submit invoices to *(include contract/PO #)* HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

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

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



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-347

File ID:	AB2021-347	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

Primary Contact Email: ADeacon@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 to provide oversight and assistance at the COVID-19 Temporary Housing Facility in the amount of \$95,460 for a total amended contract amount of \$453,436

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Amendment

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: SeaMar Community Health Centers – COVID-19 Temporary Housing Facility Contract Amendment #4
DATE: June 11, 2021

Attached is a contract amendment between Whatcom County and SeaMar for your review and signature.

▪ **Background and Purpose**

During the COVID-19 pandemic, it is necessary for Whatcom County to implement actions that will mitigate the spread of the disease and provide basic services in support of public health for the community at large. In order to respond to people in need of isolation and quarantine who have no other option to accomplish this, a COVID-19 Temporary Housing Facility has been opened. This contract provides funding for SeaMar to support the daily operations at the Facility. SeaMar has the necessary experience to accomplish this effort based on their current work as the provider of the Whatcom Ground-level Response and Coordinated Engagement (GRACE) Program. An RFQ was advertised for these services in April, 2021 and there were no respondents to the RFQ who offered to provide the administrative oversight of daily operations at the Facility. SeaMar will continue to provide the services described in this contract through September 30, 2021.

▪ **Funding Amount and Source**

Funding for this extended contract period (06/01/21 – 09/30/2021) may not exceed \$95,460 and funding for the entire contract period (03/01/2020 – 09/30/2021) may not exceed \$453,436. Funds under the contract are made available by a grant awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and Title V and VI of the CARES Act, passed thru the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES and Epidemiology & Laboratory Capacity Grants (CFDA 21.019 & 93.323). These funds are included in the 2021 budget. Council approval is required as additional funding for the extended contract period exceeds 10% of the approved budget.

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us) if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET		Whatcom County Contract No. <u>202011032 – 4</u>	
Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing Program	
Contract or Grant Administrator:		Anne Deacon	
Contractor's / Agency Name:		SeaMar Community Health Centers	
Is this a New Contract? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If not, is this an Amendment or Renewal to an Existing Contract? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	202011032
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		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 <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, grantor agency contract number(s): _____	CFDA#: _____	21.019 / 93.323
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, Whatcom County grant contract number(s): _____	201801023	
Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s): _____	Contract Cost Center: _____	660430 / 660480
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.			
If YES, indicate exclusion(s) below: This contract provides services to the County required as a result of an emergency. (COVID-19 pandemic)			
<input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ 357,976		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: <ol style="list-style-type: none"> 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. 	
This Amendment Amount: \$ 95,460			
Total Amended Amount: \$ 453,436			
Summary of Scope: This contract provides funding for daily administrative operations at Whatcom County's COVID-19 Temporary Housing Facility.			
Term of Contract:	19 Months	Expiration Date:	09/30/2021
Contract Routing:	1. Prepared by:	JT	Date: 05/18/2021
	2. Health Budget Approval	KR/JG	Date: 06/08/2021
	3. Attorney signoff:	RB	Date: 06/10/2021
	4. AS Finance reviewed:	M Caldwell	Date: 6/9/21
	5. IT reviewed (if IT related):		Date: _____
	6. Contractor signed:		Date: _____
	7. Submitted to Exec.:		Date: _____
	8. Council approved (if necessary):	AB2021-347	Date: _____
	9. Executive signed:		Date: _____
	10. Original to Council:		Date: _____

WHATCOM COUNTY HEALTH DEPARTMENT CONTRACT AMENDMENT

PARTIES:

Whatcom County
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

AND CONTRACTOR:
SeaMar Community Health Centers
1040 S Henderson Street
Seattle, WA 98108

CONTRACT PERIODS:

Original: 03/01/2020 – 12/30/2020
Amendment #1: 12/31/2020 – 01/31/2021
Amendment #2: 02/01/2021 – 05/31/2021

Amendment #3: 01/01/2021 – 05/31/2021
Amendment #4: 06/01/2021 – 09/30/2021

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Extend the term of the contract through 09/30/2021.
2. Amend Exhibit B – Compensation, to reflect a budget for the extended contract period and update invoicing requirements; revised Exhibit B is attached.
3. Funding for the extended contract period (06/01/21 – 09/30/21) is not to exceed \$95,460.
4. Funding for the total contract period (03/01/2020 – 09/30/2021) is not to exceed \$453,436.
5. All other terms and conditions remain unchanged.
6. The effective start date of the amendment is 06/01/2021.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. 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 bind the party thereto.

APPROVAL AS TO PROGRAM: _____
Anne Deacon, Human Services Manager Date

DEPARTMENT HEAD APPROVAL: _____
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: _____
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

Contractor Signature	Print Name and Title	Date
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STATE OF WASHINGTON)
COUNTY OF KING)

On this _____ day of _____, 2021, before me personally appeared _____, to me known to be 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.
Residing at _____
My Commission expires: _____

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
--------------------------------------	------

STATE OF WASHINGTON)
COUNTY OF WHATCOM)

On this _____ day of _____, 2021, before me personally 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 Bellingham. My Commission expires: _____

EXHIBIT “B” – Amendment #4
(COMPENSATION)

- i. **Budget and Source of Funding:** Funding for this contract period (06/01/21 – 09/30/21) may not exceed \$95,460. 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 project was supported by a grant awarded by the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES and Epidemiology & Laboratory Capacity Grants (CFDA 21.019 & 93.323). The budget for this contract is as follows:

BUDGET (06/01/2021 – 09/30/2021)		
Item	Documentation Required	Budget
Salaries for personnel providing Facility Operational Support, Consultation, and Technical Assistance	Expanded GL report for the period	\$89,460
Support Assistance Program and Flex Funds	GL Detail or Credit Card statement and Receipts showing documentation to support dispersals	\$6,000
TOTAL BUDGET:		\$95,460

Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County.

II. Invoicing

1. The Contractor shall submit itemized invoices according to the dates provided in #2 below in a format approved by the County to HL-BusinessOffice@co.whatcom.wa.us.
2. Invoices submitted for payment must include the items identified in the table above.
 - a. **Final invoices for services provided through June 30, 2021 must be received by July 21, 2021.**
 - b. **Final invoices for services provided from July 1, 2021 – September 30, 2021 must be received by October 21, 2021.**
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-355

File ID:	AB2021-355	Version:	1	Status:	Agenda Ready
File Created:	06/14/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Lighthouse Mission Ministries to provide oversight and assistance at the COVID Temporary Housing Facility, in the amount of \$89,674

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Lighthouse Mission Ministries – COVID Temporary Housing Facility Contract
DATE: June 14, 2021

Attached is a contract between Whatcom County and Lighthouse Mission Ministries for your review and signature.

- **Background and Purpose**

Lighthouse Mission Ministries provides oversight and assistance at Whatcom County's COVID-19 Temporary Housing Facility. This contract provides funding for 24/7 on-site support services to ensure operational, social distancing and public-health related concerns are addressed.

- **Funding Amount and Source**

Funding for this contract may not exceed \$89,674. These funds are included in the 2021 budget. Funds under the contract are made available by a grant awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and Title V and VI of the CARES Act, passed through the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES and Epidemiology & Laboratory Capacity Grants (CFDA 21.019 & 93.323). These funds are included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

- **Differences between Previous Contracts**

This is a new contract awarded as a result of RFQ 21-15; however, funding for these services has been provided through previous contracts since March, 2020. The scope of work in this contract includes no significant changes to the contract that is currently in place (WC Contract #202003013).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855040 Housing Program		
Contract or Grant Administrator:			Anne Deacon		
Contractor's / Agency Name:			Lighthouse Mission Ministries		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	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?		If yes, grantor agency contract number(s):		CFDA#:	21.019 / 93.323
Yes <input type="checkbox"/>	No <input type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		201801023	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	660430 / 660480
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	21-15			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> 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:			
\$	89,674	1. Exercising an option contained in a contract previously approved by the council.			
This Amendment Amount:		2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.			
\$		3. Bid or award is for supplies.			
Total Amended Amount:		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 funding for staff at Whatcom County's COVID-19 Temporary Housing Facility.					
Term of Contract:		4 Months		Expiration Date: 09/30/2021	
Contract Routing:	1. Prepared by: JT		Date:		05/12/2021
	2. Health Budget Approval: KR/JG		Date:		06/08/2021
	3. Attorney signoff: RB		Date:		06/11/2021
	4. AS Finance reviewed: M Caldwell		Date:		6/10/21
	5. IT reviewed (if IT related):		Date:		
	6. Contractor approved:		Date:		
	7. Submitted to Exec.:		Date:		
	8. Council approved (if necessary): AB2021-355		Date:		
	9. Executive signed:		Date:		
	10. Original to Council:		Date:		

CONTRACT FOR SERVICES
Between Whatcom County and Lighthouse Mission Ministries

Lighthouse Mission Ministries, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 11,
Exhibit A (Scope of Work), pp. 12 to 13,
Exhibit B (Compensation), p. 14,
Exhibit C (Certificate of Insurance), p. 15,
Exhibit D (Special Terms & Conditions of WA State DOH Grants).

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 June, 2021, 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 provide funding for staffing at the COVID-19 Temporary Housing Facility 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 \$89,674. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Lighthouse Mission Ministries
910 W. Holly Street
Bellingham, WA 98225

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.

Hans Erchinger-Davis, Executive Director

Recommended for Approval:

Erika Lautenbach, Director
Date

Approved as to form:

Royce Buckingham, Prosecuting Attorney	Date
--	------

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

CONTRACTOR INFORMATION:

Hans Erchinger-Davis, Executive Director
910 W. Holly Street
Bellingham, WA 98225
360-733-5120
hanse@thelighthousemission.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the

Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance:

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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.

3. Business Automobile Liability

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

4. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.
- m. **Insurance for Subcontractors.** If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 **Defense & Indemnity Agreement.** To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Anne Deacon, Human Services Manager
Whatcom County Health Department

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Anne Deacon, Human Services Manager
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
360-778-6054
ADeacon@co.whatcom.wa.us

Hans Erchinger-Davis, Executive Director
Lighthouse Mission Ministries
W Holly Street
Bellingham, WA 98225
360-733-5120
hanse@thelighthousemission.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:
If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

The Whatcom County COVID-19 Temporary Housing Facility (Facility) houses guests in need of isolation or quarantine who have no other option to accomplish such. Operations of the Facility is shared between SeaMar Community Health Centers via their GRACE (Ground-level Response and Coordinated Engagement) Program staff and Lighthouse Mission Ministries (LMM) staff. On-site staff are needed 24/7 when guests are residing to monitor and protect the Facility and the welfare of its guests, as well as to ensure that necessary daily operational issues are addressed. Accordingly, LMM will provide 24/7 staffing of the Facility, as set forth below.

II. Statement of Work

LMM will oversee daily operations by providing staffing to the Facility. Facility staff provided by LMM will include a Supervisor who will be supported by the SeaMar Program Manager who will provide guidance and consultation as necessary for administration of the Facility.

The LMM Supervisor will develop staffing schedules and provide on-site guidance to staff. As needed the Supervisor will consult with SeaMar Program Manager on best practices for managing daily staff activities as well as any concerns or issues that may arise.

Personal protective equipment and other infection-control practices will be employed at all times, as necessary. The County will provide infection control guidelines for use by all staff at the Facility.

Staffing patterns and shifts will consist of no less than one LMM staff on-site during all hours of the day. It is expected that additional LMM personnel will be added as the Facility census increases. LMM will coordinate with SeaMar on staffing levels and shifts to ensure consistent communication and coordination of activities, staff roles, supervision and other matters necessary to provide effective services and oversight of the Facility. LMM shall assume no responsibility or liability for the Facility, which shall be the sole and exclusive responsibility of the County. County shall indemnify, hold harmless, LMM, its officers, directors, employees, and staff from and against any and all claims or damages alleged to arise out of any act, error or omission related to the Facility, which shall be the sole and exclusive responsibility of the County. County shall indemnify, defend and hold harmless LMM, its officers, directors, employees and staff from and against any and all claims or damages alleged to arise out of any act, error or omission related to the Facility except for such acts, errors or omissions that are the result of the willful misconduct or gross negligence of LMM.

SeaMar will have staff available seven days weekly for consultation and guidance. Security services will be on-site and will be provided by a separate, private firm. SeaMar will be responsible for coordinating all personnel assigned to the Facility, with assistance from the LMM Supervisor, and will attend to any concerns that may arise from having multiple employers working together at the same site/program.

The County or the owner of the motel housing units will be responsible for general repairs and maintenance as well as providing for utility services.

Following are duties expected to be provided by on-site LMM personnel, but are not inclusive and may be altered as programming requires. These tasks are intended to ensure the functioning of the daily operations of the Facility. It is not expected that LMM staff will provide any hands-on assistance with guests, but instead support guests with the following activities.

1. Assist with delivery and pick-up of daily meals to Facility.
2. Assist with linen exchanges and laundry services to Facility.
3. Assist with directing regular waste disposal from each housing unit.
4. Prepare vacant rooms that have been cleaned and sanitized for the next guest by making beds and providing towels and toiletries.

5. Assist with communication connections between guests and their healthcare providers if a resident is unable to accomplish this independently.
6. Guide and direct guests on appropriate behaviors that promote sufficient social distancing, isolation, quarantine, hygiene, and sanitation.
7. Coordinate with SeaMar staff on issuance of motivational incentives to guests in an effort to encourage compliance with all infection-control practices and personal medical directives.
8. Coordinate with on-site services that may include sanitation of housing units upon discharge of a resident, security practices and concerns, on-site healthcare provision, and access/egress of the property/facility.
9. Assist coordination with guests to access help for housing unit issues that may include Wi-Fi access, repairs and maintenance, or communications problems that may arise.
10. Assist with and initiate as needed scheduling of on-site staff at the Facility.

The County will provide a manual of Policies and Procedures covering operational issues for the Facility that will be on-site and available as reference. It is expected that all personnel will follow the policies and procedures outlined, and work directly with the County on any concerns that may arise as a result. It is the County's goal to support SeaMar, LMM, and their employees in the performance of their duties to the greatest extent possible.

LMM will work with the County to adjust the budget as necessary in order to assure optimal staffing levels.

EXHIBIT "B"
COMPENSATION

- I. **Source of Funding:** Funding for this contract period (06/01/2021 – 09/30/2021) may not exceed \$89,674. Funds under this 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 a grant awarded by the US Department of the Treasury. Grant funds are administered by the Washington State Department of Health COVID-19 Local CARES and Epidemiology & Laboratory Capacity Grants (CFDA # 21.019 & 93.323). The budget for this contract is as follows:

Item	Documentation Required with Invoice	Budget
Personnel (wages and benefits)	Expanded GL report for the period.	\$89,674
TOTAL		\$89,674

II. **Invoicing:**

1. The Contractor shall submit itemized invoices by location on a monthly basis in a format approved by the County. The Contract number shall be included on all billings or correspondence. **Final invoices for services provided through June 30, 2021 must be submitted by July 10, 2021.**
2. The Contractor shall submit invoices to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, or the labor has been performed, as described on this invoice.
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

“Exhibit D”

(Special Terms and Conditions for Washington State Department of Health
COVID-19 Local CARES and Epidemiology & Laboratory Capacity Grants – CFDA #21.019 & 93.323)

The funds allocated for services performed under this contract are Washington State Department of Health funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements.

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. “DOH” shall mean the Department of Health.
- C. “Contract” or “Agreement” means the entire written agreement between DOH 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.

3. 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.

4. 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.

5. 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.

6. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

7. 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, Subparts B through F.

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.

8. 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.

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.

9. 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.

10. 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.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-372

File ID:	AB2021-372	Version:	1	Status:	Agenda Ready
File Created:	06/18/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to operate the Whatcom Homeless Service Center in the amount of \$930,003 for a total amended contract amount of \$2,324,075

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Amendment

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Opportunity Council – Whatcom Homeless Service Center Contract Amendment #4

DATE: June 18, 2021

Attached is a contract amendment between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**

The Whatcom Homeless Service Center (WHSC) provides coordinated entry for the homeless housing system. The WHSC makes referrals to partner agencies for housing case management services, cultivates and maintains relationships with local landlords, and serves as liaison for homeless housing activities to the network of service providers and other community stakeholders. The purpose of this amendment is to extend the contract for an additional six months and include an additional \$112,000 in funding to support emergency shelter in motels from July through December and subsequent indirect costs.

- **Funding Amount and Source**

Funding for this contract period (07/01/2021 – 12/31/2021) is not to exceed \$930,003 and funding for the total contract period (01/01/2021 – 12/31/2021) is not to exceed \$2,324,075. Funding is provided by the Washington State Department of Commerce Consolidated Homeless Grant, the federal Emergency Solutions-CV Grant (CFDA 14.231), local document recording fees, the Veteran's Assistance Fund, HB 1406, and Whatcom County's COVID Response Fund. These funds are included in the 2021 budget. Council approval is required as additional funding exceeds 10% of the approved budget.

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
202012017 – 4

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing Program	
Contract or Grant Administrator:		Barbara Johnson-Vinna	
Contractor's / Agency Name:		Opportunity Council	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		202012017
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	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?	If yes, grantor agency contract number(s):		CFDA#: 14.231
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		202008014 / 201907017
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	Sole Source	Contract Cost Center:	122200 / 122300 / 114 / 122800 / 129100
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):		
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> 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: <ol style="list-style-type: none"> 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. 	
\$ 1,394,072			
This Amendment Amount:			
\$ 930,003			
Total Amended Amount:			
\$ 2,324,075			
Summary of Scope: This contract provides funding for the Whatcom Homeless Service Center (WHSC), a centralized point of entry for homeless prevention and re-housing services for Whatcom County residents.			
Term of Contract:	6 months	Expiration Date:	12/31/2021
Contract Routing:	1. Prepared by:	JT	Date: 04/07/2021
	2. Health Budget Approval	KR/JG	Date: 06/17/2021
	3. Attorney signoff:	RB	Date: 06/17/2021
	4. AS Finance reviewed:	Bbennett	Date: 6/18/2021
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):	AB2021-372	Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

WHATCOM COUNTY CONTRACT AMENDMENT

PARTIES:

Whatcom County
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

AND CONTRACTOR:
Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225

CONTRACT PERIODS:

Original and Amendments #1 through #3:
Amendment #4:

01/01/2021 – 06/30/2021
07/01/2021 – 12/31/2021

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Extend the duration and other terms of this contract for 6 months, as per the original contract “General Terms, Section 10.2, Extension”.
2. Replace Exhibit A – Scope of Work, to:
 - a. Remove services provided with CARES funding which ended on 6/30/2021;
 - b. Replace Washington State Department of Commerce Consolidate Homeless Grant rental assistance funding for chronically homeless families with children with 1406 funded rental assistance; and
 - c. Include Washington State Department of Commerce Emergency Solutions COVID-19 Grant Landlord Incentive guidelines – Section IV. (3)(a)
 - d. Update 1406 funding guidelines – Section IV. (14)
3. Replace Exhibit B – Compensation, to reflect the budget for the current contract period (07/01/2021 – 12/31/2021).
4. Funding for the extended contract period (07/01/2021 – 12/31/2021) is not to exceed \$930,003
5. Funding for the total contract period (01/01/2021 – 12/31/2021) is not to exceed \$2,324,075.
6. All other terms and conditions remain unchanged.
7. The effective start date of the amendment is 07/01/2021.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. 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 bind the party thereto.

APPROVAL AS TO PROGRAM: _____
Anne Deacon – Human Services Manager Date

DEPARTMENT HEAD APPROVAL: _____
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: _____
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

	Greg Winter, Executive Director	
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
--------------------------------------	------

CONTRACTOR INFORMATION:

Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225
360-734-5121
Greg.Winter@oppco.org

EXHIBIT “A” – Amendment #4
(SCOPE OF WORK)

I. Background

The annual Point in Time Count of homelessness conducted in January 2021, counted 859 people in Whatcom County who were experiencing homeless. Throughout the year, hundreds more face the prospect of losing their homes. The Whatcom Homeless Service Center (WHSC) was established in 2008 to serve as a centralized point of entry for homelessness prevention and re-housing services for Whatcom County residents. The WHSC implements programs and services identified in Whatcom County’s Plan to End Homelessness. The WHSC authorizes and coordinates service delivery among partner agencies.

The WHSC is modeled upon evidence-based approaches to homelessness diversion, permanent supportive housing and rapid re-housing (RRH). WHSC housing services work to shift the focus from reliance upon night-by-night emergency shelters and costly institutional facilities in meeting the needs of those experiencing or at risk of homelessness to diversion and permanent housing. By serving as a centralized coordinating system of access to homeless services and by transitioning homeless individuals and families as quickly as possible to permanent housing, WHSC will improve outcomes for homeless individuals and families and ensure more efficient use of public resources.

WHSC programs include both rental assistance and case management components. WHSC staff manages the Housing Pool list, authorizes and distributes rent subsidies to local landlords on behalf of participating clients, makes referrals to partner agencies for housing case management services, manages the Homeless Management Information Services (HMIS) data collection and reporting requirements, cultivates and maintains relationships with local landlords, and serves as liaison for homeless housing activities to the network of service providers and other community stakeholders.

Services will be provided to low-income and/or homeless individuals and households residing in Whatcom County. Individuals and households served must meet the eligibility requirements of the program funding sources as further referenced in Section IV. – Program Requirements.

II. Definitions

Diversion	Diversion can be the first response to resolving a homelessness episode by focusing on re-housing without a family entering a longer-term housing program. Diversion starts with problem-solving conversations to identify a household’s own strengths and resources, and services are tailored to meet each family’s most critical needs to quickly move into housing. Diversion services can include short-term/one-time financial support (i.e., deposit assistance, flex funding, etc.).
Housing Pool	Quasi wait list that serves clients waiting for housing services based on their needs and available resources instead of a first come, first served basis.
HMIS	Washington’s Homeless Management Information Services – A database used by housing service providers to collect and manage data gathered during the course of providing housing assistance to homeless people or households at risk of losing their housing.
Partner Agencies	Agencies that contract with Whatcom County for the delivery of housing case management services, in connection with the WHSC.
Permanent Supportive Housing Population	Chronically homeless individuals/households with significant barriers to permanent housing; will receive deep rent subsidies and intensive housing case management. Chronically Homeless Families (CHF) have one head of household that meets the definition of chronic homelessness (as stated in CHG Guidelines), and one or more dependents defined as minor children, disabled dependents, or full-time students. Household income may not exceed 50% of area median gross income as defined by HUD.

ESG-CV Prevention	An intervention providing financial assistance including rent, utilities, and case management, for households at imminent risk of or at-risk of, homelessness.
Rapid Re-housing (RRH)	An intervention in which families and individuals experiencing homelessness are rapidly connected to permanent housing through a tailored package of assistance that may include the use of time-limited financial assistance including rent and utilities, and targeted supportive services including case management.
ESG-CV Rapid Rehousing and Prevention; Other Financial Assistance	Inclusive of: rental application fees charge by the owner to all applicants; security deposits; last month's rent; moving costs; utility deposits; utility payments; landlord and volunteer incentives.
SHB 1406	SHB 1406 legislation passed in 2019 provides the ability for local communities to retain a portion of sales tax collections to use for rental assistance, operations of new units of supportive and affordable housing, and acquiring, rehabilitating, or construction of affordable housing, for residents with an income of 60% or less of the area median income.
Whatcom Homeless Service Center (WHSC)	WHSC programs provide (1) centralized coordinated system of access (2) re-housing of those who become homeless (3) supportive services promoting housing stability and self-sufficiency, and (4) data management and tracking information for people receiving homeless housing services in Whatcom County and according to the Washington State Department of Commerce HMIS data collection requirements. WHSC works in conjunction with Partner Agencies to operate all activities necessary to operate as a system.

III. Statement of Work

The Contractor will be responsible for programmatic and administrative services associated with the operation of the Whatcom Homeless Service Center. Administrative and programmatic services include all activities necessary to operate the WHSC as set forth in Sections 1 and 2, below:

1. Administrative Responsibilities

The Contractor will:

- A. Provide all Human Resource and administrative services to WHSC employees (e.g., payroll, office supplies and equipment, space rental, IT support, etc.).
- B. Perform all disbursement, accounting, financial management, and reporting functions necessary to manage the funds allocated to WHSC operations. Contractor will maintain a strong internal control system over rental subsidy disbursements to assure funds are used as intended by this contract. Contractor will maintain written policies and procedures describing how these transactions are processed.
- C. Support WHSC and other housing partners in the management of the HMIS, providing troubleshooting and technical assistance, as needed.
- D. Maintain all client financial and eligibility documentation as described/referenced in Exhibit E.
- E. Maintain all financial documentation as required in Exhibits B and E.
- F. Ensure that the processes and internal controls are operating as planned and make policy adjustments, as needed.

- G. Conduct program evaluation as directed by the Whatcom County Health Department to ensure WHSC programs are meeting the Whatcom County Plan to End Homelessness and subsequent Local Plan Updates.
- H. Send staff to trainings, conferences, and technical assistance events related to carrying out the functions of WHSC and the goals of Whatcom County's Plan to End Homelessness and subsequent Local Plan Updates.

2. Programmatic Services

The Contractor will:

- A. Manage a coordinated, centralized homeless housing intake system working collaboratively with Opportunity Council's Community Service Division and Northwest Youth Services intake staff.
- B. Maintain a Housing Pool, which includes prioritizing households for services according to need and available resources and managing a wait list.
- C. Determine and document client eligibility for WHSC rent subsidies and case management services based on funding source requirements.
- D. Refer eligible clients to partner agencies for housing case management services.
- E. Administer rental assistance – authorize and disburse subsidies based on housing assessment and determination of need and eligibility. Authorize and disburse emergency assistance per procedures as outlined in the WHSC Policies and Procedures Manual.
- F. Develop the local permanent housing inventory component of the homeless housing system – Search out new housing stock, cultivate and maintain relationships with participating landlords; provide housing search assistance to partner agencies as needed; work to create innovative housing models using best and promising practices as identified by the National Alliance to End Homelessness or other nationally recognized homeless housing organizations.
- G. Manage the community-wide HMIS data system in compliance with the standards set forth by the Washington State Department of Commerce.
- H. Provide guidance to the partner agency staff to ensure effective operations of the WHSC system; keeping partner agencies updated in policies and procedures, HMIS requirements, research and best practices related to homeless housing, specific program requirements, and confidentiality laws.
- I. Provide leadership to community stakeholders regarding activities focused on homelessness and housing stability.
- J. Compile and keep up-to-date WHSC Policies and Procedures Manual consistent with the Washington State Department of Commerce Consolidated Homeless Grant and the Emergency Solutions Grant-CV.
- K. Chair Whatcom County Coalition to End Homelessness meetings and sponsored activities in partnership with Whatcom County Health Department.
- L. Complete the Whatcom County Coalition to End Homelessness Annual Report (Point In Time Count Report). This annual report shall be completed and ready for distribution no later than June

1. An exception to this will be made in extenuating circumstances when the annual Point in Time Count is not required by the WA State Department of Commerce.

IV. Program Requirements

Under the terms of this contract, the Contractor will:

1. Comply with all Washington State Department of Commerce Consolidated Homeless Grant requirements, policies and procedures in the Consolidated Homeless Grant Guidelines including periodic updates to the Guidelines which can be accessed at: <http://www.commerce.wa.gov/serving-communities/homelessness/consolidated-homeless-grant/>
2. Comply with all of the Department of Housing and Urban Development (HUD) coordinated entry requirements as per the HUD Notice Establishing Additional Requirements for a Continuum of Care Centralized or Coordinated Assessment System regarding the development and implementation of coordinated entry. This Notice, under the authority of 24 CFR 578.7(a)(8), establishes new requirements that Continuums of Care (CoC) and recipients of CoC Program and Emergency Solutions Grant (ESG) Program funding must meet and relate to development and use of a coordinated entry system. This Notice can be accessed at: <https://www.hudexchange.info/resource/5208/notice-establishing-additional-requirements-for-a-continuum-of-care-centralized-or-coordinated-assessment-system/>
3. Comply with relevant State of Washington, Department of Commerce Emergency Solutions COVID-19 Grant guidelines, including periodic updates to the guidelines which can be accessed at: <https://deptofcommerce.app.box.com/s/s2w7o65zm4buhz2bk7t0n3femanl7tml> and <https://deptofcommerce.app.box.com/s/fsmf4pmwkroszjt702j1l9cfvkv5ixmq>
 - a. Per ESG-CV Guideline 3.3.1 Landlord Incentives funding may be used to pay for landlord incentives that are reasonable and necessary to assist households in obtaining housing.
 - i. Grantees may not use ESG-CV funds to pay landlord incentives an amount that exceeds three times the rent charged for the unit.
 - ii. Landlord incentives can include signing bonuses, security deposits, costs to repair damages, and extra cleaning fees.
 - iii. Grantee must maintain program records that document that program costs are reasonable.
4. Commit to ending homelessness in Whatcom County by:
 - a. Prioritizing unsheltered homeless households for services (as per CHG Guidelines)
 - b. Assessing each household's housing needs and facilitating housing stability with the goal of obtaining or maintaining a permanent housing (as per CHG Guidelines)
 - c. Employing a progressive engagement service model (as per CHG Guidelines)
 - d. Prioritizing households that are literally homeless when using diversion rent assistance
5. Comply with eligibility requirements for serving veterans as set forth in Whatcom County Code 2.150 and 2.152, and RCW 73.08.005 and incorporated into this contract by reference. Contractor shall determine eligibility based on Items A and B of WCC 2.150.025 and shall not have utilization of Item C for determining veteran eligibility. The point of contact for the Veteran's Assistance Fund is:
Elizabeth Harmon-Craig, Veterans Specialist

Whatcom County Health Department
360-778-6050
EHarmonC@co.whatcom.wa.us

6. Comply with eligibility requirements for serving people with rental assistance that are at risk of homelessness as set forth in Substitute House Bill 1406, and RCW 82.14.540, to include an area median income of 60% or less for those served.
7. Comply with Special Conditions of Commerce Grants incorporated herein as Exhibit E.
8. Comply with Special Terms and Conditions of Washington State Department of Health COVID-19 Local CARES Grant, incorporated herein as Exhibit G.
9. Comply with Business Associate Agreement incorporated herein as Exhibit D.
10. Comply with state confidentiality laws and regulations.
11. Ensure that all costs incurred comply with CHG Guidelines as specified in Section IV.(A.) and IV.(C.) above and Exhibit E.
12. Commit to reporting complete quality data that is timely, truthful and accurate (as per CHG Guidelines and HMIS User Agreement).
13. Consequences of non-compliance with CHG and ESG-CV Guidelines as per the WA State Department of Commerce:
 - a. If Commerce determines that a Grantee is failing to comply with Guidelines, Terms and Conditions, Commerce will notify Grantee that Grantee will receive technical assistance and be required to respond to a corrective action plan to address and remedy the non-compliance.
 - b. If the Grantee is still out of compliance after the technical assistance, Commerce may move the Grantee into a probationary period with a second corrective action plan and may reduce the grant total by 20%.
 - c. If the Grantee remains out of compliance after the probation period, Commerce may terminate the grant per the General Terms and Conditions TERMINATION FOR CAUSE.
14. 1406 Rental Assistance Guidelines:
 - a. 1406 will be used to fund rental assistance only for chronically homeless families with children in permanent supportive housing for households meeting 1406 eligibility criteria.
 - b. Funding is to be used to in accordance with the recommendations of the Whatcom County Housing Advisory Committee to pay rent on behalf of chronically homeless families with children for permanent supportive housing who are experiencing homelessness or are at-risk of homelessness.
 - c. Households must have an income of 60% or less of the area median income.
 - d. Rental assistance can be provided for up to 3 months per households, with the option to request extensions.
 - e. Case management services are not an allowable expense of this funding. Families will receive case management services funded by other sources.

V. Program Outcomes

The following are the expected outcomes of WHSC in conjunction with its partner agencies. These outcomes are for a calendar year period. The WHSC must ensure rental subsidies are available to support the expected numbers of households served as follows:

1. Re-Housing
 - A. At least 150 new households that have become homeless receive short term rent subsidies and case management.
 - B. Fewer than 15% of re-housing households will re-enter homelessness one year after stable exit from the program.
2. Permanent Supportive Housing Population
 - A. At least 62 households receive housing subsidies and case management.
 - a. Two units will be from Opportunity Council owned housing units.
 - B. Up to 10 chronically homeless (CH) families with children (FWC) will receive housing subsidies funded by 1406 funding designated specifically for permanent supportive housing for CH FWC. Case management for these families will be provided by the Opportunity Council Community Services Program.
 - C. At least 85% retain their housing for six months.
3. Emergency Shelter
 - A. At least 50 households will receive emergency shelter assistance.
 - B. At least 50% of those households are placed in permanent housing after receiving shelter services.
4. Veterans
 - A. At least 110 Veterans will receive housing subsidies and case management support. These outcomes will be achieved by leveraging additional funding resources.
 - B. Fewer than 15% of Veterans served will re-enter homelessness one year after stable exit from the program.
5. 1406 Funds
 - A. Up to 10 chronically homeless (CH) families with children FWC may receive rental assistance for permanent supportive housing to prevent or end homelessness.

VI. Reporting Requirements

1. The Contractor shall submit two quarterly reports in formats approved by the County showing the Contractor's progress toward achieving the outcomes identified above. Quarterly reports are due on April 30th, July 31st, October 31st, and January 31st.

The quarterly fund reports will include:

- A. Re-Housing:
 - i. # of households that have received short term rent subsidies and case management this quarter and year to date

- ii. # of households who re-enter homelessness after stably exiting from re-housing services
 - iii. # of households that are Veterans
 - iv. # and % of households who re-enter homelessness within one year after stably exiting from re-housing services
- B. Permanent Supportive Housing Assistance
 - i. # of households receiving housing subsidies and case management this quarter and year to date
 - ii. # of units will be from Opportunity Council owned housing units
 - iii. # and % who retain their housing for six months
- C. Permanent Supportive Housing for Chronically Homeless Families with Children
 - i. # of households receiving housing subsidies and case management this quarter and year to date
 - ii. # and % who retain their housing for six months
 - iii. # of households who re-entered homelessness after receiving PSH for CH FWC subsidies
- D. Emergency Shelter
 - i. # of households who received emergency shelter assistance this quarter and year to date
 - ii. # and % of households who received emergency shelter were placed in permanent housing
- E. Veterans
 - i. # of Veterans who received housing assistance this quarter and year to date
 - ii. # of Veterans who re-enter homelessness one y
 - iii. ear after stably exiting the program
 - iv. # of honorably discharged Veterans with at least 180 days of service provided housing assistance
 - v. # of honorably discharged Veterans with less than 180 days of service provided housing assistance
 - vi. # of general or under-honorably discharged Veterans with at least 180 days of service provided housing assistance

2. The quarterly coordinated entry reports will include the following measures and targets:

- A. Number of households (HHs) added to Housing Pool (HP): Annual Target 600
- B. Number of households (HHs) added to Housing Pool (HP) this quarter:
- C. Number of HHs removed from HP due to successful project referral: Annual Target 450
- D. Number of HHs removed from HP due to inactivity: Annual Target 150
- E. Of all HHs removed from HP over reporting quarter, the percent that accepted a project referral: Annual Target 75%
- F. Number of partner agency referral requests made for households that included minors: Annual Target 150

- G. Number of partner agency referral requests made for households that did not include minors: Annual Target 200
- H. Number of partner agency referral requests made during this quarter (total): Annual Target 350
- I. Mean number of days to complete referral requests for households that include minors: 3
- J. Median number of days to complete referral requests for households that include minors: 1
- K. Mean number of days to fill referral for households that do not include minors: 4
- L. Median number of days to fill referral for households that do not include minors: 1
- M. Number of new staff trained to conduct intake assessments: 20
- N. Number of multi-agency housing partner meetings to improve function of local homeless/housing system with participation from WHSC staff:36
- O. Number of community stakeholder meetings with participation from WHSC staff: 36
- P. Amount of rental assistance money dispersed on behalf of partner agency's low-income households: \$444,651
- Q. Cumulative number of homeless households provided with emergency shelter in the form of motel stays between July 1, 2021 – December 31, 2021: 45
- R. Dates and descriptions of community or partner meetings with significant input from WHSC staff

Additionally, projects falling under specific intervention types and funded by the Consolidated Homeless Grant (CHG) will be expected to meet or make progress meeting the System Performance Measures and benchmarks as required by the Washington State Department of Commerce. System-wide performance measures and benchmarks specific to intervention type (HMIS Project type) are provided on the CHG System Performance Measures Chart on our website at: http://www.whatcomcounty.us/910/Housing_Program. Changes to the CHG System-wide Mandatory Performance Measures may be made without contract amendment. In the event of an update, the County will provide email notification with a link to the current chart on the County's website. CHG Grantees must meet or demonstrate progress towards established performance measure targets by meeting the indicated benchmarks. Targeted Prevention performance measures are exempted from the Department of Commerce's "Consequences of Non-Compliance" listed in IV.(K.) above wherein "Grantee" refers to the County being the CHG recipient.

**EXHIBIT "B" – Amendment #4
(COMPENSATION)**

- I. **Budget and Source of Funding:** Funding for this contract may not exceed \$930,003. The source of funding is local document recording fees, Washington State Department of Commerce Consolidated Homeless and Emergency Solutions COVID-19 (CFDA 14.231) Grants, the Veterans Assistance Fund, and HB 1406. COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract period (*01/01/21 – 06/30/21) is as follows:

Consolidated Homeless Grant Funding:			
Line Item		Documentation Required with Invoice	Budget
Housing Retention Manager		Expanded GL Report for the Period	\$20,237
Housing Resource Coordinator			\$36,879
Project Manager			\$21,146
HMIS Coordinator			\$12,875
50% Fringe Benefits Rate		Expanded GL based on federally approved fringe rate	\$45,569
Rental Assistance		Expanded GL Report for the period plus documentation including client ID, payee, and amount of payment	\$32,000
CHG Subtotal:			\$168,706
Document Recording Fee (DRF) Funding:			
Direct Program Supplies, Telephone, Postage and Printing		Expanded GL Report for the Period	\$2,700
Travel & Training		Ground transportation, 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. Receipts for registration fees or other documentation of professional training expenses. Lodging and meal costs for training are not to exceed the U.S. GSA Domestic Per Diem Rates (www.gsa.gov), specific to location and must follow federal guidelines. Receipts for meals are not required. For mileage, include name of traveler, dates, start and end points, and purpose. Receipts required for transportation costs, registration fees, etc.	\$1,000
Rental Assistance		Expanded GL Report for the period plus documentation including client ID, payee, and amount of payment	\$35,000
DRF Subtotal:			\$38,700
Veteran's Funding:			
Rental Assistance – Veteran's Funds		Expanded GL Report for the period plus documentation including client ID, payee, and amount of payment	\$34,151
Veteran's Fund Total			\$34,151
ESG COVID-19 Funding:			
RRH & Prevention Rental Assistance:			
Rental assistance, rental arrears, late fees		Expanded GL Report for the period plus documentation including client ID, payee, purpose and amount of payment.	\$310,000
RRH & Prevention Other Financial Assistance (excludes volunteer incentives):			\$100,000
Rent fees, security deposits, last month's rent	\$40,000		
Moving costs	\$10,000		
Utility deposits & payments	\$40,000		

Landlord incentives*	\$10,000	*Landlord incentives must include a signed explanation confirming why the incentive was reasonable and necessary.	
Total RRH & Prevention Other Financial Assistance			
Housing Stability Case Management:			
Case Manager	\$6,667		\$10,000
50% Fringe Benefit Rate	\$3,333		
Total Housing Stability Case Management			
HMIS Coordination:			
HMIS Coordinator	\$2,667		\$4,000
50% Fringe Benefit Rate	\$1,333		
Total HMIS Coordination			
Emergency Shelter Operations:			
Motel Vouchers (ESG)			\$140,919
ESG-CV Subtotal			\$564,919
1406 Funding:			
Rental Assistance for Families with Children (including for PSH FWC CH)	Expanded GL Report for the period plus documentation including client ID, payee, and amount of payment	\$25,000	
1406 Funding Subtotal:		\$25,000	
Indirect and Admin. Expenses:			
CHG Funding (12%)		\$20,245	
DRF Funding (12%)		\$4,644	
ESG-CV Funding (Admin. 7%)		\$39,544	
DRF Funding to cover ESG-CV indirect shortfall (5% of ESG-CV direct costs)		\$28,246	
Veteran’s Fund (Admin. 12%)		\$4,098	
1406 Indirect (Paid by local document recording fees @ 7%)		\$1,750	
TOTAL BUDGET:		\$930,003	

* During this contract period, a minimum of 36% of Rental Assistance – CHG Funds - must be paid out to for-profit or nonprofit private landlords, as required by the Washington Department of Commerce.

All allocated direct costs must be based on approved cost allocation plan.

**Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County. Indirect and fringe benefit cost rates shall not exceed the current federally approved rates.

II. Invoicing

1. The Contractor shall submit invoices to (include contract/PO #) HL-BusinessOffice@co.whatcom.wa.us.
2. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include the items identified in the table above. Send invoice-related communication to Barbara Johnson-Vinna.
3. The Contractor shall submit the following monthly deliverables on time with truthful, accurate information:

- a. 2021-23 Report from HMIS included with the Invoice (refer to related section of the CHG Guidelines addressing this requirement).
4. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

This is not research and development.

5. 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.

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



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-338

File ID:	AB2021-338	Version:	1	Status:	Agenda Ready
File Created:	06/08/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Opportunity Council to provide housing case management services, in the amount of \$262,341

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Opportunity Council – Housing Case Management Contract

DATE: June 8, 2021

Attached is a contract between Whatcom County and Opportunity Council for your review and signature.

- **Background and Purpose**

Housing Case Managers provide assistance to households to access housing, improve housing stability and reduce homelessness through joint efforts between the Whatcom Homeless Service Center and the Community Services Divisions of the Opportunity Council. The purpose of this contract is to provide case management and supportive services to those individuals and households experiencing or at-risk of homelessness, or who are newly housed, in order to improve housing stability and reduce homelessness in Whatcom County.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$262,341, is provided by local document recording fees and the Washington State Department of Commerce Consolidated Homeless and Emergency Solutions COVID-19 Grants (CFDA 14.231). These funds are included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract, awarded as a result of RFP 21-04; however, funding for these services has been provided through previous contracts between Whatcom County and Opportunity Council since 2011. This contract includes no significant changes from the contract that is currently in place (WC Contract #201611025).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855040 Housing		
Contract or Grant Administrator:			Barbara Johnson-Vinna		
Contractor's / Agency Name:			Opportunity Council		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	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?		If yes, grantor agency contract number(s):		CFDA#:	14.231
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>					
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		202008014 / 201907017	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>					
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	122200 / 122800/122300
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		21-04			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>			
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> 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: <ol style="list-style-type: none"> Exercising an option contained in a contract previously approved by the council. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. Bid or award is for supplies. Equipment is included in Exhibit "B" of the Budget Ordinance 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. 			
\$	262,341				
This Amendment Amount:					
\$					
Total Amended Amount					
\$					
Summary of Scope: This contract provides funding for case management services in association with the Whatcom Homeless Service Center in an effort to improve housing stability and reduce homelessness in Whatcom County.					
Term of Contract:		6 Months		Expiration Date: 12/31/2021	
Contract Routing:	1. Prepared by:		JT		Date: 03/31/2021
	2. Health Budget Approval:		KR/JG		Date: 05/19/2021
	3. Attorney signoff:		RB		Date: 05/27/2021
	4. AS Finance reviewed:		M Caldwell		Date: 6/8/21
	5. IT reviewed (if IT related):				Date:
	6. Contractor approved:				Date:
	7. Submitted to Exec.:				Date:
	8. Council approved (if necessary):		AB2021-338		Date:
	9. Executive signed:				Date:
	10. Original to Council:				Date:

CONTRACT FOR SERVICES
Between Whatcom County and Opportunity Council

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

General Conditions, pp. 3 to 13,
Exhibit A (Scope of Work), pp. 14 to 19,
Exhibit B (Compensation), pp. 20 to 21,
Exhibit C (Certificate of Insurance), p. 22,
Exhibit D (Flex Fund Guidelines), pp. 23 to 24,
Exhibit E (Special Terms & Conditions of Commerce Grants), pp. 25 to 30,
Exhibit F (Certification Regarding Lobbying).

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

The term of this Agreement shall commence on the 1st day of July, 2021 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 housing case management services** as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement is estimated at \$262,341. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Opportunity Council
1111 Cornwall Avenue
Bellingham, WA 98225

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.

Greg Winter, Executive Director

Recommended for Approval:

Date _____

Date _____

Date _____

Accepted for Whatcom County:

Greg_winter@oppco.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared,

constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract.

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.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.
- m. **Insurance for Subcontractors.** If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.

- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Barbara Johnson-Vinna, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail

transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

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

Opportunity Council
Greg Winter, Executive Director
1111 Cornwall Avenue
Bellingham, WA 98225
Greg_winter@oppc.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

- 37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

According to the annual Point In Time Count of homeless persons conducted in January 2021, at least 859 people in Whatcom County were homeless. Throughout the year, more may face the prospect of losing their homes. Whatcom County's Plan to End Homelessness provides a blueprint for how our community will work together to prevent and end homelessness. The provision of housing assistance and case management services are key strategies of the Plan.

Housing case management under Whatcom Homeless Service Center (WHSC) partnership includes both rental subsidy and housing case management components. WHSC staff determine client eligibility for services and authorize and distribute rent subsidies to local landlords on behalf of participating clients, make referrals for case management to partner agencies, and coordinate required data collection efforts.

Through this contract, Opportunity Council will serve as one of the WHSC partner agencies providing Housing Pool case management and other housing case management services. The purpose of this contract is to provide case management for individuals and families experiencing homelessness or at risk of homelessness in order to improve housing stability and reduce homelessness in Whatcom County.

II. Definitions

HMIS	Washington's Homeless Management Information System Database
Whatcom Homeless Service Center (WHSC)	WHSC programs provide (1) centralized coordinated system of access, (2) targeted prevention assistance to reduce the number of households that become homeless, (3) re-housing of those who become homeless, (4) supportive services promoting housing stability and self-sufficiency, and (5) data management and tracking information for people receiving homeless housing services in Whatcom county and according to Washington State Department of Commerce HMIS data collection requirements.

III. Statement of Work

The Contractor will provide housing case management services. Housing case management activities include arrangement, coordination, monitoring, and delivery of services related to meeting the housing needs of households and helping them obtain housing stability. Services and activities include:

1. Developing, securing, coordinating, and retaining services and suitable housing. Services include but are not limited to:
 - a. Tenant counseling;
 - b. Assisting individuals and households with understanding leases;
 - c. Securing utilities;
 - d. Making moving arrangements;
 - e. Representative payee services concerning rent and utilities;
 - f. Mediation and outreach to property owners related to locating or retaining housing;
 - g. Monitoring and evaluating household progress;
 - h. Assuring that household rights are protected;

- i. Developing an individualized housing and service plan, including a path to permanent housing stability subsequent to assistance.
2. Intake and Referral – People who present to Opportunity Council’s Community Resource Center in a housing crisis will receive a low barrier, problem-solving conversation with an Intake and Referral Specialist. Those Housing intake services provided to collect client information and assess eligibility for housing programs. Services will be provided to low-income and/or homeless individuals and households residing in Whatcom County. Individuals and households served shall have incomes at or below 50% Area Median Income (AMI).
3. Housing Pool (HP) – HP case management services are designed to make persons who are homeless or at imminent risk of homelessness aware of available programs and provide them with a point of access to housing services. HP case management provides supportive services designed to assist people waiting for housing to be able to move rapidly into permanent housing by helping clients stabilize, identify barriers to housing, and engage in activities required to remove those barriers. HP case management diverts people from entering the homeless shelter system whenever possible.
4. Diversion – Diversion can be the first response to resolving an episode of homelessness by focusing on re-housing a family without their entering a longer-term housing program. Diversion starts with problem-solving conversations to identify a household’s own strengths and resources. Services are tailored to meet each family’s most critical needs to quickly move into housing. Diversion services can include short-term/one-time financial support (i.e., deposit assistance, flex funding).
5. Deposit Assistance - Single adults experiencing homelessness will be assisted with deposit/move-in assistance when they have found housing on their own. This light touch case management will serve people awaiting assistance on the Housing Pool, attending Housing Lab, or applying for assistance through the Community Resource Center. Without the facilitated move-in assistance with case management, the result can be long term homelessness leading to deterioration of health and overall well-being of these individuals.
6. Interim Housing – Emergency shelter and supportive services to homeless families with minor children in their custody is prioritized for those in the most desperate situations. With the onset of the COVID pandemic there has been increasing demand for shelter services in motels stays and in short-term housing offered by Interfaith Coalition. Case management focuses on ensuring basic needs are met and development of a plan to obtain and maintain permanent housing.
7. Rapid Re-housing – These services focus on family homelessness and prioritize those living in shelters, motels, vehicles, or are unsheltered. Rapid Rehousing is an intervention proven to end family homelessness. Case management adhering to a progressive engagement approach and short to medium term rental subsidies for families experiencing homelessness are offered to meet the needs of families to enable them to achieve housing stability.
8. Permanent Supportive Housing – Households served with permanent supportive housing have a history of chronic homelessness or have a combination of high barriers often including mental health, active or history of addiction, and medical, developmental and physical disabilities. Long-term housing retention and personal wellness is supported through a Housing-First model, employing a harm reduction and person-centered approach.
9. Households living in units owned or master-leased by the Opportunity Council.

IV. Program Outcomes

During this contract period (07/01/2021 – 12/31/2021), the housing case management services provided by the Contractor will deliver the following outcomes:

1. At least 75 households will receive HP case management.

2. Total number of households in motels that received short-term housing case management (no specific target)
3. At least 30 families with children will receive diversion case management.
4. At least 10 households in PSH will receive case management.
5. At least 8 households receiving Skagit HOME TBRA rental assistance will receive case management.
6. At least 20 – 22 households will receive case management funded with Emergency Solutions COVID-19 Grant (ESG-CV) while in motels for emergency shelter; 12- – 16 of these households will transition from motel-based emergency shelter to permanent housing during the period of 7/1/21-12/31/21. Households must meet eligibility criteria of the ESG-CV.
7. Median number of days in case management prior to being housed will be 75.
8. Mean number of days in case management prior to being housed will be 80.
9. At least 85% of families that reached a 12-month period of time since exiting the Ending Family Homelessness Project or Rapid ReHousing case management will have retained stable housing.
10. Of the households in PSH, at least 90% will be stably housed (including exits from PSH to permanent housing).
11. At least 40 WCHD funded case management households (from ES, Diversion, EFH, Housing Pool, TBRA RRH or unstably housed, and EFH) will achieve housing stability.
12. At least 15 households will be housed from the Housing Pool with deposit/move-in assistance (this is contingent upon availability of rental assistance and referrals).
13. At least eight (8) unduplicated households will be stably housed with EFH RRH while receiving case management.
14. At least 20 unduplicated households will receive assistance funded through and eligible for the ESG-CV.

V. Additional Requirements

The Contractor will:

1. Comply with all State of Washington Department of Commerce Special Terms and Conditions of Commerce Grants, herein incorporated as Exhibit D.
2. Comply with all State of Washington Department of Commerce Consolidated Homeless Grant (CHG) requirements, policies and procedures in the CHG Guidelines including periodic updates to the Guidelines which can be accessed at the following link:
<https://deptofcommerce.app.box.com/s/4d1ilui45uqljmhlseufez4flxqv1q6b>
 - a. Commit to ending homelessness in Whatcom County, per the CHG Guidelines, by:
 1. Prioritizing unsheltered homeless households for services.
 2. Assessing each household's needs and facilitating housing stability with the goal of obtaining or maintaining permanent housing.
 3. Employing a progressive engagement service model.
 4. Prioritizing households likely to become homeless when using prevention rental assistance.
 - b. Ensure that all costs incurred comply with CHG Guidelines.
 - c. Commit to reporting complete quality data that is timely, truthful and accurate (per CHG Guidelines and HMIS User Agreement).

- d. Consequences of non-compliance with CHG Guidelines, as per the Department of Commerce, include:
 1. If Commerce determines that a Grantee is failing to comply with the Guidelines, Terms and Conditions, Commerce will notify Grantee that Grantee will receive technical assistance and be required to respond to a corrective action plan to address and remedy the non-compliance.
 2. If the Grantee is still out of compliance after the technical assistance, Commerce may move the Grantee into a probationary period with a second corrective action plan and may reduce the grant total by 20%.
 3. If the Grantee remains out of compliance after the probation period, Commerce may terminate the grant per the General Terms and Conditions TERMINATION FOR CAUSE.
3. Comply with relevant State of Washington Department of Commerce Emergency Solutions COVID-19 Grant guidelines, including periodic updates to the guidelines, which can be accessed at the following links:

<https://www.commerce.wa.gov/wp-content/uploads/2020/06/Commerce-ESG-CV-Overview-.pdf> and <http://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-esg-guidelines-2017-2019.pdf>
4. Participate in HMIS data collection efforts as directed by the WHSC; including HMIS training, HMIS data entry, updating client data as necessary, and exiting clients from HMIS. Services which must be inputted into HMIS include (but are not limited to) financial services – including deposits, rental payments, and completed home visits.
5. Comply with the following HIP referral procedure. When Contractor staff believes a referral from the HIP is not a good fit for their program, a situation that should be rare, the following procedure must be followed:
 - a. Contractor will submit a written description of the situation that justifies returning the client to the HIP.
 - b. An in-person case conference must be scheduled within five days of request to return a referral. The case conference will include Contractor staff, WHSC housing referral specialist, and HIP case management services coordinator (or designee).
 - c. The course of action mutually agree to at the case conference will be recorded in writing, constituting a binding agreement.
 - d. As the parties to this contract learn more about referral success factors, procedures may be amended accordingly.
6. Promote public health in homeless housing and preserve the safety and stability of available housing stock for homeless housing by:
 - a. Informing clients/tenants of the importance of upholding safety and health in homeless housing, and of preserving continued access to housing by our homeless housing system.
 - b. Informing clients/tenants that they may be expected to participate in cleaning and decontaminating their housing unit when necessary for health reasons.
 - c. Informing clients/tenants that damages to their unit may result in eviction and loss of the unit in the future for our homeless housing system.
 - d. Informing prospective tenants that they need to maintain a safe and clean apartment in advance of receiving housing and periodically after they are in housing.
 - e. In scattered sites, master lease, public housing, and staffed housing programs, case managers will work with the client/tenant to address the issues of health and safety that arise,

including that of suspected methamphetamine use. The WCHD will provide case managers with free and confidential technical assistance on effective methods for cleaning apartment units that have been contaminated, whenever requested.

- f. Documenting in each client file that these expectations were communicated to the client/tenant.
- 7. Require professional development training for direct service staff and supervisors.
- 8. Attend Whatcom County Coalition to End Homelessness meetings and sponsored activities.
- 9. Attend meetings and events coordinated by WHSC.

VI. Reporting Requirements

1. The Contractor shall submit quarterly reports* to the WCHD utilizing HMIS data by using the quarterly reporting template accessed on the County website, as noted below. Reports will demonstrate the Contractor's progress toward achieving the program outcomes identified above. Quarterly reports are due on April 15, July 15, October 15, and January 15.

*Contractors will be notified via email of updates to quarterly reporting templates. Current reporting templates will be posted on the Whatcom County Health Department Housing Program website which may be accessed at:

<https://www.whatcomcounty.us/DocumentCenter/View/36907/Case-Management-Report>

2. Reports will include data for only those clients served under this contract and include:
 - a. Number of households that received HP case management this quarter.
 - b. Number of households that received short-term housing (excluding motels and transitional housing) case management this quarter (carry-over in Q1, new thereafter).
 - c. Number of households that received short-term housing case management this quarter in motels (carry-over in Q1, new thereafter).
 - d. Number of FWC that received diversion case management this quarter (carry-over in Q1, new thereafter).
 - e. Total number of households in PSH that received case management during the quarter (carry-over in Q1, new thereafter).
 - f. Number of households that received Skagit HOME TBRA served with case management this quarter.
 - g. Median number of days in case management prior to being housed this quarter.
 - h. Mean number of days in case management prior to being housed.
 - i. For families that reached a 12-month period of time in the quarter since exiting the Ending Family Homelessness Project or RRH case management, the % that retained stable housing for those 12 months.
 - j. Of the households that were in PSH at the beginning of the quarter, the % that remained housed at the end of the quarter. Exists to stable housing are included in housing retention.
 - k. Number of WCHD funded case managed households (from ES, Diversion, EFH, HP, TBRA RRH or unstably housed) that achieved housing stability this quarter.
 - l. Number of households directly from the HP with deposit/move-in assistance (contingent upon rent assistance and referrals).

- m. Unduplicated number of households that become stably housed with EFH RRH that received case management during this quarter.
- n. Unduplicated number of households that received assistance funded thorough and eligible for, ESG-CV.

Additionally, projects falling under specific intervention types and funded by the CHG will be expected to meet or make progress toward the System-wide Performance Measures and benchmarks, as required by the Washington State Department of Commerce. System-wide performance measures and benchmarks specific to intervention type (HMIS project type) are provided on the CHG System Performance Measures Chart, located at: <http://whatcomcounty.us/910/Housing-Program>.

Changes to the CHG System-Wide Performance Measures may be made without contract amendment. In the event of an update, the County will provide email notification with a link to the current chart on the County's website. CHG Grantees must meet or demonstrate progress towards established performance measure targets by meeting the indicated benchmarks. Targeted prevention performance measures are exempted from the 'Consequences of Non-Compliance' stated above in Section V.(1)(d.) as per Commerce, wherein 'Grantee' refers to the County being the CHG recipient.

VII. Flex Funding

Flex funds must follow the Guidelines established by the County and be reported on the spreadsheet provided by the County (Exhibit D) and signed by an authorized agency signatory. In addition, all flex funds must be accompanied by receipts.

Exhibit B
(COMPENSATION)

- I. **Source of Funding and Budget:** The source of funding for this contract, in an amount not to exceed \$262,341, is local document recording fees, and the Washington State Department of Commerce Consolidated Homeless and Emergency Solutions COVID-19 Grants (CFDA 14.231). COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

Cost Description*	Documents Required with Invoices	Budget
Personnel – <i>funded by document recording fees</i> (salary, taxes, benefits): Housing Case Managers Case Management Coordinator Homeless Housing Programs Manager Information & Referral Specialist	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$80,000
Communications (does not include system upgrades or capital costs)	GL Detail	\$1,050
Printing & Duplicating		\$750
Office Equipment & Supplies		\$1,000
Postage		\$125
Mileage	Mileage log to include: name of staff member, date of travel, starting point and destination of travel, number of miles traveled, federal reimbursement rate (per www.gsa.gov) and a brief description of the purpose of travel	\$1,500
Travel/Training – 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.	Ground transportation, 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, brief description of the purpose. Receipts for registration fees or other documentation of professional training expenses. Receipts for meals are not required.	\$1,250
Flex Funds	Flex Fund Spreadsheet and copies of receipts	\$500
Document Recording Fees Direct Costs SUBTOTAL		\$86,175
Document Recording Fees Indirect** @ 12%		\$10,341
Personnel – <i>funded by CHG</i> (salary, taxes, benefits): Case management and support staff	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$89,500
Consolidated Homeless Grant Direct Costs SUBTOTAL		\$89,500
Consolidated Homeless Grant Indirect** @ 12%		\$10,740
Personnel – <i>funded by ESG-CV</i> (salary, taxes, benefits): Case Managers (2 FTEs – services delivered to ESG-CV eligible clients only)	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$58,558
Emergency Solutions Grant (COVID) Direct Costs SUBTOTAL		\$58,558
Emergency Solutions Grant (COVID) Indirect** @ 7%		\$4,099
Document Recording Fees paid on direct costs (in excess of 7% for ESG-CV costs @ 5%)		\$2,928
TOTAL BUDGET (7/1/2021 – 12/31/2021)		\$262,341

*Changes to the line item budget that exceed 10% of the line item must be approved in writing by the County.

**Indirect costs shall not exceed the current federally approved rate.

II. **Invoicing:**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.
2. The Contractor shall submit invoices to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The county may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/4/2021

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 Hub International Northwest LLC 110 Unity St. Bellingham WA 98225		CONTACT NAME: PHONE (A/C, No, Ext): 360-647-9000 FAX (A/C, No): 360-734-8496 E-MAIL ADDRESS: now.bellinghaminfo@hubinternational.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Philadelphia Indemnity Insurance Company	
		INSURER B: Lloyd's of London	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 1291134237

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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	PHPK2282033	6/1/2021	6/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	PHPK2282033	6/1/2021	6/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB770484	6/1/2021	6/1/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			PHPK2282033	6/1/2021	6/1/2022	PER STATUTE <input checked="" type="checkbox"/> OTH-ER <input type="checkbox"/> Stop Gap E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability Claims Made			ENP0003443-03	6/1/2021	6/1/2022	Limit Retention Aggregate 1,000,000 5,000 2,000,000

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

Per policy forms and conditions: General Liability Deluxe Endorsement Human Services form PI-GLD-HS (10/11); Primary and Non-Contributory Additional Insured form CG 20 26 04 13; and Commercial Automobile Elite Endorsement form PI-CA-001 (09/15).
Whatcom County is named as additional insured. This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

CERTIFICATE HOLDER

CANCELLATION

Whatcom County 509 Girard St 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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“EXHIBIT D”
WHATCOM COUNTY FLEX FUNDS GUIDELINES

“Flex funds” are funds that may be used at the discretion of the Contractor, following the policies described below, to purchase goods or services directly related to the service needs of the Contractor’s clients, when no other funding source is available. **Such goods or services must be reasonable and necessary to meet a client’s emergent service needs or contribute to the stabilization or self-sufficiency of the client.**

Allowable Costs: Allowable uses of client-specific expenditures of flex funds include the following:

- Clothing
- Food
- Housing/rental assistance
- Bus passes or taxi fare
- Car repairs
- Driver’s license or ID card fees
- Educational or training program registration fees
- Household supplies, including furniture
- Medications
- Health care
- Other, as approved by Whatcom County

Limitations: Flex fund expenditures must be within the allowable criteria established by the County, as identified above, must be based upon the service needs as documented in the client’s individual service plan, and must have no other funding available from any other source.

Flex funds distributed to any one client cannot exceed \$500 per year, except with written authorization from the County. No flex fund disbursements are to be made directly to the client but rather will be made on behalf of a client.

Documentation: Requests for reimbursement of flex funds must include the attached form including the following:

- A. The person or organization funds were paid to.
- B. Date of transaction.
- C. A list of the goods and/or services purchased.
- D. The cost of the goods and/or services purchased.
- E. The initials of the client and/or unique identifying number of the client for whom the goods and/or services were purchased.
- F. The total amount of flex funds distributed to the client during the year.
- G. The service need addressed by the expenditure.
- H. Accompanying invoices and/or receipts.
- I. Evidence of administrative review of expenditures

See Attached Form

Contractor:			Contract:			Period:		
Whatcom County Health Department Flex Fund Documentation								
Paid To *	Date	Cost	Goods/Services Purchased	Client ID	Total \$ To Client this Year	Service Need	No Other Funding Available	Administrative Review
* ATTACH RECEIPTS FOR EACH PURCHASE								

“Exhibit E”
(Special Terms and Conditions of Commerce Grants –
COVID 19 ESG-CV – CFDA #14.231 and Consolidated Homeless Grant)

The funds allocated for services performed under this grant are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are liable for claims or damages arising from the Contractor's performance of this subgrant.

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. “Grant” or “Agreement” means the entire written agreement between COMMERCE and the Grantee, 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. “Grantee” shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- 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. “Subgrantee/Subcontractor” shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms “subgrantee/subcontractor” refers to any tier.
- H. “Subrecipient” shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

2. ACCESS TO DATA

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

3. ACKNOWLEDGMENT OF FEDERAL FUNDS

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 Grant No. E-20-DW-53-0001 awarded by U.S. Department of Housing and Urban Development (HUD) as a supplemental appropriation through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the HUD. Grant funds are administered by the Housing Assistance Unit in the Community Services and Housing Division, Washington State Department of Commerce.”

3. ALL WRITINGS CONTAINED HEREIN

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

4. AMENDMENTS

This Grant 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. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35

The Grantee must 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.

6. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

6. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee 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 Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

7. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. “Confidential Information” as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as “confidential” by COMMERCE;
- ii. All material produced by the Grantee that is designated as “confidential” by COMMERCE; and
- iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant 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 Grantee 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 Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee 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.

8. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation in the Ethics of Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Grantee as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed in the "Disputes" clause of this contract.

9. COPYRIGHT

Unless otherwise provided, all Materials produced under this Grant 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 Grantee 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 Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee 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 Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, 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 Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

10. DUPLICATE PAYMENT

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

11. GOVERNING LAW AND VENUE

This Grant 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.

12. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, 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 contract. "Claim" as used in this contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

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

13. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

14. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

15. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

16. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501-1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

17. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Grantee's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
 - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - iii. Positive efforts shall be made to use small and minority-owned businesses.
 - iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - v. Contracts shall be made with only reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
 - vii. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection
 - 2) The basis for the cost or price
 - 3) Justification for lack of competitive bids if offers are not obtained
 - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.

- D. Contractor and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

18. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE'S name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

19. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, 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 Grantee 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 Grant.

20. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant 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 Grant.

The Grantee 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 Grant, 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.

21. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

22. RIGHT OF INSPECTION

The Grantee shall provide right of access to its facilities to COMMERCE, or of 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 Grant.

23. 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 Grant and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

24. SEVERABILITY

The provisions of this Grant 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 Grant.

25. SUBGRANTING/SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee 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 Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall

appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee'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.

26. SITE SECURITY

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.

27. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

28. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant.

All reference to the Grantee under this clause shall also include Grantee's employees, agents, or Subgrantees/Subcontractors.

29. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

"Exhibit F"
(CERTIFICATION REGARDING LOBBYING)

The undersigned 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 office or employee of an 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 entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, and cooperative agreements) and that all subrecipients 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, title 31, 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.

Agency Name: Opportunity Council

Authorized Representative: Greg Winter, Executive Director

Signature: _____

Date: _____



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-344

File ID:	AB2021-344	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and the North Sound Accountable Communities of Health to supervise Whatcom Unified Command's (WUC) Volunteer Branch in the amount of \$8,000 for a total amended contract amount of \$63,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Amendment

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: North Sound Accountable Communities of Health (ACH) – COVID-19 Whatcom Unified Command (WUC) Support Services Amendment #3
DATE: June 11, 2021

Attached is a contract amendment between Whatcom County and North Sound ACH for your review and signature.

▪ **Background and Purpose**

The North Sound ACH has provided volunteer and strategic planning support services to Whatcom County Unified Command during the COVID-19 pandemic. ACH's staff have provided supervision of WUC's Volunteer Branch and coordinated COVID-19 modeling and strategic planning efforts between WUC and the Health Department. The purpose of this amendment is to extend the contract through September 30, 2021 and increase funding to support the extended contract period.

▪ **Funding Amount and Source**

Funding for this contract period (02/01/2021 – 09/30/2021) is not to exceed \$23,000 and funding for the entire contract period (06/01/2020 – 09/30/2021) is not to exceed \$63,000. Funds under this contract are made available by grants awarded by the US Department of Treasury and 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, passed through the Washington State Department of Health Epidemiology & Laboratory Capacity Grants (CFDA 93.323). These funds are included in the 2021 budget. Council approval is required as additional funding increases the approved budget by more than 10%.

Please contact Erika Lautenbach, Director at 360-778-6005 (ELautenb@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
202007047 – 3

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8510 Administration / 851000 Administration	
Contract or Grant Administrator:		Erika Lautenbach	
Contractor's / Agency Name:		North Sound Accountable Communities of Health	

Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:	202007047	

Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	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?	If yes, grantor agency contract number(s):	CFDA#:	93.323
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

Is this contract grant funded?	If yes, Whatcom County grant contract number(s):	201801023
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):	Contract Cost Center:	660480
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

Is this agreement excluded from E-Verify?	No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>
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If YES, indicate exclusion(s) below:

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

Contract Amount:(sum of original contract amount and any prior amendments):	<p>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:</p> <ol style="list-style-type: none"> 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.
\$ 55,000	
This Amendment Amount:	
\$ 8,000	
Total Amended Amount:	
\$ 63,000	

Summary of Scope: This contract provides funding for Whatcom Unified Command strategic planning support and volunteer supervision services.

Term of Contract:	16 Months	Expiration Date:	09/30/2021
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Contract Routing:	1. Prepared by:	JT	Date:	05/20/2021
	2. Health Budget Approval	KR/JG	Date:	06/08/2021
	3. Attorney signoff:	RB	Date:	06/10/2021
	4. AS Finance reviewed:	M Caldwell	Date:	6/9/21
	5. IT reviewed (if IT related):		Date:	
	6. Contractor signed:		Date:	
	7. Submitted to Exec.:		Date:	
	8. Council approved (if necessary):	AB2021-344	Date:	
	9. Executive signed:		Date:	
	10. Original to Council:		Date:	

WHATCOM COUNTY CONTRACT AMENDMENT

PARTIES:

Whatcom County
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

AND CONTRACTOR:

North Sound Accountable Communities of Health
PO Box 4256
Bellingham, WA 98227

CONTRACT PERIODS:

Original: 06/01/2020 – 12/31/2020

Amendment #2: 02/01/2021 – 06/30/2021

Amendment #1: 01/01/2021 – 06/30/2021

Amendment #3: 07/01/2021 – 09/30/2021

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Update Exhibit C – Additional Compensation, to reflect an increase of \$8,000 for the extended contract period.
2. Funding for this contract period (02/01/2021 – 09/30/2021) is not to exceed \$23,000.
3. Funding for the total contract period (06/01/2020 – 09/30/2021) is not to exceed \$63,000.
4. All other terms and conditions remain unchanged.
5. The effective start date of the amendment is 07/01/2021.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. 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 bind the party thereto.

DEPARTMENT HEAD APPROVAL: _____
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: _____
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

	Elizabeth Baxter, CEO	
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
--------------------------------------	------

CONTRACTOR INFORMATION:

North Sound Accountable Community of Health
PO Box 4256
Bellingham, WA 98227
Liz@northsoundach.org

EXHIBIT “C” – Amendment #3
(ADDITIONAL COMPENSATION)

- I. **Budget and Source of Funding:** Additional funding for the contract period (02/01/2021 – 09/30/2021) may not exceed \$23,000. Funds under this 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 a grant awarded by the US Department of the Treasury. Grant funds are administered by the Washington State Department of Health Epidemiology & Laboratory Capacity Grant (CFDA 93.323).

Task	Documents Required Each Invoice	Total Budget
WUC Support: Volunteer Branch Director – Erica Littlewood	Composite billing rate worksheet and timesheet for the period. Time must be documented by quarter hour.	\$23,000
TOTAL		\$23,000

II. Invoicing

1. The Contractor shall submit invoices to (include contract/PO #) HL-BusinessOffice@co.whatcom.wa.us.
2. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month following the month of service. Invoices submitted for payment must include the items identified in the table above.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

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

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



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-348

File ID:	AB2021-348	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Catholic Community Services to provide housing case management services, in the amount of \$168,339

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Catholic Community Services – Housing Case Management Contract

DATE: June 11, 2021

Attached is a contract between Whatcom County and Catholic Community Services for your review and signature.

- **Background and Purpose**

This contract funds the provision of housing case management services for individuals and families that may be experiencing homelessness or residing in scattered site units as well as staffed housing programs. The majority of clients served by this contract have a history of behavioral health disorders and/or medical problems that require intensive case management services. Case management improves housing stability and promotes housing retention, thereby reducing homeless in Whatcom County.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$168,339, is provided by local document recording fees and the Washington State Department of Commerce Emergency Solutions COVID-19 Grant (CFDA 14.231). These funds are included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract, awarded as a result of RFP 21-04; however, funding for these services has been provided through previous contracts between Whatcom County and Catholic Community Services since 2011. This contract includes no significant changes from the previous contract (WC Contract #201611029).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855040 Housing		
Contract or Grant Administrator:			Christopher D'Onofrio		
Contractor's / Agency Name:			Catholic Community Services		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	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?		If yes, grantor agency contract number(s):		CFDA#:	14.231
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		202008014	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	122200/122800
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	21-04			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 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.			
\$	168,339				
This Amendment Amount:					
\$					
Total Amended Amount					
\$					
Summary of Scope: This contract provides funding for case management services in association with the Whatcom Homeless Service Center in an effort to improve housing stability and reduce homelessness in Whatcom County.					
Term of Contract:		6 Months		Expiration Date: 12/31/2021	
Contract Routing:	1. Prepared by:		JT		Date: 03/31/2021
	2. Health Budget Approval:		KR/JG		Date: 06/08/2021
	3. Attorney signoff:		RB		Date: 06/11/2021
	4. AS Finance reviewed:		M Caldwell		Date: 6/8/21
	5. IT reviewed (if IT related):				Date:
	6. Contractor approved:				Date:
	7. Submitted to Exec.:				Date:
	8. Council approved (if necessary):		AB2021-348		Date:
	9. Executive signed:				Date:
	10. Original to Council:				Date:

CONTRACT FOR SERVICES
Between Whatcom County and Catholic Community Services

Catholic Community 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 13,
Exhibit A (Scope of Work), pp. 14 to 17,
Exhibit B (Compensation), pp. 18 to 19,
Exhibit C (Certificate of Insurance), p. 20,
Exhibit D (Flex Fund Guidelines), pp. 21 to 22,
Exhibit E (Commerce ESG-CV Special Terms & Conditions), pp. 23 to 27,
Exhibit F (Certification Regarding Lobbying).

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

The term of this Agreement shall commence on the 1st day of July, 2021 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 housing case management services** as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement is estimated at \$168,339. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Catholic Community Services
1918 Everett Avenue
Everett, WA 98201

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.

Will Rice, Vice President

Recommended for Approval:

Date _____

Date _____

Date _____

Accepted for Whatcom County:

willr@ccsww.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and

any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Chris D'Onofrio, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Chris D'Onofrio
509 Girard Street
Bellingham, WA 98225
360-778-6049
CDonofri@co.whatcom.wa.us

Catholic Community Services
Will Rice, Vice President
1918 Everett Avenue
Everett, WA 98201
willr@ccsww.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

According to the annual Point In Time Count of homeless persons conducted in January 2021, at least 859 people in Whatcom County were homeless. Throughout the year, more may face the prospect of losing their homes. Whatcom County's Plan to End Homelessness provides a blueprint for how our community will work together to prevent and end homelessness. The provision of housing assistance and case management services are key strategies of the Plan.

Housing case management includes both rental subsidy and housing case management components. Through this contract, Catholic Community Services will serve as one of the WHSC's partner agencies providing housing case management. The WHSC staff determines client eligibility for services and authorizes and distributes rent subsidies to local landlords on behalf of participating clients, makes referrals for case management to partner agencies, and coordinates required data collection efforts. The population served by Catholic Community Services case managers have extensive histories of homelessness and behavioral health challenges that require additional support to be successfully stable in housing.

II. Definitions

Housing Pool (HP)	Quasi wait list that serves clients waiting for housing services based on their needs and available resources instead of a first come, first served basis.
HMIS	Washington's Homeless Management Information System Database
Permanent Supportive Housing (PHS)	Chronically homeless individuals/households with significant barriers to permanent housing; will receive deep rent subsidies and intensive housing case management.
Whatcom Homeless Service Center (WHSC)	WHSC programs provide (1). centralized coordinated system of access, (2). targeted prevention assistance to reduce the number of households that become homeless, (3). re-housing of those who become homeless, (4) supportive services promoting housing stability and self-sufficiency, and (5). data management and tracking information for people receiving homeless housing services in Whatcom county and according to Washington State Department of Commerce HMIS data collection requirements.

III. Statement of Work

The Contractor will provide housing case management services. Housing case management activities include arrangement, coordination, monitoring, and delivery of services related to meeting the housing needs of households and helping them obtain housing stability. Services and activities include:

1. Developing, securing, coordinating, and retaining services and suitable housing. Services include but are not limited to:
 - a. Tenant counseling;

- b. Assisting individuals and households with understanding leases;
 - c. Securing utilities;
 - d. Making moving arrangements;
 - e. Representative payee services concerning rent and utilities;
 - f. Mediation and outreach to property owners related to locating or retaining housing.
- 2. Monitoring and evaluating household progress;
 - 3. Assuring that household rights are protected;
 - 4. Developing an individualized housing and service plan, including a path to permanent housing stability subsequent to assistance.

Housing case management services will be provided to individuals residing in scattered site apartment units and at staffed housing facilities. Housing case management services will be provided to homeless individuals and households referred by the WHSC. On occasion, highly vulnerable adults temporarily staying in emergency shelter, to include motels, will receive housing case management services pending move-in to permanent housing.

Individuals and households served shall have incomes at or below 50% Area Median Income (AMI). Income eligibility will be determined by the funding sources used for case management.

IV. Program Outcomes

During this contract period, the housing case management services provided by the Contractor will deliver the following outcomes:

- 1. Fifty (50) individuals in Permanent Supportive Housing will receive case management services.
- 2. Five (5) households in emergency shelters will receive case management services.
- 3. The Contractor will strive to rapidly rehouse clients with the goal of most moving into housing in 35 days or less from enrollment in case management and with an average (mean) enrollment period of 40 days or less.
- 4. The Contractor will strive to create housing stability with the target of moving six (6) households from homelessness into housing stability while preventing all case managed households from becoming homeless.

V. Additional Requirements

The Contractor will:

- 1. Comply with:
 - a. Relevant State of Washington Department of Commerce Emergency Solutions COVID-19 Grant guidelines, including periodic updates to the guidelines, which can be accessed at the following link:

- b. Special Terms and Conditions of Commerce Emergency Solutions – COVID-19 (ESG-CV) Grant, herein incorporated as Exhibit E.
2. Participate in HMIS data collection efforts as directed by the WHSC; including HMIS training, HMIS data entry, updating client data as necessary, and exiting clients from HMIS. Services which must be inputted into HMIS include (but are not limited to) financial services – including deposits, rental payments, and completed home visits.
3. Comply with the following Housing Pool (HP) Referral procedure. When Contractor staff believes a referral from the HP is not a good fit for their program, a situation which should be rare, the following procedures must be followed:
 - a. Contractor will submit a written description of the situation that justifies returning the client to the HP, and
 - b. An in-person case conference must be scheduled within five days of request to return a referral. The case conference will include Contractor staff, WHSC housing referral specialist, and HP case management services coordinator (or designee).
 - c. The course of action mutually agreed to at the case conference will be recorded in writing, constituting a binding agreement.
 - d. As the parties to this contract learn more about referral success factors, procedures may be amended accordingly.
4. Promote public health in homeless housing and preserve the safety and stability of available housing stock for homeless housing by:
 - a. Informing clients/tenants of the importance of upholding safety and health in homeless housing, and of preserving continued access to housing by our homeless housing system.
 - b. Informing clients/tenants that they may be expected to participate in cleaning and decontaminating their housing unit when necessary for health reasons.
 - c. Informing clients/tenants that damages to their unit may result in eviction and loss of the unit in the future for our homeless housing system.
 - d. Informing prospective tenants that they need to maintain a safe and clean apartment in advance of receiving housing and periodically after they are in housing.
 - e. In scattered sites, master lease, public housing, and staffed housing programs, case managers will work with the client/tenant to address the issues of health and safety that arise, including that of suspected methamphetamine use. The WCHD will provide case managers with free and confidential technical assistance on effective methods for cleaning apartment units that have been contaminated, whenever requested.
 - f. Documenting in each client file that these expectations were communicated to the client/tenant.
5. Requiring professional development training for direct service staff and supervisors.
6. Attending Whatcom County Coalition to End Homelessness meetings and sponsored activities.
7. Attending meetings and events coordinated by the WHSC Housing Program.

VI. Reporting Requirements

The Contractor shall submit quarterly reports* to the WCHD utilizing HMIS data by using the quarterly reporting template accessed on the County website, as noted below. Reports will demonstrate the Contractor's progress toward achieving the program outcomes identified above. Quarterly reports are due on April 15, July 15, October 15, and January 15.

*Contractors will be notified via email of updates to quarterly reporting templates. Current reporting templates will be posted on the Whatcom County Health Department Housing Program website which may be accessed at:

<http://www.whatcomcounty.us/DocumentCenter/View/37569/WCHDquarterlyCMreportCCS>.

Reports will include data for only those clients served under this contract and include:

1. Number of sheltered households that received case management during the quarter.
2. Number of individuals in permanent supportive housing that received case management services during the quarter.
3. Average length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (in RRH, PSH, or other stable housing situation).
4. Median length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (in RRH, PSH, or other stable housing situation).
5. Number of case managed households that have been stably housed for six (6) months or more.
6. Number of case managed households that have been stably housed for twelve (12) months or more.
7. Number of case managed households that lost stable housing or exited case management while homeless.
8. Number of case managed households that achieved housing stability while receiving case management services.

VII. Flex Funding

Flex funds must follow the Guidelines established by the County and be reported on the spreadsheet provided by the County (Exhibit D) and signed by an authorized agency signatory. In addition, all flex funds must be accompanied by receipts.

Exhibit B
(COMPENSATION)

- I. **Source of Funding and Budget:** The source of funding for this contract, in an amount not to exceed \$168,339, is local document recording fees and the Washington State Department of Commerce Emergency Solutions COVID-19 Grant (CFDA 14.231). COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

*Cost Description (Funded by Document Recording Fees):	Documents Required with Invoices	Budget
Housing Case Managers	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$114,695
Homeless Housing Program Director		\$8,799
Supplies	GL Detail	\$1,200
Cell Phone/Data Processing/IT Support		\$2,803
Mileage	Mileage log to include: name of staff member, date of travel, starting point and destination of travel, number of miles traveled, federal reimbursement rate (per www.gsa.gov) and a brief description of the purpose of travel	\$3,000
Travel/Training	Ground transportation, 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, brief description of the purpose. Receipts for registration fees or other documentation of professional training expenses. 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. Receipts for meals are not required.	\$1,875
Occupancy	GL Detail	\$2,088
Rental History/Background Checks		\$450
Flex Funds	Flex Fund Spreadsheet plus copies of receipts	\$500
SUBTOTAL		\$135,410
**Indirect Costs (Document Recording Fee Funds) @ 13.3%		\$18,010
Document Recording Fee Funding Total		\$153,420
Funded by ESG-CV:		Budget
Case Aide	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$12,838
Cell Phone & Data Plan for Case Aide	GL Detail	\$329
SUBTOTAL		\$13,167
**Indirect Costs (ESG-CV Funds) @ 7%		\$922
ESG-CV Funding Total		\$14,089
**Indirect Costs from Document Recording Fees to Supplement ESG-CV Indirect (6.3%)		\$830
TOTAL BUDGET (7/1/2021 – 12/31/2021)		\$168,339

*Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County.

**Indirect costs shall not exceed the currently approved indirect cost allocation plan.

II. Invoicing:

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.
2. The Contractor shall submit invoices to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The county may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/2/2020

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 Arthur J. Gallagher Risk Management Services, Inc. 777 108th Ave NE, #200 Bellevue WA 98004		CONTACT NAME: Stephen Erni PHONE (A/C No. Ext): 425-454-3386 FAX (A/C No.): 425-451-3716 E-MAIL ADDRESS: Stephen_Erni@ajg.com	
INSURED Corporation of the Catholic Archbishop of Seattle Catholic Community Services of Western Washington 100 23rd Ave. S Seattle WA 98144		INSURER(S) AFFORDING COVERAGE INSURER A : Underwriters at Lloyd's London INSURER B : Old Republic Union Insurance Company INSURER C : Star Insurance Company INSURER D : INSURER E : INSURER F :	
CORPOFT-01		NAIC # 15792 31143 18023	

COVERAGES**CERTIFICATE NUMBER:** 326632575**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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y		BP1023020	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ Nil PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BP1023020	7/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			822000 0785428	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WCE-0937531-20	7/1/2020	7/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A B	Errors & Omissions / Prof. Liab.			BP1023020 822000 0785428	7/1/2020 7/1/2020	7/1/2021 7/1/2021	Each Claim/Aggregate \$2,000,000

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

Limits shown are inclusive of defense and insured retention. Coverage for Additional Insureds is restricted to the amount of insurance required by contract or permit. Retention under policy #BP102302 (A XV, Non-Admitted) is \$250,000 for Liability. The applicable location maintenance deductible that applies to this Certificate is \$0 for Liability.

Coverage only extends to Whatcom County for claims directly arising from an act or omission of Catholic Community Services (CCS) provided such claim occur from CCS's performance of a contractual service for or on behalf of Whatcom County. This extension of coverage applies to all contracts between CCS & Whatcom County. This coverage does not include Professional Liability; specifically excludes any action, error or omission of psychiatrists. This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

CERTIFICATE HOLDER**CANCELLATION**

Whatcom County
509 Girard St.
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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Exhibit “D”
WHATCOM COUNTY FLEX FUNDS GUIDELINES

“Flex funds” are funds that may be used at the discretion of the Contractor, following the policies described below, to purchase goods or services directly related to the service needs of the Contractor’s clients, when no other funding source is available. **Such goods or services must be reasonable and necessary to meet a client’s emergent service needs or contribute to the stabilization or self-sufficiency of the client.**

Allowable Costs: Allowable uses of client-specific expenditures of flex funds include the following:

- Clothing
- Food
- Housing/rental assistance
- Bus passes or taxi fare
- Car repairs
- Driver’s license or ID card fees
- Educational or training program registration fees
- Household supplies, including furniture
- Medications
- Health care
- Other, as approved by Whatcom County

Limitations: Flex fund expenditures must be within the allowable criteria established by the County, as identified above, must be based upon the service needs as documented in the client’s individual service plan, and must have no other funding available from any other source.

Flex funds distributed to any one client cannot exceed \$500 per year, except with written authorization from the County. No flex fund disbursements are to be made directly to the client but rather will be made on behalf of a client.

Documentation: Requests for reimbursement of flex funds must include the attached form including the following:

- A. The person or organization funds were paid to.
- B. Date of transaction.
- C. A list of the goods and/or services purchased.
- D. The cost of the goods and/or services purchased.
- E. The initials of the client and/or unique identifying number of the client for whom the goods and/or services were purchased.
- F. The total amount of flex funds distributed to the client during the year.
- G. The service need addressed by the expenditure.
- H. Accompanying invoices and/or receipts.
- I. Evidence of administrative review of expenditures

See Attached Form

Contractor:			Contract:			Period:		
Whatcom County Health Department Flex Fund Documentation								
Paid To *	Date	Cost	Goods/Services Purchased	Client ID	Total \$ To Client this Year	Service Need	No Other Funding Available	Administrative Review
* ATTACH RECEIPTS FOR EACH PURCHASE								

“Exhibit E”
(Special Terms and Conditions for Commerce Emergency Solutions Grant
(COVID 19 ESG-CV – CFDA #14.231)

The funds allocated for services performed under this grant are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are liable for claims or damages arising from the Contractor's performance of this subgrant.

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. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, 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. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- 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. "Subgrantee/Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee/subcontractor" refers to any tier.
- H. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

2. ACKNOWLEDGMENT OF FEDERAL FUNDS

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 Grant No. E-20-DW-53-0001 awarded by U.S. Department of Housing and Urban Development (HUD) as a supplemental appropriation through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the HUD. Grant funds are administered by the Housing Assistance Unit in the Community Services and Housing Division, Washington State Department of Commerce."

3. ALL WRITINGS CONTAINED HEREIN

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

4. AMENDMENTS

This Grant 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

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

6. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee 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 Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

7. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
- iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant 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 Grantee 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 Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee 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.

8. COPYRIGHT

Unless otherwise provided, all Materials produced under this Grant 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 Grantee 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 Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee 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 Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, 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 Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

9. DUPLICATE PAYMENT

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

10. GOVERNING LAW AND VENUE

This Grant 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.

11. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, 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 contract. "Claim" as used in this contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

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

12. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

13. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

14. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Grantee's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
 - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - iii. Positive efforts shall be made to use small and minority-owned businesses.

- iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - v. Contracts shall be made with only reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
 - vii. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection
 - 2) The basis for the cost or price
 - 3) Justification for lack of competitive bids if offers are not obtained
 - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
- D. Contractor and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

15. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE'S name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

16. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, 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 Grantee 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 Grant.

17. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant 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 Grant.

The Grantee 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 Grant, 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.

18. 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 Grant and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

19. SEVERABILITY

The provisions of this Grant 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 Grant.

20. SUBGRANTING/SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee 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 Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee'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.

21. SITE SECURITY

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.

22. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

23. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant.

All reference to the Grantee under this clause shall also include Grantee's employees, agents, or Subgrantees/Subcontractors.

24. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

“Exhibit F”
(CERTIFICATION REGARDING LOBBYING)

The undersigned 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 office or employee of an 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 entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, and cooperative agreements) and that all subrecipients 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, title 31, 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.

Agency Name: Catholic Community Services

Authorized Representative: Will Rice, Vice President

Signature: _____

Date: _____



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-349

File ID:	AB2021-349	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Lydia Place to provide housing case management services in the amount of \$203,602

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Lydia Place – Housing Case Management Contract

DATE: June 11, 2021

Attached is a contract between Whatcom County and Lydia Place for your review and signature.

- **Background and Purpose**

This contract funds the provision of housing case management services in association with the Whatcom Homeless Service Center. The purpose of this contract is to provide funding for case management and supportive services to families with children and individuals experiencing homelessness or who are newly housed, in order to improve housing stability and reduce homelessness in Whatcom County.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$203,602, is provided by local document recording fees and the Washington State Department of Commerce Emergency Solutions COVID-19 Grant (CFDA 14.231). These funds are included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract, awarded as a result of RFP 21-04; however, funding for these services has been provided through previous contracts between Whatcom County and Lydia Place since 2011. This contract includes funding for additional staff but no significant changes in scope of work from the previous contract (WC Contract #201611028).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855040 Housing		
Contract or Grant Administrator:			Christopher D'Onofrio		
Contractor's / Agency Name:			Lydia Place		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	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?		If yes, grantor agency contract number(s):		CFDA#:	14.231
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		202008014	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	122200/122800
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	21-04			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 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.			
\$	203,602				
This Amendment Amount:					
\$					
Total Amended Amount					
\$					
Summary of Scope: This contract provides funding for case management services in association with the Whatcom Homeless Service Center in an effort to improve housing stability and reduce homelessness in Whatcom County.					
Term of Contract:		6 Months		Expiration Date: 12/31/2021	
Contract Routing:	1. Prepared by:		JT		Date: 03/31/2021
	2. Health Budget Approval:		KR/JG		Date: 06/08/2021
	3. Attorney signoff:		RB		Date: 06/11/2021
	4. AS Finance reviewed:		M Caldwell		Date: 6/9/21
	5. IT reviewed (if IT related):				Date:
	6. Contractor approved:				Date:
	7. Submitted to Exec.:				Date:
	8. Council approved (if necessary):		AB2021-349		Date:
	9. Executive signed:				Date:
	10. Original to Council:				Date:

CONTRACT FOR SERVICES
Between Whatcom County and Lydia Place

Lydia Place, 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 13,
Exhibit A (Scope of Work), pp. 14 to 18,
Exhibit B (Compensation), pp. 19 to 20,
Exhibit C (Certificate of Insurance), p. 21,
Exhibit D (Special Terms & Conditions of Commerce Grants), pp. 22 to 27,
Exhibit E (Certification Regarding Lobbying).

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

The term of this Agreement shall commence on the 1st day of July, 2021 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 housing case management services** as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement is estimated at \$203,602. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Lydia Place
PO Box 28487
Bellingham, WA 98228

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.

Emily O'Connor, Executive Director

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and

any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Chris D'Onofrio, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Chris D'Onofrio
509 Girard Street
Bellingham, WA 98225
360-778-6049
CDonofri@co.whatcom.wa.us

Lydia Place
Emily O'Connor, Executive Director
PO Box 28487
Bellingham, WA 98228
eoconnor@lydiaplace.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

According to the annual Point In Time Count of homeless persons conducted in January 2021, at least 859 people in Whatcom County were homeless. Throughout the year, more may face the prospect of losing their homes. Whatcom County's Plan to End Homelessness provides a blueprint for how our community will work together to prevent and end homelessness. The provision of housing assistance and case management services are key strategies of the Plan.

Housing case management includes both rental subsidy and housing case management components. Through this contract, Lydia Place will serve as one of the WHSC's partner agencies providing housing case management. The WHSC staff determines client eligibility for services and authorizes and distributes rent subsidies to local landlords on behalf of participating clients, makes referrals for case management to partner agencies, and coordinates required data collection efforts.

The purpose of this contract is to provide case management for individuals and families experiencing homelessness in order to improve housing stability and reduce homelessness in Whatcom County.

II. Definitions

Housing Interest Pool (HP)	Quasi wait list that serves clients waiting for housing services based on their needs and available resources instead of a first come, first served basis.
HMIS	Washington's Homeless Management Information System Database
Permanent Supportive Housing (PHS)	Chronically homeless individuals/households with significant barriers to permanent housing; will receive deep rent subsidies and intensive housing case management.
Whatcom Homeless Service Center (WHSC)	WHSC programs provide (1). centralized coordinated system of access, (2). targeted prevention assistance to reduce the number of households that become homeless, (3). re-housing of those who become homeless, (4) supportive services promoting housing stability and self-sufficiency, and (5). data management and tracking information for people receiving homeless housing services in Whatcom county and according to Washington State Department of Commerce HMIS data collection requirements.

III. Statement of Work

The Contractor will provide housing case management services. Housing case management activities include arrangement, coordination, monitoring, and delivery of services related to meeting the housing needs of households and helping them obtain housing stability. Services and activities include:

1. Developing, securing, coordinating, and retaining services and suitable housing. Services include but are not limited to:
 - a. Tenant counseling;

- b. Assisting individuals and households with understanding leases;
 - c. Securing utilities;
 - d. Making moving arrangements;
 - e. Representative payee services concerning rent and utilities;
 - f. Mediation and outreach to property owners related to locating or retaining housing.
- 2. Monitoring and evaluating household progress;
- 3. Assuring that household rights are protected;
- 4. Developing an individualized housing and service plan, including a path to permanent housing stability subsequent to assistance.

Services will be provided to low-income and/or homeless individuals and households residing in Whatcom County. Eligible individuals and households served shall have income at or below 50% Area Median Income (AMI). Income eligibility will be determined by the funding source used for case management.

IV. Program Outcomes

During this contract period, the housing case management services provided by the Contractor will deliver the following outcomes:

- 1. Forty-five (45) individuals in Permanent Supportive Housing will receive ongoing case management services.
- 2. Thirty (30) homeless households (unsheltered or in emergency shelter) will engage in case management services over the course of this contract's initial six-month period.
- 3. The Contractor will strive to rapidly rehouse clients with the goal of most moving into housing in 65 days or less from enrollment in case management and with an average (mean) enrollment period of 80 days or less.
- 4. The Contractor will strive to create housing stability with the target of moving thirty (30) households from homelessness into housing stability. At least 95% of case managed households who enter permanent housing will remain stably housed for at least six months.

V. Additional Requirements

The Contractor will:

- 1. Comply with:
 - a. Special Terms & Conditions of Commerce Grants, herein incorporated as Exhibit D.
 - b. Commit to ending homelessness in Whatcom County, by:
 - 1. Assessing each household's needs and facilitating housing stability with the goal of obtaining or maintaining permanent housing.
 - 2. Employing a progressive engagement service model.

3. Prioritizing households likely to become homeless when using prevention rental assistance.
- c. Ensure that all costs incurred comply with funding guidelines.
- d. Commit to reporting complete quality data that is timely, truthful and accurate (per funding guidelines and HMIS Partner Agreement <http://www.commerce.wa.gov/wp-content/uploads/2018/06/hau-hmis-agency-partner-agreement-2018.pdf>).
- e. Consequences of non-compliance with guidelines, as per the Department of Commerce, include:
 1. If Commerce determines that a Grantee is failing to comply with the Guidelines, Terms and Conditions, Commerce will notify Grantee that Grantee will receive technical assistance and be required to respond to a corrective action plan to address and remedy the non-compliance.
 2. If the Grantee is still out of compliance after the technical assistance, Commerce may move the Grantee into a probationary period with a second corrective action plan and may reduce the grant total by 20%.
 3. If the Grantee remains out of compliance after the probation period, Commerce may terminate the grant per the General Terms and Conditions TERMINATION FOR CAUSE.
2. Comply with relevant State of Washington Department of Commerce Emergency Solutions COVID-19 Grant requirements and guidelines, including periodic updates to the guidelines, which can be accessed at the following links:
<https://www.commerce.wa.gov/wp-content/uploads/2020/06/Commerce-ESG-CV-Overview.pdf> and <https://deptofcommerce.app.box.com/s/fsmf4pmwkroszjt702j1l9cfvkv5ixmq>
3. Participate in HMIS data collection efforts as directed by the WHSC; including HMIS training, HMIS data entry, updating client data as necessary, and exiting clients from HMIS. Services which must be inputted into HMIS include (but are not limited to) financial services – including deposits, rental payments, and completed home visits.
4. Comply with the following Housing Pool (HP) referral procedure. When Contractor staff believes a referral from the HP is not a good fit for their program, a situation that should be rare, the following procedure must be followed:
 - a. Contractor will submit a written description of the situation that justifies returning the client to the HP.
 - b. An in-person case conference must be scheduled within five days of request to return a referral. The case conference will include Contractor staff, WHSC housing referral specialist, and HP case management services coordinator (or designee).
 - c. The course of action mutually agree to at the case conference will be recorded in writing, constituting a binding agreement.
 - d. As the parties to this contract learn more about referral success factors, procedures may be amended accordingly.
5. Promote public health in homeless housing and preserve the safety and stability of available housing stock for homeless housing by:

- a. Informing clients/tenants of the importance of upholding safety and health in homeless housing, and of preserving continued access to housing by our homeless housing system.
 - b. Informing clients/tenants that they may be expected to participate in cleaning and decontaminating their housing unit when necessary for health reasons.
 - c. Informing clients/tenants that damages to their unit may result in eviction and loss of the unit in the future for our homeless housing system.
 - d. In scattered sites, master lease, public housing, and staffed housing programs, case managers will work with the client/tenant to address the issues of health and safety that arise, including that of suspected methamphetamine use. The WCHD will provide case managers with free and confidential technical assistance on effective methods for cleaning apartment units that have been contaminated, whenever requested.
 - e. Documenting in each client file that these expectations were communicated to the client/tenant.
- 7. Requiring professional development training for direct service staff and supervisors.
 - 8. Attending Whatcom County Coalition to End Homelessness meetings and sponsored activities.
 - 9. Attending meetings and events coordinated by WHSC.

VI. Reporting Requirements

- 1. The Contractor shall submit quarterly reports* to the WCHD utilizing HMIS data by using the quarterly reporting template accessed on the County website, as noted below. Reports will demonstrate the Contractor's progress toward achieving the program outcomes identified above. Quarterly reports are due on April 15, July 15, October 15, and January 15.

*Contractors will be notified via email of updates to quarterly reporting templates. Current reporting templates will be posted on the Whatcom County Health Department Housing Program website which may be accessed at:

<http://www.whatcomcounty.us/DocumentCenter/View/37570/WCHDquarterlyCMreportLP>.

- 2. Reports will include data for only those clients served under this contract and include:
 - a. Number of homeless households that received case management during the quarter.
 - b. Number of homeless individuals that received case management during the quarter.
 - c. Number of households in permanent supportive housing that received case management services during the quarter.
 - d. Number of households in rapid re-housing programs that received case management services during the quarter.
 - e. Average length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (in RRH, PSH, or other stable housing situation).
 - f. Median length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (in RRH, PSH, or other stable housing situation).

- g. Number of case managed households that lost stable housing or exited case management while homeless.
- h. Number of case managed households that achieved housing stability while receiving case management services.

Exhibit B
(COMPENSATION)

- I. **Source of Funding and Budget:** The source of funding for this contract, in an amount not to exceed \$203,602, is local document recording fees, and the Washington State Department of Commerce Emergency Solutions COVID-19 Grants (CFDA 14.231). COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

*Cost Description	Documents Required with Invoices	Budget
Document Recording Fee Funding		
Case Management Staff	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$58,395
Program Management Staff		\$25,200
Mileage	Mileage log to include: name of staff member, date of travel, starting point and destination of travel, number of miles traveled, federal reimbursement rate (per www.gsa.gov) and a brief description of the purpose of travel	\$2,000
Direct Service Staff Training	Ground transportation, 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, brief description of the purpose. Receipts for registration fees or other documentation of professional training expenses. 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. Receipts for meals are not required.	\$500
Program Specific Occupancy Costs	GL Detail	\$4,000
Program Specific Supplies & Postage		\$750
Program Specific Utilities & Phone		\$3,500
Professional Services		\$1,300
SUBTOTAL		\$95,645
Emergency Solutions Grant COVID Funding		
Case Management Staff	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$67,030
Program Management Staff		\$22,418
SUBTOTAL		\$89,448
Indirect Costs – shall not exceed the rates indicated below:		
Document Recording Fee Indirect Costs @ 10%		\$9,564.50
ESG-CV Indirect Costs at 7%		\$6,261.36
Additional Document Recording Fee Indirect (3% of ESG-CV Costs)		\$2,683.44
SUBTOTAL Indirect		\$18,509
TOTAL BUDGET (7/1/2021 – 12/31/2021)		\$203,602

*Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County.

II. **Invoicing:**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.
2. The Contractor shall submit invoices to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The county may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

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

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

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/03/2020

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 639 Bellingham WA 98227	CONTACT NAME: Rhea Marshall PHONE (A/C, No, Ext): (360) 734-1161 FAX (A/C, No): (360) 734-1173 E-MAIL ADDRESS: rhear@riceinsurance.com <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Philadelphia Indemnity Ins Co</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Philadelphia Indemnity Ins Co		INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Philadelphia Indemnity Ins Co															
INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
INSURED Lydia Place A Nonprofit Corporation PO Box 28487 Bellingham WA 98228-0487															

COVERAGES**CERTIFICATE NUMBER:** CL2012378574**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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			PHPK2212408	12/22/2020	12/22/2021	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK2212408	12/22/2020	12/22/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB748328	12/22/2020	12/22/2021	EACH OCCURRENCE \$ 1,000,000
							AGGREGATE \$
							\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			PHPK2212408 WA Stop Gap	12/22/2020	12/22/2021	PER STATUTE <input type="checkbox"/> OTH-ER <input checked="" type="checkbox"/>
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability			PHPK2212408	12/22/2020	12/22/2021	Occurrence 1,000,000 Aggregate 2,000,000

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

Additional Insured form PIGLDHS 10/11 attached.

CERTIFICATE HOLDER**CANCELLATION**

Whatcom County Health Dept Human Services Division 509 Girard St Bellingham WA 98225	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> <p style="text-align: center;"><i>Jay Hill</i></p>
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ACORD 25 (2016/03)

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“Exhibit D”
(Special Terms and Conditions of Commerce Grants –
COVID 19 ESG-CV – CFDA #14.231)

The funds allocated for services performed under this grant are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are liable for claims or damages arising from the Contractor's performance of this subgrant.

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. “Grant” or “Agreement” means the entire written agreement between COMMERCE and the Grantee, 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. “Grantee” shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- 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. “Subgrantee/Subcontractor” shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms “subgrantee/subcontractor” refers to any tier.
- H. “Subrecipient” shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

2. ACCESS TO DATA

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

3. ACKNOWLEDGMENT OF FEDERAL FUNDS

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 Grant No. E-20-DW-53-0001 awarded by U.S. Department of Housing and Urban Development (HUD) as a supplemental appropriation through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the HUD. Grant funds are administered by the Housing Assistance Unit in the Community Services and Housing Division, Washington State Department of Commerce.”

3. ALL WRITINGS CONTAINED HEREIN

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

4. AMENDMENTS

This Grant 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. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35

The Grantee must 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.

6. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

6. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee 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 Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

7. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. “Confidential Information” as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as “confidential” by COMMERCE;
- ii. All material produced by the Grantee that is designated as “confidential” by COMMERCE; and
- iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant 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 Grantee 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 Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee 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.

8. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation in the Ethics of Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Grantee as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed in the "Disputes" clause of this contract.

9. COPYRIGHT

Unless otherwise provided, all Materials produced under this Grant 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 Grantee 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 Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee 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 Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, 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 Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

10. DUPLICATE PAYMENT

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

11. GOVERNING LAW AND VENUE

This Grant 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.

12. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, 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 contract. "Claim" as used in this contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

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

13. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

14. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

15. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

16. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501-1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

17. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Grantee's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
 - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - iii. Positive efforts shall be made to use small and minority-owned businesses.
 - iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - v. Contracts shall be made with only reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
 - vii. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection
 - 2) The basis for the cost or price
 - 3) Justification for lack of competitive bids if offers are not obtained
 - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
- D. Contractor and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

18. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE'S name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

19. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, 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 Grantee 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 Grant.

20. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant 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 Grant.

The Grantee 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 Grant, 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.

21. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

22. RIGHT OF INSPECTION

The Grantee shall provide right of access to its facilities to COMMERCE, or of 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 Grant.

23. 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 Grant and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

24. SEVERABILITY

The provisions of this Grant 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 Grant.

25. SUBGRANTING/SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee 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 Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee'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.

26. SITE SECURITY

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.

27. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

28. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant.

All reference to the Grantee under this clause shall also include Grantee's employees, agents, or Subgrantees/Subcontractors.

29. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

“Exhibit E”
(CERTIFICATION REGARDING LOBBYING)

The undersigned 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 office or employee of an 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 entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, and cooperative agreements) and that all subrecipients 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, title 31, 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.

Agency Name: Lydia Place

Authorized Representative: Emily O’Connor, Executive Director

Signature:_____

Date:_____



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-350

File ID:	AB2021-350	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Northwest Youth Services to provide housing case management services, in the amount of \$178,771

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Northwest Youth Services – Housing Case Management Contract

DATE: June 11, 2021

Attached is a contract between Whatcom County and Northwest Youth Services for your review and signature.

- **Background and Purpose**

This contract provides funding to support housing case management and supportive services to youth through age 24, who are referred by the Whatcom Homeless Service Center. The goal of these services is to improve housing stability and reduce homelessness in Whatcom County.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$178,771 is provided by local document recording fees and the Washington State Department of Commerce Emergency Solutions COVID-19 Grant (CFDA 14.231). These funds are included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract, awarded as a result of RFP 21-04; however, funding for these services has been provided through previous contracts between Whatcom County and Northwest Youth Services since 2011. This contract differs from the previous contract (WC Contract #201611017) in that it reduces the outcome measures for length of time receiving services before obtaining permanent housing and lowers the target for number of youths housed over the six-month period to better reflect difficulty in access to the current housing market. It also provides more funding for supervision and management of the housing programs.

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855040 Housing		
Contract or Grant Administrator:			Christopher D'Onofrio		
Contractor's / Agency Name:			Northwest Youth Services		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	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?		If yes, grantor agency contract number(s):		CFDA#:	14.231
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		202008014	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	122200/122800
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	21-04			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> 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:			
\$	178,771	1. Exercising an option contained in a contract previously approved by the council.			
This Amendment Amount:		2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.			
\$		3. Bid or award is for supplies.			
Total Amended Amount		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 funding for case management and supportive services to youth in association with the Whatcom Homeless Service Center in an effort to improve housing stability and reduce homelessness in Whatcom County.					
Term of Contract:		6 Months		Expiration Date: 12/31/2021	
Contract Routing:	1. Prepared by:		JT		Date: 03/31/2021
	2. Health Budget Approval:		KR/JG		Date: 06/08/2021
	3. Attorney signoff:		RB		Date: 06/11/2021
	4. AS Finance reviewed:		M Caldwell		Date: 6/10/21
	5. IT reviewed (if IT related):				Date:
	6. Contractor approved:				Date:
	7. Submitted to Exec.:				Date:
	8. Council approved (if necessary):		AB2021-350		Date:
	9. Executive signed:				Date:
	10. Original to Council:				Date:

CONTRACT FOR SERVICES
Between Whatcom County and Northwest Youth Services

Northwest Youth 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 13,
Exhibit A (Scope of Work), pp. 14 to 17,
Exhibit B (Compensation), pp. 18 to 19,
Exhibit C (Certificate of Insurance), p. 20,
Exhibit D (Flex Fund Guidelines), pp. 21 to 22,
Exhibit E (Commerce ESG-CV Special Terms & Conditions), pp. 23 to 27,
Exhibit F (Certification Regarding Lobbying).

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

The term of this Agreement shall commence on the 1st day of July, 2021 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 housing case management services** as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement is estimated at \$178,771. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Northwest Youth Services
108 Prospect Street
Bellingham, WA 98225

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.

Jason McGill, Executive Director

Recommended for Approval:

Date _____

Date _____

Approved as to form:

Date _____

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

CONTRACTOR INFORMATION:

Jason McGill, Executive Director

108 Prospect Street

jasonm@nwys.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and

any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. Verification of Coverage/Certificates and Endorsements. The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Chris D'Onofrio Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Chris D'Onofrio
509 Girard Street
Bellingham, WA 98225
360-778-6049
CDonofri@co.whatcom.wa.us

Northwest Youth Services
Jason McGill, Executive Director
108 Prospect Street
Bellingham, WA 98225
jasonm@nwys.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

Whatcom County's Plan to End Homelessness identifies youth, aged up to 24, as a population impacted by homelessness and lists the provision of safe, affordable housing with supportive services as a way to reduce and end youth homelessness. Provision of services at shelters and other interim housing options is also a component of the service continuum that increases success in reaching housing stability. Northwest Youth Services (NWYS) is the only non-tribal agency serving youth in Whatcom County by offering housing services for homeless youth. NWYS has had a significant backlog of young people awaiting housing and services due to limited operating capacity.

Through this contract, NWYS will serve as one of the Whatcom Homeless Service Center (WHSC) partner agencies providing housing case management and will serve as a specialized portal of entry into WHSC housing services for youth. The purpose of this contract is to provide housing case management for youth waiting for housing services in order to achieve housing stability and reduce youth homelessness in Whatcom County.

II. Definitions

Housing Pool (HP)	Quasi wait list that serves clients waiting for housing services based on their needs and available resources instead of a first come, first served basis.
HMIS	Washington's Homeless Management Information System Database
Whatcom Homeless Service Center (WHSC)	WHSC programs provide (1). centralized coordinated system of access, (2). targeted prevention assistance to reduce the number of households that become homeless, (3). re-housing of those who become homeless, (4) supportive services promoting housing stability and self-sufficiency, and (5). data management and tracking information for people receiving homeless housing services in Whatcom county and according to Washington State Department of Commerce HMIS data collection requirements.

III. Statement of Work

The Contractor will provide housing case management services. Housing case management activities include arrangement, coordination, monitoring, and delivery of services related to meeting the housing needs of households and helping them obtain housing stability. Services and activities include:

1. Developing, securing, coordinating, and retaining services and suitable housing. Services include but are not limited to:
 - a. Tenant counseling;
 - b. Assisting individuals and households with understanding leases;
 - c. Securing utilities;
 - d. Making moving arrangements;
 - e. Representative payee services concerning rent and utilities;

- f. Mediation and outreach to property owners related to locating or retaining housing;
 - g. Monitoring and evaluating household progress;
 - h. Assuring that household rights are protected;
 - i. Developing an individualized housing and service plan, including a path to permanent housing stability subsequent to assistance.
2. Intake – Contractor will provide intake services to youth in Whatcom County seeking housing to collect client information, assess barriers to stable housing, and eligibility for housing programs. Services will be provided to low-income and/or homeless youth residing in Whatcom County.
 3. Youth Housing Pool (YHP) – Youth housing pool case management includes services designed to educate youth who are homeless or almost homeless, about available programs, provide them with a point of access to housing services by working collaboratively with the WHSC, and engage with them to address barriers to housing.

Individuals and households served shall have incomes at or below 50% Area Median Income (AMI). Income eligibility will be determined by the funding sources used for case management.

IV. Program Outcomes

During this contract period, the housing case management services provided by the Contractor will deliver the following outcomes:

1. At least twenty (20) unsheltered youth households will receive case management services.
2. At least twenty (20) youth in emergency shelters or transitional housing will receive case management services.
3. At least twenty-five (25) youth in permanent housing will receive case management services.
4. At least twenty (15) youth will achieve housing stability while receiving case management services.
5. At least 85% of youth households who obtained housing will remain stably housed six months after existing case management services.

V. Additional Requirements

The Contractor will:

1. Comply with:
 - a. Relevant State of Washington Department of Commerce Emergency Solutions COVID-19 Grant guidelines, including periodic updates to the guidelines, which can be accessed at the following links:
<https://www.commerce.wa.gov/wp-content/uploads/2020/06/Commerce-ESG-CV-Overview-.pdf>
 and <https://deptofcommerce.box.com/s/fsmf4pmwkroszjt702j1l9cfnvk5ixmq>
 - b. Special Terms and Conditions of Commerce Emergency Solutions – COVID-19 (ESG-CV) Grant, herein incorporated as Exhibit E.

2. Participate in HMIS data collection efforts as directed by the WHSC; including HMIS training, HMIS data entry, updating client data as necessary, and exiting clients from HMIS. Services which must be inputted into HMIS include (but are not limited to) financial services – including deposits, rental payments, and completed home visits.
3. Comply with the following Housing Pool (HP) Referral procedure. When Contractor staff believes a referral from the HP is not a good fit for their program, a situation which should be rare, the following procedures must be followed:
 - a. Contractor will submit a written description of the situation that justifies returning the client to the HP, and
 - b. An in-person case conference must be scheduled within five days of request to return a referral. The case conference will include Contractor staff, WHSC housing referral specialist, and HP case management services coordinator (or designee).
 - c. The course of action mutually agreed to at the case conference will be recorded in writing, constituting a binding agreement.
 - d. As the parties to this contract learn more about referral success factors, procedures may be amended accordingly.
4. Promote public health in homeless housing and preserve the safety and stability of available housing stock for homeless housing by:
 - a. Informing clients/tenants of the importance of upholding safety and health in homeless housing, and of preserving continued access to housing by our homeless housing system.
 - b. Informing clients/tenants that they may be expected to participate in cleaning and decontaminating their housing unit when necessary for health reasons.
 - c. Informing clients/tenants that damages to their unit may result in eviction and loss of the unit in the future for our homeless housing system.
 - d. Informing prospective tenants that they need to maintain a safe and clean apartment in advance of receiving housing and periodically after they are in housing.
 - e. In scattered sites, master lease, public housing, and staffed housing programs, case managers will work with the client/tenant to address the issues of health and safety that arise, including that of suspected methamphetamine use. The WCHD will provide case managers with free and confidential technical assistance on effective methods for cleaning apartment units that have been contaminated, whenever requested.
 - f. Documenting in each client file that these expectations were communicated to the client/tenant.
5. Require professional development training for direct service staff and supervisors.
6. Attend Whatcom County Coalition to End Homelessness meetings and sponsored activities.
7. Attend meetings and events coordinated by the WHSC.

VI. Reporting Requirements

The Contractor shall submit quarterly reports* to the WCHD utilizing HMIS data by using the quarterly reporting template accessed on the County website, as noted below. Reports will demonstrate the Contractor's progress toward achieving the program outcomes identified above. Quarterly reports are due on April 15, July 15, October 15, and January 15.

*Contractors will be notified via email of updates to quarterly reporting templates. Current reporting templates will be posted on the Whatcom County Health Department Housing Program website which may be accessed at: <https://www.whatcomcounty.us/DocumentCenter/View/56308/Reporting-Tool---Case-Management-NWYS-2021>.

Reports will include data for only those clients served under this contract and include:

1. Number of unsheltered households that received case management during the quarter.
2. Number of sheltered households that received case management during the quarter.
3. Number of individuals in permanent supportive housing that received case management services during the quarter.
4. Average length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (RRH, PSH, or other stable housing situation).
5. Median length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (in RRH, PSH, or other stable housing situation).
6. Number of case managed households that have been stably housed for six (6) months.
7. Number of case managed households that have been stably housed for twelve (12) months or more.
8. Number of case managed households that lost stable housing or exited case management while homeless.
9. Number of case managed households that achieved housing stability while receiving case management services.

VII. Flex Funding

Flex funds must follow the Guidelines established by the County and be reported on the spreadsheet provided by the County (Exhibit D) and signed by an authorized agency signatory. In addition, all flex funds must be accompanied by receipts.

Exhibit B
(COMPENSATION)

- I. **Source of Funding and Budget:** The source of funding for this contract, in an amount not to exceed \$178,771, is local document recording fees, and the Washington State Department of Commerce Emergency Solutions COVID-19 Grant (CFDA 14.231). COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

*Cost Description	Documents Required with Invoices	Amount
Document Recording Fee Funding		
Scattered Site Housing Program Manager (.25 FTE)	Approved composite billing rate worksheet for each staff member and timesheets for the period.	\$8,567
Housing Program Director (.5 FTE)		\$18,800
Facility Based Housing Program Manager (.5 FTE)		\$17,134
Case Managers (1.3 FTE)		\$38,701
Data Analytics and Reporting (.1 FTE)		\$3,155
Data Entry Assistant (.05 FTE)		\$938
Direct Service Staff Training	Include name of traveler, dates, start & end point, and purpose. Receipts are required for transportation costs, registration fees, etc. Lodging & meal costs follow federal guidelines (www.gsa.gov). Receipts for meals are not required.	\$500
Program Specific Occupancy Costs	GL Detail	\$2,400
Program Specific Phones, Supplies & Postage		\$840
Flex Funds	Flex fund spreadsheet and copies of receipts	\$1,000
SUBTOTAL		\$92,035
Emergency Solutions Grant COVID Funding		
Scattered Site Housing Program Manager (.25 FTE)	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$8,567
Case Manager (Rapid Rehousing 1 FTE)		\$29,770
Interim Housing Program Management (HUSLY, 1 FTE)		\$32,147
SUBTOTAL		\$70,484
Indirect Costs – shall not exceed the rates indicated below:		
Document Recording Fee Indirect Costs @ 10%		\$9,203
ESG-CV Indirect Costs at 7%		\$4,934
Additional Document Recording Fee Indirect (3% of ESG-CV Costs)		\$2,115
SUBTOTAL Indirect		\$16,252
TOTAL BUDGET (7/1/2021 – 12/31/2021)		\$178,771

*Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County.

II. Invoicing:

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.
2. The Contractor shall submit invoices to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The county may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

Exhibit "D"
WHATCOM COUNTY FLEX FUNDS GUIDELINES

"Flex funds" are funds that may be used at the discretion of the Contractor, following the policies described below, to purchase goods or services directly related to the service needs of the Contractor's clients, when no other funding source is available. **Such goods or services must be reasonable and necessary to meet a client's emergent service needs or contribute to the stabilization or self-sufficiency of the client.**

Allowable Costs: Allowable uses of client-specific expenditures of flex funds include the following:

- Clothing
- Food
- Housing/rental assistance
- Bus passes or taxi fare
- Car repairs
- Driver's license or ID card fees
- Educational or training program registration fees
- Household supplies, including furniture
- Medications
- Health care
- Other, as approved by Whatcom County

Limitations: Flex fund expenditures must be within the allowable criteria established by the County, as identified above, must be based upon the service needs as documented in the client's individual service plan, and must have no other funding available from any other source.

Flex funds distributed to any one client cannot exceed \$500 per year, except with written authorization from the County. No flex fund disbursements are to be made directly to the client but rather will be made on behalf of a client.

Documentation: Requests for reimbursement of flex funds must include the attached form including the following:

- A. The person or organization funds were paid to.
- B. Date of transaction.
- C. A list of the goods and/or services purchased.
- D. The cost of the goods and/or services purchased.
- E. The initials of the client and/or unique identifying number of the client for whom the goods and/or services were purchased.
- F. The total amount of flex funds distributed to the client during the year.
- G. The service need addressed by the expenditure.
- H. Accompanying invoices and/or receipts.
- I. Evidence of administrative review of expenditures

See Attached Form

Contractor:			Contract:			Period:		
Whatcom County Health Department Flex Fund Documentation								
Paid To *	Date	Cost	Goods/Services Purchased	Client ID	Total \$ To Client this Year	Service Need	No Other Funding Available	Administrative Review
* ATTACH RECEIPTS FOR EACH PURCHASE								

“Exhibit E”
(Special Terms and Conditions for Commerce Emergency Solutions Grant
– COVID 19 ESG-CV – CFDA #14.231)

The funds allocated for services performed under this grant are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are liable for claims or damages arising from the Contractor's performance of this subgrant.

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. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, 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. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- 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. "Subgrantee/Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee/subcontractor" refers to any tier.
- H. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

2. ACKNOWLEDGMENT OF FEDERAL FUNDS

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 Grant No. E-20-DW-53-0001 awarded by U.S. Department of Housing and Urban Development (HUD) as a supplemental appropriation through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the HUD. Grant funds are administered by the Housing Assistance Unit in the Community Services and Housing Division, Washington State Department of Commerce."

3. ALL WRITINGS CONTAINED HEREIN

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

4. AMENDMENTS

This Grant 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

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

6. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee 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 Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

7. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
- iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant 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 Grantee 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 Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee 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.

8. COPYRIGHT

Unless otherwise provided, all Materials produced under this Grant 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 Grantee 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 Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee 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 Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, 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 Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

9. DUPLICATE PAYMENT

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

10. GOVERNING LAW AND VENUE

This Grant 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.

11. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, 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 contract. "Claim" as used in this contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

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

12. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

13. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

14. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Grantee's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
 - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - iii. Positive efforts shall be made to use small and minority-owned businesses.

- iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - v. Contracts shall be made with only reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
 - vii. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection
 - 2) The basis for the cost or price
 - 3) Justification for lack of competitive bids if offers are not obtained
 - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
- D. Contractor and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

15. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE'S name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

16. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, 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 Grantee 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 Grant.

17. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant 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 Grant.

The Grantee 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 Grant, 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.

18. 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 Grant and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

19. SEVERABILITY

The provisions of this Grant 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 Grant.

20. SUBGRANTING/SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee 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 Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee'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.

21. SITE SECURITY

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.

22. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

23. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant.

All reference to the Grantee under this clause shall also include Grantee's employees, agents, or Subgrantees/Subcontractors.

24. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

“Exhibit F”
(CERTIFICATION REGARDING LOBBYING)

The undersigned 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 office or employee of an 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 entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, and cooperative agreements) and that all subrecipients 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, title 31, 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.

Agency Name: Northwest Youth Services

Authorized Representative: Jason McGill, Executive Director

Signature: _____

Date: _____



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-351

File ID:	AB2021-351	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Cascade Connections to provide services to individuals with developmental disabilities, in an estimated amount of \$1,321,837

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Cascade Connections – Services to Individuals with Developmental Disabilities Contract
DATE: June 11, 2021

Attached is a contract between Whatcom County and Cascade Connections for your review and signature.

- **Background and Purpose**

This contract provides “Pathways to Employment” and “Community Inclusion” services to eligible individuals with developmental disabilities. Pathways to Employment services are designed to assist individuals to pursue and maintain paid employment in integrated community settings. Community Inclusion services are design to increase participation and inclusion in the community. In January 2021, 353 adults in Whatcom County received employment services and 32 individuals received community inclusion services. Cascade Connections is one of four community providers offering these services.

- **Funding Amount and Source**

Funding for this contract is provided by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. Total compensation under this contract will vary depending on the number of clients and the types of services authorized, however, the estimated authorized service level is \$1,321,837. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract; however, funding for these services has been provided through previous contracts between Whatcom County and Cascade Connections since 2001. This contract updates hourly rates in line with a temporary 12% rate increase through December 31, 2021 and otherwise includes no significant changes from the contract that is currently in place (WC Contract #201706028).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET		Whatcom County Contract No. _____																					
Originating Department:		85 Health																					
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855050 Developmental Disabilities																					
Contract or Grant Administrator:		Jessica Lee																					
Contractor's / Agency Name:		Cascade Connections																					
Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If not, is this an Amendment or Renewal to an Existing Contract? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		Yes <input type="checkbox"/> No <input type="checkbox"/>																				
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		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 <input type="checkbox"/> No <input checked="" type="checkbox"/>		If yes, grantor agency contract number(s): _____																					
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		CFDA#: _____																					
If yes, Whatcom County grant contract number(s): _____		201906024																					
Is this contract the result of a RFP or Bid process? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If yes, RFP and Bid number(s): 16-18																					
Contract Cost Center: _____		673800																					
Is this agreement excluded from E-Verify? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>																							
If YES, indicate exclusion(s) below:																							
<input type="checkbox"/> Professional services agreement for certified/licensed professional.																							
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).																					
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.																					
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.																					
Contract Amount:(sum of original contract amount and any prior amendments): Varies depending on number of services authorized and types of services authorized.		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 provides funding for services designed to assist eligible individuals with developmental disabilities to pursue and maintain paid employment in integrated community settings.																							
Term of Contract: _____		1 Year																					
Expiration Date: _____		06/30/2022																					
Contract Routing:		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">1. Prepared by: JT</td> <td style="width: 50%;">Date: 03/04/2021</td> </tr> <tr> <td>2. Health Budget Approval: KR/JG</td> <td>Date: 06/08/2021</td> </tr> <tr> <td>3. Attorney signoff: RB</td> <td>Date: 06/11/2021</td> </tr> <tr> <td>4. AS Finance reviewed: M Caldwell</td> <td>Date: 6/9/21</td> </tr> <tr> <td>5. IT reviewed (if IT related):</td> <td>Date:</td> </tr> <tr> <td>6. Contractor approved:</td> <td>Date:</td> </tr> <tr> <td>7. Submitted to Exec.:</td> <td>Date:</td> </tr> <tr> <td>8. Council approved (if necessary): AB2021-351</td> <td>Date:</td> </tr> <tr> <td>9. Executive signed:</td> <td>Date:</td> </tr> <tr> <td>10. Original to Council:</td> <td>Date:</td> </tr> </table>		1. Prepared by: JT	Date: 03/04/2021	2. Health Budget Approval: KR/JG	Date: 06/08/2021	3. Attorney signoff: RB	Date: 06/11/2021	4. AS Finance reviewed: M Caldwell	Date: 6/9/21	5. IT reviewed (if IT related):	Date:	6. Contractor approved:	Date:	7. Submitted to Exec.:	Date:	8. Council approved (if necessary): AB2021-351	Date:	9. Executive signed:	Date:	10. Original to Council:	Date:
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**CONTRACT FOR SERVICES
Between Whatcom County and Cascade Connections**

Cascade Connections, 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 13,
Exhibit A (Scope of Work), pp. 14 to 21,
Exhibit B (Compensation), pp. 22 to 24,
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of July, 2021 and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2022.

The general purpose or objective of this Agreement is to **provide services to individuals with developmental disabilities** 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 is estimated at \$1,321,837. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Cascade Connections
4350 Cordata Parkway #201
Bellingham, WA 98226

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.

Kristin Nguyen, Vocational Services Administrator

Recommended for Approval:

Date _____

Date _____

Approved as to form:

Date _____

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

CONTRACTOR INFORMATION:

Kristin Nguyen, Vocational Services Administrator
4350 Cordata Parkway #201
Bellingham, WA 98226
360-647-9087
Knguyen@ccsite.org

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360-647-9087
Knguyen@ccsite.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and

any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. Verification of Coverage/Certificates and Endorsements. The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Jessica Lee, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Jessica Lee, Program Specialist
509 Girard Street
Bellingham, WA 98225
360-778-6047
JLLee@co.whatcom.wa.us

Cascade Connections
Kristin Nguyen, Vocational Services Administrator
4350 Cordata Parkway #201
Bellingham, WA 98226
360-647-9087
knguyen@ccsite.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

The purpose of this contract is to provide "Pathways to Employment" and "Community Inclusion" services to eligible individuals with developmental disabilities. Pathways to Employment services assist working age adults to pursue and maintain paid employment in integrated community settings. Community Inclusion services support individuals who are retired or no longer seeking employment to increase their independence and inclusion in the community.

All individuals served are authorized by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. (DSHS/DDA) All services are individualized to reflect the individual's interests, skills and service goals within rules established by DSHS/DDA.

This contract reflects the community values and goals of the Whatcom County Developmental Disabilities Advisory Board, the DSHS/DDA program agreement for the current biennium and the County Guidelines published by DSHS and available at https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf.

II. Service Types

The contractor has applied for and been accepted and monitored as a qualified provider for the services indicated:

☒ Individual Supported Employment

☒ Group Supported Employment

☒ Community Inclusion

These services are defined in the table below, based on the definitions found in the DSHS Developmental Disabilities Administration (DDA) Program Agreement for the current DDA biennium.

Service Type	Service Description	Service Goals
Individual Supported Employment	<ol style="list-style-type: none">1. These services are part of an individual's pathway to integrated employment in typical community jobs.2. These are individualized services necessary to help persons with developmental disabilities obtain and maintain integrated employment at or above the state's minimum wage in the general workforce.3. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, recordkeeping, and on-going support to maintain a job.	<ol style="list-style-type: none">a. Establish employment opportunities for participants within local businesses on a one-person/one-job basis or self-employment in line with the DSHS/DDA self-employment guidelines.b. Develop work opportunities regardless of the level of disability.c. Develop relationships with and support from co-workers without disabilities (natural supports).d. Earn sufficient wages to increase self-sufficiency and meet or exceed living expenses.e. Develop skills necessary to increase independence on the job and decrease dependence on paid supports.

		f. Make measurable progress toward the individual's employment goals.
Group Supported Employment	<ol style="list-style-type: none"> 1. These services are part of an individual's pathway to integrated employment in typical community jobs. 2. These services are intended to be short term and offer ongoing supervised employment for groups of no more than eight (8) workers with disabilities in the same setting. 3. Examples include enclaves, mobile crew and other business models employing small groups of workers with disabilities in integrated employment in community settings. 	<ol style="list-style-type: none"> a. Establish supervised employment opportunities for small groups of participants within local business, industry and community settings. b. Develop relationships and support from co-workers without disabilities (i.e. Natural Supports). c. Earn sufficient wages to increase self-sufficiency and met or exceed living expenses. d. Develop skills necessary to increase independence on the job, and decrease dependence on paid supports. e. Make measurable progress toward the individual's employment goals and toward integrated employment at minimum wage or better.
Community Inclusion	<ol style="list-style-type: none"> 1. These individualized services are provided in typical integrated community settings for individuals in retirement or no longer pursuing employment. 2. Services will promote individualized skill building which supports the individual to actively and independently engage in their local community. 3. Activities will provide opportunity to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion. 4. These services may be authorized instead of employment support for working age individuals (21-62) who have received nine months of employment support and choose to no longer pursue employment. 	<ol style="list-style-type: none"> a. Participation in integrated community activities of clients' choice similar to individuals without disabilities of the same age. b. Membership/leadership in local community clubs and associations based on interest and culture. c. Foster connections between persons with disabilities and persons without disabilities who are not paid developmental disabilities staff. d. Enhance or maintain the persons' competence, integration, physical or mental skill.

III. Statement of Work

The Contractor will develop an individualized service plan for each client based on his or her interests, skills and abilities. Support will be provided as defined below to make measurable progress toward the client's service goals as outlined in the plan.

A. Client Support

“Support” provided in the implementation of client services, as referenced herein, is defined as staff time spent on behalf of the program client to achieve community employment or inclusion goals. In addition to those activities specifically outlined within the billable activities, below, “support” when used within a definition typically refers to one of the three following activities:

1. **Monitoring** of client employment or community inclusion activities (e.g., ensuring safety, quality, etc.);
2. Providing verbal or physical reminders or **prompts** for the client to successfully complete or engage in employment or community inclusion activities; or
3. Providing partial or total 1:1 **physical assistance** to allow the client to successfully complete or engage in employment or inclusion activities.

B. Pathway to Employment Billable Support Activities

Pathway to Employment includes both Individual Employment (IE) and Group Supported Employment (GSE). Billable support activities for Pathway to Employment services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County, without a contract amendment.

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/Individual%20Employment%20Billable%20Activities%207.2019.pdf> and

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/GSE%20and%20PVS%20Service%20Guidelines%20Minimum%20Expectations%202013.pdf>

C. Community Inclusion Billable Support Activities

Billable support activities for Community Inclusion services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County without a contract amendment.

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/CI%20Billable%20Activities%202-1-2018.pdf>

D. Individualized Plan for Services

The Contractor is required to have a written, individualized service plan for each client, completed within 60 days of County authorization. This individual plan is meant to be the “driver” or basis for support services delivered by the Contractor. The individual plan must be updated and reviewed at least annually by the planning team, as described below.

The individual plan requires the development of a planning team including the client, client’s guardian when applicable, DSHS/DDA Case Resource Manager, and others identified by the client to provide input. At a minimum, the DSHS/DDA Case Resource Manager and the individual/guardian will receive a copy of the completed plan. Other members of the planning team may request a copy with the client’s permission.

Required elements of both Pathways to Employment and Community Inclusion plans are outlined in the County Program Implementation Guide:

E. Progress Updates

For all clients, the Contractor shall document measurable progress toward achieving the individual's service goals every 6 months in a format approved by the County. Six (6) month progress updates must be sent within 30 days following the 6-month period to the DSHS/DDA Case Resource Manager and the client/guardian.

If clients receiving Individual Employment or Group Supported Employment services have not obtained paid employment at minimum wage or better within six (6) months the contractor will:

1. Review the progress toward service goals
2. Provide evidence of consultation with the family/client
3. Develop additional strategies with the family/client, county staff, employment support staff and case manager, as appropriate. Strategies may include technical assistance, changing to a new provider and/or additional resources as needed to support employment goals.
4. Document the additional/new strategies developed for each client with the client's file.

If after 12 months, the client remains unemployed, an additional review will be conducted. The Contractor will address steps outlined in the previous six-month progress report in the next six-month progress report. The client may request to participate in Community Inclusion activities or the client can choose to remain in an employment program. Individuals requesting to participate in Community Inclusion activities will be referred to his/her DSHS/DDA Case Resource Manager.

IV. Service Requirements

A. All services will:

1. Be individualized and unique to the client's Individualized Pathway to Employment or Community Inclusion Plan.
2. Be provided to clients meeting age requirements detailed in WAC 388-845-2110.
3. Ensure continued movement toward inclusive settings, integration and connection with others in the community without disabilities.
4. Provide supports in a variety of settings and in a broad range of activities that will contribute to his/her individual service goals.
5. Provide staff and training interventions at appropriate levels to safely and effectively meet the needs of the client.

6. Promote independence through skill development and training, including the effective use of public transportation.
7. Implement curriculum, work activities, routines, and other materials used to facilitate learning that are relevant to the age and individual needs of each client.
8. Emphasize the development of natural community supports, in conjunction with, but not an over-reliance on, public funds. Natural supports are those provided by individuals in the work or community environment who are not paid to support the client.
9. Demonstrate measurable progress toward achieving the client's individualized service goals.
10. Include at minimum monthly contact by the contractor.
11. Provide support to the client at a service level proposed by the Contractor, approved by the County and authorized by the DSHS/DDA Case Resource Manager. Service levels will be authorized in accordance with:
 - Washington Administrative Code (WAC) [388-828-9325](#) through [9360](#) for Employment Services
 - WAC [388-828-9300](#) through [9310](#) for Community Inclusion Services
 - County Implementation Guide for Employment and Inclusion Services
<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>
12. Adhere to 42CFR 441.530(a)(1) related to Home and Community Based settings which require:
 - a. The service setting is integrated in and supports full access to the greater community;
 - b. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
 - c. Provides opportunities to seek employment and work in competitive integrated settings; and
 - d. Identifying settings that isolate people from the broader community or that have the effect of isolating individuals from the broader community of individuals who do not receive Medicaid HCB services. These settings are presumed not to be home and community-based.

B. All Employment Services will:

1. Emphasize maximum integration with co-workers without disabilities. All efforts will be made to promote employer responsibility for workers with disabilities, including exploration of direct employment of clients by the business/industry in Group Supported Employment.
2. Ensure that pay for work performed is commensurate with pay to other employees doing the same type and amount of work.

3. Ensure that all individuals, regardless of their disability, are provided the opportunity to pursue employment. Some participants may need more support than others and may spend time in activities that will prepare the participant for future community employment.
4. Ensure that supports necessary for job success have been identified and provided to each participant. Support may include, but are not limited to, identification of resources necessary for transportation, job restructuring, work materials or routine adaption, work environment modification, identification of job counseling needs, etc.
5. Ensure that supports, including training and support to employers and co-workers, have been provided in each job placement to ensure jobs are maintained and fading of support is occurring. This includes the development of natural (unpaid) supports
6. Support clients to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828.

C. Individual Employment

Where the service provider is also the Client's employer, long term funding will remain available to the service provider employer for six months after the employee/Client's date of hire. At the end of the six-month period, if the client continues to need support on the job, another service provider who is not the employer of record must provide the support unless the County issues prior written approval. If the County approves the continuation of long-term supports, where the service provider is also the Client's employer, the County will regularly monitor these positions to assure fading efforts occur when appropriate and any potential conflict of interest is addressed.

D. Group Supported Employment (GSE) will:

1. Ensure paid work is available for all clients authorized for these services. In the event that contracted work is no longer available or insufficient to maintain a GSE work site, the provider is expected to notify the County to determine appropriate next steps related to client authorization.
2. Work towards establishing permanent integrated employment at or above minimum wage.
3. Ensure billing of GSE service hours in line with DDA requirements outlined in the Program Implementation guide.

E. Community Inclusion Services will:

1. Focus on activities that are typically experienced by the general public. Support to participate in segregated and/or specialized activities will not be reimbursed. Segregated

and specialized activities are those which are organized and designed for individuals based on their disability.

2. Not be provided simultaneously with employment services, unless approved by exception by DSHS/DDA.
3. Ensure the health and safety of participating clients.
4. Ensure a positive image and development of relationships, increased competence, individualized skill-building, and other benefits identified in the client's plan. Services will occur individually or in a group of no more than 2 or 3 individuals. Group services may only occur when based on similar interests and needs.
5. Allow a client to discontinue services in order to pursue work and to receive employment support at any time.

V. Additional Consumer Supports and Other Activities

Other allowable activities not tied to a specific client, or tied to clients under the age of 21 (not yet meeting age requirements outlined in WAC 388-845-2110) may be approved by the County. Approval for projects within the below categories will follow authorization procedures as outlined in the Program Implementation Guide within funds available and approved by the County.

- A. Staff Training: Costs incurred by the program for planned, structured activities for the purpose of providing, or improving, or enhancing job-related knowledge and skills of staff, providers, volunteers, or interning students in the provision of developmental disabilities services.
- B. Community Information and Education: to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.
- C. Other Activities.
 - i. Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search." <https://www.projectsearch.us/>
 - ii. Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
 - iii. Job Foundations- A pilot project designed to engage students ages 19-20 in targeted employment readiness activities in their second to last year of school. The contractor will complete a written Job Foundations report (<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Job%20Foundation%20Report.docx>) based on information gathered about the student's skills and interests and assessment of student performance. The report will include actionable next steps for the student's job search and will be completed in line with best practice guidelines available on the County Best Practices website: <https://www.dshs.wa.gov/dda/county-best-practices>. The contractor will engage in an average of 35 hours of employment support activities with or on behalf of the student until the student moves into job development.

- iv. Partnership project: Collaborative partnerships with school districts, employment providers, Division of Vocational Rehabilitation (DVR), families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21). Students in their last year of school may be eligible to receive a job foundations report if one was not completed in their second to last year.

VI. Additional Provisions

- A. In determining the service level associated with each individual client, the primary service obligation is to meet the needs of the individual client related to his or her service goals, within the limits and requirements established in the WAC.
- B. Service levels proposed by the Contractor must be approved by the County and authorized by the DDA Case Resource Manager (CRM).
- C. Payment will be made on an hourly basis for all staff support hours provided, up to but not to exceed, the monthly support hours authorized for each client.
- D. Authorized service levels documented in the DSHS/Case Management Information System (CMIS) database will take precedence in the event of any inconsistency or conflict. The current maximum authorized service level will be downloaded from the DSHS/CMIS database and provided to the Contractor on the monthly billing report.
- E. The Contractor may propose a change in service level through the process established in the County Program Implementation Guide.
- F. Funds received from the County shall not be used to provide cash benefit to the supported individual, whether salary, bonuses or benefits.
- G. The contractor agrees to assign to the County, its Medicaid waiver billing rights for services to DDA clients eligible under Title XIX Programs. If the Contractor chooses to contract directly with DSHS to provide covered services under Title XIX, those services will not be billed to the County.

VII. Reporting

- A. Reporting on client services will be made monthly with the invoice for services through the established DSHS/DDA County billing and reporting process in the format approved by the County. Data elements and definitions for each category of services are outlined by DSHS/DDA in the Case Management Information System (CMIS) billing instructions found at: <https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/AWA%20Billing%20Instructions.docx>.
- B. The Contractor will provide other reports as developed and required by DSHS/DDA and the County during the term of the contract.

VIII. Program Implementation Requirements

The Developmental Disabilities Program Implementation Guide, Employment or Community Inclusion Services is incorporated by reference into the Scope of Work as presently adopted or subsequently amended and can be located at:

<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=> . The purpose of the Program Implementation Guide is to detail implementation requirements including policy and procedure for Pathways to Employment and Community Inclusion services.

Exhibit B
(COMPENSATION)

The source of funding for this contract is the Washington State Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA). Total compensation for the contract is variable, depending upon the number of clients and service levels authorized by DSHS/DDA and the County. This is a vendor agreement and not a sub-recipient agreement.

The County will pay the contractor for services delivered to DSHS/DDA authorized clients:

1. Service levels are individualized, based on assessed client need;
2. The service hours authorized for each client is mutually agreed upon by DDA, the County, and the Contractor;
3. Limits to client service authorizations are established in Washington Administrative Code (WAC) 388-828-7020;388-828-9205, 388-828-9310
4. Funding is allocated for services delivered to an individual client. The client's service allocation and funding will follow the client in the event that they choose to receive services through another Contractor;
5. The billing unit for services is hourly

I. Billing and Payment

1. Invoices and attached service documentation will be submitted monthly to the Whatcom County Health Department in the format approved by the County. A complete billing includes both an invoice coversheet and attached client services documentation. The Contractor shall send invoices and service documentation to the following address:

Jessica Lee, Program Specialist
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
jlee@co.whatcom.wa.us

2. The County must receive all invoices and supporting documentation within ten (10) calendar days following the last day of the month for which reimbursement is claimed. If an invoice or required documentation is incorrect, it will be returned to the Contractor. All invoice corrections or modifications must be submitted no later than 45 days after the last day of the month in which the services were provided.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract. Invoices and invoice corrections or modifications related to work done prior to December 31 of the contract year will be accepted no later than January 15, following the end of the County fiscal year (December 31).
4. The Contractor will not be paid for any billings or invoices for services occurring prior to the execution of the contract or after its termination.
5. The Contractor shall not bill the county for service performed or provided under this contract if the Contractor has been or will be paid for the same service by any other source. Such sources include, but are not limited to, the Division of Vocational Rehabilitation Social Security Work Incentives such as Plans for

Achieving Self Support (PASS) or Impairment Related Work Expense (IRWE). The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. 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.

7. A total annual funding authorization for all clients will be communicated to the Contractor at the start of the contract year. The funding authorization may be amended, based on use, over the course of the contract year without contract amendment. Expenditures may not exceed the total funding approved by the County and in no case will exceed the total available funding restricted to these services.

II. Reimbursement Rates for Pathways to Employment and Community Inclusion Services

Service Type	Description	Unit Rate	Fund Source
A. Individual Employment	Individualized staff support authorized <u>up to 30 hours</u> a month per client.	\$83/hour	DSHS/DDA
B. Individual Employment Exceptional Service level	For every 10 hour increment above 30*, the hourly rate will be reduced as described below. Minimum hourly rate is \$35/ hour for IE services. a. 31-40 hour= \$65/hour b. Additional reduction of \$5/ hour for every 10 hour increment above 40. Example: 41-50 hours=\$60/ hour; 51-60 hours=\$55/ hour	Variable \$35-\$65/ hour	DSHS/DDA
C. Group Supported Employment	Shared staff support within the GSE setting and individualized staff support outside of the GSE setting as authorized	\$72/hour	DSHS/DDA
D. Community Inclusion	Individualized support in integrated community settings	\$39/hour	DSHS/DDA

*Both the rate and the service level are attached to the client's authorization approved by DSHS/DDA. This means that if the actual number of hours provided falls below 30 (or another 10 hour increment), the lower hourly rate will still apply. Exceptional service hours may be limited by funding availability and DSHS/DDA approval.

III. Reimbursement Rates for Other Consumer Supports and Other Activities

Activities A-E authorized based on funding available and approved by the County

Activity	Description	Unit/Rate	Funding
A. Partnership Projects	Hourly consultation with school districts, families, employers to improve the transition of young adults from school to work and adult services. Not to exceed hours authorized by the County.	\$74/hour	DSHS/DDA
B. Staff training, Projects and other activities	Training, projects and activities as detailed in Section V., above, and approved in writing by the County, using exhibit B of the Program Implementation Guide .	Reimbursement	DSHS/DDA Local funds not to exceed \$5,000

C. Job Foundation - Report	Payment upon completion and County approval of student Job Foundations Report. (Rate set by DSHS/DDA)	\$2,400 per County authorized student	DSHS/DDA
D. Job Foundation – Employment Outcome	Outcome payments for “High Acuity” students placed in competitive, integrated, individual employment by the following date of the student’s school exit year: a. By September 30 b. Between October through December c. Between January through March d. Between April through June	Rates set by DSHS DDA a. \$1,500 b. \$1,000 c. \$500 d. \$250 e. An Additional payment of \$1,000 if client is working ten hour of work per week or more.	DSHS/DDA

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-352

File ID:	AB2021-352	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Kulshan Supported Employment to provide services to individuals with developmental disabilities, in an estimated amount of \$1,150,942

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Kulshan Supported Employment – Services to Individuals with Developmental Disabilities Contract
DATE: June 11, 2021

Attached is a contract between Whatcom County and Kulshan Supported Employment for your review and signature.

- **Background and Purpose**

This contract provides “Pathways to Employment” and “Community Inclusion” services to eligible individuals with developmental disabilities. Pathways to Employment services are designed to assist individuals to pursue and maintain paid employment in integrated community settings. Community Inclusion services are design to increase participation and inclusion in the community. In January 2021, 353 adults in Whatcom County received employment services and 32 individuals received community inclusion services. Kulshan Supported Employment is one of four community providers offering these services.

- **Funding Amount and Source**

Funding for this contract is provided by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. Total compensation under this contract will vary depending on the number of clients and the types of services authorized, however, the estimated authorized service level is \$1,150,942. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract; however, funding for these services has been provided through previous contracts between Whatcom County and Kulshan Supported Employment since 2001. This contract updates hourly rates in line with a temporary 12% rate increase through December 31, 2021 and otherwise includes no significant changes from the contract that is currently in place (WC Contract #201706011).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855050 Developmental Disabilities		
Contract or Grant Administrator:			Jessica Lee		
Contractor's / Agency Name:			Kulshan Supported Employment		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	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?		If yes, grantor agency contract number(s):		CFDA#:	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		201906024	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	673800
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	16-18			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> 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 services authorized and types of services authorized.		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 funding for services designed to assist eligible individuals with developmental disabilities to pursue and maintain paid employment in integrated community settings.					
Term of Contract:		1 Year		Expiration Date: 06/30/2022	
Contract Routing:		1. Prepared by: JT		Date:	03/04/2021
		2. Health Budget Approval: KR/JG		Date:	06/08/2021
		3. Attorney signoff: RB		Date:	06/11/2021
		4. AS Finance reviewed: M Caldwell		Date:	6/9/21
		5. IT reviewed (if IT related):		Date:	
		6. Contractor approved:		Date:	
		7. Submitted to Exec.:		Date:	
		8. Council approved (if necessary): AB2021-352		Date:	
		9. Executive signed:		Date:	
		10. Original to Council:		Date:	

CONTRACT FOR SERVICES
Between Whatcom County and Kulshan Supported Employment

Kulshan Supported Employment, 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 13,
Exhibit A (Scope of Work), pp. 14 to 21,
Exhibit B (Compensation), pp. 22 to 24,
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of July, 2021 and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2022.

The general purpose or objective of this Agreement is to **provide services to individuals with developmental disabilities** 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 is estimated at \$1,150,942. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Kulshan Supported Employment
310 Iowa Street
Bellingham, WA 98225

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.

Matt Carlson, Director

Recommended for Approval:

Date _____

Date _____

Approved as to form:

Date _____

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

CONTRACTOR INFORMATION:

Kulshan Supported Employment

Matt Carlson, Director

310 Iowa Street

Bellingham, WA 98225

360-739-8145

staff@kulshansupportedemployment.com

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and

any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Jessica Lee, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Jessica Lee, Program Specialist
509 Girard Street
Bellingham, WA 98225
360-778-6047
JLLee@co.whatcom.wa.us

Kulshan Supported Employment
Matt Carlson, Director
310 Iowa Street
Bellingham, WA 98225
360-739-8145
staff@kulshansupportedemployment.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

The purpose of this contract is to provide "Pathways to Employment" and "Community Inclusion" services to eligible individuals with developmental disabilities. Pathways to Employment services assist working age adults to pursue and maintain paid employment in integrated community settings. Community Inclusion services support individuals who are retired or no longer seeking employment to increase their independence and inclusion in the community.

All individuals served are authorized by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. (DSHS/DDA) All services are individualized to reflect client interests, skills and service goals within rules established by DSHS/DDA.

This contract reflects the community values and goals of the Whatcom County Developmental Disabilities Advisory Board, the DSHS/DDA program agreement for the current biennium and the County Guidelines published by DSHS and available at https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf.

II. Service Types

The contractor has applied for and been accepted and monitored as a qualified provider for the services indicated:

☒ Individual Supported Employment

☒ Group Supported Employment

☐ Community Inclusion

These services are defined in the table below, based on the definitions found in the DSHS Developmental Disabilities Administration (DDA) Program Agreement for the current DDA biennium.

Service Type	Service Description	Service Goals
Individual Supported Employment	<ol style="list-style-type: none">1. These services are part of an individual's pathway to integrated employment in typical community jobs.2. These are individualized services necessary to help persons with developmental disabilities obtain and maintain integrated employment at or above the state's minimum wage in the general workforce.3. These services may include intake, discovery, assessment, job preparation, job marketing, job supports,	<ol style="list-style-type: none">a. Establish employment opportunities for participants within local businesses on a one-person/one-job basis or self-employment in line with the DSHS/DDA self-employment guidelines.b. Develop work opportunities regardless of the level of disability.c. Develop relationships with and support from co-workers without disabilities (natural supports).d. Earn sufficient wages to increase self-sufficiency and meet or exceed living expenses.

	recordkeeping, and on-going support to maintain a job.	<p>e. Develop skills necessary to increase independence on the job and decrease dependence on paid supports.</p> <p>f. Make measurable progress toward the individual's employment goals.</p>
Group Supported Employment	<p>1. These services are part of an individual's pathway to integrated employment in typical community jobs.</p> <p>2. These services are intended to be short term and offer ongoing supervised employment for groups of no more than eight (8) workers with disabilities in the same setting.</p> <p>3. Examples include enclaves, mobile crew and other business models employing small groups of workers with disabilities in integrated employment in community settings.</p>	<p>a. Establish supervised employment opportunities for small groups of participants within local business, industry and community settings.</p> <p>b. Develop relationships and support from co-workers without disabilities (i.e. Natural Supports).</p> <p>c. Earn sufficient wages to increase self-sufficiency and met or exceed living expenses.</p> <p>d. Develop skills necessary to increase independence on the job, and decrease dependence on paid supports.</p> <p>e. Make measurable progress toward the individual's employment goals and toward integrated employment at minimum wage or better.</p>
Community Inclusion	<p>1. These individualized services are provided in typical integrated community settings for individuals in retirement or no longer pursuing employment.</p> <p>2. Services will promote individualized skill building which supports the individual to actively and independently engage in their local community.</p> <p>3. Activities will provide opportunity to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion.</p> <p>4. These services may be authorized instead of employment support for working age individuals (21-62) who have received nine months of employment support and choose to no longer pursue employment.</p>	<p>a. Participation in integrated community activities of clients' choice similar to individuals without disabilities of the same age.</p> <p>b. Membership/leadership in local community clubs and associations based on interest and culture.</p> <p>c. Foster connections between persons with disabilities and persons without disabilities who are not paid developmental disabilities staff.</p> <p>d. Enhance or maintain the persons' competence, integration, physical or mental skill.</p>

III. **Statement of Work**

The Contractor will develop an individualized service plan for each client based on his or her interests, skills and abilities. Support will be provided as defined below to make measurable progress toward the client's service goals as outlined in the plan.

A. Client Support

“Support” provided in the implementation of client services, as referenced herein, is defined as staff time spent on behalf of the program client to achieve community employment or inclusion goals. In addition to those activities specifically outlined within the billable activities, below, “support” when used within a definition typically refers to one of the three following activities:

1. **Monitoring** of client employment or community inclusion activities (e.g., ensuring safety, quality, etc.);
2. Providing verbal or physical reminders or **prompts** for the client to successfully complete or engage in employment or community inclusion activities; or
3. Providing partial or total 1:1 **physical assistance** to allow the client to successfully complete or engage in employment or inclusion activities.

B. Pathway to Employment Billable Support Activities

Pathway to Employment includes both Individual Employment (IE) and Group Supported Employment (GSE). Billable support activities for Pathway to Employment services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County, without a contract amendment.

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/Individual%20Employment%20Billable%20Activities%207.2019.pdf> and <https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/GSE%20and%20PVS%20Service%20Guidelines%20Minimum%20Expectations%202013.pdf>

C. Community Inclusion Billable Support Activities

Billable support activities for Community Inclusion services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County without a contract amendment. [https://www.dshs.wa.gov/dda/county-best-practices/CI Billable Activities 2-1-2018.pdf](https://www.dshs.wa.gov/dda/county-best-practices/CI%20Billable%20Activities%202-1-2018.pdf)

D. Individualized Plan for Services

The Contractor is required to have a written, individualized service plan for each client, completed within 60 days of County authorization. This individual plan is meant to be the “driver” or basis for support services delivered by the Contractor. The individual plan must be updated and reviewed at least annually by the planning team, as described below.

The individual plan requires the development of a planning team including the client, client’s guardian when applicable, DSHS/DDA Case Resource Manager, and others identified by the client to provide input. At a minimum, the DSHS/DDA Case Resource Manager and the individual/guardian will receive a copy of the completed plan. Other members of the planning team may request a copy with the client’s permission.

Required elements of both Pathways to Employment and Community Inclusion plans are outlined in the County Program Implementation Guide:

E. Progress Updates

For all clients, the Contractor shall document measurable progress toward achieving the individual's service goals every 6 months in a format approved by the County. Six (6) month progress updates must be sent within 30 days following the 6 month period to the DSHS/DDA Case Resource Manager and the client/guardian.

If clients receiving Individual Employment or Group Supported Employment services have not obtained paid employment at minimum wage or better within six (6) months the contractor will:

1. Review the progress toward service goals
2. Provide evidence of consultation with the family/client
3. Develop additional strategies with the family/client, county staff, employment support staff and case manager, as appropriate. Strategies may include technical assistance, changing to a new provider and/or additional resources as needed to support employment goals.
4. Document the additional/new strategies developed within the client's file.

If after 12 months, the client remains unemployed, an additional review will be conducted. The Contractor will address steps outlined in the previous six-month progress report in the next six-month progress report. The client may request to participate in Community Inclusion activities or the client can choose to remain in an employment program. Individuals requesting to participate in Community Inclusion activities will be referred to his/her DSHS/DDA Case Resource Manager.

IV. Service Requirements

A. All services will:

1. Be individualized and unique to the client's Individualized Pathway to Employment or Community Inclusion Plan.
2. Be provided to clients meeting age requirements detailed in WAC 388-845-2110.
3. Ensure continued movement toward inclusive settings, integration and connection with others in the community without disabilities.
4. Provide supports in a variety of settings and in a broad range of activities that will contribute to his/her individual service goals.
5. Provide staff and training interventions at appropriate levels to safely and effectively meet the needs of the client.

6. Promote independence through skill development and training, including the effective use of public transportation.
7. Implement curriculum, work activities, routines, and other materials used to facilitate learning that are relevant to the age and individual needs of each client.
8. Emphasize the development of natural community supports, and the fading of paid staff support. Natural supports are those provided by individuals in the work or community environment who are not paid to support the client.
9. Demonstrate measurable progress toward achieving the client's individualized service goals.
10. Include at minimum monthly contact by the contractor.
11. Provide support to the client at a service level proposed by the Contractor, approved by the County and authorized by the DSHS/DDA Case Resource Manager. Service levels will be authorized in accordance with:
 - Washington Administrative Code (WAC) [388-828-9325](#) through [9360](#) for Employment Services
 - WAC [388-828-9300](#) through [9310](#) for Community Inclusion Services
 - County Implementation Guide for Employment and Inclusion Services
<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>
12. Adhere to 42CFR 441 530(a)(1) related to Home and Community Based settings which require:
 - a. The service setting is integrated in and supports full access to the greater community;
 - b. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
 - c. Provides opportunities to seek employment and work in competitive integrated settings; and
 - d. Identifying settings that isolate people from the broader community or that have the effect of isolating individuals from the broader community of individuals who do not receive Medicaid HCB services. These settings are presumed not to be home and community-based.

B. All Employment Services will:

1. Emphasize maximum integration with co-workers without disabilities. All efforts will be made to promote employer responsibility for workers with disabilities, including exploration of direct employment of clients by the business/industry in Group Supported Employment.
2. Ensure that pay for work performed is commensurate with pay to other employees doing the same type and amount of work.

3. Ensure that all individuals, regardless of their disability, are provided the opportunity to pursue employment. Some participants may need more support than others and may spend time in activities that will prepare the participant for future community employment.
4. Ensure that supports necessary for job success have been identified and provided to each participant. Support may include, but are not limited to, identification of resources necessary for transportation, job restructuring, work materials or routine adaption, work environment modification, identification of job counseling needs, etc.
5. Ensure that supports, including training and support to employers and co-workers, have been provided in each job placement to ensure jobs are maintained and fading of support is occurring. This includes the development of natural (unpaid) supports.
6. Support clients to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828.

C. Individual Employment

Where the service provider is also the Client's employer, long term funding will remain available to the service provider employer for six months after the employee/Client's date of hire. At the end of the six-month period, if the client continues to need support on the job, another service provider who is not the employer of record must provide the support unless the County issues prior written approval. If the County approves the continuation of long-term supports, where the service provider is also the Client's employer, the County will regularly monitor these positions to assure fading efforts occur when appropriate and any potential conflict of interest is addressed.

D. Group Supported Employment (GSE) will:

1. Ensure paid work is available for all clients authorized for these services. In the event that contracted work is no longer available or insufficient to maintain a GSE work site, the provider is expected to notify the County to determine appropriate next steps related to client authorization.
2. Work towards establishing permanent integrated employment at or above minimum wage.
3. Ensure billing of GSE service hours in line with DDA requirements outlined in the Program Implementation guide.

E. Community Inclusion Services will:

1. Focus on activities that are typically experienced by the general public. Support to participate in segregated and/or specialized activities will not be reimbursed. Segregated

and specialized activities are those which are organized and designed for individuals based on their disability.

2. Not be provided simultaneously with employment services, unless approved by exception by DSHS/DDA.
3. Ensure the health and safety of participating clients.
4. Ensure a positive image and development of relationships, increased competence, individualized skill-building, and other benefits identified in the client's plan. Services will occur individually or in a group of no more than 2 or 3 individuals. Group services may only occur when based on similar interests and needs.
5. Allow a client to discontinue services in order to pursue work and to receive employment support at any time.

V. Additional Consumer Supports and Other Activities

Other allowable activities not tied to a specific client, or tied to clients under the age of 21 (not yet meeting age requirements outlined in WAC 388-845-2110) may be approved by the County. Approval for projects within the below categories will follow authorization procedures as outlined in the Program Implementation Guide within funds available and approved by the County.

- A. Staff Training: Costs incurred by the program for planned, structured activities for the purpose of providing, or improving, or enhancing job-related knowledge and skills of staff, providers, volunteers, or interning students in the provision of developmental disabilities services.
- B. Community Information and Education: to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.
- C. Other Activities.
 - i. Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search" – <https://www.projectsearch.us/>
 - ii. Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
 - iii. Job Foundations- A pilot project designed to engage students ages 19-20 in targeted employment readiness activities in their second to last year of school. The contractor will complete a written Job Foundations report (<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Job%20Foundation%20Report.docx>) based on information gathered about the student's skills and interests and assessment of student performance. The report will include actionable next steps for the student's job search and will be completed in line with best practice guidelines available on the County Best Practices website: <https://www.dshs.wa.gov/dda/county-best-practices>. The contractor will engage in an average of 35 hours of employment support activities with or on behalf of the student until the student moves into job development.

- iv. Partnership project: Collaborative partnerships with school districts, employment providers, Division of Vocational Rehabilitation (DVR), families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21). Students in their last year of school may be eligible to receive a job foundations report if one was not completed in their second to last year.

VI. Additional Provisions

- A. In determining the service level associated with each individual client, the primary service obligation is to meet the needs of the individual client related to his or her service goals, within the limits and requirements established in the WAC.
- B. Service levels proposed by the Contractor must be approved by the County and authorized by the DDA Case Resource Manager (CRM).
- C. Payment will be made on an hourly basis for all staff support hours provided, up to but not to exceed, the monthly support hours authorized for each client.
- D. Authorized service levels documented in the DSHS/Case Management Information System (CMIS) database will take precedence in the event of any inconsistency or conflict. The current maximum authorized service level will be downloaded from the DSHS/CMIS database and provided to the Contractor on the monthly billing report.
- E. The Contractor may propose a change in service level through the process established in the County Program Implementation Guide.
- F. Funds received from the County shall not be used to provide cash benefit to the supported individual, whether salary, bonuses or benefits.
- G. The contractor agrees to assign to the County, its Medicaid waiver billing rights for services to DDA clients eligible under Title XIX Programs. If the Contractor chooses to contract directly with DSHS to provide covered services under Title XIX, those services will not be billed to the County.

VII. Reporting

- A. Reporting on client services will be made monthly with the invoice for services through the established DSHS/DDA County billing and reporting process in the format approved by the County. Data elements and definitions for each category of services are outlined by DSHS/DDA in the Case Management Information System (CMIS) billing instructions found at: <https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/AWA%20Billing%20Instructions.docx>.
- B. The Contractor will provide other reports as developed and required by DSHS/DDA and the County during the term of the contract.

VIII. Program Implementation Requirements

The Developmental Disabilities Program Implementation Guide, Employment or Community Inclusion Services is incorporated by reference into the Scope of Work as presently adopted or subsequently amended and can be located at:

<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>. The purpose of the Program Implementation Guide is to detail implementation requirements including policy and procedure for Pathways to Employment and Community Inclusion services.

Exhibit B
(COMPENSATION)

The source of funding for this contract is the Washington State Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA). Total compensation for the contract is variable, depending upon the number of clients and service levels authorized by DSHS/DDA and the County. This is a vendor agreement and not a sub-recipient agreement.

The County will pay the contractor for services delivered to DSHS/DDA authorized clients:

1. Service levels are individualized, based on assessed client need;
2. The service hours authorized for each client is mutually agreed upon by DDA, the County, and the Contractor;
3. Limits to client service authorizations are established in Washington Administrative Code (WAC) 388-828-7020;388-828-9205, 388-828-9310
4. Funding is allocated for services delivered to an individual client. The client's service allocation and funding will follow the client in the event that they choose to receive services through another Contractor;
5. The billing unit for services is hourly

I. Billing and Payment

1. Invoices and attached service documentation will be submitted monthly to the Whatcom County Health Department in the format approved by the County. A complete billing includes both an invoice coversheet and attached client services documentation. The Contractor shall send invoices and service documentation to the following address:

Jessica Lee, Program Specialist
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
jlee@co.whatcom.wa.us

2. The County must receive all invoices and supporting documentation within ten (10) calendar days following the last day of the month for which reimbursement is claimed. If an invoice or required documentation is incorrect, it will be returned to the Contractor. All invoice corrections or modifications must be submitted no later than 45 days after the last day of the month in which the services were provided.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract. Invoices and invoice corrections or modifications related to work done prior to December 31 of the contract year will be accepted no later than January 15, following the end of the County fiscal year (December 31).
4. The Contractor will not be paid for any billings or invoices for services occurring prior to the execution of the contract or after its termination.
5. The Contractor shall not bill the county for service performed or provided under this contract if the Contractor has been or will be paid for the same service by any other source. Such sources include, but are not limited to, the Division of Vocational Rehabilitation Social Security Work Incentives such as Plans for

Achieving Self Support (PASS) or Impairment Related Work Expense (IRWE). The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. 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.

7. A total annual funding authorization for all clients will be communicated to the Contractor at the start of the contract year. The funding authorization may be amended, based on use, over the course of the contract year without contract amendment. Expenditures may not exceed the total funding approved by the County and in no case will exceed the total available funding restricted to these services.

II. Reimbursement Rates for Pathways to Employment and Community Inclusion Services

Service Type	Description	Unit Rate	Fund Source
A. Individual Employment	Individualized staff support authorized <u>up to 30 hours</u> a month per client.	\$83 /hour	DSHS/DDA
B. Individual Employment Exceptional Service level	For every 10 hour increment above 30*, the hourly rate will be reduced as described below. Minimum hourly rate is \$35/ hour for IE services. a. 31-40 hour= \$65/hour b. Additional reduction of \$5/hour for every 10 hour increment above 40. Example: 41-50 hours=\$60/hour; 51-60 hours=\$55/hour	Variable \$35-\$65/ hour	DSHS/DDA
C. Group Supported Employment	Shared staff support within the GSE setting and individualized staff support outside of the GSE setting as authorized	\$72/hour	DSHS/DDA
D. Community Inclusion	Individualized support in integrated community settings	\$39/hour	DSHS/DDA

*Both the rate and the service level are attached to the client's authorization approved by DSHS/DDA. This means that if the actual number of hours provided falls below 30 (or another 10 hour increment), the lower hourly rate will still apply. Exceptional service hours may be limited by funding availability and DSHS/DDA approval.

III. Reimbursement Rates for Other Consumer Supports and Other Activities

Activities A-E authorized based on funding available and approved by the County

Activity	Description	Unit/Rate	Funding
A. Partnership Projects	Hourly consultation with school districts, families, employers to improve the transition of young adults from school to work and adult services. Not to exceed hours authorized by the County.	\$74/hour	DSHS/DDA
B. Staff training, Projects and other activities	Training, projects and activities as detailed in Section V., above, and approved in writing by the County, using exhibit B of the Program Implementation Guide .	Reimbursement	DSHS/DDA Local funds not to exceed \$5,000

C. Job Foundation - Report	Payment upon completion and County approval of student Job Foundations Report. (Rate set by DSHS/DDA)	\$2,400 per County authorized student	DSHS/DDA
D. Job Foundation – Employment Outcome	Outcome payments for “High Acuity” students placed in competitive, integrated, individual employment by the following date of the student’s school exit year: a. By September 30 b. Between October through December c. Between January through March d. Between April through June	Rates set by DSHS DDA a. \$1,500 b. \$1,000 c. \$500 d. \$250 e. An Additional payment of \$1,000 if client is working ten hour of work per week or more.	DSHS/DDA

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-353

File ID:	AB2021-353	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Washington Vocational Services to provide services to individuals with developmental disabilities, in an estimated amount of \$268,910

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Washington Vocational Services – Services to Individuals with Developmental Disabilities Contract
DATE: June 11, 2021

Attached is a contract between Whatcom County and Washington Vocational Services for your review and signature.

- **Background and Purpose**

This contract provides “Pathways to Employment” and “Community Inclusion” services to eligible individuals with developmental disabilities. Pathways to Employment services are designed to assist individuals to pursue and maintain paid employment in integrated community settings. Community Inclusion services are design to increase participation and inclusion in the community. In January 2021, 353 adults in Whatcom County received employment services and 32 individuals received community inclusion services. Washington Vocational Services is one of four community providers offering these services.

- **Funding Amount and Source**

Funding for this contract is provided by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. Total compensation under this contract will vary depending on the number of clients and the types of services authorized, however, the estimated authorized service level is \$268,910. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract; however, funding for these services has been provided through previous contracts between Whatcom County and Washington Vocational Services since 2019. This contract updates hourly rates in line with a temporary 12% increase in rates through December 31, 2021 and otherwise includes no significant changes from the contract that is currently in place (WC Contract #201906005).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855050 Developmental Disabilities		
Contract or Grant Administrator:			Jessica Lee		
Contractor's / Agency Name:			Washington Vocational Services		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	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?		If yes, grantor agency contract number(s):		CFDA#:	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):		201906024	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	673800
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	16-18			
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> 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 services authorized and types of services authorized.		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 funding for services designed to assist eligible individuals with developmental disabilities to pursue and maintain paid employment in integrated community settings.					
Term of Contract:		1 Year		Expiration Date: 06/30/2022	
Contract Routing:	1. Prepared by: JT		Date:		03/04/2021
	2. Health Budget Approval: KR/JG		Date:		06/08/2021
	3. Attorney signoff: RB		Date:		06/11/2021
	4. AS Finance reviewed: M Caldwell		Date:		6/9/21
	5. IT reviewed (if IT related):		Date:		
	6. Contractor approved:		Date:		
	7. Submitted to Exec.:		Date:		
	8. Council approved (if necessary): AB2021-353		Date:		
	9. Executive signed:		Date:		
	10. Original to Council:		Date:		

CONTRACT FOR SERVICES
Between Whatcom County and Washington Vocational Services

Washington Vocational 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 13,
Exhibit A (Scope of Work), pp. 14 to 19,
Exhibit B (Compensation), pp. 20 to 23,
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of July, 2021 and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2022.

The general purpose or objective of this Agreement is to **provide services to individuals with developmental disabilities** 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 is estimated at \$268,910. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Washington Vocational Services
111 SE Everett Mall Way
Building C, Suite 100
Everett, WA 98208

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.

Janet Bruckshen, Executive Director

Recommended for Approval:

Date _____

Date _____

Date _____

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

jbruckshen@wvs.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and

any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Jessica Lee, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Jessica Lee, Program Specialist
509 Girard Street
Bellingham, WA 98225
360-778-6047
JLLee@co.whatcom.wa.us

Washington Vocational Services
Janet Bruckshen, Executive Director
111 SE Everett Mall Way
Building C, Suite 100
Everett, WA 98208
425-774-3338
jbruckshen@wvs.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

The purpose of this contract is to provide "Pathways to Employment" and "Community Inclusion" services to eligible individuals with developmental disabilities. Pathways to Employment services assist working age adults to pursue and maintain paid employment in integrated community settings. Community Inclusion services support individuals who are retired or no longer seeking employment to increase their independence and inclusion in the community.

All individuals served are authorized by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. (DSHS/DDA) All services are individualized to reflect client interests, skills and service goals within rules established by DSHS/DDA.

This contract reflects the community values and goals of the Whatcom County Developmental Disabilities Advisory Board, the DSHS/DDA program agreement for the current biennium and the County Guidelines published by DSHS and available at https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf.

II. Service Types

The contractor has applied for and been accepted and monitored as a qualified provider for the services indicated:

☒ Individual Supported Employment

☐ Group Supported Employment

☒ Community Inclusion

These services are defined in the table below, based on the definitions found in the DSHS Developmental Disabilities Administration (DDA) Program Agreement for the current DDA biennium.

Service Type	Service Description	Service Goals
Individual Supported Employment	<ol style="list-style-type: none">1. These services are part of an individual's pathway to integrated employment in typical community jobs.2. These are individualized services necessary to help persons with developmental disabilities obtain and maintain integrated employment at or above the state's minimum wage in the general workforce.3. These services may include intake, discovery, assessment, job preparation, job marketing, job supports,	<ol style="list-style-type: none">a. Establish employment opportunities for participants within local businesses on a one-person/one-job basis or self-employment in line with the DSHS/DDA self-employment guidelines.b. Develop work opportunities regardless of the level of disability.c. Develop relationships with and support from co-workers without disabilities (natural supports).d. Earn sufficient wages to increase self-sufficiency and meet or exceed living expenses.

	recordkeeping, and on-going support to maintain a job.	<p>e. Develop skills necessary to increase independence on the job and decrease dependence on paid supports.</p> <p>f. Make measurable progress toward the individual's employment goals.</p>
Group Supported Employment	<p>1. These services are part of an individual's pathway to integrated employment in typical community jobs.</p> <p>2. These services are intended to be short term and offer ongoing supervised employment for groups of no more than eight (8) workers with disabilities in the same setting.</p> <p>3. Examples include enclaves, mobile crew and other business models employing small groups of workers with disabilities in integrated employment in community settings.</p>	<p>a. Establish supervised employment opportunities for small groups of participants within local business, industry and community settings.</p> <p>b. Develop relationships and support from co-workers without disabilities (i.e. Natural Supports).</p> <p>c. Earn sufficient wages to increase self-sufficiency and met or exceed living expenses.</p> <p>d. Develop skills necessary to increase independence on the job, and decrease dependence on paid supports.</p> <p>e. Make measurable progress toward the individual's employment goals and toward integrated employment at minimum wage or better.</p>
Community Inclusion	<p>1. These individualized services are provided in typical integrated community settings for individuals in retirement or no longer pursuing employment.</p> <p>2. Services will promote individualized skill building which supports the individual to actively and independently engage in their local community.</p> <p>3. Activities will provide opportunity to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion.</p> <p>4. These services may be authorized instead of employment support for working age individuals (21-62) who have received nine months of employment support and choose to no longer pursue employment.</p>	<p>a. Participation in integrated community activities of clients' choice similar to individuals without disabilities of the same age.</p> <p>b. Membership/leadership in local community clubs and associations based on interest and culture.</p> <p>c. Foster connections between persons with disabilities and persons without disabilities who are not paid developmental disabilities staff.</p> <p>d. Enhance or maintain the persons' competence, integration, physical or mental skill.</p>

III. **Statement of Work**

The Contractor will develop an individualized service plan for each client based on his or her interests, skills and abilities. Support will be provided as defined below to make measurable progress toward the client's service goals as outlined in the plan.

A. Client Support

“Support” provided in the implementation of client services, as referenced herein, is defined as staff time spent on behalf of the program client to achieve community employment or inclusion goals. In addition to those activities specifically outlined within the billable activities, below, “support” when used within a definition typically refers to one of the three following activities:

1. **Monitoring** of client employment or community inclusion activities (e.g., ensuring safety, quality, etc.);
2. Providing verbal or physical reminders or **prompts** for the client to successfully complete or engage in employment or community inclusion activities; or
3. Providing partial or total 1:1 **physical assistance** to allow the client to successfully complete or engage in employment or inclusion activities.

B. Pathway to Employment Billable Support Activities

Pathway to Employment includes both Individual Employment (IE) and Group Supported Employment (GSE). Billable support activities for Pathway to Employment services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County, without a contract amendment.

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/Individual%20Employment%20Billable%20Activities%207.2019.pdf> and

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/GSE%20and%20PVS%20Service%20Guidelines%20Minimum%20Expectations%202013.pdf>

C. Community Inclusion Billable Support Activities

Billable support activities for Community Inclusion services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County without a contract amendment.

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/CI%20Billable%20Activities%202-1-2018.pdf>

D. Individualized Plan for Services

The Contractor is required to have a written, individualized service plan for each client, completed within 60 days of County authorization. This individual plan is meant to be the “driver” or basis for support services delivered by the Contractor. The individual plan must be updated and reviewed at least annually by the planning team, as described below.

The individual plan requires the development of a planning team including the client, client’s guardian when applicable, DSHS/DDA Case Resource Manager, and others identified by the client to provide input. At a minimum, the DSHS/DDA Case Resource Manager and the individual/guardian will receive a copy of the completed plan. Other members of the planning team may request a copy with the client’s permission.

Required elements of both Pathways to Employment and Community Inclusion plans are outlined in the County Program Implementation Guide:

<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>

E. Progress Updates

For all clients, the Contractor shall document measurable progress toward achieving the individual's service goals every 6 months in a format approved by the County. Six (6) month progress updates must be sent within 30 days following the 6 month period to the DSHS/DDA Case Resource Manager and the client/guardian.

If clients receiving Individual Employment or Group Supported Employment services have not obtained paid employment at minimum wage or better within six (6) months the contractor will:

1. Review the progress toward service goals
2. Provide evidence of consultation with the family/client
3. Develop additional strategies with the family/client, county staff, employment support staff and case manager, as appropriate. Strategies may include technical assistance, changing to a new provider and/or additional resources as needed to support employment goals.
4. Document the additional/new strategies developed within the client's file.

If after 12 months, the client remains unemployed, an additional review will be conducted. The Contractor will address steps outlined in the previous six-month progress report in the next six-month progress report. The client may request to participate in Community Inclusion activities or the client can choose to remain in an employment program. Individuals requesting to participate in Community Inclusion activities will be referred to his/her DSHS/DDA Case Resource Manager.

IV. Service Requirements

A. All services will:

1. Be individualized and unique to the client's Individualized Pathway to Employment or Community Inclusion Plan.
2. Be provided to clients meeting age requirements detailed in WAC 388-845-2110.
3. Ensure continued movement toward inclusive settings, integration and connection with others in the community without disabilities.
4. Provide supports in a variety of settings and in a broad range of activities that will contribute to his/her individual service goals.

5. Provide staff and training interventions at appropriate levels to safely and effectively meet the needs of the client.
6. Promote independence through skill development and training, including the effective use of public transportation.
7. Implement curriculum, work activities, routines, and other materials used to facilitate learning that are relevant to the age and individual needs of each client.
8. Emphasize the development of natural community supports, and the fading of paid staff support. Natural supports are those provided by individuals in the work or community environment who are not paid to support the client.
9. Demonstrate measurable progress toward achieving the client's individualized service goals.
10. Include at minimum monthly contact by the contractor.
11. Provide support to the client at a service level proposed by the Contractor, approved by the County and authorized by the DSHS/DDA Case Resource Manager. Service levels will be authorized in accordance with:
 - Washington Administrative Code (WAC) [388-828-9325](#) through [9360](#) for Employment Services
 - WAC [388-828-9300](#) through [9310](#) for Community Inclusion Services
 - County Implementation Guide for Employment and Inclusion Services
<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>
12. Adhere to 42CFR 441.530(a)(1) related to Home and Community Based settings which require:
 - a. The service setting is integrated in and supports full access to the greater community;
 - b. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
 - c. Provides opportunities to seek employment and work in competitive integrated settings; and
 - d. Identifying settings that isolate people from the broader community or that have the effect of isolating individuals from the broader community of individuals who do not receive Medicaid HCB services. These settings are presumed not to be home and community-based.

B. All Employment Services will:

1. Emphasize maximum integration with co-workers without disabilities. All efforts will be made to promote employer responsibility for workers with disabilities, including exploration of direct employment of clients by the business/industry in Group Supported Employment.

2. Ensure that pay for work performed is commensurate with pay to other employees doing the same type and amount of work.
3. Ensure that all individuals, regardless of their disability, are provided the opportunity to pursue employment. Some participants may need more support than others and may spend time in activities that will prepare the participant for future community employment.
4. Ensure that supports necessary for job success have been identified and provided to each participant. Support may include, but are not limited to, identification of resources necessary for transportation, job restructuring, work materials or routine adaption, work environment modification, identification of job counseling needs, etc.
5. Ensure that supports, including training and support to employers and co-workers, have been provided in each job placement to ensure jobs are maintained and fading of support is occurring. This includes the development of natural (unpaid) supports
6. Support clients to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828.

C. Individual Employment

Where the service provider is also the Client's employer, long term funding will remain available to the service provider employer for six months after the employee/Client's date of hire. At the end of the six-month period, if the client continues to need support on the job, another service provider who is not the employer of record must provide the support unless the County issues prior written approval. If the County approves the continuation of long-term supports, where the service provider is also the Client's employer, the County will regularly monitor these positions to assure fading efforts occur when appropriate and any potential conflict of interest is addressed.

D. Group Supported Employment (GSE) will:

1. Ensure paid work is available for all clients authorized for these services. In the event that contracted work is no longer available or insufficient to maintain a GSE work site, the provider is expected to notify the County to determine appropriate next steps related to client authorization.
2. Work towards establishing permanent integrated employment at or above minimum wage.
3. Ensure billing of GSE service hours in line with DDA requirements outlined in the Program Implementation guide.

E. Community Inclusion Services will:

1. Focus on activities that are typically experienced by the general public. Support to participate in segregated and/or specialized activities will not be reimbursed. Segregated and specialized activities are those which are organized and designed for individuals based on their disability.
2. Not be provided simultaneously with employment services, unless approved by exception by DSHS/DDA.
3. Ensure the health and safety of participating clients.
4. Ensure a positive image and development of relationships, increased competence, individualized skill-building, and other benefits identified in the client's plan. Services will occur individually or in a group of no more than 2 or 3 individuals. Group services may only occur when based on similar interests and needs.
5. Allow a client to discontinue services in order to pursue work and to receive employment support at any time.

V. Additional Consumer Supports and Other Activities

Other allowable activities not tied to a specific client, or tied to clients under the age of 21 (not yet meeting age requirements outlined in WAC 388-845-2110) may be approved by the County. Approval for projects within the below categories will follow authorization procedures as outlined in the Program Implementation Guide within funds available and approved by the County.

- A. Staff Training: Costs incurred by the program for planned, structured activities for the purpose of providing, or improving, or enhancing job-related knowledge and skills of staff, providers, volunteers, or interning students in the provision of developmental disabilities services.
- B. Community Information and Education: to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.
- C. Other Activities.
 - i. Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search" <https://www.projectsearch.us/>
 - ii. Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
 - iii. Job Foundations- A pilot project designed to engage students ages 19-20 in targeted employment readiness activities in their second to last year of school. The contractor will complete a written Job Foundations report (<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Job%20Foundation%20Report.docx>) based on information gathered about the student's skills and interests and assessment of student performance.. The report will include actionable next steps for the student's job search and will be completed in line with best practice guidelines available on

the County Best Practices website: <https://www.dshs.wa.gov/dda/county-best-practices>.

The contractor will engage in an average of 35 hours of employment support activities with or on behalf of the student until the student moves into job development.

- iv. Partnership project: Collaborative partnerships with school districts, employment providers, Division of Vocational Rehabilitation (DVR), families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21). Students in their last year of school may be eligible to receive a job foundations report if one was not completed in their second to last year.

VI. Additional Provisions

- A. In determining the service level associated with each individual client, the primary service obligation is to meet the needs of the individual client related to his or her service goals, within the limits and requirements established in the WAC.
- B. Service levels proposed by the Contractor must be approved by the County and authorized by the DDA Case Resource Manager (CRM).
- C. Payment will be made on an hourly basis for all staff support hours provided, up to but not to exceed, the monthly support hours authorized for each client.
- D. Authorized service levels documented in the DSHS/Case Management Information System (CMIS) database will take precedence in the event of any inconsistency or conflict. The current maximum authorized service level will be downloaded from the DSHS/CMIS database and provided to the Contractor on the monthly billing report.
- E. The Contractor may propose a change in service level through the process established in the County Program Implementation Guide.
- F. Funds received from the County shall not be used to provide cash benefit to the supported individual, whether salary, bonuses or benefits.
- G. The contractor agrees to assign to the County, its Medicaid waiver billing rights for services to DDA clients eligible under Title XIX Programs. If the Contractor chooses to contract directly with DSHS to provide covered services under Title XIX, those services will not be billed to the County.

VII. Reporting

- A. Reporting on client services will be made monthly with the invoice for services through the established DSHS/DDA County billing and reporting process in the format approved by the County. Data elements and definitions for each category of services are outlined by DSHS/DDA in the Case Management Information System (CMIS) billing instructions found at:
<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/AWA%20Billing%20Instructions.docx>.
- B. The Contractor will provide other reports as developed and required by DSHS/DDA and the County during the term of the contract.

VIII. Program Implementation Requirements

The Developmental Disabilities Program Implementation Guide, Employment or Community Inclusion Services is incorporated by reference into the Scope of Work as presently adopted or subsequently amended and can be located at:

<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>. The purpose of the Program Implementation Guide is to detail implementation requirements including policy and procedure for Pathways to Employment and Community Inclusion services.

Exhibit B
(COMPENSATION)

The source of funding for this contract is the Washington State Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA). Total compensation for the contract is variable, depending upon the number of clients and service levels authorized by DSHS/DDA and the County. This is a vendor agreement and not a sub-recipient agreement.

The County will pay the contractor for services delivered to DSHS/DDA authorized clients:

1. Service levels are individualized, based on assessed client need;
2. The service hours authorized for each client is mutually agreed upon by DDA, the County, and the Contractor;
3. Limits to client service authorizations are established in Washington Administrative Code (WAC) 388-828-7020;388-828-9205, 388-828-9310
4. Funding is allocated for services delivered to an individual client. The client's service allocation and funding will follow the client in the event that they choose to receive services through another Contractor;
5. The billing unit for services is hourly

I. Billing and Payment

1. Invoices and attached service documentation will be submitted monthly to the Whatcom County Health Department in the format approved by the County. A complete billing includes both an invoice coversheet and attached client services documentation. The Contractor shall send invoices and service documentation to the following address:

Jessica Lee, Program Specialist
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
jlee@co.whatcom.wa.us

2. The County must receive all invoices and supporting documentation within ten (10) calendar days following the last day of the month for which reimbursement is claimed. If an invoice or required documentation is incorrect, it will be returned to the Contractor. All invoice corrections or modifications must be submitted no later than 45 days after the last day of the month in which the services were provided.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract. Invoices and invoice corrections or modifications related to work done prior to December 31 of the contract year will be accepted no later than January 15, following the end of the County fiscal year (December 31).
4. The Contractor will not be paid for any billings or invoices for services occurring prior to the execution of the contract or after its termination.
5. The Contractor shall not bill the county for service performed or provided under this contract if the Contractor has been or will be paid for the same service by any other source. Such sources include, but are not limited to, the Division of Vocational Rehabilitation Social Security Work Incentives such as Plans for

Achieving Self Support (PASS) or Impairment Related Work Expense (IRWE). The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. 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.

7. A total annual funding authorization for all clients will be communicated to the Contractor at the start of the contract year. The funding authorization may be amended, based on use, over the course of the contract year without contract amendment. Expenditures may not exceed the total funding approved by the County and in no case will exceed the total available funding restricted to these services.

II. Reimbursement Rates for Pathways to Employment and Community Inclusion Services

Service Type	Description	Unit Rate	Fund Source
A. Individual Employment	Individualized staff support authorized <u>up to 30 hours</u> a month per client.	\$83 /hour	DSHS/DDA
B. Individual Employment Exceptional Service level	For every 10 hour increment above 30*, the hourly rate will be reduced as described below. Minimum hourly rate is \$35/ hour for IE services. a. 31-40 hour= \$65/hour b. Additional reduction of \$5/hour for every 10 hour increment above 40. Example: 41-50 hours=\$60/hour; 51-60 hours=\$55/hour	Variable \$35-\$65/ hour	DSHS/DDA
C. Group Supported Employment	Shared staff support within the GSE setting and individualized staff support outside of the GSE setting as authorized	\$72/hour	DSHS/DDA
D. Community Inclusion	Individualized support in integrated community settings	\$39/hour	DSHS/DDA

*Both the rate and the service level are attached to the client's authorization approved by DSHS/DDA. This means that if the actual number of hours provided falls below 30 (or another 10 hour increment), the lower hourly rate will still apply. Exceptional service hours may be limited by funding availability and DSHS/DDA approval.

III. Reimbursement Rates for Other Consumer Supports and Other Activities

Activities A-E authorized based on funding available and approved by the County

Activity	Description	Unit/Rate	Funding
A. Partnership Projects	Hourly consultation with school districts, families, employers to improve the transition of young adults from school to work and adult services. Not to exceed hours authorized by the County.	\$74/hour	DSHS/DDA
B. Staff training, Projects and other activities	Training, projects and activities as detailed in Section V., above, and approved in writing by the County, using exhibit B of the Program Implementation Guide .	Reimbursement	DSHS/DDA Local funds not to exceed \$5,000

C. Job Foundation - Report	Payment upon completion and County approval of student Job Foundations Report. (Rate set by DSHS/DDA)	\$2,400 per County authorized student	DSHS/DDA
D. Job Foundation – Employment Outcome	Outcome payments for “High Acuity” students placed in competitive, integrated, individual employment by the following date of the student’s school exit year: a. By September 30 b. Between October through December c. Between January through March d. Between April through June	Rates set by DSHS DDA a. \$1,500 b. \$1,000 c. \$500 d. \$250 e. An Additional payment of \$1,000 if client is working ten hour of work per week or more.	DSHS/DDA

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-354

File ID:	AB2021-354	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	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:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Work Opportunities to provide services to individuals with developmental disabilities, in an estimated amount of \$686,136

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Work Opportunities – Services to Individuals with Developmental Disabilities Contract
DATE: June 11, 2021

Attached is a contract between Whatcom County and Work Opportunities for your review and signature.

- **Background and Purpose**

This contract provides “Pathways to Employment” and “Community Inclusion” services to eligible individuals with developmental disabilities. Pathways to Employment services are designed to assist individuals to pursue and maintain paid employment in integrated community settings. Community Inclusion services are design to increase participation and inclusion in the community. In January 2021, 353 adults in Whatcom County received employment services and 32 individuals received community inclusion services. Work Opportunities is one of four community providers offering these services.

- **Funding Amount and Source**

Funding for this contract is provided by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. Total compensation under this contract will vary depending on the number of clients and the types of services authorized, however, the estimated authorized service level is \$686,136. Council approval is required as funding exceeds \$40,000.

- **Differences Between Previous Contracts**

This is a new contract; however, funding for these services has been provided through previous contracts between Whatcom County and Work Opportunities since 2010. This contract updates hourly rates in line with a temporary 12% increase in rates through December 31, 2021 and otherwise includes no significant changes from the contract that is currently in place (WC Contract #201706014).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 (ADeacon@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.

WHATCOM COUNTY CONTRACT INFORMATION SHEET		Whatcom County Contract No. _____																					
Originating Department:		85 Health																					
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855050 Developmental Disabilities																					
Contract or Grant Administrator:		Jessica Lee																					
Contractor's / Agency Name:		Work Opportunities																					
Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If not, is this an Amendment or Renewal to an Existing Contract? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		Yes <input type="checkbox"/> No <input type="checkbox"/>																				
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		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 <input type="checkbox"/> No <input checked="" type="checkbox"/>		If yes, grantor agency contract number(s): _____																					
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		CFDA#: _____																					
If yes, Whatcom County grant contract number(s): _____		201906024																					
Is this contract the result of a RFP or Bid process? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If yes, RFP and Bid number(s): 16-18																					
Contract Cost Center:		673800																					
Is this agreement excluded from E-Verify? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>																							
If YES, indicate exclusion(s) below:																							
<input type="checkbox"/> Professional services agreement for certified/licensed professional.																							
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).																					
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.																					
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.																					
Contract Amount:(sum of original contract amount and any prior amendments): Varies depending on number of services authorized and types of services authorized.		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 provides funding for services designed to assist eligible individuals with developmental disabilities to pursue and maintain paid employment in integrated community settings.																							
Term of Contract: 1 Year		Expiration Date: 06/30/2022																					
Contract Routing:		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">1. Prepared by: JT</td> <td style="width: 40%;">Date: 03/04/2021</td> </tr> <tr> <td>2. Health Budget Approval: KR/JG</td> <td>Date: 06/08/2021</td> </tr> <tr> <td>3. Attorney signoff: RB</td> <td>Date: 06/11/2021</td> </tr> <tr> <td>4. AS Finance reviewed: M Caldwell</td> <td>Date: 6/9/21</td> </tr> <tr> <td>5. IT reviewed (if IT related):</td> <td>Date:</td> </tr> <tr> <td>6. Contractor approved:</td> <td>Date:</td> </tr> <tr> <td>7. Submitted to Exec.:</td> <td>Date:</td> </tr> <tr> <td>8. Council approved (if necessary): AB2021-354</td> <td>Date:</td> </tr> <tr> <td>9. Executive signed:</td> <td>Date:</td> </tr> <tr> <td>10. Original to Council:</td> <td>Date:</td> </tr> </table>		1. Prepared by: JT	Date: 03/04/2021	2. Health Budget Approval: KR/JG	Date: 06/08/2021	3. Attorney signoff: RB	Date: 06/11/2021	4. AS Finance reviewed: M Caldwell	Date: 6/9/21	5. IT reviewed (if IT related):	Date:	6. Contractor approved:	Date:	7. Submitted to Exec.:	Date:	8. Council approved (if necessary): AB2021-354	Date:	9. Executive signed:	Date:	10. Original to Council:	Date:
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10. Original to Council:	Date:																						

CONTRACT FOR SERVICES
Between Whatcom County and Work Opportunities

Work Opportunities, 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 13,
Exhibit A (Scope of Work), pp. 14 to 21,
Exhibit B (Compensation), pp. 22 to 24,
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of July, 2021 and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2022.

The general purpose or objective of this Agreement is to **provide services to individuals with developmental disabilities** 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 is estimated at \$686,136. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2021.

CONTRACTOR:

Work Opportunities
6515 202nd Street SW
Lynnwood, WA 98036

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.

Carrie Morehouse, Executive Director

WHATCOM COUNTY:
Recommended for Approval:

Anne Deacon, Human Services Manager Date

Erika Lautenbach, Director Date

Approved as to form:

Royce Buckingham, Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

CONTRACTOR INFORMATION:

Work Opportunities
Carrie Morehouse, Executive Director
6515 202nd Street SW
Lynnwood, WA 98036
425-778-2156
carrie@workopportunities.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

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

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

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and

any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, 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 Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, 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

Contractor 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 Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor 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 Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor 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 Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor 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 Contract. 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.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor 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 contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. 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 contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. 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. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, 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 Contractor 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 Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor 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 Contractor, irrespective of whether such limits maintained by the Contractor 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 Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor 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 Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor 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 error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor 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 Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. 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 Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Jessica Lee, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department
Jessica Lee, Program Specialist
509 Girard Street
Bellingham, WA 98225
360-778-6047
JLLee@co.whatcom.wa.us

Work Opportunities
Carrie Morehouse, Executive Director
6515 202nd Street SW
Lynnwood, WA 98036
425-778-2156
carrie@workopportunities.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If 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:

If applicable, 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. If applicable, 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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

I. Background

The purpose of this contract is to provide "Pathways to Employment" and "Community Inclusion" services to eligible individuals with developmental disabilities. Pathways to Employment services assist working age adults to pursue and maintain paid employment in integrated community settings. Community Inclusion services support individuals who are retired or no longer seeking employment to increase their independence and inclusion in the community.

All individuals served are authorized by the Washington State Department of Social and Health Services, Developmental Disabilities Administration. (DSHS/DDA) All services are individualized to reflect client interests, skills, and service goals within rules established by DSHS/DDA.

This contract reflects the community values and goals of the Whatcom County Developmental Disabilities Advisory Board, the DSHS/DDA program agreement for the current biennium and the County Guidelines published by DSHS and available at https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf.

II. Service Types

The contractor has applied for and been accepted and monitored as a qualified provider for the services indicated:

☒ Individual Supported Employment

☐ Group Supported Employment

☒ Community Inclusion

These services are defined in the table below, based on the definitions found in the DSHS Developmental Disabilities Administration (DDA) Program Agreement for the current DDA biennium.

Service Type	Service Description	Service Goals
Individual Supported Employment	<ol style="list-style-type: none">1. These services are part of an individual's pathway to integrated employment in typical community jobs.2. These are individualized services necessary to help persons with developmental disabilities obtain and maintain integrated employment at or above the state's minimum wage in the general workforce.3. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, recordkeeping, and on-going support to maintain a job.	<ol style="list-style-type: none">a. Establish employment opportunities for participants within local businesses on a one-person/one-job basis or self-employment in line with the DSHS/DDA self-employment guidelines.b. Develop work opportunities regardless of the level of disability.c. Develop relationships with and support from co-workers without disabilities (natural supports).d. Earn sufficient wages to increase self-sufficiency and meet or exceed living expenses.

		<p>e. Develop skills necessary to increase independence on the job and decrease dependence on paid supports.</p> <p>f. Make measurable progress toward the individual's employment goals.</p>
Group Supported Employment	<p>1. These services are part of an individual's pathway to integrated employment in typical community jobs.</p> <p>2. These services are intended to be short term and offer ongoing supervised employment for groups of no more than eight (8) workers with disabilities in the same setting.</p> <p>3. Examples include enclaves, mobile crew and other business models employing small groups of workers with disabilities in integrated employment in community settings.</p>	<p>a. Establish supervised employment opportunities for small groups of participants within local business, industry and community settings.</p> <p>b. Develop relationships and support from co-workers without disabilities (i.e. Natural Supports).</p> <p>c. Earn sufficient wages to increase self-sufficiency and met or exceed living expenses.</p> <p>d. Develop skills necessary to increase independence on the job, and decrease dependence on paid supports.</p> <p>e. Make measurable progress toward the individual's employment goals and toward integrated employment at minimum wage or better.</p>
Community Inclusion	<p>1. These individualized services are provided in typical integrated community settings for individuals in retirement or no longer pursuing employment.</p> <p>2. Services will promote individualized skill building which supports the individual to actively and independently engage in their local community.</p> <p>3. Activities will provide opportunity to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion.</p> <p>4. These services may be authorized instead of employment support for working age individuals (21-62) who have received nine months of employment support and choose to no longer pursue employment.</p>	<p>a. Participation in integrated community activities of clients' choice similar to individuals without disabilities of the same age.</p> <p>b. Membership/leadership in local community clubs and associations based on interest and culture.</p> <p>c. Foster connections between persons with disabilities and persons without disabilities who are not paid developmental disabilities staff.</p> <p>d. Enhance or maintain the persons' competence, integration, physical or mental skill.</p>

III. Statement of Work

The Contractor will develop an individualized service plan for each client based on his or her interests, skills and abilities. Support will be provided as defined below to make measurable progress toward the client's service goals as outlined in the plan.

A. Client Support

“Support” provided in the implementation of client services, as referenced herein, is defined as staff time spent on behalf of the program client to achieve community employment or inclusion goals. In addition to those activities specifically outlined within the billable activities, below, “support” when used within a definition typically refers to one of the three following activities:

1. **Monitoring** of client employment or community inclusion activities (e.g., ensuring safety, quality, etc.);
2. Providing verbal or physical reminders or **prompts** for the client to successfully complete or engage in employment or community inclusion activities; or
3. Providing partial or total 1:1 **physical assistance** to allow the client to successfully complete or engage in employment or inclusion activities.

B. Pathway to Employment Billable Support Activities

Pathway to Employment includes both Individual Employment (IE) and Group Supported Employment (GSE). Billable support activities for Pathway to Employment services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County, without a contract amendment.

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/Individual%20Employment%20Billable%20Activities%207.2019.pdf> and

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/GSE%20and%20PVS%20Service%20Guidelines%20Minimum%20Expectations%202013.pdf>

C. Community Inclusion Billable Support Activities

Billable support activities for Community Inclusion services are found on the DSHS/DDA website, and may be amended or updated with prior notification by the County without a contract amendment.

<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/CI%20Billable%20Activities%202-1-2018.pdf>

D. Individualized Plan for Services

The Contractor is required to have a written, individualized service plan for each client, completed within 60 days of County authorization. This individual plan is meant to be the “driver” or basis for support services delivered by the Contractor. The individual plan must be updated and reviewed at least annually by the planning team, as described below.

The individual plan requires the development of a planning team including the client, client’s guardian when applicable, DSHS/DDA Case Resource Manager, and others identified by the client to provide input. At a minimum, the DSHS/DDA Case Resource Manager and the individual/guardian will receive a copy of the completed plan. Other members of the planning team may request a copy with the client’s permission.

Required elements of both Pathways to Employment and Community Inclusion plans are outlined in the County Program Implementation Guide.

E. Progress Updates

For all clients, the Contractor shall document measurable progress toward achieving the individual's service goals every 6 months in a format approved by the County. Six (6) month progress updates must be sent within 30 days following the 6 month period to the DSHS/DDA Case Resource Manager and the client/guardian.

If clients receiving Individual Employment or Group Supported Employment services have not obtained paid employment at minimum wage or better within six (6) months the contractor will:

1. Review the progress toward service goals
2. Provide evidence of consultation with the family/client
3. Develop additional strategies with the family/client, county staff, employment support staff and case manager, as appropriate. Strategies may include technical assistance, changing to a new provider and/or additional resources as needed to support employment goals.
4. Document the additional/new strategies developed within the client's file.

If after 12 months, the client remains unemployed, an additional review will be conducted. The Contractor will address steps outlined in the previous six-month progress report in the next six-month progress report. The client may request to participate in Community Inclusion activities or the client can choose to remain in an employment program. Individuals requesting to participate in Community Inclusion activities will be referred to his/her DSHS/DDA Case Resource Manager.

IV. Service Requirements

A. All services will:

1. Be individualized and unique to the client's Individualized Pathway to Employment or Community Inclusion Plan.
2. Be provided to clients meeting age requirements detailed in WAC 388-845-2110.
3. Ensure continued movement toward inclusive settings, integration and connection with others in the community without disabilities.
4. Provide supports in a variety of settings and in a broad range of activities that will contribute to his/her individual service goals.
5. Provide staff and training interventions at appropriate levels to safely and effectively meet the needs of the client.
6. Promote independence through skill development and training, including the effective use of public transportation.

7. Implement curriculum, work activities, routines, and other materials used to facilitate learning that are relevant to the age and individual needs of each client.
8. Emphasize the development of natural community supports, and the fading of paid staff support. Natural supports are those provided by individuals in the work or community environment who are not paid to support the client.
9. Demonstrate measurable progress toward achieving the client's individualized service goals.
10. Include at minimum monthly contact by the contractor.
11. Provide support to the client at a service level proposed by the Contractor, approved by the County and authorized by the DSHS/DDA Case Resource Manager. Service levels will be authorized in accordance with:
 - Washington Administrative Code (WAC) [388-828-9325](#) through [9360](#) for Employment Services
 - WAC [388-828-9300](#) through [9310](#) for Community Inclusion Services
 - County Implementation Guide for Employment and Inclusion Services
<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>
12. Adhere to 42CFR 441 530(a)(1) related to Home and Community Based settings which require:
 - a. The service setting is integrated in and supports full access to the greater community;
 - b. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
 - c. Provides opportunities to seek employment and work in competitive integrated settings; and
 - d. Identifying settings that isolate people from the broader community or that have the effect of isolating individuals from the broader community of individuals who do not receive Medicaid HCB services. These settings are presumed not to be home and community-based.

B. All Employment Services will:

1. Emphasize maximum integration with co-workers without disabilities. All efforts will be made to promote employer responsibility for workers with disabilities, including exploration of direct employment of clients by the business/industry in Group Supported Employment.
2. Ensure that pay for work performed is commensurate with pay to other employees doing the same type and amount of work.
3. Ensure that all individuals, regardless of their disability, are provided the opportunity to pursue employment. Some participants may need more support than others and may spend time in activities that will prepare the participant for future community employment.

4. Ensure that supports necessary for job success have been identified and provided to each participant. Support may include, but are not limited to, identification of resources necessary for transportation, job restructuring, work materials or routine adaption, work environment modification, identification of job counseling needs, etc.
5. Ensure that supports, including training and support to employers and co-workers, have been provided in each job placement to ensure jobs are maintained and fading of support is occurring. This includes the development of natural (unpaid) supports.
6. Support clients to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828.

C. Individual Employment

Where the service provider is also the Client's employer, long term funding will remain available to the service provider employer for six months after the employee/Client's date of hire. At the end of the six-month period, if the client continues to need support on the job, another service provider who is not the employer of record must provide the support unless the County issues prior written approval. If the County approves the continuation of long-term supports, where the service provider is also the Client's employer, the County will regularly monitor these positions to assure fading efforts occur when appropriate and any potential conflict of interest is addressed.

D. Group Supported Employment (GSE) will:

1. Ensure paid work is available for all clients authorized for these services. In the event that contracted work is no longer available or insufficient to maintain a GSE work site, the provider is expected to notify the County to determine appropriate next steps related to client authorization.
2. Work towards establishing permanent integrated employment at or above minimum wage.
3. Ensure billing of GSE service hours in line with DDA requirements outlined in the Program Implementation guide.

E. Community Inclusion Services will:

1. Focus on activities that are typically experienced by the general public. Support to participate in segregated and/or specialized activities will not be reimbursed. Segregated and specialized activities are those which are organized and designed for individuals based on their disability.
2. Not be provided simultaneously with employment services, unless approved by exception by DSHS/DDA.

3. Ensure the health and safety of participating clients.
4. Ensure a positive image and development of relationships, increased competence, individualized skill-building, and other benefits identified in the client's plan. Services will occur individually or in a group of no more than 2 or 3 individuals. Group services may only occur when based on similar interests and needs.
5. Allow a client to discontinue services in order to pursue work and to receive employment support at any time.

V. Additional Consumer Supports and Other Activities

Other allowable activities not tied to a specific client, or tied to clients under the age of 21 (not yet meeting age requirements outlined in WAC 388-845-2110) may be approved by the County. Approval for projects within the below categories will follow authorization procedures as outlined in the Program Implementation Guide within funds available and approved by the County.

- A. Staff Training: Costs incurred by the program for planned, structured activities for the purpose of providing, or improving, or enhancing job-related knowledge and skills of staff, providers, volunteers, or interning students in the provision of developmental disabilities services.
- B. Community Information and Education: to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.
- C. Other Activities.
 - i. Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search" <https://www.projectsearch.us/>
 - ii. Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
 - iii. Job Foundations- A pilot project designed to engage students ages 19-20 in targeted employment readiness activities in their second to last year of school. The contractor will complete a written Job Foundations report (<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Job%20Foundation%20Report.docx>) based on information gathered about the student's skills and interests and assessment of student performance. The report will include actionable next steps for the student's job search and will be completed in line with best practice guidelines available on the County Best Practices website: <https://www.dshs.wa.gov/dda/county-best-practices>. The contractor will engage in an average of 35 hours of employment support activities with or on behalf of the student until the student moves into job development.
 - iv. Partnership project: Collaborative partnerships with school districts, employment providers, Division of Vocational Rehabilitation (DVR), families, employers and other community

collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21). Students in their last year of school may be eligible to receive a job foundations report if one was not completed in their second to last year.

VI. Additional Provisions

- A. In determining the service level associated with each individual client, the primary service obligation is to meet the needs of the individual client related to his or her service goals, within the limits and requirements established in the WAC.
- B. Service levels proposed by the Contractor must be approved by the County and authorized by the DDA Case Resource Manager (CRM).
- C. Payment will be made on an hourly basis for all staff support hours provided, up to but not to exceed, the monthly support hours authorized for each client.
- D. Authorized service levels documented in the DSHS/Case Management Information System (CMIS) database will take precedence in the event of any inconsistency or conflict. The current maximum authorized service level will be downloaded from the DSHS/CMIS database and provided to the Contractor on the monthly billing report.
- E. The Contractor may propose a change in service level through the process established in the County Program Implementation Guide.
- F. Funds received from the County shall not be used to provide cash benefit to the supported individual, whether salary, bonuses or benefits.
- G. The contractor agrees to assign to the County, its Medicaid waiver billing rights for services to DDA clients eligible under Title XIX Programs. If the Contractor chooses to contract directly with DSHS to provide covered services under Title XIX, those services will not be billed to the County.

VII. Reporting

- A. Reporting on client services will be made monthly with the invoice for services through the established DSHS/DDA County billing and reporting process in the format approved by the County. Data elements and definitions for each category of services are outlined by DSHS/DDA in the Case Management Information System (CMIS) billing instructions found at:
<https://manuals.dshs.wa.gov/sites/default/files/DDA/dda/documents/AWA%20Billing%20Instructions.docx>.
- B. The Contractor will provide other reports as developed and required by DSHS/DDA and the County during the term of the contract.

VIII. Program Implementation Requirements

The Developmental Disabilities Program Implementation Guide, Employment or Community Inclusion Services is incorporated by reference into the Scope of Work as presently adopted or subsequently amended and can be located at:

<https://www.whatcomcounty.us/DocumentCenter/View/1491/Developmental-Disabilities-Employment-and-Community-Inclusion-PDF?bidId=>. The purpose of the Program Implementation Guide is to detail implementation requirements including policy and procedure for Pathways to Employment and Community Inclusion services.

Exhibit B
(COMPENSATION)

The source of funding for this contract is the Washington State Department of Social and Health Services, Developmental Disabilities Administration (DSHS/DDA). Total compensation for the contract is variable, depending upon the number of clients and service levels authorized by DSHS/DDA and the County. This is a vendor agreement and not a sub-recipient agreement.

The County will pay the contractor for services delivered to DSHS/DDA authorized clients:

1. Service levels are individualized, based on assessed client need;
2. The service hours authorized for each client is mutually agreed upon by DDA, the County, and the Contractor;
3. Limits to client service authorizations are established in Washington Administrative Code (WAC) 388-828-7020;388-828-9205, 388-828-9310
4. Funding is allocated for services delivered to an individual client. The client's service allocation and funding will follow the client in the event that they choose to receive services through another Contractor;
5. The billing unit for services is hourly

I. Billing and Payment

1. Invoices and attached service documentation will be submitted monthly to the Whatcom County Health Department in the format approved by the County. A complete billing includes both an invoice coversheet and attached client services documentation. The Contractor shall send invoices and service documentation to the following address:

Jessica Lee, Program Specialist
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
jlee@co.whatcom.wa.us

2. The County must receive all invoices and supporting documentation within ten (10) calendar days following the last day of the month for which reimbursement is claimed. If an invoice or required documentation is incorrect, it will be returned to the Contractor. All invoice corrections or modifications must be submitted no later than 45 days after the last day of the month in which the services were provided.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract. Invoices and invoice corrections or modifications related to work done prior to December 31 of the contract year will be accepted no later than January 15, following the end of the County fiscal year (December 31).
4. The Contractor will not be paid for any billings or invoices for services occurring prior to the execution of the contract or after its termination.
5. The Contractor shall not bill the county for service performed or provided under this contract if the Contractor has been or will be paid for the same service by any other source. Such sources include, but are not limited to, the Division of Vocational Rehabilitation Social Security Work Incentives such as Plans for

Achieving Self Support (PASS) or Impairment Related Work Expense (IRWE). The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

6. 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.

7. A total annual funding authorization for all clients will be communicated to the Contractor at the start of the contract year. The funding authorization may be amended, based on use, over the course of the contract year without contract amendment. Expenditures may not exceed the total funding approved by the County and in no case will exceed the total available funding restricted to these services.

II. Reimbursement Rates for Pathways to Employment and Community Inclusion Services

Service Type	Description	Unit Rate	Fund Source
A. Individual Employment	Individualized staff support authorized <u>up to 30 hours</u> a month per client.	\$83 /hour	DSHS/DDA
B. Individual Employment Exceptional Service level	For every 10 hour increment above 30*, the hourly rate will be reduced as described below. Minimum hourly rate is \$35/ hour for IE services. a. 31-40 hour= \$65/hour b. Additional reduction of \$5/hour for every 10 hour increment above 40 Example: 41-50 hours=\$60/hour; 51-60 hours=\$55/hour	Variable \$35-\$65/ hour	DSHS/DDA
C. Group Supported Employment	Shared staff support within the GSE setting and individualized staff support outside of the GSE setting as authorized	\$72/hour	DSHS/DDA
D. Community Inclusion	Individualized support in integrated community settings	\$39/hour	DSHS/DDA

*Both the rate and the service level are attached to the client's authorization approved by DSHS/DDA. This means that if the actual number of hours provided falls below 30 (or another 10 hour increment), the lower hourly rate will still apply. Exceptional service hours may be limited by funding availability and DSHS/DDA approval.

III. Reimbursement Rates for Other Consumer Supports and Other Activities

Activities A-E authorized based on funding available and approved by the County

Activity	Description	Unit/Rate	Funding
A. Partnership Projects	Hourly consultation with school districts, families, employers to improve the transition of young adults from school to work and adult services. Not to exceed hours authorized by the County.	\$74/hour	DSHS/DDA
B. Staff training, Projects and other activities	Training, projects and activities as detailed in Section V., above, and approved in writing by the County, using exhibit B of the Program Implementation Guide .	Reimbursement	DSHS/DDA – Local funds not to exceed \$5,000

C. Job Foundation - Report	Payment upon completion and County approval of student Job Foundations Report. (Rate set by DSHS/DDA)	\$2,400 per County authorized student	DSHS/DDA
D. Job Foundation – Employment Outcome	Outcome payments for “High Acuity” students placed in competitive, integrated, individual employment by the following date of the student’s school exit year: a. By September 30 b. Between October through December c. Between January through March d. Between April through June	Rates set by DSHS DDA a. \$1,500 b. \$1,000 c. \$500 d. \$250 e. An Additional payment of \$1,000 if client is working ten hour of work per week or more.	DSHS/DDA

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-362

File ID:	AB2021-362	Version:	1	Status:	Agenda Ready
File Created:	06/15/2021	Entered by:	Tliddings@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bennett Engineering, LLC to update the Dept of Ecology-Central Shop Industrial Stormwater Pollution Prevention Plan (SWPPP), in the amount of \$30,850.00 for a total amended contract amount of \$55,035

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Contract Amendment


**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 Schlehuber, Division Manager

MEMORANDUM

To: The Honorable Satpal Singh Sidhu, County Executive and
Honorable Members of the Whatcom County Council
Through: Jon Hutchings, Public Works Director
From: Kraig Olason, PW Stormwater Program Manager
Ben Kuiken, PW Stormwater Engineer III
Eric Schlehuber, PW Equipment Services Manager 
Date: June 11, 2021
Re: Update to Central Shop Stormwater Pollution Prevention Plan (SWPPP) Contract
Amendment (Whatcom County Contract #202008054), Bennett Engineering, LLC

▪ **Requested Action**

Approval requested to amend Whatcom County Contract #202008054 for Stormwater Pollution Prevention Plan Update to Central Shop, between Whatcom County and Bennett Engineering, LLC, in the amount of \$30,850 for a total amended contract amount of \$55,035.

▪ **Background and Purpose**

This agreement is intended to secure the professional services of Bennett Engineering, LLC for the purposes of the update to the Central Shop Industrial Stormwater Pollution Prevention Plan (SWPPP). The original contract provided a term of 90 days for completion for August 17, 2020 through November 16, 2020. An amendment executed on August 28, 2020 extended the term through May 31, 2021. A further amendment executed on May 7, 2021 extended the term through December 31, 2022 and increased the original contract amount to a total consideration of \$24,185. This amendment will update the scope of work and increase the consideration by \$30,850.

▪ **Funding Amount and Source**

The resulting amendment will increase the original contract by \$30,850 for a total amended contract amount of \$55,035. The funding for this contract was provided for with an approved budget transfer in April 2021.

▪ **Recommended Action**

Please approve this amendment (Whatcom County Contract #202008054-3) and forward to the County Executive and the County Council for approval at their June 29, 2021 Council meeting.

Please contact Kraig Olason at extension 6301, Ben Kuiken at extension 6303 or Eric 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.
202008054-3

Originating Department:	Public Works – Equipment Services Division
Division/Program: <i>(i.e. Dept. Division and Program)</i>	910/9090/909040 (Equipment Services/Facility)
Contract or Grant Administrator:	Eric L. Schlehuber, Equipment Services Manager
Contractor's / Agency Name:	Bennett Engineering, LLC

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 #: 202008054

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: _____
Already approved? Council Approved Date: _____ (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? Contract _____
Yes ☒ No ☐ If yes, RFP and Bid number(s): RFQ 20-01 Cost Center: 501600

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): \$ 24,185.00 This Amendment Amount: \$ 30,850.00 Total Amended Amount: \$ 55,035.00	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.
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Summary of Scope: Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bennett Engineering, LLC to update the Dept of Ecology- Central Shop Industrial Stormwater Pollution Prevention Plan (SWPPP), in the amount of \$30,850.00 for a total amended contract amount of \$55,035.

Term of Contract: May 1, 2021	Expiration Date: December 31, 2022
-------------------------------	------------------------------------

Contract Routing:	1. Prepared by: Tammy Iddings	Date: 5/19/2021
	2. Attorney signoff: C. Quinn	Date: 6/7/2021
	3. AS Finance reviewed: bennett	Date: 06/10/2021
	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:

Amendment No. 3
Whatcom County Contract No. 202008054
CONTRACT BETWEEN WHATCOM COUNTY
AND
BENNETT ENGINEERING, LLC

Whatcom County Contract No.
202008054-3

This amendment of Whatcom County Contract #202008054 is made this _____ day of _____, 2021, by and between Whatcom County, a municipal corporation, hereinafter referred to as the "COUNTY", and Bennett Engineering, LLC, hereinafter referred to as the "CONTRACTOR", for the purpose of providing professional services for the Dept of Ecology-Central Shop Stormwater Pollution Prevention Plan update, as more fully and definitively described in Exhibit "A" hereto. The language of Exhibit "A-2" controls in case of any conflict between it and that provided here.

This Amendment updates the Scope of Work and will increase the maximum consideration by \$30,850.00 to a total consideration of \$55,035 as follows:

- A. Exhibits "A" shall be substituted in its entirety by Exhibit "A-2".
- B. Exhibits "B" shall be substituted in its entirety by Exhibit "B-2". The maximum consideration for the extension of this agreement shall not exceed \$30,850.00 USD, for an amended running total amount not to exceed \$55,035.00 on this contract. The contract number, set forth above, shall be included on all billings or correspondence in connection therewith.

All other terms and conditions set forth in the original agreement will remain in full force and effect.

DATED this _____ day of _____, 2021.

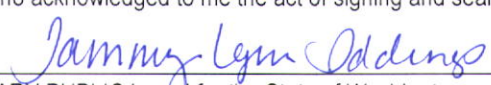
CONTRACTOR:

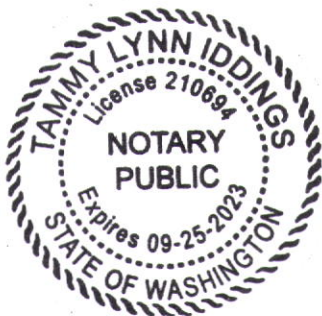
BENNETT ENGINEERING, LLC


Thomas E. Bennett, Owner

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this 11 day of June, 2021, before me personally appeared Thomas E. Bennett to me known to be the Owner of Bennett Engineering, LLC 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
Bellevue. My commission expires 9/25/2023.



WHATCOM COUNTY:

Recommended for Approval:

Jon Hutchings, Public Works Director

Date

Approved as to form:

Approved Via Email-CQ/TI

6/17/21

Christopher Quinn, Senior 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 _____, 2021, before me personally appeared Satpal Singh Sidhu, to me known to be the County 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:

BENNETT ENGINEERING, LLC

Thomas E. Bennett, Owner

Address:

2324 James Street
Bellingham, WA 98225

Mailing Address:

2324 James Street
Bellingham, WA 98225

Contact Name: Thomas E. Bennett

Contact Phone: 360-671-2600

Contact FAX: 360-428-6916

Contact Email: tomb@bennettengr.com

EXHIBIT "A-2"
(SCOPE OF WORK)

BENNETT ENGINEERING, LLC

May 14, 2021

Whatcom County Public Works Department
Equipment Services Division
901 W. Smith Road
Bellingham, WA 98226

Attn: Eric Schlehuber, Division Manager

**Re: Request for Additional Scope of Services/Budget/Term – Amendment #3
Updated Stormwater Pollution Prevention Plan (SWPPP)
Whatcom County Central Shops Facility, WC Contract #202008054-2**

Dear Eric:

Bennett Engineering, LLC (Bennett) submits this request for additional scope of services and budget under the current Whatcom County Contract #202008054-2 regarding detailed design of stormwater treatment BMPs and construction support for the Whatcom County Central Shops. The purpose of the proposed stormwater improvements is to reduce and minimize the elevated turbidity and metals concentrations in stormwater runoff from the existing bulk storage area in the southwest corner of the Site and the gravel-surfaced area located west and north of the Main Operations Building, in accordance Industrial Stormwater General Permit (ISGP) #WAR-011715. In addition, we are requesting to extend the term of the current contract to December 31, 2022.

ADDITIONAL SCOPE OF SERVICES

The additional scope of services includes the following tasks:

Task 1 Project Management

Project management includes meetings and correspondence with Whatcom County and Ecology officials, coordination with outside consultants and contractors, permit application support, and preparation of the project schedules, bid packages, and monthly progress reports. We anticipate that the Site work will be completed under a Whatcom County Land Disturbance Permit. A Construction Stormwater General Permit (CSWGP) will also be required for the project, as the total area of land disturbance will exceed 1.0 acre.

Task 2 Site Inspections/Review of Current BMPs

There are no proposed changes to the current Task 2.

Task 3 Stormwater Treatment/Structural Control BMP Evaluation

Task 3 includes developing 2 to 3 alternatives to 30% design level for evaluation by the County; preparing the civil plan set and Stormwater Site Plan Report for the proposed stormwater BMPs, in accordance with the ISGP, Whatcom County Development Standards, and 2014 Ecology Manual; stormwater modeling for the proposed BMPs using the Western Washington Hydrology Model; revising the final plan set based on comments from the County and Ecology; and preparing an Operation & Maintenance Manual for the stormwater BMPs, as required under the ISGP. The anticipated submittals include 60%, 90%, 100%, and final design documents.

2324 JAMES STREET BELLINGHAM, WA 98225
PHONE: (360) 671-2600 CELL: (360) 739-9844

May 14, 2021

**Request for Additional Scope of Services/Budget/Term – Updated SWPPP
Whatcom County Central Shops Facility**

Task 4 Updated SWPPP

Bennett prepared the Updated SWPPP for the facility in October 2020. The SWPPP will have to be revised to address the new source control and treatment BMPs implemented at the Site, and include the O&M Manual prepared under Task 3.

Task 5 Construction Support

Bennett will perform site inspections during construction of the BMPs to document the work. Task 3 also includes reviewing material submittals from the contractor, responding to requests for information, as needed, and preparing a Record Drawing Set of the completed project.

Task 6 Outside Services

Bennett will utilize Kingworks Structural Engineers for structural engineering design of the reinforced concrete bioretention vault and Project Landworks for landscaping design services for the bioretention facility. These services will be billed through Bennett at cost + 4%.

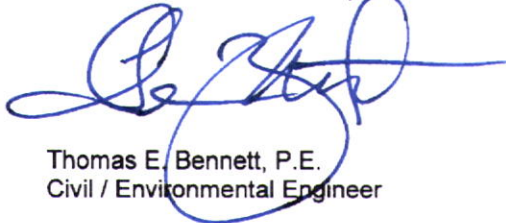
AMENDED BUDGET

The current authorized budget under Whatcom County Contract #202008054-2 is \$24,185. We propose an additional budget of \$30,850 to perform the additional scope of services, as summarized in the attached Exhibit A. If approved, the total amended budget under the contract will be \$55,035. We propose to provide our services on a time-and-expense basis, in accordance with the attached 2021 Schedule of Fees.

We appreciate the opportunity to provide our monitoring services to Whatcom County. If you have any questions, please contact Tom Bennett at 360-671-2600.

Sincerely,

BENNETT ENGINEERING, LLC



Thomas E. Bennett, P.E.
Civil / Environmental Engineer

Attachments: Exhibit A – Recommended Budget Summary – Amendment #3
2021 Schedule of Fees – Bennett Engineering, LLC

EXHIBIT "B-2"
(COMPENSATION)

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed fifty-five thousand thirty-five dollars and zero cents (\$55,035.00) including Washington State Sales Tax as summarized in the table below:

**EXHIBIT A - AMENDMENT #3
RECOMMENDED BUDGET SUMMARY**

**DETAILED SW DESIGN/CONSTRUCTION SUPPORT
WHATCOM COUNTY CENTRAL SHOPS FACILITY**

TASK	AUTHORIZED BUDGET THRU AMENDMENT #2	RECOMMENDED BUDGET			AMENDED BUDGET
	WC #202008054-2	AMENDMENT #3			
		Time	Rate	Total	
Task 1 - Project Management					
Correspondence with County/Ecology		20	\$125.00	\$2,500.00	
Coordination of Outside Consultants		6	\$125.00	\$750.00	
Preparation/Updates of Project Schedule		10	\$125.00	\$1,250.00	
Permit Application Support		8	\$125.00	\$1,000.00	
Preparation of Bid Packages		16	\$125.00	\$2,000.00	
Progress Reports and Invoicing		12	\$125.00	\$1,500.00	
Task 1 Total	\$2,875.00			\$9,000.00	\$11,875.00
Task 2 - Site Inspections/Review of Current BMPs		Time	Rate	Total	
Site Visits/Documentation of BMPs					
Task 2 Total	\$2,070.00	0	\$125.00	\$0.00	\$2,070.00
Task 3 - Detailed Design - SW Treatment/Structural Control BMPs		Time	Rate	Total	
Alternatives Analysis - 30% Design (2-3 Alternatives) - Project Manager		6	\$125.00	\$750.00	
Alternatives Analysis - 30% Design (2-3 Alternatives) - Drafting		7	\$70.00	\$490.00	
Cover Sheet/Vicinity Map/Const. Sequence		2	\$70.00	\$140.00	
Existing Conditions/TESC Plan		3	\$70.00	\$210.00	
Grading & Drainage Plan - SW Corner		24	\$70.00	\$1,680.00	
Grading & Drainage Plan - New Pavement Area		16	\$70.00	\$1,120.00	
Stormwater Site Plan - Bioretention Facility		16	\$70.00	\$1,120.00	
Construction Details & Specifications		8	\$70.00	\$560.00	
Grading Design/Engineering Calcs/Details/SW Model		8	\$125.00	\$1,000.00	
Stormwater Site Plan Report		12	\$125.00	\$1,500.00	
Operation & Maintenance Manual		8	\$125.00	\$1,000.00	
Plan Review - 60%/90%/100% Final Submittals		10	\$125.00	\$1,250.00	
Drawing Revisions - 60%/90%/100% Final Submittals		14	\$70.00	\$980.00	
Task 3 Total	\$12,840.00			\$11,800.00	\$24,640.00
Task 4 - SWPPP Revision		Time	Rate	Total	
SWPPP Revisions		10	\$125.00	\$1,250.00	
Task 4 Total	\$6,400.00			\$1,250.00	\$7,650.00
Task 5 - Construction Support		Time	Rate	Total	
Site Visits/Documentation of Project Construction		14	\$115.00	\$1,610.00	
Submittal Review/Response to Contractor RFIs		10	\$125.00	\$1,250.00	
Record Drawing Set		6	\$70.00	\$420.00	
Task 5 Total	\$0.00			\$3,280.00	\$3,280.00
Task 6 - Outside Services		Time	Rate	Total	
Structural Engineer - Kingworks Structural Engineers (w/ 4% Markup)		1	\$5,200.00	\$5,200.00	
Landscape Architect - Project Landworks (w/ 4% Markup)		1	\$320.00	\$320.00	
Task 6 Total	\$0.00			\$5,520.00	\$5,520.00
TOTALS:	\$24,185.00			\$30,880.00	\$66,085.00

BENNETT ENGINEERING, LLC

PROJECT: 20018

2021 SCHEDULE OF FEES – BENNETT ENGINEERING, LLC

Charges for services provided by Bennett Engineering, LLC will be invoiced on the basis of the following schedule of fees. Billing rates for 2021 are as follows:

PERSONNEL:	TASK CODE	RATE
STAFF ENGINEER	300.....	\$ 70.00
PROJECT ENGINEER	400.....	\$ 90.00
SENIOR ENGINEER I	500.....	\$105.00
SENIOR ENGINEER II	510.....	\$115.00
PROJECT MANAGER	520.....	\$125.00
PRINCIPAL ENGINEER	610.....	\$135.00
HEARING/EXPERT TESTIMONY	700.....	\$150.00

EXPENSES:

Subconsultant Services	Cost + 4%
Direct Project Expenses	Cost + 8%

Field equipment will be charged in accordance with the following schedule:

EQUIPMENT:

Disposable Bailers, each	\$10.00
Peristaltic Pump, per day	\$50.00
Soil Sampling Equipment, per day	\$50.00
Field Monitoring Equipment, per day	\$25.00
Field Manometer, per day	\$25.00
Field Filter Pump and Assembly, per day	\$50.00



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-358

File ID:	AB2021-358	Version:	1	Status:	Agenda Ready
File Created:	06/14/2021	Entered by:	AReynold@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		
Assigned to:	Council Criminal Justice and Public Safety Committee				Final Action:
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Report from the Public Defenders Office

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
<hr/>			
<hr/>			

Attachments:



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:	06/29/2021			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	
10/27/2020	Council Committee of the Whole	DISCUSSED	
11/10/2020	Council Committee of the Whole	DISCUSSED	
11/24/2020	Council Committee of the Whole	DISCUSSED	

12/08/2020	Council Committee of the Whole	DISCUSSED
01/12/2021	Council Committee of the Whole	DISCUSSED
01/26/2021	Council Committee of the Whole	DISCUSSED
02/09/2021	Council Committee of the Whole	DISCUSSED
02/23/2021	Council Committee of the Whole	DISCUSSED
03/09/2021	Council Committee of the Whole	DISCUSSED
03/23/2021	Council Committee of the Whole	DISCUSSED
04/06/2021	Council Committee of the Whole	DISCUSSED
04/20/2021	Council Committee of the Whole	DISCUSSED
05/04/2021	Council Committee of the Whole	DISCUSSED
05/18/2021	Council Committee of the Whole	DISCUSSED
06/01/2021	Council Committee of the Whole	DISCUSSED
06/15/2021	Council Committee of the Whole	DISCUSSED

Attachments: COB Council COVID-19 briefing 6.21.21.pptx

COVID-19 Update

Greg Stern MD

Whatcom County Health Officer

Erika Lautenbach MPH

Director, Whatcom County Health Department

June 21, 2021

Bellingham City Council Meeting



Whatcom County
HEALTH
Department





COVID-19 Case Trends

Whatcom County

HEALTH

Department

Overview of COVID-19 trends

- Case rates are down from peaks in November 2020, post-holiday January 2021 surge, and April-May 2021 surge.
- Case rates vary by county sub-area, all are decreasing.
- Concern re: susceptible people as more transmissible variants spread, as weather cools this fall and winter, more indoor exposure to cold, dry air.



COVID-19 DISEASE ACTIVITY

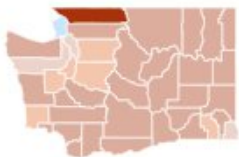
Data as of June 17, 2021 11:59PM PT

Select a key metric

Rate per 100K newly
diagnosed casesNew hospitalizations
per 100K peopleEffective reproductive
number (R)

Select a County

All



75 or more
50 to <75
25 to <50
10 to <25
+0 to <10
zero cases

Chart View

Tabular View

COVID-19 disease activity

Rate of newly diagnosed confirmed and probable COVID-19 cases

This graph shows the trend of the rate of newly diagnosed confirmed and probable COVID-19 cases per 100,000 people during a two week period. The most recent period is from May 28 through Jun 10. The Department of Health defines low disease activity as having fewer than 25 cases per 100,000 people during the prior two weeks.

[Learn More](#)

Whatcom County

7 Day ☒ 14 DayRate per 100K of newly
diagnosed confirmed and
probable cases during the
prior two weeks

125.4

Meeting goal of fewer than
25 cases (confirmed and
probable) per 100,000
people

No

Supporting detail

Population

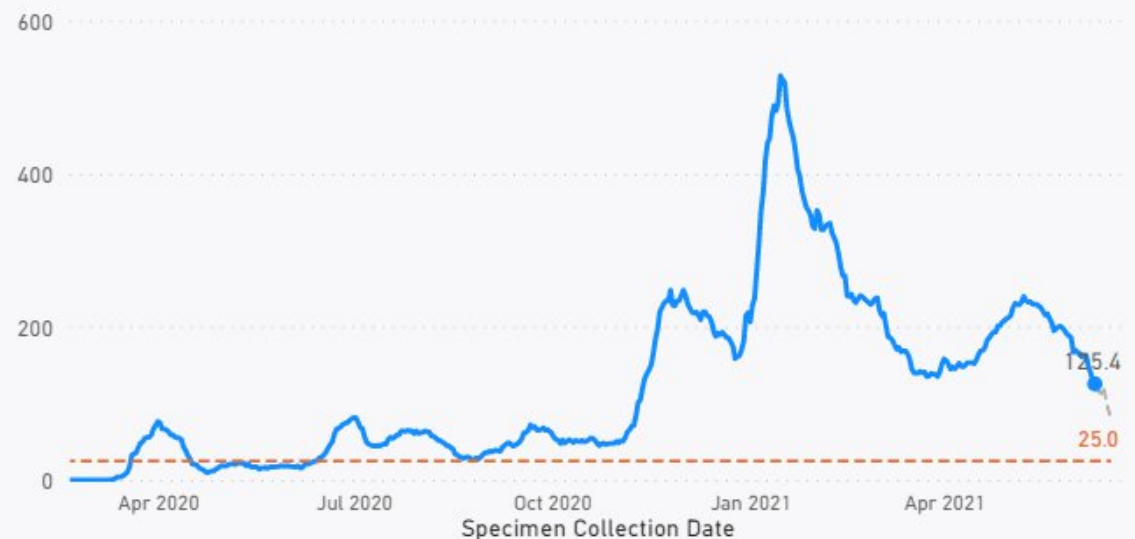
228,000

Confirmed and probable
cases in the prior two
weeks

286

Rate per 100K of newly diagnosed confirmed and probable cases during the prior two weeks

— Case rate □ Latest case rate --- Case rate incomplete --- Goal <25 case rate



Sources: Washington State Department of Health and the Washington State Office of Financial Management



COVID-19 DISEASE ACTIVITY

Data as of June 17, 2021 11:59PM PT

Select a key metric

Rate per 100K newly
diagnosed casesNew hospitalizations
per 100K peopleEffective reproductive
number (R)

Select a County

Whatcom

COVID-19 disease activity

Rate of newly hospitalized COVID-19 patients during the past week

This graph shows the trend of the rate of newly hospitalized COVID-19 patients per 100,000 people during the past week. Hospitalizations among confirmed and probable cases are included. The most recent period is from Jun 1 through Jun 07.

[Learn
More](#)

Whatcom County

Rate of newly hospitalized COVID-19 patients per 100K people

— Hospitalization rate —●— Latest rate — — — Hospitalization (incomplete data)

Rate of newly hospitalized
COVID-19 patients per
100K people during the
past week

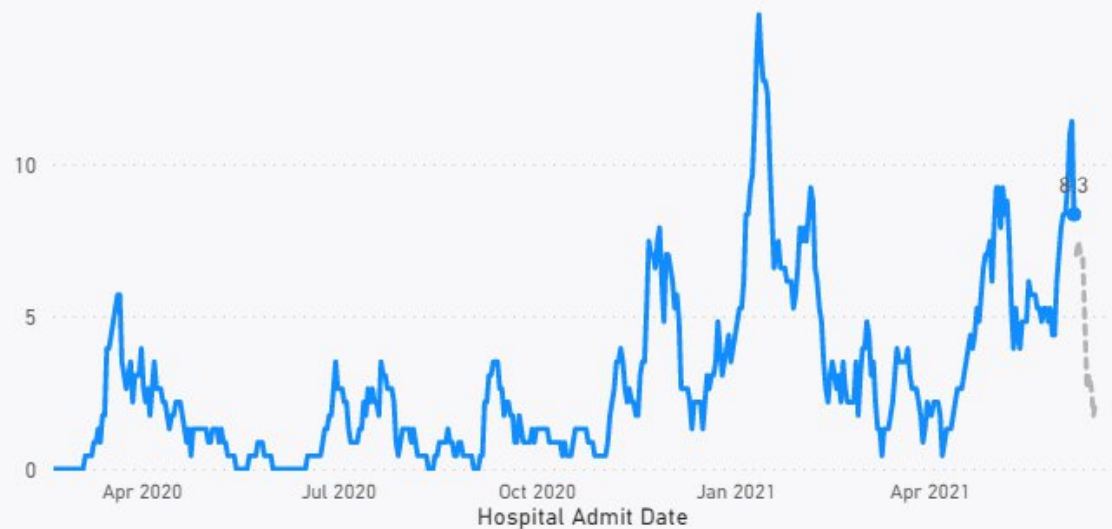
8.3

Population

228,000

Newly hospitalized
COVID-19 patients
during the past week

19



Sources: Washington State Department of Health and the Washington State Office of Financial Management

Chart View

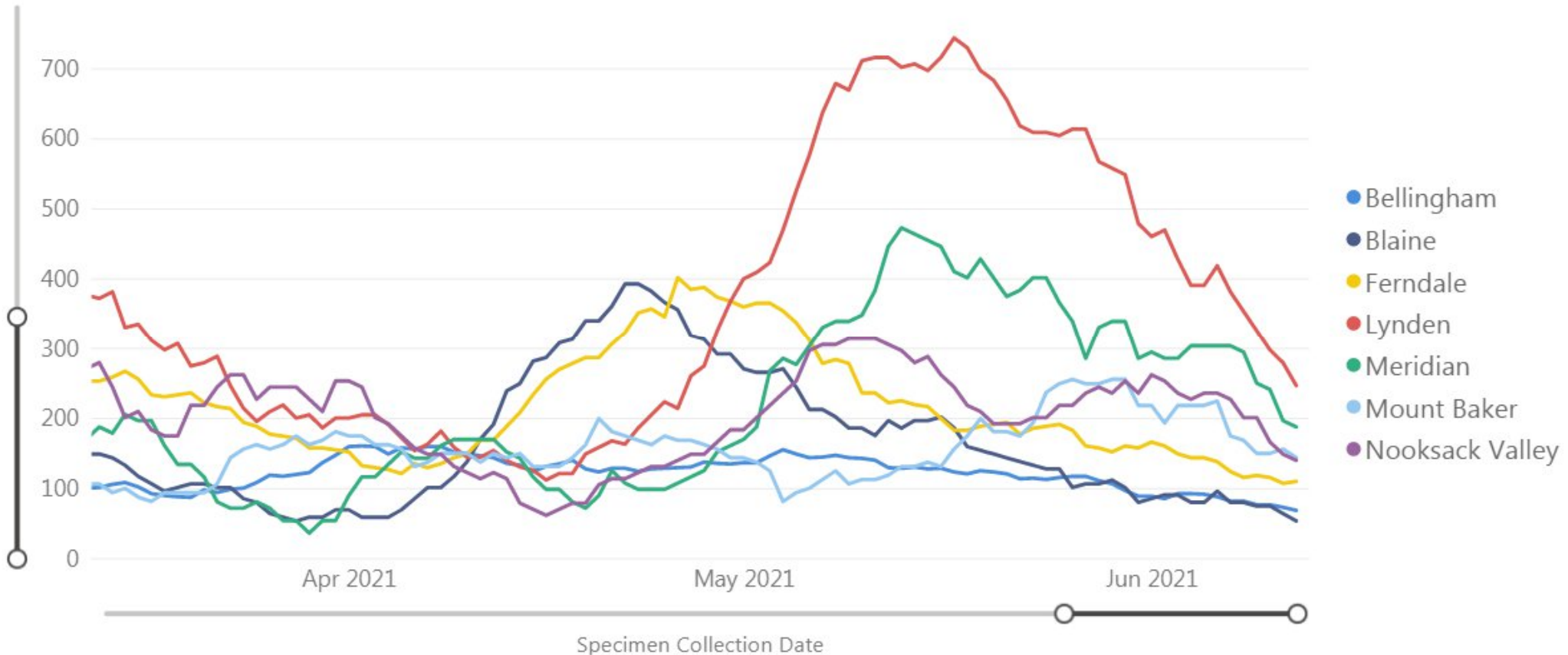
Tabular View

ack



Case Rates: Whatcom County Sub-County Areas

New confirmed COVID-19 cases per 100,000 people during the prior two weeks



Data for the past 14 days is considered preliminary and may change due to data reconciliation.
Sub-county areas are defined by school district boundaries.



Vaccination Coverage

Whatcom County

HEALTH

Department

COVID-19 IN WASHINGTON STATE

People Initiating Vaccination (Receiving at least 1 dose)

DATA AS OF 6/16/2021 PT

This chart shows the number of people in Washington initiating vaccination (receiving at least 1 dose). People initiating vaccination represent the total number of people who have received at least one dose of any type of COVID-19 vaccine. Individuals who are fully vaccinated are included in the count of both People Initiating Vaccination and People Fully Vaccinated. Please note, the measures "vaccines given" and "people vaccinated" are not comparable. Vaccines given counts number of doses given in a location. People vaccinated counts number of Washington residents initiating vaccination and

SELECT COUNTY

Search

☐ Pend Oreille County
 ☐ Pierce County
 ☐ San Juan County
 ☐ Skagit County
 ☐ Skamania County
 ☐ Snohomish County
 ☐ Spokane County
 ☐ Stevens County
 ☐ Thurston County
 ☐ Wahkiakum County
 ☐ Walla Walla County
 ☒ Whatcom County
 ☐ Whitman County
 ☐ Yakima County

Map View

Tabular View

Percent of Total Population Initiating Vaccination	58.0%
Percent of Total Population Fully Vaccinated	51.6%
Percent of Population Initiating Vaccination (16+)	68.1%
Percent of Population Fully Vaccinated (16+)	61.1%
Percent of Population Initiating Vaccination (12+)	66.5%
Percent of Population Fully Vaccinated (12+)	59.2%

TOTAL POPULATION INITIATING VACCINATION (RECEIVING AT LEAST 1 DOSE)

Legend

60%+

>45% to 60%

>30% to 45%

>15% to 30%

>0% to 15%

Zero

County data for people initiating vaccination are based on the vaccine recipient's county of residence. people initiating vaccination do not have a county reported. For 353 people who initiated vaccination, we are unable to determine whether all

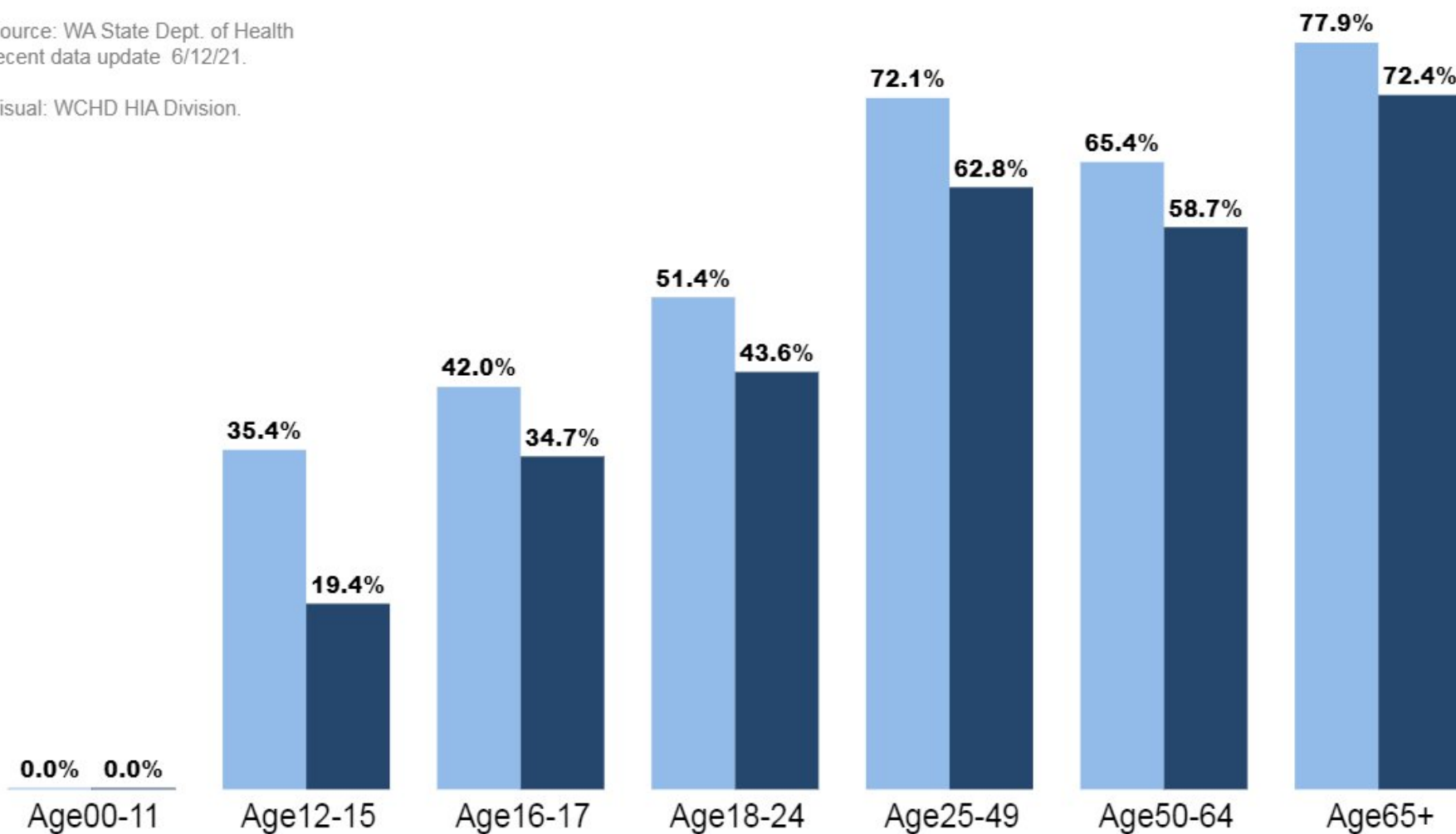
County-level information can be found on Local Health Jurisdiction [\(LHJ\) websites](#)

Whatcom County: Percent of Age Group Vaccinated for COVID-19

● Vaccination Initiated ● Vaccination

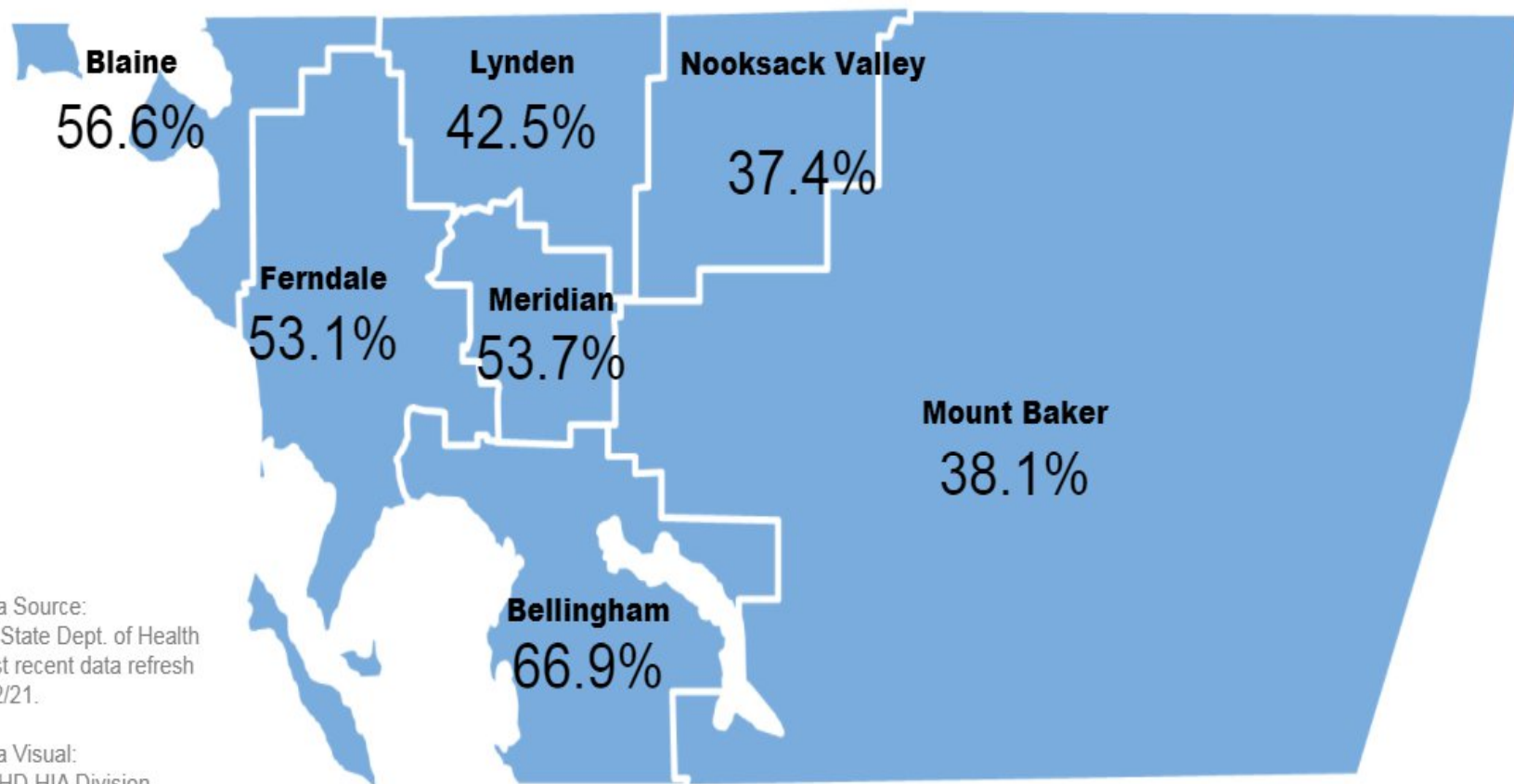
Data Source: WA State Dept. of Health
Most recent data update 6/12/21.

Data Visual: WCHD HIA Division.




Go back ByAgeColumns < > ↶

Whatcom County: Percent of Population who have Initiated COVID-19 Vaccination by Sub-County Area



Data Source:
WA State Dept. of Health
Most recent data refresh
6/12/21.

Data Visual:
WCHD HIA Division.



SARS-CoV-2 Variants

Whatcom County
HEALTH
Department

Variant overview

- Proportion of cases due to specific variants changes over time as more transmissible variants spread and become the dominant strains.
- Alpha (B.1.1.7) was dominant strain after original strains, 50% more transmissible.
- Gamma (P.1) and Delta (B.1.617.2) even more transmissible than Alpha, anticipate Delta being dominant strain by late summer, early fall. Different timelines by region.

Washington State follows the [Center for Disease Control and Prevention’s variants of concern](#).

These include:

Name	Area of emergence	CDC designation	Cumulative Washington cases detected	Earliest specimen collection date	Most recent specimen collection date
B.1.1.7	United Kingdom	Variant of concern	5,629	2021-01-07	2021-06-03
B.1.351	South Africa	Variant of concern	147	2021-01-29	2021-05-24
P.1	Brazil	Variant of concern	1,133	2021-02-06	2021-06-02
B.1.427	California	Variant of concern	361	2020-12-11	2021-05-20
B.1.429	California	Variant of concern	2,750	2020-11-20	2021-06-01
B.1.526*	New York	Variant of interest	345	2021-01-21	2021-06-02
B.1.525	New York	Variant of interest	66	2021-02-05	2021-05-13
P.2	Brazil	Variant of interest	37	2021-01-28	2021-04-20
B.1.617**	India	Variant of interest	206	2021-03-22	2021-06-02

*Includes B.1.526 and B.1.526.1 **Includes B.1.617, B.1.617.1, B.1.617.2, and B.1.617.3

- Sequencing can be performed on stored specimens at any time, so the earliest collection date may change as additional specimens are sequenced.

Pend Oreille	2	0	1	0	0	0	0	0	0
Pierce	442	12	68	18	309	23	2	2	4
San Juan	6	0	0	0	0	0	0	0	0

8

County	B.1.1.7 count	B.1.1.351 count	P.1 count	B.1.1.427 count	B.1.1.429 count	B.1.1.526* count	B.1.1.525 count	P.2 count	B.1.1.617* * count
Skagit	112	0	9	1	12	0	0	0	0
Skamania	2	0	0	0	0	0	0	0	0
Snohomish	821	15	114	31	266	26	4	1	12
Spokane	67	1	59	4	34	6	1	0	1
Stevens	0	0	1	0	0	0	0	0	1
Thurston	81	4	5	4	24	2	0	0	0
Walla Walla	3	0	3	7	4	1	0	0	0
Whatcom	254	1	91	5	21	8	2	0	0
Whitman	40	0	1	6	6	1	0	0	0
Yakima	135	11	33	92	373	12	1	8	10

*Includes B.1.526 and B.1.526.1 **Includes B.1.617, B.1.617.1, B.1.617.2, and B.1.617.3

Use the controls to focus on a specific region and/or 2-week interval

HHS Region

USA

● Nowcast On

○ Nowcast Off

Two weeks ending

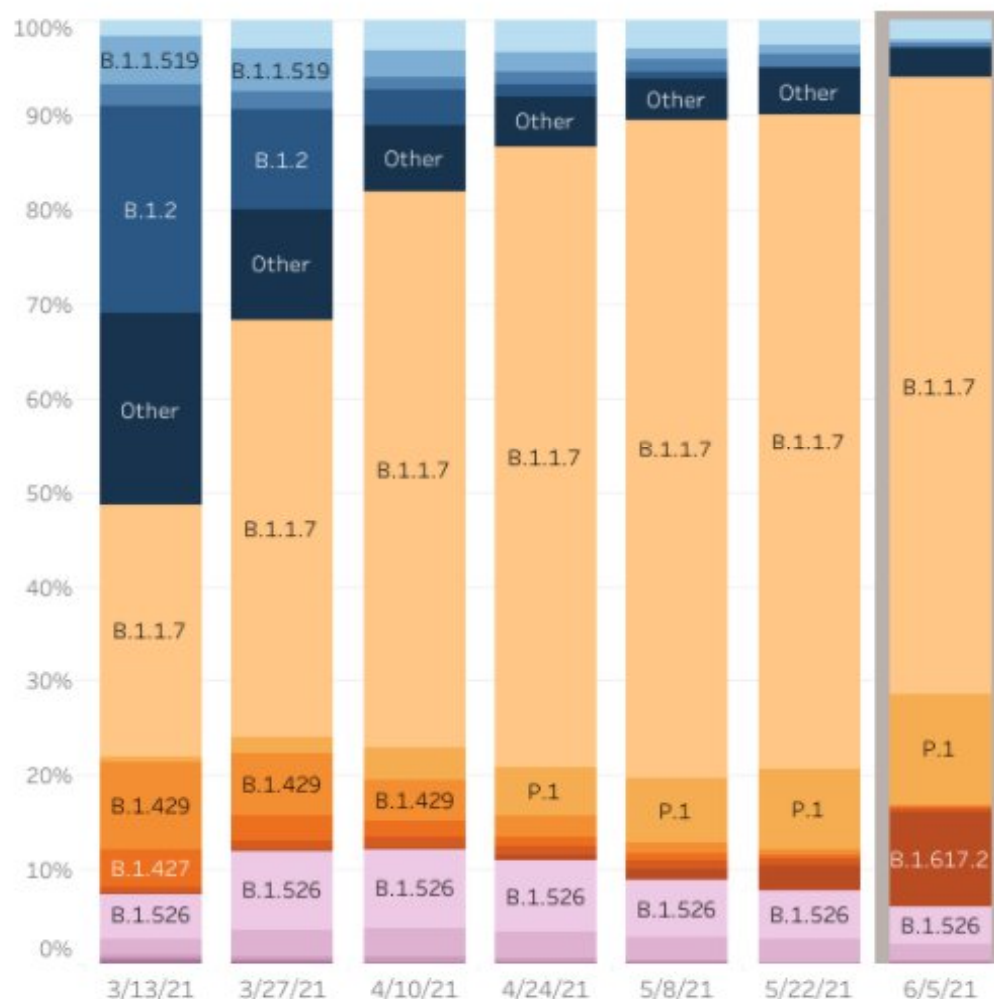
6/5/2021



United States: 2/28/2021 – 6/5/2021

United States: 5/23/2021 – 6/5/2021 NOWCAST

**



Collection date, two weeks ending

USA

	Lineage	Type	%Total	95%PI	
Most common lineages #	B.1.1.7	VOC	65.5%	60.4-70.6%	
	P.1	VOC	11.6%	8.1-15.3%	
	B.1.617.2	VOC	9.9%	6.6-13.5%	
	B.1.526	VOI	4.0%	2.1-6.3%	
	B.1.526.2		1.9%	0.6-3.6%	
	B.1.526.1	VOI	1.8%	0.6-3.3%	
	B.1		0.4%	0.0-1.2%	
	B.1.1.519		0.4%	0.0-1.2%	
Additional VOI/VOC lineages #	B.1.2		0.1%	0.0-0.3%	
	B.1.351	VOC	0.5%	0.0-1.5%	
	B.1.429	VOC	0.3%	0.0-0.9%	
	B.1.617.1	VOI	0.2%	0.0-0.6%	
	B.1.427	VOC	0.1%	0.0-0.6%	
	B.1.525	VOI	0.1%	0.0-0.6%	
	P.2	VOI	0.0%	0.0-0.3%	
Other*	Other		3.2%	0.9-6.3%	

* Other represents >200 additional lineages, which are each circulating at <1% of viruses

** These data include Nowcast estimates, which are modeled projections that may differ from weighted estimates generated at later dates

Sublineages of P.1 and B.1.351 (P.1.1, P.1.2, B.1.351.2, B.1.351.3) are aggregated with the parent lineage and included in parent lineage's proportion.

Use the controls to focus on a specific region and/or 2-week interval

HHS Region

Region 10 - Alaska, Idaho, Oreg...

● Nowcast On

○ Nowcast Off

Two weeks ending

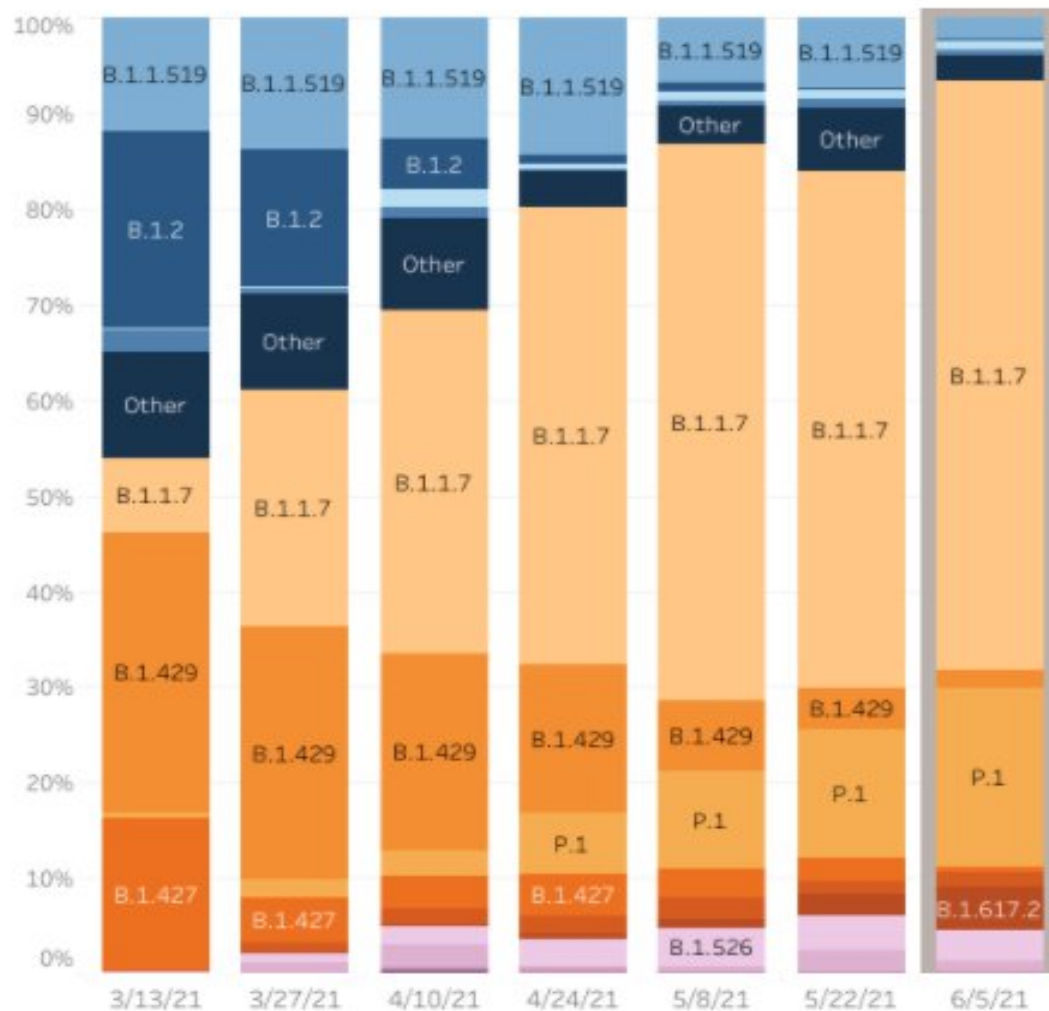
6/5/2021



HHS Region 10: 2/28/2021 – 6/5/2021

HHS Region 10: 5/23/2021 – 6/5/2021 NOWCAST

**



Collection date, two weeks ending

Region 10 - Alaska, Idaho, Oregon, and Washington

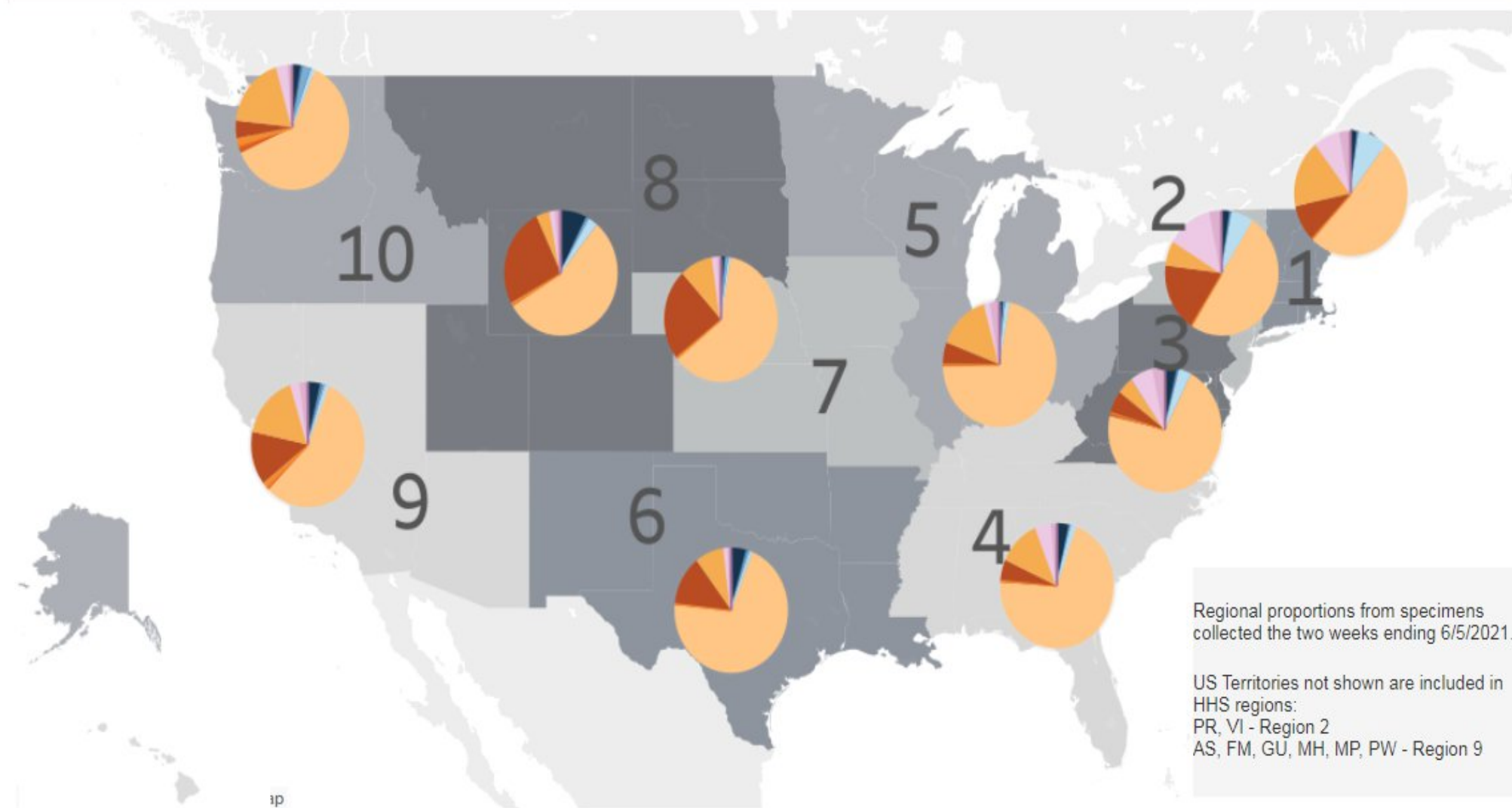
	Lineage	Type	%Total	95%PI	
Most common lineages #	B.1.1.7	VOC	61.8%	42.9-78.6%	
	P.1	VOC	18.7%	7.1-35.7%	
	B.1.617.2	VOC	4.5%	0.0-14.3%	
	B.1.526	VOI	3.3%	0.0-10.7%	
	B.1.1.519		2.2%	0.0-7.1%	
	B.1.429	VOC	1.7%	0.0-7.1%	
	B.1.351	VOC	1.5%	0.0-7.1%	
	B.1.526.1	VOI	1.1%	0.0-7.1%	
	B.1.526.2		0.9%	0.0-7.1%	
	B.1		0.7%	0.0-3.6%	
Additional VOI/VOC lineages #	B.1.2		0.1%	0.0-3.6%	
	B.1.427	VOC	0.6%	0.0-3.6%	
	B.1.525	VOI	0.1%	0.0-3.6%	
	B.1.617.1	VOI	0.1%	0.0-3.6%	
	P.2	VOI	0.0%	0.0-3.6%	
Other*	Other		2.5%	0.0-10.7%	

* Other represents >200 additional lineages, which are each circulating at <1% of viruses

** These data include Nowcast estimates, which are modeled projections that may differ from weighted estimates generated at later dates

Sublineages of P.1 and B.1.351 (P.1.1, P.1.2, B.1.351.2, B.1.351.3) are aggregated with the parent lineage and included in parent lineage's proportion.

United States: 5/23/2021 – 6/5/2021 NOWCAST



Updated June 15, 2021

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ails

COVID-19 Treatment and Prevention

- Clinical guidance provided by WCHD is based on consensus guidelines, primarily those from NIH, CDC, and national medical specialty societies.
- The guidelines are based on a thorough and ongoing critical review of the results, study methods, and analyses used in relevant studies.
- Speculative or promising treatments need to be evaluated for safety and efficacy before they are disseminated by public health.
- Expert panels, like the CDC Advisory Committee on Immunization Practices, the FDA Advisory Boards, and the NIH COVID-19 Treatment Guidelines Panel, provide that evaluation of the evidence.

Vaccines - from Research to Approval

FDA – Data monitoring and safety board must approve application for clinical trials

- Phase 1 trial - safety of the vaccine candidate. Escalating doses given to healthy volunteers to determine side effects and tolerability.
- Phase 2 trial - expands recruitment and may include participants with health conditions such as obesity, cancer, and diabetes. Active recruitment for participants of various demographics. Continued testing of the safety of the vaccine and its initial efficacy and how it affects the immune system.
- Phase 3 trial - recruit thousands of participants to measure the efficacy of the vaccine in preventing disease.

- Manufacturers submit their data with applications for EUA or licensing. Reviewed by FDA teams and by independent advisory board (VRBPAC)
- Key to rapid development of COVID-19 vaccines was multiple vaccine platforms, previous development of vaccines for SARS-CoV-1, MERS, and others, and gene sequencing and sharing of genome within weeks of initial isolation of SAR-CoV-2
- Simultaneous Phase 2 and 3 trials, with public funding of trials allowed for compression of timeline with maintenance of safety review.
- VAERS, v-safe, Vaccine Safety Datalink (VSD), Clinical Immunization Safety Assessment (CISA) for post-authorization safety surveillance

COVID-19 Vaccine Safety and Efficacy

- Although response of variants to vaccines vary, all provide significant protection against current VOC, markedly reduce risk of severe disease/hospitalization/death, and reduce transmission.
- New info on Delta variant response to vaccines show little efficacy from first dose mRNA vaccine, need full series to have significant protection.
- FDA and CDC reviewing rare cardiac inflammation events following mRNA vaccine, clotting events following adenovirus vector vaccines. Vaccine safety system is identifying issues and investigating.
- Risk of cardiac inflammation is higher and more severe with COVID-19 infection than from vaccine. AAP, ACC, CDC strongly recommend vaccination.

Summary

- Virus is suppressed, not eliminated. We are all safer when transmission is less.
- Those without prior immunity are susceptible.
- Vaccine is safest and most effective protection.
- Those at risk should continue to mask, distance, avoid gatherings with unvaccinated.
- Current status is good and improving. Concern remains for variants that are more transmissible, more virulent, and less responsive to neutralizing antibodies (from vaccine or prior infection)

References/Data Sources

- <https://www.whatcomcounty.us/3427/COVID-19-Data>
- <https://coronavirus.wa.gov/what-you-need-know/roadmap-recovery-metrics>
- <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/data-tables/420-316-SequencingAndVariantsReport.pdf>
- <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>
- <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html#Concern>
- <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety.html>
- <https://www.covid19treatmentguidelines.nih.gov/about-the-guidelines/>

Vaccine Safety

- FDA COVID-19 Vaccine Safety Updates, Vaccines and Related Biological Products Advisory Committee (VRBPAC), June 10, 2021 <https://www.fda.gov/media/150054/download>
- CDC Advisory Committee on Immunization Practices (ACIP) meeting 6/23/21 will provide update on mRNA vaccines and cardiac inflammation and discuss COVID-19 mRNA vaccines in adolescents and young adults: benefit-risk discussion <https://www.cdc.gov/vaccines/acip/meetings/downloads/agenda-archive/agenda-2021-06-23-508.pdf>
- CDC Vaccine Safety Programs
- <https://www.cdc.gov/vaccinesafety/index.html>



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-382

File ID:	AB2021-382	Version:	1	Status:	Agenda Ready
File Created:	06/21/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
Assigned to:	Council Committee of the Whole			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Discussion regarding proposed Comprehensive Plan and Whatcom County Code (WCC) amendments, primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area and various land uses on a countywide basis

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding 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).

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
-------	--------------	---------	----------

Attachments: Proposed amendments

Exhibit B

NOTE: Council changes from existing, adopted code language are shown within underlines and strikethroughs. Additional Joint Stakeholder Group changes are highlighted in green. Additional Planning and Development Services changes are highlighted in gray. Additional changes from the County's Prosecuting Attorney's Office are 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 expansion of facilities pursuant to and in accordance with WCC 20.68.153, WCC 20.68.154 or any new or expansions of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility, 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 by the SEPA Responsible Official in consultation with the Planning Commission and the County Council. The expert evaluation or Worksheet shall analyze the "significance" of direct, indirect, and cumulative impacts arising from:

1. Windborne transport of fossil or renewable fuel emissions across Whatcom County;
2. Lifecycle greenhouse gas emissions for the project's incremental change for renewable facilities and 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;
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 information in the expert evaluation or the Worksheet 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 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.

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.

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.

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. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to address a particular impact of a project or would be less restrictive than County Code.

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 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, odors or greenhouse gas emissions impacts not addressed through the regulations of NWCAA or DOE, the County may require mitigation under SEPA.

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.

i. Greenhouse Gas Emissions: The following shall apply to projects that: (1) are expansions of Fossil Fuel Refineries and Fossil Fuel Transshipment Facilities, as defined in WCC 20.68.153 and WCC 20.68.154, or new, or expansion of Renewable Fuel Refineries and Renewable Fuel Transshipment Facilities; and (2) will have reasonably foreseeable, probable, direct greenhouse gas emissions resulting from new or modified equipment of greater than 10,000 MT/year (CO₂e) as determined by the Northwest Clean Air Agency using methodology consistent with 40 CFR § 98.253, Calculating GHG Emissions (for Petroleum Refineries) and 40 CFR § 98.33, Calculating GHG Emissions (for Stationary Fuel Combustion Sources), as applicable.

(a) Emissions Assessed: The SEPA Responsible Official shall require assessment of the lifecycle greenhouse gas emissions of the project, with a focus on the reasonably foreseeable, probable, direct and indirect, gross greenhouse gas emissions caused by the project, consistent with WAC 197-11-060(4)(d). The assessment shall estimate the incremental gross direct-facility emissions change from a baseline established in current Prevention of Significant Deterioration and/or Minor New Source Review Permit Technical Support Documents.

Rationale: The proposed amendments use the terms “direct emissions” and “facility emissions.” However, the Joint Stakeholder Group proposed that “Direct Emissions” should have the same definition of “Facility Emissions” in an e-mail of June 18, 2021. Instead of having two terms that mean the same thing, PDS is recommending using the term “direct emissions” and eliminating the term “facility emissions.”

(b) Impact Assessment: Greenhouse gas emissions impacts shall be assessed using current scientifically valid modeling techniques, accounting for project emissions and gross increases of existing facility emissions resulting from the proposed expansion project. The range of greenhouse gas emissions impacts assessed may be greater than the range of greenhouse gas emissions impacts for which mitigation is required.

(c) Mitigation: The County decision-maker shall require the applicant to identify options for mitigation of greenhouse gas emissions that are caused by the project pursuant to WAC 197-11-660 and WCC 16.08.160.B, and in accordance with the following considerations:

(1) Mitigation measures must be imposed on the permittee, ~~but only to the extent attributable to the identified direct emissions of the project proposal as permitted,~~ as provided in WAC 197-11-660 1(d). ~~Required The County decision maker must require mitigation may be limited to address the project's direct greenhouse gas emissions and may also be required for mitigation to address the project's~~ indirect emissions. Voluntary additional mitigation may occur, per WAC 197-11-660 1(d). Mitigation shall not be required for projects shown in SEPA assessment to reduce greenhouse gas emissions of existing facilities on a lifecycle basis.

Rationale: The Joint Stakeholder Group proposed the above changes in an e-mail of May 3, 2021 to clarify the language.

(2) The SEPA Responsible Official shall not require duplicative mitigation of greenhouse gas emissions (MT CO₂e) that are reasonably foreseeable, probable, and caused by the project to the extent these emissions or a portion of these emissions are otherwise mitigated under other local, state, or federal laws, rules, or permits.

(3) Mitigation may be achieved through on-site mitigation measures, such as efficiency improvements and reduced generation, and through local and regional projects, so long as such measures or projects are reasonable, capable of being accomplished, are likely to protect or enhance environmental quality, and meet current state rules and standards. Alternatively, mitigation may be achieved through 1) projects located outside of the local area/region, or 2) through purchase of carbon offsets from any carbon registry approved by the Planning Department, NWCAA, or any Washington state agency, subject to the provisions of item (6), below. Mitigations for the project being permitted may concurrently satisfy any other requirements imposed by County, State or Federal governments for the same project.

(4) When considering the total mitigation required, a multiplier of 1.5 shall be applied to the tonnage of all mitigations performed locally (including those selected from the current Whatcom County Climate Action Plan) after [the effective date of this ordinance] as a means to encourage local investment. This multiplier shall not apply to emission reduction units generated by and purchased from local third-party projects or activities that were implemented prior to the effective date of this ordinance.

(5) Applicants are encouraged, but not required, to select mitigation proposals from the Whatcom County Climate Action Plan and to select projects that yield energy efficiency gains, local economic benefits such as creation of jobs with living wage or use of prevailing wages, and/or local economic development.

(6) Mitigations based on emissions reductions from activities or programs must be: (a) real, specific, identifiable, and quantifiable; (b) permanent; (c) enforceable; (d) verifiable; and (e) except as allowed by (3) above, additional to reductions required under other laws, rules, or permits for unrelated projects or expansions.

(7) The County decision maker may not deny a permit based upon lack of availability of local or regional mitigation.

(d) Should a Washington state greenhouse gas assessment and mitigation permitting or project requirement be adopted, such as a rule adopted pursuant to the Washington Governor's Directive 19- 18, Environmental Assessment of Greenhouse Gas Emissions, Title 16.08.160.F.1.b.i shall no longer apply as of the effective date of the requirement or rule. Should a new Federal greenhouse gas assessment and mitigation permitting or project requirement with the same force and effect of Title 16.08.160.F.1.b.i be adopted Title 16.08.160.F.1.b.i shall no longer apply as of the effective date of the requirement or rule.

(e) For the purposes of 16.08.160.F.1.b.i., the following definitions apply:

(1) Gross emissions are defined as the actual incremental emissions increases or decreases resulting from the project. Gross emissions do not include reductions or additions from offsite mitigation or lifecycle impacts.

(2) Indirect emissions are defined as emissions resulting from offsite generation of power purchased for consumption at the facility and emissions from other contiguous or adjacent utilities directly supplying the facility (examples include cogeneration of steam, offsite hydrogen production).

Rationale: The definitions of “Gross emissions” and “Indirect emissions” have been moved to page 8, because that’s where the other definitions are located.

ii. 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. 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.

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.

260 197-11-762 Local agency.
261 197-11-764 Major action.
262 197-11-766 Mitigated DNS.
263 197-11-768 Mitigation.
264 197-11-770 Natural environment.
265 197-11-772 NEPA.
266 197-11-774 Nonproject.
267 197-11-775 Open record hearing.
268 197-11-776 Phased review.
269 197-11-778 Preparation.
270 197-11-780 Private project.
271 197-11-782 Probable.
272 197-11-784 Proposal.
273 197-11-786 Reasonable alternative.
274 197-11-788 Responsible official.
275 197-11-790 SEPA.
276 197-11-792 Scope.
277 197-11-793 Scoping.
278 197-11-794 Significant.
279 197-11-796 State agency.
280 197-11-797 Threshold determination.
281 197-11-799 Underlying governmental action.

282 In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this article,
283 the following terms shall have the following meanings, unless the context indicates otherwise:
284
285

286 **A. "Direct Emissions" means greenhouse gas emissions associated with Fossil Fuel Refineries, Fossil Fuel**
287 **Transshipment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based upon**
288 **the refining and processing of Fossil Fuels located within the Cherry Point Heavy Industrial Area."**

289
290 **Rationale:** The Joint Stakeholder Group proposed that "Direct Emissions" should have
291 the same definition of "Facility Emissions" in an e-mail of June 18, 2021.
292

293 **B.** "Early notice" means the county's response to an applicant stating whether it considers issuance of a
294 determination of significance (DS) likely for the applicant's proposal (mitigated determination of
295 nonsignificance (MDNS) procedures).
296

297 **B.C.** "ERC" means environmental review committee established in WCC 16.08.045.
298

D. "Facility Emissions" means greenhouse gas emissions associated with Fossil Fuel Refineries, Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based upon the refining and processing of Fossil Fuels located within the Cherry Point Heavy Industrial area.

Rationale: The proposed amendments use the terms "direct emissions" and "facility emissions." However, the Joint Stakeholder Group proposed that "Direct Emissions" should have the same definition of "Facility Emissions" in an e-mail of June 18, 2021. Instead of having two terms that mean the same thing, PDS is recommending using the term "direct emissions" and eliminating the term "facility emissions."

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 70A.1570.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.4570.235 RCW) or any directly superseding provisions of state or federal law.

E. Gross emissions mean the actual incremental emissions increases or decreases resulting from the project. Gross emissions do not include reductions or additions from offsite mitigation or lifecycle impacts.

F. Indirect emissions mean emissions resulting from offsite generation of power purchased for consumption at the facility and emissions from other contiguous or adjacent utilities directly supplying the facility (examples include cogeneration of steam, offsite hydrogen production).

Rationale: The definitions of "Gross emissions" and "Indirect emissions" have been moved from page 5 to page 8, because that's where the other definitions are located. The only change is from "are defined as" to "mean" for consistency with the other definitions.

G. "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.

HC. "Ordinance" means the procedure used by the county to adopt regulatory requirements.

ID. "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA process or his/her designee.

IE. "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 Facilities.

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 ~~22.0520.84~~ 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.~~

~~(34)~~ The manufacture and processing of rubber and plastic products.

~~(45)~~ 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.

.055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing fixtures, structural metal and stamping.

412 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
413 materials handling equipment; machine tools and dies; and special and general industrial equipment.

414

415 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

416 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
417 railroad equipment, bicycles and motorcycles.

418 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities except as
419 conditionally permitted under WCC 20.68.153 and .154 and prohibited under WCC 20.68.200.

420 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
421 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
422 (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.

423 .061 Heavy construction contractors.

424 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
425 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
426 noncommercial uses, excluding state education facilities and correction facilities.

427 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
428 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
429 shall contain no indoor plumbing but may be served with electrical power for lighting.

430 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
431 the Heavy Impact Industrial District in the Bellingham UGA.

432 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

433 .066 Marijuana production or processing facility.

434 .068 Existing Fossil Fuel Refineries, existing Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, Renewable
435 Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that
436 when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must
437 disclose any capacity changes defined under WCC 20.68.153 and WCC 20.68.154 to the county permitting authorities.
438 Provided that a conditional use permit is not required by WCC 20.68.153 or WCC 20.68.154, permitted uses include repairs,
439 improvements, maintenance, modifications, remodeling or other changes including but not limited to the following.:

440 (1) Accessory and appurtenant buildings, structures, and processing equipment.

441 (2) Office space.

442 (3) Parking lots.

443 (4) Radio communications facilities.

444 (5) Security buildings, fire stations, and operation centers.

445 (6) Storage buildings.

446 (7) Routine maintenance and repair.

447 (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with
448 on the subject site by federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes
449 of co-processing biomass with petroleum.

450 (9) Road projects and bridges.

451 (10) Temporary trailers.

- 452 (11) Heating and cooling systems.
- 453 (12) Cable installation.
- 454 (13) Information technology improvements.
- 455 (14) Continuous emissions monitoring systems or analyzer shelters.
- 456 (15) Wastewater and stormwater treatment facilities.
- 457 (16) Replacement and upgrading of existing equipment.
- 458 (17) Safety upgrades.
- 459 (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.
- 460 (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.
- 461 (20) Renewable fuel production and shipment.
- 462 (21) Transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved;
- 463 (22) Necessary Fossil Fuels transfers during turn-arounds or maintenance periods.
- 464 (23) Storage tanks, provided that the County decision maker shall include in any approval of an application for storage tanks
465 at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel
466 Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and
467 approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of
468 fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or
469 will not be used for transshipment.
- 470 (24) Other similar structures or activities.
- 471
- 472 .070 New Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, except that new piers, docks, or wharves
473 in the Cherry Point Industrial District are prohibited.
- 474 .071 Expansion of existing legal Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, provided that the
475 expansion is for Renewable Fuels only.
- 476 .081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.
- 477 .082 Marine port facilities, except as prohibited under WCC 20.68.200.
- 478 .085 Type I solid waste handling facilities.
- 479 .086 Type II solid waste handling facilities.
- 480 **20.68.100 Accessory uses.**
- 481 .101 Employee recreation facilities and play areas.
- 482 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
483 district.
- 484 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 485 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
486 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 487 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

488 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
489 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

490 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
491 purpose of serving the child care needs of employees whose place of employment lies within this zone district.

492 .108 Electric vehicle rapid charging stations and battery exchange facilities.

493 .109 Inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks.

494 20.68.130 Administrative approval uses.

495 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
496 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
497 (Exh. A), 2006).

498 20.68.150 Conditional uses.

499 The following uses require a conditional use permit in the HII Zoning District.

500 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

501 (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that
502 allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

503 (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to
504 protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal
505 action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval
506 which might have been proposed.

507 .153 Expansion of existing Fossil Fuel Refineries. For purposes of this section, an expansion is any development (including
508 otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following
509 applicable thresholds:

510 A. Cumulatively increases the facility's total Maximum Atmospheric Crude Distillation Capacity for Fossil Fuels by
511 more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations
512 conducted by a licensed professional engineer; or

513 B. Cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000
514 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a
515 licensed professional engineer in accordance with 20.97.230.1; or

516 C. Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess
517 of limits, if any, established by County, State or Federal authorities (where applicable) as of [XXX effective date of
518 ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.

519 If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

520
521 Rationale: In the Planning Commission version, expansion of Fossil Fuel Refineries and expansion of
522 Fossil Fuel Transshipment Facilities were addressed under one code section. They were
523 subsequently split into two code sections but the reset clause was only carried over to one of them
524 (WCC 20.68.154 below). The above change would restore the original intent to apply this clause
to both Fossil Fuel Refinery expansions and Fossil Fuel Transshipment Facility expansions.

525 .154 Expansion of existing Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any
526 development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that
527 cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or

420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with 20.97.230.1.

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

Expansions as per 20.68.153 or 20.68.154 shall be subject to the conditional use criteria below as applicable:

(1) The conditional use permit approval criteria listed under WCC 22.05.026 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 County decision maker (as applicable):

(a) All of the anticipated types and volumes of substances to be processed, stored, or transferred in bulk with the proposed expansion;

(b) Changes in the Maximum Transshipment Capacity or the Maximum Atmospheric Crude Distillation Capacity occurring as a result of the proposed expansion, as applicable; and

(c) The mode of shipment vessels to be loaded or unloaded with the proposed equipment and/or as a result of the proposed expansion;

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 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 zoning administrator that the project applicant has met any federal or state permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions.

(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 WCC 20.68.153 or WCC 20.68.154 (as applicable) have not been exceeded.

(11) The County decision maker shall include, in any approval of an application for an expansion, as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in the application and approved in the permit. The application shall describe the intended use, including the type of fuel to be stored and, if located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will not be used for transshipment.

Rationale: The proposed conditional use approval criteria for expansion of fossil fuel facilities have been moved, with no changes, from proposed WCC 20.68.154 to WCC 22.05.026 where the standard conditional use criteria are located.

568 .15~~54~~ Treatment and storage facilities for hazardous wastes subject to the following:

569 (1) The ~~eight~~ criteria for a conditional use listed under WCC ~~22.05.02620.84.200~~.

570 (2) The most current state siting criteria under Chapter 173-303 WAC.

571 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,
572 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those
573 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.

574 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County
575 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from
576 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10
577 percent of the total local hazardous waste stream.

578 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been
579 constructed consistent with state requirements.

580 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,
581 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to
582 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit
583 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,
584 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be
585 documented by county staff.

586 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of
587 all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county
588 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and
589 inspection reporting procedures.

590 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an
591 inspection by a qualified and independent inspection agency satisfactory to the county.

592 (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health
593 and safety, the permit may be revoked by the approving body following a public hearing.

594 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

595 .157 Trailheads with parking areas for more than 30 vehicles.

596 .158 Athletic fields.

597 .180 Major passenger intermodal terminals.

598 .187 Type III solid waste handling facilities; provided, that:

599 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site
600 will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at
601 least three feet in elevation higher than the floodway elevation;

602 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:

603 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

604 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;

605 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

606 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

607 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;

608 (f) This 1,500-foot buffer does not apply to:

609 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
610 the property line 100 feet or the standard zoning district setback, whichever is greater;

611 (ii) Inert landfills;

612 (3) Inert landfills shall be located at least 500 feet from the following:

613 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

614 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;

615 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

616 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

617 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;

618 (f) This 500-foot buffer does not apply to:

619 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
620 the property line 100 feet or the standard zoning district setback, whichever is greater;

621 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
622 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
623 county or state road right-of-way;

624 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
625 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
626 is shown to be intermittent and easily delayed until emergency conditions have passed;

627 (6) The facility or site has complied with the provisions of WCC ~~22.05.026~~~~20.84.200~~ and all other ordinances and laws
628 regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as
629 well as state and federal regulations concerning solid waste facilities and sites;

630 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
631 closure plan includes:

632 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
633 activity, with seeding to be accomplished annually but no later than September 30th; and

634 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
635 covered through the financial assurance for post-closure activities;

636 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
637 of WCC 20.80.300 (Landscaping);

638 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
639 delineated wellhead protection area;

640 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
641 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
642 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
643 the boundary of the airport property;

644 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to
645 protect the value and enjoyment of existing adjacent uses.

646 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
647 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
648 processed as a major development project pursuant to Chapter 20.88 WCC.

649 **20.68.200 Prohibited uses.**

650 All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not
651 limited to the following, which are listed here for purposes of clarity:

652 .201 Reserved.

653 .202 Adult businesses.

654 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
655 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
656 products derived thereof; and primary metal industries.

657 .204 New Fossil Fuel Refineries.

658 .205. New Fossil Fuel Transshipment Facilities.

659 .206. New piers, docks, or wharves in Cherry Point Industrial District.

660 .207 Coal-fired power plants.

661 (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-
662 075, 1991).

663 **20.68.250 Minimum lot size.**

664 The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and
665 development standards of the district. (Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996).

666 **20.68.255 Minimum lot frontage.**

667 For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility
668 development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the
669 frontage be less than 30 feet. (Ord. 99-045 § 1, 1999).

670 **20.68.350 Building setbacks.**

671 Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.68.550. (Ord. 99-078, 1999).

672 **20.68.400 Height limitations.**

673 No maximum height is established; however, when a building exceeds 50 feet, the setback requirements of WCC 20.80.200
674 shall be increased by one foot for each foot of building height in excess of 50 feet, as applicable to all setbacks.

675 **20.68.450 Lot coverage.**

676 The maximum building or structural coverage shall not exceed 60 percent of the lot size.

677 **20.68.500 Open space.**

678 *Repealed by Ord. 97-057. (Ord. 96-046, 1996).*

679 **20.68.550 Buffer area.**

680 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
681 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual
682 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
683 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

684 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
685 structures shall be established consistent with the following options:

686 (1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum
687 setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security
688 roads, parking, or open space.

689 (2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the
690 district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the
691 setback(s) may be used for security roads, parking, or open space.

692 (3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to
693 the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be
694 situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.

695 (4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban
696 Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be
697 increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.

698 (5) In no case shall the setback from the northern and western boundaries of the Cherry Point heavy industrial area not
699 contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and
700 security or protective uses.

701 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
702 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

703 .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
704 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
705 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,
706 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

707 **20.68.600 Sign regulations.**

708 Sign regulations shall be administered pursuant to WCC 20.80.400.

709 **20.68.650 Development criteria.**

710 (Ord. 96-056 Att. A § A1, 1996).

711 **20.68.651 Landscaping.**

712 Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).

713 **20.68.652 Off-street parking and loading.**

714 Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must
715 be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on
716 public rights-of-way.

717 **20.68.653 Drainage.**

718 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
719 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A §
720 A2, 1996; Ord. 94-022, 1994).

721 **20.68.654 Driveways.**

722 Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of
723 Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).

724 **20.68.655 Access.**

725 Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).

726 **20.68.656 Maintenance.**

727 The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be
728 responsible for assuring the care and maintenance of any natural growth, where appropriate.

729 **20.68.657 Enclosure.**

730 All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature,
731 including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).

732 **20.68.700 Performance standards.**

733 **20.68.701 Pollution control and nuisance abatement.**

734 Each industry is required to continuously employ the best pollution control and nuisance abatement technology when
735 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or
736 regulations provide for the level of technology to be employed, the appropriate standards shall apply.

737 **20.68.702 Heat, light and glare.**

738 All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used
739 as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

740 **20.68.703 Ground vibration.**

741 No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is
742 discernible without instruments, at or beyond the property line for the use concerned.

743 **20.68.704 Odors.**

744 No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in
745 such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe
746 upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).

747 **20.68.705 Noise.**

748 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-
749 075, 1991).

750 **20.68.706 Toxic gases and fumes.**

751 Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control
752 Authority standards. (Ord. 91-075, 1991).

753 **20.68.707 Liquid pollutants.**

754 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).

755 **20.68.708 Appearance.**

756 New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so
757 as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such
758 uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999).

759 **20.68.709** *Marijuana odor.*

760 For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a
761 concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon
762 the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to
763 capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or
764 surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh.
765 A, 2015).

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 (Chapter 20.66) and the Heavy Impact Industrial District (Chapter 20.68 WCC), as applicable, and the following:

(1) New piers, docks, or wharves.

(2) Conversion of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility to a Fossil Fuel Refinery or Fossil Fuel Transshipment Facility.

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.

830 (4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.

831 (5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit,
832 short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject
833 to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site
834 plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private
835 facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation
836 required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

837 **20.74.070 Minimum lot size and parcelization.**

838 The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be
839 permitted as follows:

840 (1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent
841 with the master site plan requirements in this chapter.

842 (2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC
843 consistent with the master site plan requirements of this chapter.

844 (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master
845 site plan requirements of this chapter.

846 (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
847 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

848 (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083
849 Exh. A § 57, 1998).

850 **20.74.080 Design standards.**

851 Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site
852 design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District,
853 Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District,
854 Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

855 **20.74.090 Traffic demand management.**

856 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
857 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
858 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
859 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

860 (1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by
861 December 1, 2011.

862 (2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the
863 requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

864 **20.74.100 Drainage.**

865 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
866 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

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869 CHAPTER 20.88 MAJOR PROJECT PERMITS

870 20.88.100 Major project permits.

871 .110 All major developments shall, prior to any construction, obtain a major project permit.

872 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
873 16.16 WCC and for any proposed development that meets any two of the following conditions:

Cost	
(estimated construction cost exclusive \$5,000,000 of land value)	
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

874

875 In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the
876 technical review committee that any project be considered a major development, if in the opinion of the administration it is of
877 a nature that council review would be appropriate.

878 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
879 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing
880 examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application
881 based on the following criteria:

882 (1) Will comply with the development standards and performance standards of the zone in which the proposed major
883 development will be located; provided where a proposed major development has obtained a variance from the development
884 and performance standards, standards as varied shall be applied to that project for the purposes of this act.

885 (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for
886 the issuance of a conditional use permit for the zone in which the project is located.

887 ~~(3) Will be consistent with applicable laws and regulations.~~

888

(3) Prior to commencement of any site preparation or construction activities, will obtain, if required, a state aquatic lands lease, and all other necessary permit 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.

(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.

.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: planned unit development or development agreement.

CHAPTER 20.97 DEFINITIONS

20.97.160.2 Fossil Fuels.

"Fossil fuels" refers to hydrocarbon compounds and composites formed as a result of geologic processes acting on the remains of organic matter, including but not limited to coal, petroleum products and byproducts, crude oil, Intermediate Materials (such as unfinished oils and blendstocks), natural gas, oil shales, bitumens, tar sands, liquefied petroleum gases, propane, butane, and heavy oils. Renewable fuels are not Fossil Fuels.

20.97.160.3 Fossil Fuel Refinery.

A "Fossil Fuel Refinery" is an entire complex, consisting of its individual units, equipment, or components, which in aggregate engages primarily in receiving and converting 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. Fossil Fuel Refinery uses include, but are not limited to: receiving feedstocks, bulk storage, manufacturing, or processing of Fossil Fuels, Intermediate Materials or byproducts, and shipment of those processed materials to downstream customers. The following activities do not render a Fossil Fuel Refinery a Fossil Fuel Transshipment Facility: (i) inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks, (ii) transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved, and (iii) necessary Fossil Fuels transfers during turn-arounds or maintenance periods. This definition shall exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

20.97.160.4 Fossil Fuel Transshipment Facility.

"Fossil Fuel Transshipment Facility" is an entire complex, consisting of its individual units, equipment, or components, which in aggregate, engages primarily in the process of off-loading Fossil Fuels from one or more modes of shipment (i.e., rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point Industrial District. This definition shall exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

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), state clean air act (Chapter 70A.1570.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.4570.235 RCW).

20.97.190.2 Intermediate Materials

"Intermediate Materials" refers to refined or partially refined Fossil Fuel 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. Under this definition, feedstocks such as "topped crude" are not Intermediate Materials.

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.

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.

20.97.230.1 Maximum Transshipment Capacity

The calculation of Maximum Transshipment Capacity shall be conducted by a professional engineer licensed in the State of Washington and shall consist of one or a combination of the following limitations:

(a) The maximum physical limit of a facility's capacity for off-loading Fossil Fuels from one or more modes of shipment (i.e., rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels, without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries such as the Cherry Point Industrial District, based on the facility's maximum physical limits to move Fossil Fuels from the receipt points of all its inbound shipment methods to the delivery points of all its outbound shipment methods, including the capacities or other physical attributes of the facility's equipment, including but not limited to capacities of:

- (i) loading equipment;
- (ii) offloading equipment;
- (iii) pumps and/or compressors;
- (iv) bulk storage;
- (v) piping hydraulics; or
- (vi) any combination of the above.

The capacity calculation shall exclude any equipment installed with a permit condition that prohibits that equipment from being used for transshipment purposes.

(b) Shipment limitations imposed by County, State or Federal authorities that can be demonstrated by the applicant to restrict the frequency and/or annual amount of Fossil Fuel shipments at its facility. If any such limitations form the basis of a Maximum Transshipment Capacity calculation, then any future increases in Fossil Fuel shipments above those previously imposed limits would constitute an increase in Maximum Transshipment Capacity.

20.97.340.3 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.

20.97.340.4 Renewable Fuel.

“Renewable Fuel” means liquid or gaseous fuels produced from renewable biomass, woody biomass or landfill wastes and limited in terms of blending with fossil fuels. Renewable fuels shall also include fuels produced from renewable electricity including hydrogen and synthetic fuels. Common renewable fuels include ethanol, renewable diesel 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 and meets the requirements of American society of testing and materials specification D 975.

(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.

Rationale: This revised definition of “Renewable Fuel” is more consistent with the types of fuels and feedstocks that are likely to be produced in the future. Both liquid and gaseous fuels are creditable fuels under the clean fuel standard created by HB 1091 and this definition provides for gaseous fuels like renewable natural gas and hydrogen.

20.97.340.5 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.

20.97.340.6 Renewable Fuel Transshipment Facility.

“Renewable Fuel Transshipment Facility” is an entire complex, consisting of its individual units, equipment, or components which in aggregate engages primarily in the process of off-loading Renewable Fuels and/or Renewable Biomass from one mode of shipment (i.e., rail, truck, pipeline, etc.) then storing and/or loading such fuels without processing through a Renewable Fuel Refinery or Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point Industrial District. This definition shall exclude Small Fossil or Renewable Fuel Storage and Distribution 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.

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.

NOTE: Renumber definitions in existing code as necessary.

Exhibit D

22.05.026 Conditional use permits.

(1) Application. Conditional use permit applications shall be processed per the provisions of this chapter.

(2) Conditional use permits shall be nontransferable unless said transfer is approved by the hearing examiner.

(3) Approval Criteria. Before approving an application, the director or hearing examiner shall ensure that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate evidence showing that the proposed use at the proposed location:

(a) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan, zoning regulations, and any other applicable regulations.

(b) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.

(c) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with rural land use policies as designated in the rural lands element of the Comprehensive Plan.

(d) Will not be hazardous or disturbing to existing or future neighboring uses.

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

(f) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.

(g) Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors.

(h) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

(i) Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of major importance.

(4) Approval Criteria for expansion of Fossil Fuel Refineries pursuant to WCC 20.68.153 and expansion of Fossil Fuel Transshipment Facilities pursuant to WCC 20.68.154. Before approving an application, the hearing examiner shall ensure that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate evidence showing that:

(a) The conditional use permit approval criteria listed under WCC 22.05.026(3) are met;

(b) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

(c) The applicant has documented to the County decision maker (as applicable):

(i) All of the anticipated types and volumes of substances to be processed, stored, or transferred in bulk with the proposed expansion,

(ii) Changes in the Maximum Transshipment Capacity or the Maximum Atmospheric Crude Distillation Capacity occurring as a result of the proposed expansion, as applicable; and

(iv) The mode of shipment vessels to be loaded or unloaded with the proposed equipment and/or as a result of the proposed expansion.

The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

(d) Insurance requirements meet the provisions of WCC 22.05.125.

(e) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction.

(f) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to address risks created by expansions.

(g) Plans for stormwater and wastewater releases have been approved.

(h) 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 zoning administrator that the project applicant has met any federal or state permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions.

(i) 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.

(j) 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 WCC 20.68.153 or WCC 20.68.154 (as applicable) have not been exceeded.

(k) The County decision maker shall include, in any approval of an application for an expansion, as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in the application and approved in the permit.

The application shall describe the intended use, including the type of fuel to be stored and, if located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will not be used for transshipment.

Rationale: The proposed conditional use approval criteria for expansion of fossil fuel facilities have been moved, with no changes, from proposed WCC 20.84.154 to WCC 22.05.026 where the standard conditional use criteria are located.

(54) Revisions. The hearing examiner may administratively approve revisions to conditional use permits; provided, that the proposed changes are within the scope and intent of the original permit. "Within the scope and intent of the original permit" shall mean the following:

(a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:

(i) Revisions involving new structures not shown on the original site plan shall require a new permit;

(ii) Any revisions shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; and

(iii) Any revisions shall be reviewed for consistency with the Comprehensive Plan;

(b) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;

(c) The use authorized pursuant to the original permit is not changed;

(d) No additional over-water construction will be involved for shoreline conditional use permits;

(e) No substantial increase in adverse environmental impact will be caused by the project revision. (Ord. 2020-045 § 1 Exh. A).

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 county code, the county comprehensive plan if applicable, and the county shoreline management program, including 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)).

22.05.125 Proof of insurance for hazards created in the County

For expansion projects requiring approval under a Conditional Use Permit or Major Project Permit at new or existing facilities per WCC 20.68.153 or WCC 20.68.154, financial assurance for the benefit of Whatcom County shall be required. For such expansion projects, a permittee must demonstrate proof of financial assurance (such as trust funds, letters of credit, insurance, self-insurance, financial tests, corporate guarantees, payment bonds, or performance bonds) sufficient to comply with the financial responsibility requirements set forth in State and Federal law, as applicable, prior to permit approval by a Whatcom County Decision Maker. If the financial assurance is in the form of insurance policies, the policies must name Whatcom County as an additional insured and provide Whatcom County with a certificate of insurance to that effect.

The permittee must maintain the approved level of financial assurance coverage for new or expanded uses while operating the permitted facility. At the request of the permittee, the Whatcom County Decision Maker may approve new or altered forms of financial assurance to meet the requirements of this section, provided that the new or altered form is consistent with the scope and intent of the original permit condition.

22.05.126 Supplemental Procedures for Fossil Fuel Refinery and Fossil Fuel Transshipment Facility Permitting

(1) Upon request of the County, Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities shall fill out a supplemental checklist for the purpose of determining whether a project qualifies as a permitted use or requires a conditional use permit as specified in WCC 20.68.153 or WCC 20.68.154. The checklist shall contain supplemental information to include:

(a) Impact on Maximum Atmospheric Crude Distillation Capacity (MACDC), Maximum Transshipment Capacity, and fossil fuel unit train shipment frequency from the proposed activity;

(b) Confirmation of the acceptance of potential permit conditions as outlined in 20.68.068 subsection (23);

(c) Applicant name, property owner information, and parcel information as appropriate;

(d) ~~Clear indication of information considered confidential and non-disclosable under the Public Records Act, including the provisions of WCC 1.32.090 and RCW 42.56; and~~

(e) An attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant and certified by a Notary Public.

(2) ~~The checklist shall establish the procedure to be followed by the County upon receipt of a request for disclosure of any information identified by the applicant as confidential. This procedure shall establish, at a minimum, that information identified as confidential may be disclosed only after the County has:~~

~~(a) Notified the applicant in writing of the request;~~

(b) ~~Determined that the requested information is not exempt from disclosure under WCC 1.32.090 and Chapter 42.56 RCW;~~

(c) ~~Notified the applicant in writing of the County's intention to disclose the information and provided the applicant with 10 days from the date of written notice to file an objection with the Public Records Officer; and~~

(d) ~~Notified the applicant in writing of the County's decision to disclose the information despite the applicant's objections and provided the applicant with a reasonable opportunity (at least 30 days from the date of written notice) to file an injunction under RCW 42.56.540.~~

(3) Confidential Business Information

(a) ~~For the purpose of checklists, permit applications and all other materials submitted by Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities for activities in the Cherry Point Heavy Impact Industrial District, the following shall apply:~~

(i) ~~Applicants~~ ~~The applicant shall clearly identify information the applicant considered to be confidential and non-disclosable under the Public Records Act, including the provisions of WCC 1.32.090 and RCW 42.56, and if confidential information Confidential Business Information, not subject to disclosure under chapter 42.56 RCW (Public Records Act) and/or WCC 1.32.090. If such information is contained in submittal documents, the applicant shall submit two copies of materials for County use as follows:~~

- ~~1. A copy with confidential information Confidential Business Information clearly identified, with a watermark indicating the document contains such confidential information; and~~
- ~~2. A copy with confidential information Confidential Business Information redacted, and a watermark added indicating that the document does not contain such confidential information and is suitable for public disclosure.~~

(ii) ~~The following may be considered confidential and non-disclosable under the Public Records Act, WCC 1.32.090, and RCW 42.56, and may be exempt from disclosure by the County in accordance with WCC 1.32.090 Confidential Business Information may include:~~

- ~~1. Processing equipment technical specifications on internals, sidestream/pumparounds, design specifications, and process controls;~~
- ~~2. Process unit design, instrumentation and controls;~~
- ~~3. Feedstock, product, or process unit pump capacity and configuration; and~~
- ~~4. Contractual agreements and all terms contained therein.~~

(iii) ~~The information listed above is not meant to be all-inclusive. Other information related to the applicant's processing activities, feedstock and product purchase, and/or sale and transportation methods and costs may be non-disclosable under the County's Public Record provisions and/or provisions of RCW 42.56 and other state provisions. Confidential Business Information and, if so, shall be In all cases, such information will be marked as Confidential Business Information such when submitted as part of an application.~~

(iv) Calculation and permit material submittals may contain, but are not required to contain any of the above information.

(v) Where no increase to MACDC, Maximum Transshipment Capacity, or unit train frequency is proposed, submittal of Confidential Business Information specifically related to the criteria of WCC 20.68.153 and WCC 20.68.154 shall not be required to be submitted with the permit application materials.

(4) Where calculations are to be submitted for Maximum Transshipment Capacity of Maximum Atmospheric Crude Distillation Capacity, the applicant shall provide calculations performed and certified by a professional engineer licensed in the state of Washington, clearly indicating the impact on MACDC and Transshipment Capacity. Sections of the report containing Confidential Business Information shall be separated as noted in WCC 20.05.130 subsection (2) clearly identified as required by WCC 22.05.126(2)(a)(i) above.

(5) If the County receives a public records request for records containing information the applicant has clearly indicated to be Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i), the County will notify the applicant of the request and provide the applicant with at least 30 days to file for an injunction under RCW 42.56.540 to prevent the disclosure of such information. If the applicant does not file for an injunction within the period of time set by the County, the County will disclose the records containing the information that the applicant has designated as Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i).

Rationale for Above Changes Proposed by the Prosecuting Attorney's Office: The County is not in the position to independently determine whether information provided by the applicant is Confidential Business Information that is exempt from disclosure nor is it in the position to defend the withholding of such information if challenged in court. In such circumstances, the Public Records Act allows the County to provide third-party notice to an applicant and allow the applicant an opportunity to file for an injunction to prevent the release of this information. Applicants are in the unique position of having all of the evidence necessary to establish the existence of an exemption, if one exists.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-378

File ID:	AB2021-378	Version:	1	Status:	Agenda Ready
File Created:	05/25/2021	Entered by:	CHalka@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
Assigned to:	Council Committee of the Whole			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Discussion and request for direction regarding hearing examiner contract for 2022

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion and request for direction regarding hearing examiner contract for 2022

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Memo



MEMORANDUM

TO: Whatcom County Council

FROM: Council Staff

RE: Discussion regarding Hearing Examiner Services Contract for 2022

DATE: June 21, 2021

The Council Office is responsible for contracting for Hearing Examiner Services, with approval from the County Council. Staff would like to receive Council feedback and direction on contracting for 2022 hearing examiner services. Options include bringing forward a contract amendment to continue services with the current Hearing Examiner or issuing a request for proposals for hearing examiner services.

Background

- Whatcom County issued a Request for Proposals for Hearing Examiner Services for the 2020 contract year (RFP# 19-70). Michael Bobbink was the sole RFP respondent.
- For the 2020 contract year, County Council approved a contract with Michael Bobbink for hearing examiner services (Contract #201911034), with the option to renew the contract for a total of three years.
- For the 2021 contract year, County Council approved a contract amendment for hearing examiner services with Michael Bobbink (Contract #201911034-1). The 2021 contract amendment reduced the annual contract amount by 5% from \$97,661.65 to \$92,778.57.
- Michael Bobbink has provided hearing examiner services to Whatcom County for over 25 years.
- The Whatcom County Hearing Examiner has approximately 40 cases per year.

Please feel free to contact Cathy Halka at ext. 5019 if you have any questions.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-369

File ID:	AB2021-369	Version:	1	Status:	Agenda Ready
File Created:	06/17/2021	Entered by:	CHalka@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
Assigned to:	Council Committee of the Whole			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Discussion of proposed ordinance and program guide establishing a Commercial Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion of proposed ordinance and program guide establishing a Commercial Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Ordinance, Program Guide

PROPOSED BY: DONOVAN, BUCHANAN
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ORDINANCE ADOPTING WHATCOM COUNTY CODE CHAPTER 16.50
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-
PACER) PROGRAM WITHIN WHATCOM COUNTY AND APPROVING THE
PROGRAM GUIDEBOOK AND RELATED DOCUMENTS REQUIRED
TO IMPLEMENT THE PROGRAM**

WHEREAS, commercial and multi-family buildings are major sources of energy use, 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 encourages sustainability by supporting renewable energy and energy resiliency; 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 benefits 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 chapter 36.165 RCW promotes voluntary energy efficiency programs, energy conservation, and resiliency; and

WHEREAS, the C-PACER program authorized in chapter 36.165 RCW is consistent with goals and policies of the Whatcom County Comprehensive Plan and the Whatcom County Climate Protection and Energy Conservation Action Plan; and

WHEREAS, on October 27, 2020 and November 10, 2020, Whatcom County Council discussed the C-PACER program, a proposed ordinance, program administration, and costs; and

WHEREAS, on June 29, 2021, Whatcom County Council introduced an ordinance designating a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County; and

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Code is hereby amended to establish chapter 16.50, Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County, as outlined in Exhibit A to this ordinance.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

() Approved () Denied

Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date Signed: _____

EXHIBIT A:

Chapter 16.50

Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County

- 16.50.010 Establishment
- 16.50.020 Definitions
- 16.40.030 Territory
- 16.50.040 Program Administration
- 16.50.050 C-PACER Financing
- 16.50.060 C-PACER Lien
- 16.50.070 Application and Review
- 16.50.080 Program Guidebook
- 16.50.090 Collection and Enforcement
- 16.50.100 Fees
- 16.50.110 Enactment
- 16.50.120 Effective Date
- 16.50.130 No Liability. No Public Funds.
- 16.50.140 Sunset clause

16.50.010 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.

16.50.020 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 assignees 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 chapter 36.165 RCW that are to be financed as described in a Project Application and approved by the Program Administrator, are a Qualified Project.

16.50.030 Territory.

The Program shall be available to all Eligible Property within the following Region, defined by the County in accordance with chapter 36.165 RCW, within the boundaries of the County, including both incorporated and unincorporated territory. The Region is the incorporated and unincorporated areas of Whatcom County.

16.50.040 Program Administration

- A. Pursuant to the C-PACER Act, the County designates the Planning and Development Services Director or their designee as the Program Administrator. The Program Administrator shall review and approve the Project Applications submitted in accordance with the Program Guidebook, collect any fees, cause the County Executive to execute the documents required by the Program Guidebook to enable a C-PACER Financing and provide documents to the applicant or lender to record with the County Auditor.
- 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.

16.50.050 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.
- 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.

16.50.060 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 WCC 16.50.050.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.

16.50.070 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 WCC 16.50.020 (14) of this Ordinance and 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 Planning and Development Services Department for execution by the County Executive at least five (5) business 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.
- E. The County Auditor 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. It is the responsibility of the applicant or lender to record the documents at the County Auditor's Office and pay any applicable recordation fees.
- 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 Hearing Examiner, consistent with the County's rules and subject to the applicable provisions of Washington's Administrative Procedures Act, chapter 34.05 RCW.

16.50.080 Program Guidebook.

A. The C-PACER Program shall be administered in accordance with the requirements contained in the Program Guidebook, adopted herein by reference and available through the Whatcom County Council Office and online at www.whatcomcounty.us through an ordinance search. 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 review and 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 16.50.070 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 Whatcom County Council, so long as it complies with this Ordinance and chapter 36.165 RCW.

16.50.090 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.

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 deemed non-delegable by the County shall be performed, on a reimbursable basis, by the County on behalf of the Capital Provider.

16.50.100 Fees.

An application fee as provided in the Unified Fee Schedule 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 program fee as provided in the Unified Fee Schedule, 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.

16.50.110 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 Whatcom County Code or violation of any provision of the Whatcom 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 Whatcom 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.

16.50.120 Effective Date.

This Ordinance shall take effect ten days after enactment. The County Planning and Development Services Department shall begin accepting applications for review no later than ninety (90) days after the effective date.

16.50.130 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.

16.50.140 Sunset clause

The Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program shall be dissolved twenty-four (24) months after the effective date of this ordinance, unless specifically extended by ordinance. The County Council shall review the need to continue the C-PACER program four months prior to the sunset date.

PROGRAM GUIDEBOOK:

Commercial Property Assessed Clean Energy + Resilience (C-PACER) Program

Whatcom County, Washington



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MAP 1: Whatcom County C-PACER Boundary Map

Exhibit 1: Project Application and Checklist

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Exhibit 3: Notice of Assessment Interest and C-PACER Lien

Exhibit 4: Assignment of Notice of Assessment Interest and Assessment Agreement

I. Introduction

CLIMATE PROTECTION AND ENERGY CONSERVATION ACTION PLAN

The 2007 Whatcom County Climate Protection and Energy Conservation Action Plan aims to reduce the County's greenhouse gas (GHG) emissions. Strategies such as energy efficiency improvements in homes and businesses are noted in the plan as the easiest and most cost-effective methods.

In 2016, the Whatcom County Council added Policy 10D-6 to the Comprehensive Plan calling for the creation of a Climate Impact Advisory Committee to, in part, review the implementation of the 2007 Climate Action Plan. The County Council established the Whatcom County Climate Impact Advisory Committee in December 2017 (Ordinance 2017-080) to review and provide recommendations to the County Council and Executive on issues related to the preparation and adaptation for, and the prevention and mitigation of, impacts of climate change (WCC 2.126).

In 2019, the Community Research Project was launched to collect information from local stakeholders on strategies to reduce or mitigate GHG emissions and support climate resiliency and adaptation. A set of actions were developed for consideration in a revised Climate Action Plan, including strategies to increase energy efficiency and conservation in buildings and support for a Property Assessed Clean Energy program to subsidize energy conservation and renewable energy improvements to buildings.

In 2021, the Climate Impact Advisory Committee began working to update the Climate Action Plan using information collected in recent years such as a GHG inventory, vulnerability assessments, and other sources. The focus of the plan is addressing human-built infrastructure, including buildings as well as land use, to reduce GHGs.

ABOUT C-PACER

The Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program is voluntary and allows owners of eligible properties to seek long-term financing from private capital providers for qualified improvements including energy efficiency, renewable energy, water conservation, and resiliency investments. Capital providers offer financing and the property owner repays the loan to the capital provider over time, such as the case with a traditional loan. However, with C-PACER financing, the loan is assigned to the property as an assessment and remains with the property until it is repaid, regardless of any transfers of property ownership. Collection of the assessment is assigned by the County to the capital provider, and the property owner pays the assessment directly to the capital provider.

Like other assessments, C-PACER financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whoever owns the property at the time. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, solar installations, or seismic upgrades – over the useful life of the measures. The period of the financing agreement will not exceed the useful life of the qualified project or weighted useful life if more than one qualified improvement is included.

Enforcement of the C-PACER lien is the responsibility of the capital provider. In the event of default, only the payments in arrears are due.

LEGAL AUTHORITY

In 2020, the Washington State legislature passed C-PACER enabling legislation, HB 2405, which allows counties to establish C-PACER programs. The legislation specified that the efficiency and resiliency of buildings is essential for ensuring the health and safety of residents, employees, and tenants. Whatcom County (the “County”) administers a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing program (the “C-PACER Program” or the “Program”) under chapter 36.165 of the Revised Code of Washington (RCW) (the “C-PACER Act”).

The responsibility of the County is limited to a) an ordinance and guidelines that govern how its C-PACER program works and b) review of the lien application for compliance with the C-PACER state law, and then recording a unique agreement that includes the acknowledgement of a special property assessment by the County. The repayment of the C-PACER financing is between a private lender and a property owner, when the lender’s lien against the property is filed, with no obligation on the part of the County.

WHATCOM COUNTY C-PACER PROGRAM GUIDEBOOK

This Program Guidebook aims to assist eligible property owners to understand the provisions of Whatcom County’s C-PACER program and navigate the application process.

In this document you can find information about the eligibility requirements for C-PACER properties and projects in Whatcom County and the process for applying for C-PACER project approval.

II. Whatcom County C-PACER Guidelines

The C-PACER Program enables financing for eligible property owners (“Property Owners”) to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a “Qualified Improvement”) as described in the C-PACER Act and further clarified in this Guidebook. The purpose of this Program Guidebook is to provide clarity on the guidelines of the Whatcom County C-PACER program, in compliance with the state enabling legislation.

This Program Guidebook (the “Guidebook”) is prepared as required by the C-PACER Act, at the direction of Whatcom County, and is approved in connection with, and as an attachment to, the enabling ordinance (Ord. 2021-____) for this program (the “C-PACER Ordinance”) dated _____, 2021. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Ordinance and the C-PACER Act.

The Guidebook provides information on guidelines, eligibility, approval criteria, and the application form and checklist for the administration of the C-PACER Program for Whatcom County.

Qualified Improvements, including all eligible costs that are to be financed as permitted by the C-PACER Act and described in a project application (the “Project Application”) approved by the Program, constitute a “Qualified Project.” Property Owners may receive funding for their Qualified Improvements only from qualified private investors (“Capital Providers”) pursuant to a separate Financing Agreement negotiated between the Property Owner and Capital Provider (a “Financing Agreement”).

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for C-PACER project financing in Washington State, and
- The appropriate steps and forms needed for a C-PACER application to Whatcom County.

1. C-PACER Program Boundaries

Whatcom County Council adopted Ordinance number 2021-____ on _____, 2021, establishing the C-PACER Program for all eligible properties within the boundaries of the County, including both incorporated and unincorporated areas (the “Region”). The Region is illustrated in Map 1.

2. Administration of Program; Authorized Officials

The Planning and Development Services Director or their designee (the “Director”) is designated and authorized to review each Project Application to confirm that it is complete. The Director will then obtain signatures from the County Executive to execute the Assessment Agreement and C-PACER Lien documents on behalf of the County and release the documents for the applicant or capital provider to record with the real property records via the County Auditor.

As part of Program operation, the Director will:

- Accept the Project Applications and Checklist (see Exhibit 1) from applicant (Property Owners and/or Capital Provider) for prospective C-PACER projects;
- Review the Project Application and Checklist to determine completion;

- Approve, conditionally approve, or disapprove the Project Application and communicate to applicant;
- Request the County Executive’s signature on the Assessment Agreement (Exhibit 2), Notice of Assessment Interest and C-PACER Lien (“Notice of Assessment Interest”) (Exhibit 3) and Assignment of Notice of Assessment Interest and Assessment Agreement (“Assignment”) (Exhibit 4); and
- Release documents for the applicant or capital provider to record with the County Auditor.

3. Eligibility Requirements

Eligible Property means any privately-owned commercial, agricultural, industrial, or multi-family real property of five (5) or more dwelling units located within the boundaries of the Region. Eligible properties include those owned by a not-for-profit organization.

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Ordinance are met, including requiring the Property Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the assessment and C-PACER Lien encumber the fee interest in the property, not the ground leasehold.

Property Owner means an owner of qualifying eligible property, which is the record owner of title to the Eligible Property. The Property Owner may be any type of business, corporation, individual, or non-profit organization.

Qualified Improvement means a permanent improvement affixed to the real property that meets at least one of the following criteria:

- Decreases energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, or allows for the reduction in demand, or reduces greenhouse gas emissions (“Energy Efficiency Improvement”);
- Supports the production of clean, renewable energy, as defined in the Clean Energy Transformation Act (RCW 19.405.020(34)), 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 (“Renewable Energy Improvement”);
- Decreases water consumption or demand and addresses 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 (“Water Conservation Improvement”); or
- Increases resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids (“Resiliency Improvement”).

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of

a Qualified Improvement permanently affixed to an Eligible Property.

- For Renewable Energy Improvements, “permanently affixed” includes Qualified Projects that are subject to a power purchase agreement or lease between the Property Owner/applicant and the owner of the renewable energy system, if the power purchase agreement or lease contains all of the following provisions:
 - a) The Renewable Energy Improvement relates to a Renewable Resource, defined in RCW 19.405.020(34) as follows: (a) water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first-growth forests; or (i) biomass energy.
 - b) The term of the power purchase agreement or lease is at least as long as the term of the related Assessment Agreement.
 - c) The owner of the Renewable Energy Improvement agrees to install, maintain, and monitor the system for the entire term of the Assessment Agreement.
 - d) Neither the owner of the Renewable Energy Improvement, nor the Property Owner, nor any successors in interest are permitted to remove the system prior to completion of the full repayment of the C-PACER Lien.
 - e) After installation, the power purchase agreement or lease is paid, either partially or in full, using the funds from the C-PACER financing.
 - f) The power purchase agreement or lease specifies the holder of the C-PACER Lien is a third-party beneficiary of the power purchase agreement or lease until the C-PACER Lien has been fully repaid.
- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed.

Qualifying Capital Provider may be any of the following:

- a corporation, partnership, or other legal entity that provides proof that it is currently registered as a C-PACER Capital Provider in two different states with C-PACE programs;
- a federal -chartered bank or credit union; or
- a state-chartered bank or credit union

Qualifying costs that can be C-PACER financed include:

- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Lender’s fees;
- Program application and administrative fees;
- Project development and engineering fees;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance; and
- 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.

4. Application Process

The Planning and Development Services Department will review the Application for proof of compliance with the requirements of the statute that are necessary for the County to approve the application and execute the applicable documents for the proposed C-PACER transaction. All applicants are encouraged to review the Project Application and Checklist to ensure that the types of documentation and information required are present in the completed Application.

The process of obtaining financing under the Program starts when a Property Owner approaches a Capital Provider. The Capital Provider will work with the Property Owner to collect a number of application and due diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties may agree to the loan terms.

The general flow of the C-PACER application process will be as follows:

- (1) The Property Owner and the Capital Provider prepare the Project Application, consisting of the Project Application, Checklist, and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that the County will rely upon to verify compliance with the C-PACER Act and C-PACER Ordinance are present in the completed Project Application.
- (2) The applicant submits the completed Project Application and Checklist with the corresponding application fee and additional information to Planning and Development Services. Applicants must submit a hard copy and an electronic copy of all application materials.
- (3) The Planning and Development Services Department will have 15 business days to review the Project Application and issue a determination (approve, conditionally approve, or deny). If the department has received an unusually high number of applications, or if review is delayed because of some force majeure event, the department may notify the applicant that the application review and determination will be delayed by no more than 15 additional business days.
- (4) The Planning and Development Services Department application review process is confined to confirming that the Project Application is complete and all attachments conform to these guidelines. *County approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.* The Planning and Development Services Department will review the Project Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Ordinance that are necessary for the County to approve the Project Application and execute the applicable documents for the proposed C-PACER transaction. Incomplete Project Applications will be returned to the applicant, and the Planning and Development Services Department will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.

- (5) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent (see Exhibit 5) is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.
- (6) Upon receipt of approval, the Capital Provider will draft the following “Closing Documents”: The Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment and Assessment Agreement. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.
- (7) If the Project Application received conditional approval, the Closing Documents executed by the County may not be released from escrow unless and until all lender consents have been received and executed in accordance with the C-PACER Act and C-PACER Ordinance.
- (8) At closing, after program fees have been paid, the Planning and Development Services Department will release executed agreements to the applicant or capital provider, including the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment Interest and C-PACER Lien, to record via the Whatcom County Auditor.
- (9) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement, and the Property Owner completes the Qualified Improvements and submits a certificate of completion to the Planning and Development Services Department.
- (10) The Property Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement

5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached) (see Exhibit 1)
 - Lienholder(s) Consent (form attached) (see Exhibit 5)
 - Certificate of Qualified Improvements: (see Exhibit 6)
- (1) For Renewable Energy Improvements or Energy Efficiency Improvements on an existing building:
A certification 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, or the addition of renewable sources of energy or water.

The certification must be performed by a licensed professional engineer or accredited individual or firm from the following list:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)
 - Building Energy Modeling Professional (BEMP)
 - Operations & Performance Management Professional Certification (OPMP)
 - High-Performance Building Design Professional Certification (HBDP)

- Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)
- Building Performance Institute
 - Energy Auditor
- Investor Confidence Project
 - ICP Quality Assurance Assessor

Other professional entities may be accepted by the Planning and Development Services Department at its discretion.

- (2) For Renewable Energy Improvements that are solar photovoltaics, a North American Board of Certified Energy Practitioners (NABCEP) PV design specialist certification is acceptable, or a licensed Electrical Engineer, Building Energy Assessment Professional (BEAP), Building Energy Modeling Professional (BEMP), Certified Energy Manager (CEM), Certified Measurement and Verification Professional (CMVP), or Certified Energy Auditor (CEA). Other professional entities may be accepted by the Planning and Development Services Department at its discretion.
- (3) For lead reduction in water improvements, a Water Quality Association Professional Certification.
- (4) For Resilience Improvements on an existing building: Certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience, including but not limited to seismic improvements, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
- (5) For new construction:
 - (A) Relating to energy or water efficiency, certification by a licensed professional engineer stating that each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency, water efficiency, or renewable energy code requirements. If the building as a whole performs above code, all energy and water-related improvements are eligible for financing.
 - (B) Relating to resilience, certification by a licensed professional Civil Engineer that the proposed Qualified Improvements will result in improved resiliency. If the building as a whole performs above or exceeds code requirements for resiliency, all resiliency-related improvements that relate to that particular requirement are eligible for financing.
- (6) For all Qualified Improvements, the licensed engineer, individual or firm providing the certification of eligibility of the Qualified Improvements must attest that the proposed term of the financing does not exceed the weighted average effective useful life of the proposed Qualified Improvements and that the Qualified Improvements are permanently affixed, as described in this Guidebook.

6. Closing Documents

The following documents require the signature of the County Executive and shall be part of the closing of any C-PACER transaction. Each document must be substantially similar in substance to the forms provided, although it is expected that Property Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Assessment Agreement (see Exhibit 2)
- Notice of Assessment Interest and C-PACER Lien (see Exhibit 3)
- Assignment of Notice of Assessment Interest and C-PACER Lien and Assessment Agreement (see Exhibit 4)

7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Property Owner and the Capital Provider. Whatcom County has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Property Owners and Capital Providers.

8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER financing installment payments, including foreclosure, remain the responsibility of the Capital Provider, and the terms are negotiated within the Financing Agreement.

9. Enforcement of C-PACER Lien

The C-PACER Lien may be 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 Whatcom County, by prosecution of foreclosure proceedings under chapter 84.64 RCW et seq., including 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 will be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration has the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050. Under the C-PACER Act, such enforcement may not occur until at least one year after delinquency.

By accepting a C-PACER Lien, the Capital Provider or its assignee, as applicable, agrees to assume responsibility for prosecution of said action of foreclosure pursuant to RCW 84.64.040, independent of and without assistance or consent from the prosecuting attorney, in accordance with the terms of the Financing Agreement.

10. Program Fee

Whatcom County, as compensation for time and costs incurred in the establishment of the C-PACER Program, including the C-PACER Ordinance, this Guidebook, the draft documents, as well as for reviewing

a Project Application for completeness and executing the Assessment Agreement, C-PACER Lien, and Assignment, is entitled to an application and program fee, which is specified in the Unified Fee Schedule. The Property Owner must pay this fee to the County as a condition precedent to releasing documents for recording.

11. Term of an Assessment; Calculation of Useful Life of Qualified Improvements

The maximum term of an assessment may not exceed the useful life of the Qualified Improvement, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

12. Form of Closing Documents

The Program has adopted form Closing Documents: Assessment Agreement, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessments Interest and Assessment Agreement. A Property Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms. By submitting the Closing Documents to the County, the applicant acknowledges there are no substantive changes to the forms. If any material or substantive terms are changed in the Closing Documents, the applicant must submit a summary of detailed changes formatted in a bulleted list with page references and descriptions of modifications.

The forms are attached as Exhibits 2, 3, and 4, and are incorporated herein as referenced.

13. Written Consent from Lienholder(s) Required

Before entering into an Assessment Agreement with the County, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the assessment and C-PACER Lien from any holder of a lien, mortgage, or security interest in the real property.

For qualifying multifamily projects (residential projects of 5 or more dwelling units), the Capital Provider must obtain written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements encumbering the real property as a condition precedent to the participation in the Program by the property.

If the consents are executed at closing, the signatures of the County to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Planning and Development Services Department, an amended Project Application with the consents attached must be sent to the Planning and Development Services Department. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Ordinance and C-PACER Act.

14. Provisions for Marketing and Participant Education

This Guidebook will be made available to the public on the Whatcom County website. Whatcom County may engage in events and/or provide written materials to increase awareness about the Whatcom County

C-PACER program. Whatcom County encourages other stakeholders to develop and share materials to promote the Whatcom County C-PACER program to serve the public benefit of health and safety.

15. County Has No Liability or Financial Responsibility

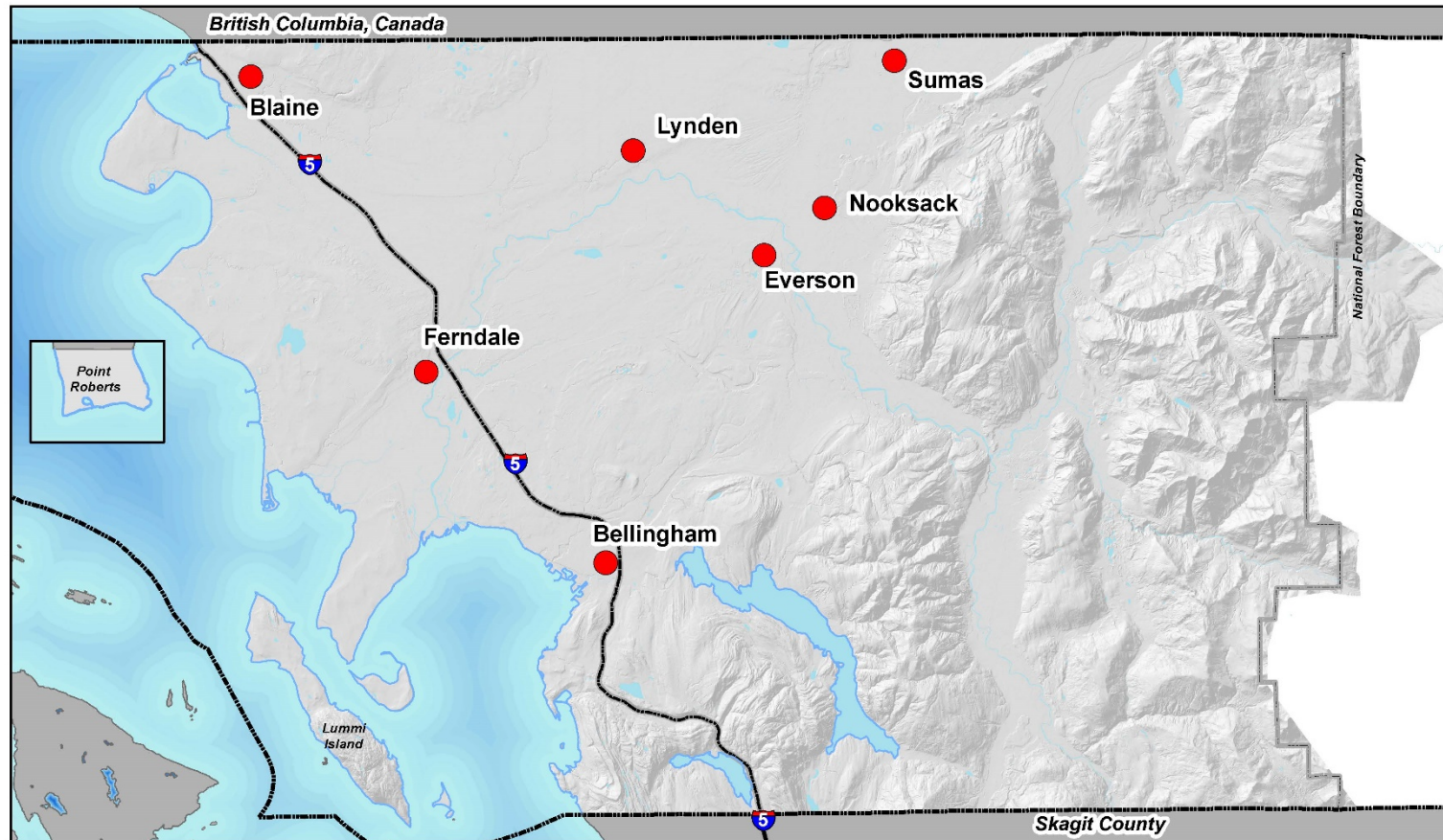
Neither Whatcom County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program.

The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the C-PACER program. No public funds may be used to repay any C-PACER financing obligation.

16. Limitation of Whatcom County's Authority



Whatcom County may not enforce any privately financed debt under this Program. Neither the State of Washington nor Whatcom County may use public funds to fund or repay any loan between a capital provider and property owner. No provisions of this Program shall be interpreted to pledge, offer, or encumber the full faith and credit of Whatcom County, nor shall Whatcom County pledge, offer, or encumber its full faith and credit for any lien amount through this Program.

MAP 1: Whatcom County C-PACER Boundary Map



Whatcom County

Legend

- Incorporated City
-  Interstate 5
-  Whatcom County Boundary

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

0 0.75 1.5 3 4.5 6 Miles



EXHIBIT 1: Project Application and Checklist

Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program

Whatcom County administers a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") financing program under Section [36.165](#) of the Revised Code of Washington (RCW) (the "C-PACER Act"). The C-PACER Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain qualified energy efficiency and resiliency improvements. The C-PACER program agreements create a property assessment and assign collection of the assessment to the capital provider or lender.

The Whatcom County C-PACER program was established in 2021 (Ordinance No. 2021-____) and is administered through the Planning & Development Services Department.

The following highlights the steps of the C-PACER application process:

1. Property Owner develops an energy generation, energy efficiency, water conservation, or resiliency project idea.
2. Property Owner identifies a registered C-PACER capital provider for their project.
3. Property owner and capital provider coordinate to complete application materials and submit to the Planning & Development Services Department (Program Administrator) with application fee.
4. Planning & Development Services Department reviews the application for completion.
5. Planning & Development Services Department issues a letter of approval, conditional approval, denial or request for additional information to the applicant (within 15 business days of receiving an application).
6. Capital provider drafts agreements and submits to the Planning & Development Services Department for review and signature of approval by County Executive.
7. Planning & Development Services Department issues a letter confirming agreements are ready for recordation and will be released upon payment of C-PACER program fees.
8. Applicant or Capital Provider submits payment for the C-PACER program fees to the Planning & Development Services Department.
9. Planning and Development Services releases the agreements to the applicant or capital provider for recordation with the County Auditor (standard [recordation fees](#) apply)
10. Applicant or lender provides recordation number to Planning and Development Services Department.
11. Capital provider funds the project.
12. After project completion, applicant provides a signed certification of completion form to the capital provider and the Planning & Development Services Department.
13. Loan payments are made by the property owner to the capital provider over the loan term.

**Commercial Property Assessed Clean Energy and Resiliency
(C-PACER) Project Application**

Applicant/Agent:

Name: _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Email: _____

Phone: _____

Property Owner(s) Information (legal names): ☐ Same as Applicant above

Name(s): _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Email: _____

Phone: _____

**If Applicant or Contact information changes please submit an updated Fee/Agent authorization form for each change.*

Property Information:

1. Property location and description:

Address: _____

Tax Parcel Number(s) (APN): _____

Property description: _____

2. Property type:

☐ Commercial ☐ Agricultural ☐ Industrial ☐ Multi-family of 5+ units

☐ Other _____

Building use(s): _____

3. Qualifying Owner

☐ Limited liability company ☐ General or limited partnership ☐ Corporation

☐ Individual/Sole proprietorship ☐ Trust

Proposed Qualified Improvements:

4. Qualifying Improvement Certification

A) FOR EXISTING BUILDINGS: (if new construction, skip to item B)

The improvements sought are (check all that applies):

☐ Energy Efficiency ☐ Renewable Energy ☐ Water Efficiency ☐ Building Resiliency

i. If Energy Efficiency, improvement is:

☐ HVAC system ☐ Windows & Doors ☐ Temperature Control System ☐ Lighting
☐ Siding/Insulation/Roofing ☐ Appliances ☐ other _____

ii. If Renewable Energy, improvement is:

☐ Solar Panels ☐ Thermal ☐ other _____

and is project:

☐ Direct Purchase ☐ Power Purchase Agreement ☐ N/A

iii. If Water Efficiency, improvement is:

☐ Lead Reduction ☐ Low-flow fixtures ☐ Irrigation System ☐ Control System
☐ Water Collection & Reuse ☐ other _____

iv. If Building Resiliency, improvement is:

☐ Seismic retrofits ☐ Flood mitigation ☐ Stormwater Management
☐ Fire suppression ☐ Wildfire resistance ☐ Wind resistance
☐ Energy storage ☐ Energy microgrids ☐ other _____

B) FOR NEW CONSTRUCTION:

The improvements being sought are (check all that applies):

☐ Energy Efficiency ☐ Renewable Energy ☐ Water Efficiency ☐ Building Resiliency

☐ Lead Reduction, water ☐ Resiliency

i. If Energy Efficiency, improvement is:

☐ HVAC system ☐ Windows & Doors ☐ Temperature Control System ☐ Lighting
☐ Siding/Insulation/Roofing ☐ Appliances ☐ other _____

ii. If Renewable Energy, improvement is:

☐ Solar Panels ☐ Thermal ☐ other _____

and is project:

☐ Direct Purchase ☐ Power Purchase Agreement ☐ N/A

iii. If Water Efficiency, improvement is:

- ☐ Lead Reduction ☐ Low-flow fixtures ☐ Irrigation System ☐ Control System
☐ Water Collection & Reuse ☐ other _____

iv. If Building Resiliency, improvement is:

- ☐ Seismic retrofits ☐ Flood mitigation ☐ Stormwater Management
☐ Fire suppression ☐ Wildfire resistance ☐ Wind resistance
☐ Energy storage ☐ Energy microgrids ☐ other _____

Capital Provider Information:

5. Capital Provider Information

Legal Name: _____

Contact Person: _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Email: _____

Phone: _____

Must answer 'Yes' to at least one of the following and provide required documentation as per Checklist:

- a) Federal or state-chartered bank, or credit union ☐ Yes ☐ No
b) Registered capital provider in more than 2 states: ☐ Yes ☐ No
c) Qualified to do business in Washington state: ☐ Yes ☐ No

6. Lienholder Consent Form (signed and notarized)

- ☐ Attached ☐ Delivered at close

IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN.

IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.

Signature on Application:

BY SIGNATURE BELOW, THE APPLICANTS (THE PROPERTY OWNER AND CAPITAL PROVIDER) AFFIRM THAT THE INFORMATION AND DOCUMENTATION ARE TRUE AND CORRECT TO THE BEST OF THEIR ABILITY AND THAT THE APPLICANTS HAVE READ THE DISCLOSURES AND DISCLAIMERS ATTACHED TO THIS APPLICATION AND UNDERSTAND THE RISKS OF PARTICIPATING IN THE C-PACER PROGRAM; FURTHER, THAT THE APPLICANTS AFFIRM THAT NEITHER THE COUNTY, ITS GOVERNING BODY, EXECUTIVES, NOR EMPLOYEES ARE PERSONALLY LIABLE AS A RESULT OF EXERCISING ANY RIGHTS OR RESPONSIBILITIES GRANTED UNDER THIS PROGRAM.

APPLICATION FORM SIGNED AND DATED ON: _____

ON BEHALF OF PROPERTY OWNER: _____

NAME & TITLE: _____

ON BEHALF OF CAPITAL PROVIDER: _____

NAME & TITLE: _____

TO BE COMPLETED BY AUTHORIZED COUNTY OFFICIAL

APPLICATION: ☐ APPROVED ☐ CONDITIONALLY APPROVED ☐ DENIED

ON BEHALF OF COUNTY: _____

NAME AND TITLE: _____

CONDITIONS OF APPROVAL (IF APPLICABLE): _____

C-PACER Project Checklist – Application (Step 1)

Applicant Checklist	<i>Please include this checklist with your application submittal - Applications will not be accepted without all necessary information compiled with a completed submittal.</i>	PDS Checklist
<input type="checkbox"/>	1. C-PACER Application Form (see pages 2-5) completed	<input type="checkbox"/>
<input type="checkbox"/>	2. Property Address a) Documentation of Property Address (Deed, Title Report, Assessor/Treasurer Record)	<input type="checkbox"/>
<input type="checkbox"/>	b) Address location is within Whatcom County	<input type="checkbox"/>
<input type="checkbox"/> <input type="checkbox"/>	3. Property Owner a) Documentation of Ownership (Deed, Title Report) b) Confirm property ownership names matches title report documentation If name(s) is different: provide one of the following: <input type="checkbox"/> Certified copy of personal/corporate name change <input type="checkbox"/> Certified power of attorney	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	4. Qualifying Property Documentation (Assessor/Treasurer official records, appraisal, zoning report, ground lease – if applicable)	<input type="checkbox"/>
<input type="checkbox"/>	5. Qualifying owner Documentation (Certificate of LLC or LP formation, Trust agreement or certificate, valid driver's license, power of attorney or corporate resolution authorizing representation) <i>If property is held by a limited liability company, general or limited partnership or a corporation, the applicant should include a copy of the certificate of formation, organization, incorporation or similar document and a good standing certificate/certificate of existence from the state or organization and, if not organized in Washington, a certificate of registration to conduct business in Washington as a foreign entity.</i> <i>If a trust, include a copy of the trust agreement or a trustees' certificate. If an individual, include a copy of a valid driver's license. If the application is to be signed by a party other than the applicant, then, in addition to the foregoing, include a power of attorney or corporate resolution authorizing said party.</i>	<input type="checkbox"/>
<input type="checkbox"/>	6. Capital Provider documentation a) If a federal or state-chartered bank, or credit union, the certificate of organization or similar document; OR b) If not an entity in a), evidence of registration as a C-PACE capital provider in two states; OR c) If not an entity in a), evidence of financing for at least one previous C-PACE transaction in another jurisdiction.	<input type="checkbox"/>

<input type="checkbox"/>	Certificate of Capital Provider Qualifications (see Program Guide, Exhibit 7)	<input type="checkbox"/>
<input type="checkbox"/>	7. Qualifying Improvement Certification	<input type="checkbox"/>
<input type="checkbox"/>	a) Original and copy of Energy, Water & Resilience Compliance <u>Certificate</u> that is complete, signed, with accompanying documentation (see Program Guide, Exhibit 6)	<input type="checkbox"/>
<input type="checkbox"/>	b) Description of improvements and certifications for improvements sought, including documentation of the appropriate license/qualifications required by the Guidebook.	<input type="checkbox"/>
<input type="checkbox"/>	8. Lienholder Consent	<input type="checkbox"/>
<input type="checkbox"/>	a) Lienholder Consent Form (must be substantially the same as Model form) (see Program Guide, Exhibit 5)	<input type="checkbox"/>
<input type="checkbox"/>	b) Form signed and notarized in appropriate places	<input type="checkbox"/>
<input type="checkbox"/>	c) Cross-check list of Lienholders from Title Report with Written Consents provided by Capital Provider	<input type="checkbox"/>
<input type="checkbox"/>	Additional written consent from any and all holders of affordable housing covenants, restrictions, or regulatory agreements	<input type="checkbox"/>
	IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN.	
	IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.	
<input type="checkbox"/>	9. C-PACER Application Fee – <i>See Unified Fee Schedule</i>	<input type="checkbox"/>
	<u>NOTE:</u> Fees will be assessed in accordance with the Whatcom County Unified Fee Schedule (UFS) in effect at the time of application submittal. Make checks payable to 'Whatcom County' or call Planning and Development Services to pay by credit card over the phone. Per UFS 2843 all permits and applications are subject to a Technology fee. The fee is calculated on the permit/application fees due.	

C-PACER Project Checklist – Recordation (Step 2)

Applicant Checklist	<i>Please include this checklist with your application submittal - Applications will not be accepted without all necessary Information compiled with a completed submittal.</i>	PDS Checklist
<input type="checkbox"/>	1. Assessment Agreement	<input type="checkbox"/>
<input type="checkbox"/>	2. Notice of Assessment Interest and C-PACER Lien	<input type="checkbox"/>
<input type="checkbox"/>	3. Assignment of the Notice of Assessment Interest and C-PACER Lien Assessment Agreement	<input type="checkbox"/>
<input type="checkbox"/>	4. Lienholder(s) Consent – if not already submitted with application	<input type="checkbox"/>
<input type="checkbox"/> N/A	5. Signatures a) All required applicant signatures b) All required County Executive signatures	<input type="checkbox"/> <input type="checkbox"/>
N/A	6. Letter to Applicant/Lender/Contact regarding documents ready to pick up for recordation	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	7. Provide recordation information to Planning & Development Services County Auditor, Recordation # _____	<input type="checkbox"/>
<input type="checkbox"/>	8. Project completion certification (see Program Guide, Exhibit 8) Date received: _____	<input type="checkbox"/>
C-PACER application complete		

Agent Authorization

If you are authorizing an agent to apply for permits on your behalf you must complete this form and have it notarized, which will provide authorization for a designated agent to apply for permits on your behalf.

I/we, _____, the owner(s) of the subject property, understand that by completing this form I hereby authorize _____ to act as my agent. I understand that said agent will be authorized to submit applications on my behalf, and that any fees associated with submitted applications are due to me and not to the said agent. I also understand that once an application has been submitted that all future correspondence will be directed to the agent.

Property Address

Parcel Number

Property Owner Printed Name

Property Owner Printed Name

Property Owner Signature

Property Owner Signature

Date

Date

I certify that I know or have satisfactory evidence that _____ is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public Signature

Notary Public Printed Name

Notary Public in and for the State of Washington
Residing at _____

My appointment expires: ____/____/____

Application received by _____ Date _____

EXHIBIT 2: Assessment Agreement

Assessment Agreement for C-PACER Financing

COUNTY OF WHATCOM, WASHINGTON

**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY
(C-PACER) PROGRAM**

SECTION 1.	PURPOSE	2
SECTION 2.	THE PROPERTY	2
SECTION 3.	ASSESSMENT AND LIEN; ASSIGNMENT	2
SECTION 4.	COLLECTION OF ASSESSMENT; FORECLOSURE	2
SECTION 5.	TERM; AGREEMENT RUNS WITH THE LAND;	3
SECTION 6.	RECORDATION OF DOCUMENTS	3
SECTION 7.	AMENDMENT	3
SECTION 8.	BINDING EFFECT; ASSIGNMENT	3
SECTION 9.	NO LIABILITY OF THE COUNTY	3
SECTION 10.	INDEMNIFICATION	4
SECTION 11.	GOVERNING LAW; VENUE	4
SECTION 12.	SEVERABILITY	4
SECTION 13.	COUNTERPARTS	4
EXHIBIT A	PROPERTY LEGAL DESCRIPTION	A-1
EXHIBIT B	DESCRIPTION OF QUALIFIED IMPROVEMETS	B-1
EXHIBIT C	FORM OF NOTICE OF ASSESSMENT	C-1
EXHIBIT D	ASSESSMENT SCHEDULE	D-1

Assessment Agreement for C-PACER Financing

[Name] County, Washington

This ASSESSMENT AGREEMENT for C-PACER FINANCING (this "**Agreement**") is made and entered into as of this ____ day of _____, 20____, (the "**Effective Date**") by and between the County of Whatcom, Washington (the "**County**"), and _____, the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit A (the "**Property**").

RECITALS

WHEREAS, the County has, on _____, 2021 established the Commercial Property Assessed Clean Energy and Resiliency Program (the "**Program**") through the adoption of Ordinance No. 2021 - _____ ("**County Ordinance**") to allow the financing of certain renewable energy, energy and water efficiency, and resiliency improvements ("**Qualified Improvements**"), through the levy of contractual assessments pursuant to chapter 36.165 RCW (as may be amended from time to time, the "**C-PACER Act**"); and

WHEREAS, the purpose and method of approval of C-PACER financing under the Program are described in the Program Guidebook attached to the County Ordinance, as the same may have been amended from time to time prior to the Effective Date of this Agreement (the "**Program Guidebook**"); and

WHEREAS, the Property is located in the boundaries of the County and the County has consented to owners of eligible properties within its jurisdiction participating in the Program; and

WHEREAS, the Property Owner has submitted application materials including a description of the Qualified Improvements that will be acquired, constructed on and/or installed on the Property; and

WHEREAS, the County has reviewed such application materials to assess compliance with the C-PACER Act, the County Ordinance, and Program Guidebook, and the County has determined that the project proposed by the Property Owner complies with such criteria and is approved for participation in the Program (the "**Approved Project**"); and

WHEREAS, the Approved Project is to be financed pursuant to a financing agreement between the Property Owner (the "**Financing Agreement**") and a capital provider (together with its designee or assigns, the "**Capital Provider**") and under which the Property Owner agrees to repay such Capital Provider; and

WHEREAS, pursuant to chapter 36.165 RCW, the County and the Property Owner must enter into an agreement whereby the Property Owner voluntarily consents to have an assessment levied and a lien placed on the qualifying property in exchange for receiving and repaying C-PACER financing; and

WHEREAS, it is a condition to closing of the Financing Agreement that the Property Owner and the County enter into this Agreement and that this Agreement be assigned to the Capital Provider; and

WHEREAS, the Property Owner voluntarily and willingly agrees to have an assessment levied on the Property and to enter into this Agreement in order to finance the installation on the Property of the Qualified Improvements contemplated as part of the Approved Project, all on the terms set forth in the Financing Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Property Owner and the County formally covenant and agree as follows, with the intent to bind themselves and their respective successors and assigns:

AGREEMENT

Section 1. **Purpose.** The Property Owner and the County are entering into this Agreement for the purpose of subjecting the Property to a C-PACER assessment to finance or refinance the purchase, installation, or construction of the Qualified Improvements identified on Exhibit B on the Property.

Section 2. **The Property.** This Agreement relates to the real property identified in Exhibit A. The Property Owner has supplied to the County current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

Section 3. **Assessment and Lien; Assignment.**

(a) The Property Owner agrees that upon the execution and delivery of this Agreement by the parties, the Property Owner voluntarily and willingly consents to the placement of an assessment levied against the Property by the County pursuant to this Agreement and applicable law in the principal amount of \$[REDACTED], together with all interest, penalties, and fees as described in the Financing Agreement (the “**Assessment**”). Upon execution and delivery of this Agreement, the County will execute and cause to be recorded in the office of the County Auditor for the County, together with a copy of this Agreement, pursuant to chapter 36.165 RCW, the Notice of Assessment Interest and C-PACER Lien (“**Notice of Assessment**”), substantially in the form of Exhibit C. The recording of the Notice of Assessment will cause the Assessment to attach as a lien upon the Property for the benefit of the County (the “**C-PACER Lien**”) and provide record notice to third parties of the existence of the C-PACER Lien.

(b) The execution and delivery of this Agreement by the parties authorizes and effectuates the levy of the Assessment by the County against the Property without any further action required by the parties.

(c) The Property Owner hereby promises to pay the Assessment for a period of [REDACTED] years on the due dates set forth in Exhibit D hereto (the “**Assessment Schedule**”). The Property Owner agrees, as provided in the Financing Agreement, to pay the amount due in installments according to the Assessment Schedule (each, an “**Assessment Installment**”), each such Assessment Installment to be paid by the Property Owner by its due date in order to avoid delinquencies and the accrual of interest and related penalties.

(d) The Assessment shall be secured by the C-PACER Lien until paid in full. Failure to pay any Assessment Installment, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due on the terms and provisions of the Financing Agreement. In addition, under those circumstances, the C-PACER Lien may be foreclosed in the manner specified in Section 4, below.

(e) The Assessment and the C-PACER Lien shall be assigned, pursuant to the Assignment of Assessment Agreement (the “**Assignment**”), to the Capital Provider, its designee or assigns as set forth in the Financing Agreement. The Assignment shall be executed and delivered contemporaneously with this Agreement and recorded immediately following the Notice of Assessment.

Section 4. **Collection of Assessment; Foreclosure.**

(a) The Assessment Installments shall be collected in the manner specified in the Financing Agreement.

(b) The Property Owner acknowledges that if any Assessment Installment is not paid when due, the C-PACER lien may be 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. This enforcement may include prosecution of foreclosure proceedings under chapter 84.64 RCW et seq., including the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider 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) As permitted by RCW 84.64.040, Property Owner expressly consents to prosecution of said action of foreclosure by Capital Provider in accordance with the terms of the Financing Agreement. The County shall have no obligation to prosecute such foreclosure on behalf of the Capital Provider, or to otherwise participate in such foreclosure except to the extent that any action on the part of the County or any County official is required in order to allow the Capital Provider to prosecute or effectuate the foreclosure under chapter 84.64 RCW, or to ratify or confirm any action of the Capital Provider taken in furtherance of the foregoing, as contemplated in the County Ordinance.

(d) [Because the Agreement covers multiple parcels, an action of foreclosure on a parcel or parcels pursuant to this section shall be brought in accordance with the terms specified in the Financing Agreement, to the extent consistent with the requirements of RCW 84.64.040.]

Section 5. **Term; Agreement Runs with the Land.**

(a) Except as otherwise set forth in this Agreement, this Agreement shall terminate upon the final payment or prepayment of the Assessment. Following such termination, the County shall cause to be executed, delivered, and/or recorded such instruments as are necessary in order to release the C-PACER Lien. The C-PACER Lien placed pursuant to this Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

(b) The balance 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 Property.

(c) In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will be assigned to each of the newly created parcels on the basis of [relative valuation], unless the Financing Agreement provides that the Assessment should be allocated in an alternate manner.

Section 6. **Recordation of Documents.** The County shall cause to be recorded in the office of the County Auditor the Notice of Assessment, which includes this Agreement as an attachment, and such other documents that are attached as Exhibits to this Agreement.

Section 7. **Amendment.** (a) This Agreement may be modified only by the written agreement of the Capital Provider and the Property Owner.

(b) The Property Owner agrees that it will, from time to time, execute,

acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Agreement.

Section 8. Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the County, the Property Owner and their respective successors and assigns. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Financing Agreement) will impair in any way the right to pursue foreclosure of the C-PACER Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. With exception of Section 9, any assignee shall be a party to this Agreement and shall have all of the rights and obligations of the County hereunder to the extent that such rights and obligations have been assigned by the County pursuant to the assignment documentation between the County and the assignee. The County may furnish any information concerning the Property Owner in its possession from time to time to prospective assignees.

Section 9. No Liability of the County. Pursuant to chapter 36.165 RCW, the County shall incur no liability as a result of any provision of this Agreement, nor shall any members of the governing body, employees, board members and executives of the County be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of this Agreement. This provision shall inure only to the County, its governing body, employees, board members, and executives, and not to the benefit of the County's successors or assigns of this Agreement.

Section 10. Indemnification. Property Owner agrees to defend, indemnify and hold the County, its elected officials, employees, agents and contractors harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, the Approved Project, the Assessment and the C-PACER Lien. Property Owner's duty to indemnify the County shall not apply to liability for damages to the extent caused by or resulting from the sole or contributory negligence or willful misconduct of the County, its commissioners, employees, agents or contractors.

Section 11. Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of Washington. Any legal action brought under this Agreement must be instituted in a superior court of the County.

Section 12. Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 13. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Signatures Appear on Following Page

597

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____,
by _____,
the _____, of _____ County, Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B
QUALIFIED IMPROVEMENTS

[To be inserted]

EXHIBIT C
FORM OF NOTICE OF ASSESSMENT

[To be inserted]

EXHIBIT D**ASSESSMENT SCHEDULE**

Period	Bill date	Delinquent After Date	Payment	Interest	Principal	Principal Remaining	Annual Collection Costs**	Total Payment Due
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								

EXHIBIT 3: Notice of Assessment Interest and C-PACER Lien

RETURN NAME and ADDRESS

Please Type or Print Neatly and Clearly All Information

Document Title(s) NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN

Reference Number(s) of Related Documents

Grantor(s) [PROPERTY OWNER]

Grantee(s) WHATCOM COUNTY

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

Assessor's Tax Parcel ID Number

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party

Instrument Prepared By
And Recording Requested by:

Space Above for Recorder's Use

NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN

Washington RCW 36.165

Filed in Whatcom County

(GRANTEE) WHATCOM COUNTY

(GRANTOR) [PROPERTY OWNER]

Notice is hereby given that the person named below is placing a C-PACER Lien pursuant to chapter 36.165 RCW. In support of this lien the following information is submitted:

1. THE ASSESSMENT LIEN GRANTEE	WHATCOM COUNTY
2. DATE ON WHICH THE ASSESSMENT AGREEMENT WAS SIGNED GRANTING THE RIGHT TO PLACE AN ASSESSMENT AND C-PACER LIEN ON THE PROPERTY	[INSERT]
3. THE PROPERTY OWNER GRANTING THE PLACEMENT OF THE ASSESSMENT AND C-PACER LIEN	[INSERT]
4. THE PROPERTY AGAINST WHICH THE ASSESSMENT AND C-PACER LIEN IS PLACED IS LOCATED AT THE FOLLOWING MUNICIPAL ADDRESS:	[INSERT]
5. LEGAL DESCRIPTION OF THE PROPERTY IS AS FOLLOWS	SEE EXHIBIT A TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
6. ASSESSOR'S PARCEL NUMBER OF THE PROPERTY	[INSERT]
7. PRINCIPAL AMOUNT OF ASSESSMENT SECURED BY C-PACER LIEN	[INSERT]

8. TERMS AND LENGTH OF ASSESSMENT SECURED BY C-PACER LIEN	SEE EXHIBIT _ TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
9. COPY OF ASSESSMENT AGREEMENT (ATTACHED)	[INSERT]

IN WITNESS WHEREOF, Grantee and Grantor have caused this Notice of Assessment Interest and C-PACER Lien to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

GRANTEE:

Whatcom County, State of Washington

By: _____
Its: _____

GRANTOR:

[PROPERTY OWNER]

By: _____
Its: _____

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____, 20__, by
_____.

{the _____,

of _____} [Only if authorized party who is not the
Property Owner]

WITNESS my hand and official seal.

Signature : _____ (seal)

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____, by
_____, the
_____, of _____ County, Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

EXHIBIT 4: Assignment of Notice of Assessment Interested and C-Pacer Lien and Assessment Agreement

RETURN NAME and ADDRESS

Please Type or Print Neatly and Clearly All Information

Document Title(s) **ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSESSMENT AGREEMENT**

Reference Number(s) of Related Documents

Grantor(s)/Assignor **WHATCOM COUNTY**

Grantee(s)/Assignee **[CAPITAL PROVIDER OR DESIGNEE]**

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Section or Lot/Block/Subdivision)

Assessor's Tax Parcel ID Number _____

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party

**ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN
AND ASSIGNMENT OF ASSESSMENT AGREEMENT**

This ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSIGNMENT OF ASSESSMENT AGREEMENT (this “Assignment”) is dated as of [MONTH] __, 20__ by Whatcom County, Washington (“Assignor”), to [CAPITAL PROVIDER] (“Assignee”).

For value received, Assignor hereby grants, assigns and transfers to Assignee, without recourse or warranty of any kind, express or implied, all of Assignor’s rights in, title to, and interest under, that certain Notice of Assessment Interest and C-PACER Lien, dated as of [____], 20__, by [____] (“Property Owner”) and Assignor, recorded on [____], 20__ as Instrument No. _____ in the office of the records of Whatcom County, State of Washington (the “Notice of Assessment Interest”) and the Assessment Agreement dated as of [____], 20__, between Property Owner and Assignor and attached to such Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith. Assignee hereby accepts all of Assignor’s rights in, title to, and interest under the Assessment Agreement and the Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith.

Consistent with RCW 84.64.040, by accepting this Assignment, Assignee agrees for the benefit of Assignor that Assignee shall be solely responsible for enforcing the obligation of Property Owner to pay the Assessment described in the Assessment Agreement, including pursuing a foreclosure of the C-PACER Lien in accordance with chapter 84.64 RCW. Assignor shall have no obligation to prosecute such foreclosure on behalf of Assignee, or to otherwise participate in such foreclosure, except to the extent that any action on the part of Assignor or any official of Assignor is required in order to allow Assignee to prosecute or effectuate the foreclosure under chapter 84.64 RCW, or to ratify or confirm any action of Assignee taken in furtherance of the foregoing, as contemplated in the County Ordinance (as defined in the Notice of Assessment Interest).

Signatures appear on following page

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

“ASSIGNOR”

WHATCOM COUNTY, WASHINGTON

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON)
 : ss.
WHATCOM COUNTY)

This record was acknowledged before me on _____, by
_____, the
_____, of _____ County,
Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

“ASSIGNEE”

[CAPITAL PROVIDER OR DESIGNEE]

By: _____

Name: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On [MONTH] ____, 20__ personally appeared before me, _____, who duly acknowledged to me that he/she executed the foregoing instrument on behalf of [CAPITAL PROVIDER OR DESIGNEE] in his/her capacity as _____ of [CAPITAL PROVIDER OR DESIGNEE]

NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

[INSERT]

EXHIBIT 5: Lienholder Consent

**Notice of Proposed C-PACER Assessment and
Request for Consent of Lien or Other Obligation Holder to C-PACER Assessment and C-PACER
Lien**

Notice Date:

Lien or Other Obligation Holder:

Street:

City/State/Zip Code:

ATTN:

Property/Loan Information:

Address: [_____] (the “Property”)

Loan Number:

Why has the Financial Institution received this notice?

The Property Owner listed below owns the subject Property. Your Financial Institution holds a lien, mortgage or security interest or other secured encumbrance on the Property.

[Property Owner] (the “Property Owner”) wishes to install energy efficiency, water conservation, renewable energy, and/or resiliency improvements to the property using Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing, known as the “C-PACER” program. The Property Owner requests your consent for the property to participate in the program.

Background on C-PACER in Washington

Washington statute (chapter 36.165 RCW) (the “C-PACER Act”) authorizes Washington counties to establish a C-PACER program in their communities. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Act.

C-PACER financing helps stimulate local economies by allowing owners of agricultural, commercial, and industrial and multi-family properties with 5 or more dwelling units to obtain low-cost, long-term financing for energy efficiency, renewable energy, and water conservation and resiliency projects. Whatcom County, where the subject property is located, has established a C-PACER program within its jurisdiction for qualifying property owners.

Through the C-PACER program, the financing for qualifying projects is provided by a private Capital Provider, and the principal amount is recorded by Whatcom County as a voluntary assessment and lien (“the C-PACER lien”) on the Property. The annual assessment payments relating to that lien are repaid to, and collected by, the private Capital Provider, which has the responsibility of administering the Property Owner’s C-PACER obligation. Assessments have long been used to pay for improvements to real property that meet a public policy objectives, such as sidewalks, parks, lighting districts, and water and sewer projects. Like other assessments, the C-PACER obligations remain with a property upon its sale, until the financing is fully repaid, at which point the C-PACER lien and assessment are retired.

Under chapter 36.165 RCW, once consent from pre-existing lien holders and, if applicable, the holders of certain other obligations, on a property is given, an assessment can be imposed and a C-PACER lien can be filed. Once filed, that lien, like other government-imposed liens, moves into a superior position above other obligations, except for property taxes and other qualifying government obligations.

To qualify for C-PACER financing, the proposed project must meet the following basic criteria:

- The property is located in Whatcom County, Washington, a county that has passed an ordinance authorizing a C-PACER program;
- The property is an agricultural, commercial, or industrial property, or multi-family property of 5 or more dwelling units;
- The proposed measures reduce energy consumption, reduce water consumption, increase the production of on-site renewable energy, reduce lead in potable water, and/or increase the resiliency of the property, as defined in the C-PACER Act;
- The proposed measures are permanently affixed to the property; and
- The Property Owner receives consent of the current mortgage/lien holder(s).

Why should your Financial Institution consent to the C-PACER Assessment and C-PACER Lien?

1. Property improvements financed through the C-PACER program have public benefits. To qualify for C-PACER, a project must install improvements that either conserve energy or water resources; reduce greenhouse gas emissions; reduce lead levels in potable water; or improve safety and public health through certain resiliency enhancements (e.g., seismic stability). Under the C-PACER program eligibility requirements, a proposed project must include verification by a qualified and licensed professional certifying that the improvements will provide these public benefits. Qualifying improvements typically enhance property value and improve its collateral value for the mortgage or other obligatory interests that your Financial Institution holds in the Property.
2. C-PACER payments do not accelerate. In the event a mortgage holder or lien holder forecloses on the property for any reason, only the C-PACER payments currently due and in arrears would be payable, which is likely a relatively small proportion of the total amount financed. *In the case of a default, the entire outstanding principal, interest and penalties of your Financial Institution's loan may be accelerated and come due; however, for the C-PACER financing, only the past due amounts may be collected in a default.* The remaining C-PACER financing balance runs with the land and regular installment payments would be paid by the new property owner.
3. Improvements financed through C-PACER often reduce a property's operating costs and/or the potential for catastrophic damage, and they often improve health and comfort of occupants, all of which make a property more attractive to tenants and future owners.
4. Property improvements financed through the C-PACER program align with public Climate Action Plans and, potentially, with your institution's sustainability plans and commitments, and to shareholder interests.

What should your Financial Institution know?

Property Owner has indicated its intention to apply for C-PACER financing for improvements outlined in on the Property. The C-PACER financing will be levied on the Property pursuant to an Assessment Agreement between the Property Owner and the County, and the amount of the C-PACER financing will be determined by a Financing Agreement between the Property Owner and the private Capital Provider. The C-PACER financing terms will consist of:

Total cost of improvements:	
Total C-PACER financing requested (+/- 5%):	
Annual interest rate not to exceed:	
Term of repayment:	
Total estimated annual C-PACER Payments:	

# Payments per year:	
----------------------	--

As required by the C-PACER Act, Property Owner is sending this Request for Consent of Lien or Other Obligation Holder to the creation of a C-PACER Assessment and Lien to:

- i. provide notice of Property Owner's proposed participation of the Property in the program;
- ii. request confirmation from your Financial Institution (a current mortgage/lien or other obligation holder) that the levy of the C-PACER payments will not trigger a default nor the exercise of any remedies under your current lien or other encumbrance relating to the Property;
- iii. provide notice that, due to the requirements under the County's Assessment Agreement with the Property Owner, the C-PACER private Capital Provider financing payments will be collected in installments that are subject to the same remedies and lien priorities as real property taxes; and
- iv. declare the Property Owner's agreement to uphold and pay on a timely basis both the existing obligations to your Financial Institution which are secured by the Property and the proposed C-PACER installments.

Execution and Return of Consent. The Property Owner would appreciate your executing the attached Consent Form for the Whatcom County C-PACER program and returning it to the undersigned at your earliest convenience.

Sincerely,

BY: (signature): _____

PROPERTY OWNER NAME: [_____]

MAILING ADDRESS (if different than Property address): [_____]

Lien or Other Obligation Holder Consent to C-PACER Assessment and Lien

Date:

Property/Loan Information Building

Address:

Tax key/Parcel:

Lien or Other Obligation Holder:

Loan Number:

This Lien or Other Obligation Holder Consent Acknowledgement to C-PACER Assessment and Lien (this “Consent”) is given by the undersigned entity (the “Holder”) with respect to the above-referenced C-PACER Assessment and Lien and property (“Property”) in relation to the Whatcom County C-PACER program (the “Program”).

RECITALS

A. The Holder is in receipt of written notice (“Notice”) from the owner of the Property (“Property Owner”) that it intends to finance the installation on the Property of certain Qualified Improvements according to chapter 36.165 RCW that will be permanently fixed to the Property and that will be financed by participating in the Program.

B. The Holder understands that, as a result of an Assessment Agreement between Whatcom County and the Property Owner, and a Financing Agreement between the Property Owner and [REDACTED] (the “C-PACER Capital Provider”), that the C-PACER Assessment and Lien against the Property, as described in the C-PACER Assessment Agreement between the County and Property Owner and in the C-PACER Financing Agreement between the private Capital Provider and the Property Owner (the “C-PACER Assessment”), will be levied on the Property, and that the C-PACER lien against the Property 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 Assessment, including any interest, penalties, and charges accrued or accruing under the terms of the Financing Agreement are paid in full.

C. The Property Owner has agreed in a manner acceptable to the Holder to uphold and pay on a timely basis both the existing obligations to the Holder which are secured by the Property and the proposed C-PACER Assessment payments.

D. The Holder consents to the Property’s participation in the C-PACER program and that the C-PACER lien will take precedence over all other liens except for a lien for taxes as described in paragraph B.

[Continued on next page]

ACKNOWLEDGEMENT

The undersigned hereby represents that it is authorized to execute this Acknowledgement on behalf of the Holder. The Holder hereby:

- (i) confirms that it has received the Notice;
- (ii) acknowledges the levy by Whatcom County of the C-PACER Assessment pursuant to the terms of the Assessment Agreement and C-PACER Financing Agreement; and
- (iii) agrees that the levy and payment of the C-PACER Assessment will not constitute a default nor trigger the exercise of any remedies under the Holder's Loan or other obligation documents.

The Holder hereby acknowledges that the Property Owner, the County, the C-PACER Capital Provider and the County's designated C-PACER Program Administrator, will rely on the representation and acknowledgement of the Holder set forth in this Acknowledgement. The Recitals are integrated into and made a part of this Acknowledgment.

Holder:

By:

Signature:

Title:

Date:

In witness whereof, _____ has caused its name to be signed this _____ day of

_____, _____.

By: _____

_____, _____

EXHIBIT 6: Certificate of Qualified Improvements
(Energy, Water, Renewable Energy, Resilience Certificate of Compliance)

I, the undersigned, hereby certify the following facts and make the following certifications with respect to the project described in the attached Project Application (the "Project") under the Whatcom County Commercial C-PACER Program:

1. I am a licensed Professional Engineer in the State of Washington, whose registration number and stamp are shown below, OR
2. I am accredited by or belong to a firm with an accreditation from:
 - American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)
 - Building Energy Modeling Professional (BEMP)
 - Operations & Performance Management Professional Certification (OPMP)
 - High-Performance Building Design Professional Certification (HBDP)
 - Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)
 - Building Performance Institute
 - Energy Auditor
 - Investor Confidence Project
 - ICP Quality Assurance Assessor
 - Other: _____

Please provide verification of professional accreditation and recognition

3. The application is for:
____ an existing building
____ new construction
4. Please describe your relationship to the project:
____ I am employed by the project applicant in my professional capacity
____ I am a contracted independent third-party reviewer
5. I reviewed the following information regarding the project (e.g. equipment specifications OR design drawings/modeling OR permit applications OR an ASHRAE Level 1 assessment/energy assessment): Please Describe: _____
6. The project proposal includes the "Qualified Improvements", as defined in chapter 36.165 RCW and the Program Guidebook, and the estimated useful life of each Qualified Improvement, which are listed in an attachment to this certification. (Please attach)
7. The Qualified Improvements will be permanently affixed to the property.

IF FOR AN EXISTING BUILDING (check those that apply):

I CERTIFY:

- _____ The proposed Qualified Improvements will result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.

- _____ The Qualified Improvements will result in improved resilience, which may include, without limitation, seismic resilience, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids. If other, specify: _____

IF FOR NEW CONSTRUCTION (check those that apply):

I CERTIFY:

- _____ Each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency or water efficiency or renewable energy code requirements
- _____ The building as a whole, as a result of the Qualified Improvements, performs above or exceeds applicable building energy and/or water codes
- _____ The proposed resiliency Qualified Improvements will enable the subject property to exceed the resiliency code requirements.

Signature: _____

NAME:

Business name:

Business address:

Business contact email:

Business contact phone:

IF APPLICABLE

License No. _____

Stamp: _____

ATTACHMENTS (Please attach to Certification)

EXHIBIT 7: Certificate of Capital Provider Qualifications

CERTIFICATE OF CAPITAL PROVIDER QUALIFICATION

Please check all of the following that apply to the qualifications of [] (“Capital Provider”), the capital provider that will supply the C-PACER financing for the project located at []. *Note: Capital Providers must meet at least one of the following.*

_____ Capital Provider is registered to provide C-PACE financing in at least two other states.

State: _____

Program Name: _____

State: _____

Program Name: _____

Please provide documentation. Appropriate documentation includes a certification or verified copy of registration as a C-PACE provider by a C-PACE program.

_____ Capital Provider is registered to provide C-PACE financing and has financed at least one previous C-PACE transaction in another jurisdiction.

State: _____

Program Name: _____

Transaction: _____

Please provide documentation. Appropriate documentation includes a copy of a recorded transaction document (such as Notice of Assessment or Lien) specifying that it is part of a C-PACE transaction.

_____ Capital Provider is a federally chartered bank, thrift institution, or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable federal regulatory body.

_____ Capital Provider is a state-chartered bank, thrift institution or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable state regulatory body.

The undersigned certifies that the above is true and accurate as of the current date:

[Capital Provider]

By: _____

Name and Date:

Title:

EXHIBIT 8: Certificate of C-PACER Improvements Completion

CERTIFICATE OF C-PACER IMPROVEMENTS COMPLETION

Property Owner: _____

Property Address: _____

C-PACER application approval date: _____

C-PACER financing closing date: _____

The undersigned certifies that the work under the above approved C-PACER Application, attached as **Exhibit A** hereto, has been satisfactorily and properly completed and all improvements are operating as intended.

PROPERTY OWNER:

[INSERT ENTITY NAME, IF APPLICABLE]

BY: _____

Signature

Printed Name

Title

Exhibit A

C-PACER Application

[See Attached]



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-368

File ID:	AB2021-368	Version:	1	Status:	Agenda Ready
File Created:	06/17/2021	Entered by:	AGeLeyns@co.whatcom.wa.us		
Department:	Health Department	File Type:	Report		
Assigned to:	Council	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Report from the Health Department on the Behavioral Health Program Fund 2020 Annual Report

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
<hr/>			

Attachments: Staff Memo, Annual Report

Memorandum

TO: COUNTY EXECUTIVE SATPAL SIDHU
FROM: Anne Deacon, Human Services Manager
DATE: JUNE 16, 2021
**RE: 2020 ANNUAL REPORT TO COUNTY COUNCIL ON THE
BEHAVIORAL HEALTH PROGRAM FUND**

The Whatcom County Code requires that an annual report be presented to the County Council on the services and expenditures of the Behavioral Health Program Fund. The 2020 annual report will be presented at the June 29, 2021 meeting. That report is attached here for your review.

The pandemic impacted in-person delivery of some, but not all programs funded. Nonetheless, you will see from the report that many services were provided and over 10,000 residents of Whatcom County benefited as a result. The stated number of people served is almost 14,000, but we are aware that many people received more than one service.

The Behavioral Health Program Fund, supported by local sales tax dollars, has a healthy fund balance. As a result, we are creating a budget that provides more funding for programs than is expected from annual revenues. The county made some cuts to certain programs in 2021 in anticipation of less revenue collected this year due to the pandemic. However, we find that our revenues have exceeded our budgeted expectations and are reinstating funding as appropriate to ensure programs supported by these dollars have the necessary resources to operate at full capacity.

We will plan to provide a more detailed report to County Council this Fall on our school-based services. Data indicates that the mental health of our youth has been negatively impacted by the pandemic. We hope to inform the County Council on how we are working with our school districts and community partners to address this troubling concern.



Whatcom County Behavioral Health

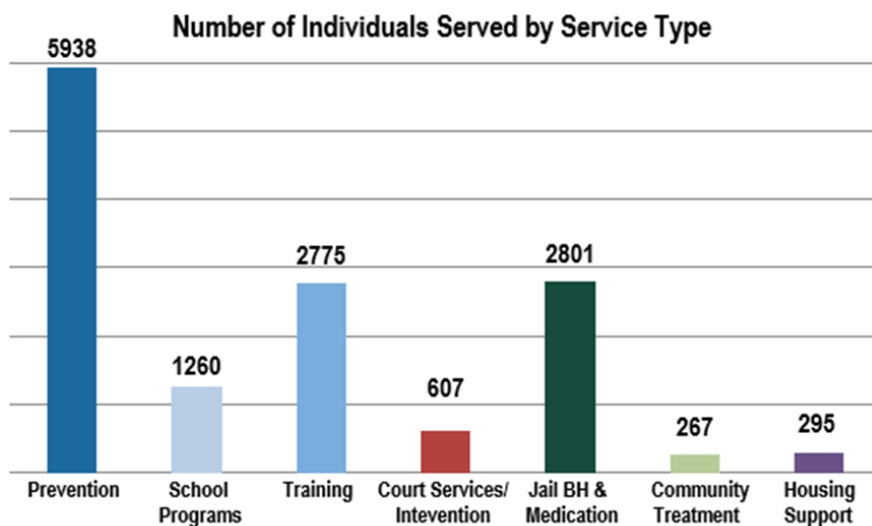
1/10 of 1% Sales Tax Annual Report 2020

Manager's Comments:

It goes without saying that the year 2020 was unique, challenging, and difficult for the mental health and welfare of our residents. During the pandemic, your Behavioral Health dollars were put to good use. Supportive services in the school districts focused on preventing substance abuse by our youth, providing mental health programs, and supporting families struggling with isolation. Treatment programs in our criminal justice system retooled in order to continue services and prevent recidivism. Housing for people with behavioral health concerns remained available and provided a stable home to promote recovery. And the GRACE program saw a 95% success rate for its members in reducing encounters with the criminal justice system, while improving their well-being.

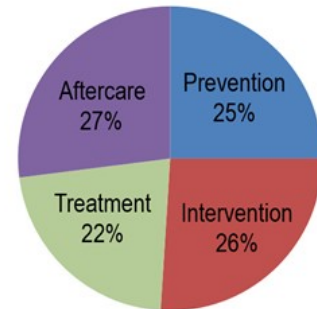
Construction of the new 32-bed Crisis Stabilization Center experienced material delivery delays because of COVID, yet was completed in time for opening in January 2021. This new Center was a high priority for our community. We are extremely excited to provide a welcoming, safe, and supportive place to adults who are experiencing a behavioral health crisis. No one will be turned away because of funding concerns. As the Center's programs reach full capacity, detox and mental health stabilization services will offer guests the opportunity to resolve their crisis and have hope for the future.

It has been a year of successes!



Service Expenditures for 2020

Percentage by PITA Service Type



Total \$4,484,467

(see back for budget details)

Vision and Goals

Develop a comprehensive infrastructure of behavioral health care that will:

Provide effective recovery-oriented services that mitigate the need for individuals to default to utilization of the emergency room, hospital beds and the county jail.

Provide access and availability for intervention and treatment services to individuals who have limited access.

Promote the provision of services in natural environments in order to reduce the incidence and severity of substance use and mental health disorders.

Provide interventions that divert individuals with mental health and substance use disorders from the criminal justice system to more appropriate options of care.

Support young children and families with early interventions and behavioral health promotion.

2020 Accomplishments

- Completed construction of the new Crisis Stabilization Center
- Expanded housing support services
- Leveraged new federal resources for school-based programs

Whatcom County Behavioral Health Program Financial Statement

Year Ending December 31, 2020

Revenue Collected

Expenditures

Revenue

Sales Tax Collected	\$4,892,066
Interest Earned	\$84,061
Other	\$644,434

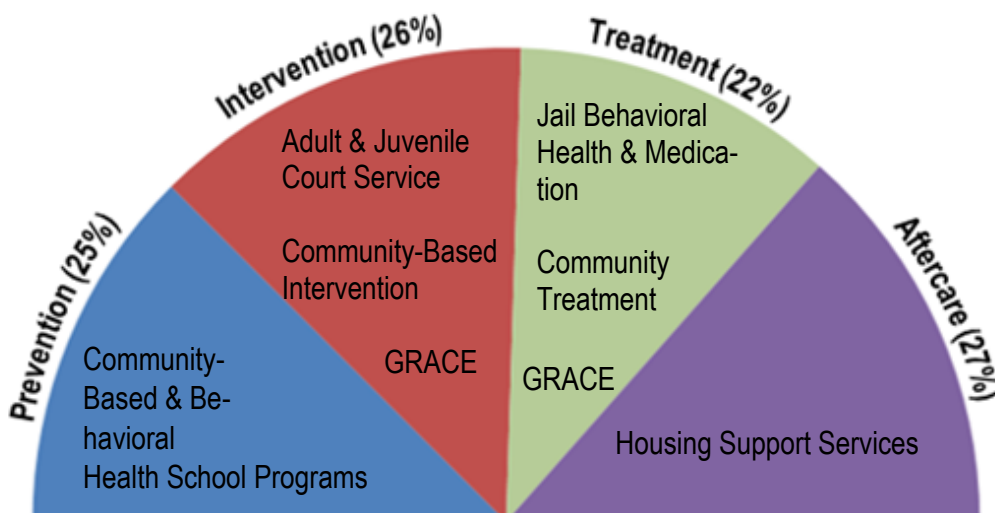
Total Revenue	\$5,620,561
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Expenditures

Prevention	\$367,830
Behavioral Health School Programs	\$745,322
GRACE Program	\$488,614
Courts & Other Intervention Services	\$955,207
Jail Behavioral Health Services & Re-Entry Services	\$583,016
Community Treatment	\$151,374
Housing Support Services	\$1,193,104
Program Services Total (81% of expenses)	\$4,484,467
Direct Program Support	\$347,540
Administrative Costs (14% of expenses)	\$693,248
Total Expenditures	\$5,525,255

PITA Continuum

The PITA model continues to serve as the framework for creating a comprehensive foundation for service delivery.





Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-050

File ID:	MIN2021-050	Version:	1	Status:	Agenda Ready
File Created:	06/16/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Special Committee of the Whole for June 15, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Special Committee of the Whole Jun 15 2021

Whatcom County Council Special 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 BY 9:55 A.M.; MEETING ADDED 6.11.2021

(TO PARTICIPATE, SEE INSTRUCTIONS AT

www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)

Tuesday, June 15, 2021

9:30 AM

Council Chambers

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

Committee Chair Barry Buchanan called the meeting to order at 9:34 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

Announcements**Committee Discussion**

1. [AB2021-345](#) Discussion regarding reopening Council operations to the public

The following people spoke and briefed the Councilmembers:

- Dana Brown-Davis, Clerk of the Council
- Satpal Sidhu, County Executive
- Perry Rice, Administrative Services Department Information Technology
- Tyler Schroeder, Executive's Office

The speakers answered questions and Councilmembers discussed possible ways to set up the Chambers for hybrid meetings; equipment that may need to be purchased now to help facilitate hybrid meetings; policies concerning masking, social distancing, and vaccination for in-person meetings; whether there should be mandates in place for public participation or just requests; waiting until the county has 70 or 80% of the population vaccinated before opening the chambers; having staff (Health Department, Council Office, Legal Counsel, Administration, and Facilities) craft the framework of a policy or reopening plan that the Council could then discuss; being slow in the reopening process to allow time to get things in order and to keep staff from being overburdened; and finding out what other jurisdictions are doing.

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 10:07 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: MIN2021-051

File ID:	MIN2021-051	Version:	1	Status:	Agenda Ready
File Created:	06/17/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Committee of the Whole for June 15, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Committee of the Whole Jun 15 2021

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 5 P.M. (TO
PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)
Tuesday, June 15, 2021**

2:50 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 2:55 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

Announcements**Committee Discussion**

1. [AB2020-219](#) Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

Erika Lautenbach, Health Department Director, reported on the following:

- Today marks six months of administration of vaccine in our county and 67.7% of age 16+ residents have initiated a COVID-19 vaccine
- The final two days of the clinic at the community vaccination center this week
- A focus on ensuring access to vaccine
- A drawing for a truck for those who initiate a COVID-19 vaccine between June 1 and July 31, 2021
- The first week in Whatcom County without a new outbreak in a business
- A fall of the 14-day case rates to below 100 per 100,000
- A concerning increase and subsequent decrease in hospitalization rates

She answered whether Whatcom County saw a noticeable uptick in vaccination rates when they announced they were going to give away a truck, how much the Mt. Baker School District vaccine rate has improved, and whether the Health Department might set up vaccination booths at the county fair or other festivals.

This agenda item was DISCUSSED.

2. [AB2021-296](#) Ordinance adopting amendments to the Purchase of Development Rights Program
- Becky Snijder van Wissenkerke, Planning and Development Services Department, stated she was available to answer questions and she discussed with Councilmembers where this Ordinance is in the process.

This agenda item was DISCUSSED.

3. [AB2021-185](#) Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County
- Browne and Byrd briefed the Councilmembers and the following people spoke:

- Michael Jones, City of Blaine
- Frank Bob, Lummi Nation

Donovan moved to hold it longer to get more information, particularly from the Lummi Tribal Council. Browne seconded the motion and stated they should set a date.

Councilmembers and the speakers discussed scheduling a meeting with the Lummi Tribal Council and the City of Blaine and whether the Lummi Tribal Council is possibly supportive of Councilmember Browne's compromise.

Dana Brown-Davis, Clerk of the Council, answered whether Council staff could help to set up a meeting between the Tribal Council, Whatcom County, and the City of Blaine and councilmembers discussed whether a meeting date should be set and who all would be involved.

Satpal Sidhu, County Executive, suggested that representatives from the three groups could meet first, then go back to their councils, and then organize a larger meeting.

Councilmembers and the speakers continued to discuss the item and how long the item should be held.

Donovan amended his motion **and moved** to recommend to the Council that they hold this in Committee until July 27th. The motion was seconded by Frazey.

Brown-Davis asked about the process that should happen between now and then and Councilmembers discussed the process, the motion to hold, and which Councilmembers should be involved in a government to government meeting.

Frank Bob provided closing comments and Michael Jones stated he had none.

The motion carried by the following vote:

Aye: 5 - Donovan, Frazey, Browne, Buchanan, and Byrd

Nay: 2 - Elenbaas and Kershner

This agenda item was DISCUSSED AND MOTION(S) APPROVED.

4. [AB2021-339](#) Discussion to establish a process for filling district court judicial vacancy

Dana Brown-Davis, Clerk of the Council, briefed the Councilmembers and stated she needs to know when they would like to fill the position so interviews can be set up. The position *does not* have to be filled by July 1, 2021.

Councilmembers discussed the process they should follow, whether they can get a ranking system from the State and local Bar Associations, the timing of the appointment, whether there is time to reach out to the associations and Washington Women Lawyers to find out if they have a process for giving the Council input and a qualification rating, whether the local Bar Association should vet the applications, and getting a summary (age, gender, longevity, and degree of diversity) of who has served in the position beforehand.

Karen Frakes, Prosecuting Attorney's Office, stated in the time she has worked for the County, there has never been (to her knowledge) anyone except for white males that have held judicial positions in the District Court.

Councilmembers and Brown-Davis continued to discuss keeping the deadline for applications what it is and asking the local Bar Association how long it would take them to give a ranking, contacting the local Bar Association and Washington Women Lawyers to find out how long it would take to vet applications once they get them, and a possible update to Councilmembers on July 13 to find out when the Council would like to make an appointment.

Donovan moved to request that Council staff make contact with the local Bar Association and Washington Women Lawyers and ask how long it would take them to vet the applications, then come back on July 13, 2021 for an update. The motion was seconded by Frazey.

Councilmembers and Frakes discussed the motion, letting the groups know what it is that the Council wants from them, and deciding on whose opinion they would like in the process.

The motion carried by the following vote:

Aye: 6 - Frazey, Kershner, Browne, Buchanan, Byrd, and Donovan

Nay: 1 - Elenbaas

Brown-Davis, asked if Councilmembers would like all the applications distributed at one time after the application deadline or as they come in.

Frazey moved that they wait until June 28th and then distribute all the applications to Councilmembers at one time. The motion was seconded by Kershner.

Councilmembers discussed what groups should vet the applications.

The motion carried by the following vote:

Aye: 6 - Frazey, Kershner, Browne, Buchanan, Byrd, and Donovan

Nay: 1 - Elenbaas

This agenda item was DISCUSSED AND MOTION(S) APPROVED.

Committee Discussion and Recommendation to Council

1. [AB2021-279](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Section 8.22 to align requirements for amending the Charter by citizen initiative with Washington State norms

The following answered whether a supermajority vote is needed from the Committee to recommend the Ordinance to the full Council:

- Dana Brown-Davis, Clerk of the Council
- Karen Frakes, Prosecuting Attorney's Office

Councilmembers discussed the history of citizen initiatives and how amendments to the Charter should be proposed.

Donovan moved and Browne seconded that the Ordinance be RECOMMENDED FOR ADOPTION.

Councilmembers discussed the motion.

Donovan's motion that the Ordinance be RECOMMENDED FOR ADOPTION carried by the following vote:

Aye: 4 - Browne, Buchanan, Donovan and Frazey

Nay: 3 - Byrd, Elenbaas and Kershner

Absent: 0

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 4:33 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: MIN2021-052

File ID:	MIN2021-052	Version:	1	Status:	Agenda Ready
File Created:	06/18/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Regular County Council for June 15, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Council Jun 15 2021

Whatcom County Council

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



Minutes - Draft Minutes

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010); AGENDA**

REVISED 6.15.2021

Tuesday, June 15, 2021

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 6:01 p.m. in a virtual meeting.

ROLL CALL

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, and Kathy Kershner

Absent: None

FLAG SALUTE

ANNOUNCEMENTS

Buchanan announced the following:

The Council is accepting applications to a vacancy on the Lummi Island Ferry Advisory Committee. This vacancy must be filled by someone who does NOT live on or own property on Lummi Island. If you are interested in serving Whatcom County and the Lummi Island community, please let us know at 360-778-5010 or email the Council at council@co.whatcom.wa.us.

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 Browne (see votes on individual items below).

1. [MIN2021-047](#) Committee of the Whole Executive Session for June 1, 2021

Donovan moved and Browne seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Temp Absent: 1 - Byrd

2. [MIN2021-048](#) Committee of the Whole for June 1, 2021

Donovan moved and Browne seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Temp Absent: 1 - Byrd

3. [MIN2021-049](#) Regular County Council for June 1, 2021

Donovan moved and Browne seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Temp Absent: 1 - Byrd

OPEN SESSION (20 MINUTES)

Council staff played a short instructional video about how to speak at the meeting.

The following people spoke:

- Kathy Sabel
- Misty Flowers
- Andrea Ward
- Shean Halley
- Nancy Bergman
- Natalie Chavez
- Jean Purcell
- Markis Dee Stidham

Hearing no one else, Buchanan closed the Open Session.

CONSENT AGENDA

(From Council Finance and Administrative Services Committee)

Browne reported for the Finance and Administrative Services Committee and ***moved*** to approve Consent Agenda items one through nine. Councilmembers discussed and voted on those items (see votes on individual items below).

1. [AB2021-319](#) Request authorization for the County Executive to enter into a contract between

Whatcom County and Arc of Whatcom County to provide information, education, and family support to individuals with developmental disabilities, their family members, and the general public, in the amount of \$150,616

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

2. [AB2021-321](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and the County Road Administrative Board (CRAB) in order to receive Rural Arterial Preservation grant funding for the Hampton Road Pavement Rehabilitation project in the amount of \$170,100

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [AB2021-322](#) Request authorization for the County Executive to enter into a contract between Whatcom County and the Executive Office of the President for a grant award for funding from the High Intensity Drug Trafficking Areas (HIDTA) program in the amount of \$205,073.00

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. [AB2021-325](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to provide funding for Child Development Services to eligible children ages birth to three who have developmental disabilities and delays, in the estimated amount of \$77,812, for a total estimated amended contract amount of \$213,952

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

5. [AB2021-332](#) Resolution to amend Resolution 2020-046 for unrepresented Whatcom County employees

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-021

6. [AB2021-333](#) Request authorization for a Letter of Understanding between Whatcom County and General Teamsters' Local Union 231 to amend the Master Collective Bargaining Agreement for the period January 1, 2019 - December 31, 2021

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

7. [AB2021-335](#) Request authorization for a Letter of Understanding between Whatcom County and the WA State Nurses Association to amend the collective bargaining agreement for the period January 1, 2021 - December 31, 2022

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

8. [AB2021-336](#) Request authorization for a Letter of Understanding between Whatcom County and

PROTEC17 to amend the collective bargaining agreement for the period January 1, 2019 - December 31, 2021

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

9. [AB2021-337](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Northwest Educational Services District 189 to provide behavioral health services, in the amount of \$121,000

Browne 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, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. [AB2021-307](#) Ordinance amending the 2021 Whatcom County Budget, request no. 9, in the amount of \$1,138,322

Browne reported for the Finance and Administrative Services Committee and ***moved*** that the Ordinance be ADOPTED.

Councilmembers discussed the motion and specifically the fund used to unfreeze County staff positions that had been frozen during the COVID-19 crisis.

Satpal Sidhu, County Executive, answered questions about and Councilmembers discussed the funding source, what happens in the long run when the American Rescue Plan Act funds are gone and the County has committed money for these staff positions, and whether general funds would be set aside for that time.

Browne's motion that the Ordinance be ADOPTED carried by the following vote:

Aye: 4 - Browne, Buchanan, Donovan, and Frazey

Nay: 3 - Byrd, Elenbaas, and Kershner

Absent: 0

Enactment No: ORD 2021-035

2. [AB2021-310](#) Ordinance establishing the American Rescue Plan Act Fund and establishing a budget for the American Rescue Plan Act Fund

Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2021-036

3. [AB2021-324](#) Request authorization for the County Executive to enter into Local Agency Agreement Supplement No. 4 between Whatcom County and the Washington State Department of Transportation for the Birch Bay Drive and Pedestrian Facility Project in the amount of \$1,100,000

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. [AB2021-330](#) County Executive requests approval of the Economic Development Investment (EDI) Board's recommendations for funding to support three project applications from the City of Lynden, Port of Bellingham, and Bellingham Housing Authority

Browne reported for the Finance and Administrative Services Committee and ***moved*** to approve the agenda item with the following amendments as recommended in committee:

- PORT OF BELLINGHAM: To not approve the \$6 million for the Port of Bellingham but to approve the letter of support for \$2 million with the condition that accepting grant funding will be subject to an explanation as to how they will deliver the last mile for internet coverage

- CITY OF LYNDEN: To recommend to the Council an alternative of \$2 million of loan funding to be approved for the City of Lynden project as opposed to a one third grant and two thirds loan
- BELLINGHAM HOUSING AUTHORITY: (No amendments - approve the Housing Authority proposal as described)

Donovan moved that they bring the full proposals that were in the Committee to the full Council for consideration. The motion was seconded by Elenbaas but a motion was on the floor.

Browne stated he would withdraw his motion but Councilmembers discussed that his motion cannot be withdrawn so they voted on his motion to approve the agenda item with the recommended amendments.

Browne's motion failed by the following vote:

Aye: 0

Nay: 7 - Frazey, Kershner, Browne, Buchanan, Byrd, Donovan, and Elenbaas

Donovan moved to begin the discussion with the proposal that went to the Committee and that was in the packet. The motion was seconded by Kershner.

Browne suggested that they trifurcate each proposal and discuss each one separately and Donovan accepted that suggestion.

PORT OF BELLINGHAM

Tyler Schroeder, Executive's Office, briefed the Councilmembers and Councilmembers discussed the amount of the request.

Kershner moved that they change the Economic Development Investment (EDI) funding request from \$6 million to \$2 million. The motion was seconded by Donovan.

Donovan asked whether it would be a combination of loans and grants.

Kershner stated she would amend her motion to include that the \$2 million would be in combination of loans and grants as presented in the packet but then withdrew it because that scenario would be for a different request and not the Port of Bellingham. They voted on her original motion.

The motion carried by the following vote:

Aye: 7 - Kershner, Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

Nay: 0

Browne moved that the Port of Bellingham has to come back with a plausible explanation as to how they are going to do the last mile before they can accept the grant and the Council will fund it. The motion was seconded by Elenbaas.

Councilmembers discussed the motion, what the Council is asking of the Port, and giving them a letter of support and the following people answered whether the Port of Bellingham has to come back to the Council after the vote tonight or if it is a done deal:

- Tyler Schroeder, Executive's Office
- Satpal Sidhu, County Executive

Browne restated his motion that before they can accept the grant (which is the trigger point for the Council to fund the EDI), the Port of Bellingham has to give the Council a good explanation of how they are going to do the last mile.

Schroeder answered whether it will impede the Port's ability to apply for the grant.

The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

CITY OF LYNDEN

Browne reported for the Finance and Administrative Services Committee.

Satpal Sidhu, County Executive, answered a question about whether these requests would come as three separate ordinances in the future. Today is just approval for the Administration to prepare the ordinances.

Kershner moved to accept the EDI application from Lynden as submitted. The motion was seconded by Elenbaas.

Councilmembers and Sidhu discussed the motion and the request.

The motion carried by the following vote:

Aye: 6 -Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Abstain: 1 -Browne

BELLINGHAM HOUSING AUTHORITY

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

The motion carried by the following vote:

Aye: 6 - Donovan, Elenbaas, Frazey, Kershner, Browne, and Buchanan

Nay: 1 - Byrd

THE MAIN AGENDA ITEM AS AMENDED

Browne moved to approve AB2021-330 as amended. The motion was seconded by Kershner.

Councilmembers and Sidhu discussed the motion.

This Special Executive Only Item was APPROVED AS AMENDED by the following vote.

Aye: 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Abstain: 1 - Byrd

5. [AB2021-331](#) Request authorization for the County Executive to award bid #21-26 and enter into a contract between Whatcom County and Tiger Construction LTD for the Plantation Indoor Range HVAC and Roof Replacement, in the amount of \$1,032,352.54

Browne reported for the Finance and Administrative Services Committee and **moved** that the Bid Award be AUTHORIZED.

Councilmembers discussed the motion and what kind of revenue the plantation range brings in.

Christ Thomsen, Parks and Recreation Department, answered whether the Parks Department has explored selling the plantation rifle range to a private party.

Browne's motion that the Bid Award be AUTHORIZED carried by the

following vote:

Aye: 5 - Buchanan, Byrd, Donovan, Elenbaas, and Kershner

Nay: 0

Absent: 0

Abstain: 2 - Browne, and Frazey

(From Council Public Works and Health Committee)

6. [AB2021-320](#) Discussion of community-requested revision to the Birch Bay Golf Cart Zone boundary, and request for Council direction

Frazey reported for the Public Works and Health Committee and **moved** that they request that Public Works Department do a traffic study on this proposal.

Councilmembers discussed the motion.

Kershner moved to amend the motion to remove the portion of Bay Road that the residents have asked us to do (without the traffic study), return the speed limit to 35, and save the traffic study for the additional area that the residents out there would like us to look at including. The motion was seconded by Elenbaas.

Jon Hutchings, Public Works Department Director, stated there needs to be an ordinance change and Public Works would prefer to go through an analysis of all the controls on establishing speed limits and make sure we are doing things right before we make these changes. He answered whether the traffic study is the better way to go.

The amended motion carried by the following vote:

Aye: 7 - Kershner, Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

Nay: 0

This item was DISCUSSED AND MOTION(S) APPROVED

(From Council Committee of the Whole)

7. [AB2021-279](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to amend Whatcom County Charter Section 8.22 to align requirements for amending the Charter by citizen initiative with Washington State norms

Buchanan reported for the Committee of the Whole and **moved** that the Ordinance be Adopted.

Councilmembers discussed the motion and ways Charter amendments should be proposed.

Buchanan's motion that the Ordinance be adopted FAILED (because the item required a supermajority vote) by the following vote:

Aye: 4 - Browne, Buchanan, Donovan, and Frazey

Nay: 3 - Byrd, Elenbaas, and Kershner

Absent: 0

(No Committee Assignment)

8. [AB2021-323](#) Request approval to send letter of appreciation to child care team members
Frazey briefed the Councilmembers.

**Browne moved and Frazey seconded that the REQUEST be APPROVED.
The motion carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

ITEMS ADDED BY REVISION

1. [AB2021-360](#) Ordinance to establish an independent review of the community response to the COVID-19 Pandemic

***Donovan moved* and Browne seconded that the Ordinance be INTRODUCED.**

Councilmembers discussed the motion, a letter of support that came from the head of the Emergency Operations Center, and the process for the independent review. They concurred that the item should be placed in Committee of the Whole for discussion.

Donovan's motion that the Ordinance be INTRODUCED carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

Satpal Sidhu, County Executive, commented on the proposed Ordinance and stated it is too early.

INTRODUCTION ITEMS

Donovan moved that they withdraw AB2021-185 from Introduction tonight. The motion was seconded by Browne and Councilmembers voted (see motion and vote on item below).

Donovan moved to introduce items 2-4. The motion was seconded by Browne (see votes on individual items below).

1. [AB2021-185](#) Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County

Donovan moved and Browne seconded that the Ordinance Requiring a Public Hearing be WITHDRAWN from Introduction. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

This item was withdrawn from Introduction and held in Committee.

2. [AB2021-327](#) Ordinance amending the Whatcom County Budget, request no. 10, in the amount of \$744,800

Donovan moved and Browne seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [AB2021-328](#) Resolution amending the Flood Control Zone District and subzones 2021 budgets, request no. 1, in the amount of \$15,415 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Donovan moved and Browne seconded that the Resolution (FCZDBS) be INTRODUCED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. [AB2021-340](#) Ordinance suspending Whatcom County Code 1.28 to update the Correctional Facilities operational standards

Donovan moved and Browne seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers gave committee reports and updates on recent events.

ADJOURN

The meeting adjourned at 9:04 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: AB2021-296

File ID:	AB2021-296	Version:	1	Status:	Introduced for Public Hearing
File Created:	05/13/2021	Entered by:	RSnijder@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

Primary Contact Email: rsnijder@whatcomcounty.us

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Purchase of Development Rights Program

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance to amend Whatcom County Code 3.25A and PDR Program Guidelines. The proposed amendments would change the program's name, update the site selection criteria, and improve program administration.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/01/2021	Council	INTRODUCED	Council Committee of the Whole
06/15/2021	Council Committee of the Whole	DISCUSSED	

Attachments: Staff Memo, Proposed Ordinance, Proposed Ordinance Exhibit A, Proposed Ordinance Exhibit B-Changes, Proposed Ordinance Exhibit B- Clean

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

Memorandum

TO: Honorable County Councilmembers
Honorable Executive Sidhu

THROUGH: Mark Personius, PDS Director *MP*

FROM: Becky Snijder van Wissenkerke, PDR Program Administrator *BLS*

DATE: May 11, 2021

SUBJECT: Request to amend Whatcom County Code 3.25A and the PDR Program Guidelines as recommended by the Purchase of Development Rights Oversight Committee

The Purchase of Development Rights Program messaging and outreach were evaluated in 2019. After such evaluation, the Purchase of Development Rights (PDR) Oversight Committee recommends changing the program's name to the Whatcom County Conservation Easement Program. This proposed name better represents the program's purpose: purchasing conservation easements that will protect important agricultural lands, forestland, and ecological areas in Whatcom County. Since the program's establishment, development rights have been removed by placing conservation easements on properties. These conservation easements also protect the land by placing other restrictions, such as limiting the amount of impervious surfaces and prohibiting any use not conducive to agriculture, forestry, or the protection of ecological areas.

In addition to this proposed program name change, the PDR Oversight Committee and PDR Program staff have reviewed Whatcom County Code 3.25A and the PDR Program Guidelines and have identified additional changes that will improve the program's administration. The major change is revising the program's site selection criteria to better identify properties with high conservation value. In 2018, the program expanded to include the protection of forestland and important ecological areas as secondary goals to the program's primary goal of farmland preservation. The current site selection criteria is designed to rank farmland and does not accurately evaluate valuable forestland or important ecological areas. The proposed program guidelines and scoring criteria, as presented in the attached documents, continue to prioritize the protection of agricultural applications while also identifying important forestland and ecological areas for protection.

The PDR Oversight Committee and PDR Program staff recommend this proposed name change and updated guidelines as detailed in the attached ordinance. We look forward to discussing these recommended changes with you.

Please call Becky Snijder van Wissenkerke, PDR Program Administrator, with any questions or concerns at (360)778-5956.

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
PURCHASE OF DEVELOPMENT RIGHTS PROGRAM**

WHEREAS, Whatcom County government recognizes agriculture and forestry as major contributors to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural and forestry lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring "open space land, farm and agricultural land, and timber land, and a significant Conservation Futures fund balance is available for additional farm land protection efforts"; and

WHEREAS, Ordinance #2002-054 adopted Whatcom County Code Title 3.25A that authorized the creation of a Purchase of Development Rights (PDR) Program that offers voluntary farm agreements that include the purchase of agricultural conservation easements on farmable land within Whatcom County; and

WHEREAS, Ordinance #2002-054 and WCC 3.25A established a Purchase of Development Rights Oversight Committee to provide review and assistance to the PDR Program Administrator; and

WHEREAS, The Whatcom County Council adopted the PDR Guidelines Document through Resolution #2002-040 which includes specific direction for program administration and conservation easement acquisitions; and

WHEREAS, Ordinance #2018-065 amended Whatcom County Code 3.25A to direct the PDR Program to also offer voluntary agreements to purchase forestry and ecological conservations easements on working forestlands and important ecosystem areas within Whatcom County; and

WHEREAS, The PDR Program messaging was evaluated in 2019 and the Purchase of Development Rights Oversight Committee recommended changing the program's name to the Whatcom County Conservation Easement Program, and

WHEREAS, The Purchase of Development Rights Oversight Committee has updated the program guidelines so as to better identify properties with high conservation value, and

WHEREAS, The Purchase of Development Rights Oversight Committee voted unanimously on April 23, 2021 to recommend approval of the proposed program name change, updated guidelines, and updates to Whatcom County Code 3.25A.

1 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that
2 Whatcom County Code 3.25A is hereby amended as outlined in Exhibit A to this ordinance.
3

4 **BE IT ALSO ORDAINED** by the Whatcom County Council that the PDR Program
5 Guidelines are also amended as outlined in Exhibit B to this ordinance.
6

7 **ADOPTED** this ____ day of _____, 2021.
8
9

10
11 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

12
13 _____
14 Dana Brown-Davis, Clerk of the Council
15

Barry Buchanan, Council Chair
16

17
18 APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

19
20 Approved by email/C Quinn/B Snijder
21

22 Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

25
26 Date Signed: _____

Exhibit A

1 Chapter 3.25A
2 ~~AGRICULTURAL, FORESTRY, AND ECOLOGICAL PURCHASE OF DEVELOPMENT RIGHTS~~
3 ~~PROGRAM~~ WHATCOM COUNTY CONSERVATION EASEMENT PROGRAM
4
5 Sections:
6 **3.25A.010 Short title.**
7 **3.25A.020 Purpose.**
8 **3.25A.030 Applicability.**
9 **3.25A.040 Definitions.**
10 **3.25A.050 Designation of program administrator – Powers and duties.**
11 **3.25A.060 ~~Purchase of development rights~~ Conservation easement program oversight committee**
12 **established – Powers and duties.**
13 **3.25A.070 Eligibility criteria.**
14 **3.25A.080 Ranking system.**
15 **3.25A.090 Conservation easement terms and conditions.**
16 **3.25A.100 Application and evaluation procedure.**
17 **3.25A.110 Purchase of ~~development rights~~ conservation easements procedure.**
18 **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**
19 **3.25A.130 Authorization.**

Comment [BSvW1]: Name changed to highlight the end goal (conservation easement protecting the land) rather than the method (purchasing development rights)

20
21 **3.25A.010 Short title.**
22 This chapter shall be known and may be cited as the “~~Agricultural, Forestry, and Ecological Purchase of~~
23 ~~Development Rights Program~~ Whatcom County Conservation Easement Program.” For the purpose of
24 this chapter this program shall be known as the “~~PDRCEP~~” program. (Ord. 2018-065 Exh. A; Ord. 2013-
25 015 Exh. A; Ord. 2002-054 § 1).
26

27 **3.25A.020 Purpose.**
28 To establish a voluntary agricultural, forestry, and ecological ~~purchase of development~~
29 ~~rights~~ conservation easement program for Whatcom County which will enhance the protection of the
30 county’s farmland, forestland, and important ecosystem areas, enhance the long-term viability of the
31 agricultural and forestry enterprises within the county and provide public benefit by retaining properties
32 in permanent resource use, in addition to the protection of ecosystem functions and values. (Ord. 2018-
33 065 Exh. A; Ord. 2002-054 § 1).
34

35 **3.25A.030 Applicability.**
36 The ~~PDR program~~ CEP shall be available for all qualifying lands, as identified in the ~~PDR program~~ CEP
37 guidelines, except those lands under the ownership or control of the United States of America, the state
38 of Washington or an agency or instrumentality thereof. Any conservation easement acquired pursuant
39 to this chapter shall be voluntarily offered by the owner. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).
40

41 **3.25A.040 Definitions.**
42 The following definitions shall apply in the interpretation and implementation of this chapter:
43

44 “Administrator” is that person placed in a managerial position over the daily operations of the ~~PDR~~
45 ~~program~~ CEP. The administrator shall serve as a direct liaison to the program.
46

47 “Conservation easement” means a nonpossessory interest in one or more parcels by one or more
48 qualified easement holders under WCC 3.25A.090(B) acquired under RCW 64.04.130, whether the

49 easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or
50 donation pursuant to the ~~PDR program~~CEP guidelines, imposing limitations or affirmative obligations for
51 the purpose of retaining or protecting agricultural, forestry, and ecosystem values of the parcel or
52 parcels.

53
54 “Development rights” means an interest in and the right to use and subdivide land for any and all
55 residential, commercial and industrial purposes and activities which are not incident to agricultural,
56 forestry, and/or ecosystem uses.

57
58 “Owner” means the owner or owners of the fee simple interest of the parcel.

59
60 “Parcel” means a legal lot of record, lawfully recorded in the Whatcom County auditor’s office. A
61 conservation easement may contain one or more parcels; for purposes of this chapter the term “parcel”
62 shall include all parcels covered by, or proposed to be covered by, the conservation easement.

63
64 The “~~PDR program~~CEP guidelines” shall be adopted by county council and contain the rules and
65 regulations under which the ~~PDR program~~CEP operates. They include eligibility criteria, site selection
66 criteria, a standard conservation easement and other procedures and information necessary to ensure
67 fair and consistent administration of the ~~PDR program~~CEP.

68
69 “Qualifying lands” means those properties meeting the eligibility criteria established in the ~~PDR~~
70 ~~program~~CEP guidelines for which ~~development rights~~conservation easements may be purchased
71 pursuant to this chapter. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

72
73 **3.25A.050 Designation of program administrator – Powers and duties.**

74 A. Designation. The administrator shall be designated by and report to the director of planning and
75 development services.

76
77 B. Powers and Duties. The administrator or his or her designee shall administer the ~~PDR program~~CEP
78 and shall have powers and duties to:

79
80 1. Establish reasonable and standard procedures and forms consistent with this chapter and the ~~PDR~~
81 ~~program~~CEP guidelines for the administration and implementation of the program.

82
83 2. Promote the program in cooperation with the ~~PDR-CEP~~ oversight committee by providing
84 educational materials to the public and conducting informational meetings.

85
86 3. Investigate and pursue, in conjunction with the county, state, federal and other programs available,
87 to provide additional public and private resources to fund the program and to maximize private
88 participation.

89
90 4. Evaluate and rank all applications to determine their eligibility and provide assistance to the ~~PDR~~
91 ~~CEP~~ oversight committee in ranking properties.

92
93 5. Coordinate the preparation of appraisals.

94
95 6. Negotiate conservation easement terms and value with the owner or owners.

96

97 | 7. Provide staff support to the county council, the PDR-CEP oversight committee, and the county's
98 | authorized appraiser.
99 |
100 | 8. For each conservation easement accepted into the program, establish baseline data, and assure
101 | that the terms and conditions of the easement are monitored and complied with by coordinating a
102 | monitoring program with each easement holder. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).
103 |
104 | **3.25A.060 ~~Purchase of development rights~~Conservation easement program oversight committee**
105 | **established – Powers and duties.**
106 | A. Establishment. The PDR-CEP oversight committee is hereby established, as follows:
107 |
108 | 1. The committee shall consist of seven members appointed by the county executive and confirmed by
109 | county council. Each member shall be a resident in and of Whatcom County. The committee shall be
110 | comprised of three farmers, one individual representing farm-supporting businesses, one individual
111 | possessing real estate experience, one citizen (nonfarmer) from the unincorporated county, and one
112 | citizen (nonfarmer) from an incorporated city. No members may have an ownership interest in any
113 | of the lands submitted for purchase pursuant to this chapter.
114 |
115 | 2. The members of the committee shall serve at the pleasure of the county council. ~~The initial terms of~~
116 | ~~the members shall be as follows: two members shall be for two years; three members shall be for~~
117 | ~~three years; and two members shall be for four years. Each term after the initial~~Each term shall be
118 | for four years.
119 |
120 | 3. The members of the committee shall serve without pay, but the county council may, at its
121 | discretion, reimburse members for actual and necessary expenses incurred in the performance of
122 | their duties.
123 |
124 | 4. The committee shall elect a chairperson, ~~and~~ vice-chairperson ~~and secretary~~ at its first meeting
125 | each calendar year. ~~The secretary need not be a member of the committee.~~
126 |
127 | 5. The administrator shall be an ex officio member of the committee.
128 |
129 | B. Purpose. To provide oversight and evaluation for the county ~~PDR program~~CEP. The PDR-CEP oversight
130 | committee's role is to advise the council in the selection of eligible lands offered for PDR-CEP
131 | acquisition.
132 |
133 | C. Powers and Duties. The PDR-CEP oversight committee shall have the powers and duties to:
134 |
135 | 1. Promote the program, in cooperation and under the guidance of the administrator, by providing
136 | educational materials to the public and conducting informational meetings.
137 |
138 | 2. Review and make recommendations to the administrator and the county council as to which
139 | conservation easements should be purchased.
140 |
141 | 3. Annually review the ~~PDR program~~CEP guidelines and recommend to the county council any changes
142 | needed to maintain the program's consistency with the comprehensive plan, or to improve the
143 | administration, implementation and effectiveness of the program.
144 |

Comment [BSvW2]: All members serve 4 years during their first term

Comment [BSvW3]: Staff provide secretary duties

145 4. Provide an annual report of program accomplishments to county council and county executive.

146
147 D. Organization – Meetings. Meetings of the committee shall be open and accessible to the public and
148 shall be subject to the Open Public Meetings Act. The committee shall determine its own meeting
149 schedule but shall meet at least annually. A public comment period will be provided at each meeting.
150 Written records of meetings, decisions, findings and recommendations shall be kept and such records
151 shall be public. The committee shall adopt its own rules and procedures for the conduct of business. The
152 committee shall elect a chairperson from among its members who shall preside at its meetings. A
153 quorum shall consist of four members present and the committee shall operate on a “majority rule”
154 basis.

155
156 E. Technical Advisory Committee. A technical advisory committee, without voting privileges, may be
157 formed to advise the ~~PDR-CEP~~ oversight committee on technical/scientific matters as needed.
158 Representatives may include but not be limited to individuals from the following agencies: Cooperative
159 Extension Service, National Resource Conservation Service and Whatcom Conservation District. (Ord.
160 2018-065 Exh. A; Ord. 2002-054 § 1).

161
162 **3.25A.070 Eligibility criteria.**

163 In order for a parcel to be eligible for a conservation easement, it must ~~be located outside of an~~
164 ~~established urban growth area and within Rural 2A, Rural 5A*, Rural 5A, Rural 10A, Residential Rural,~~
165 ~~Rural Residential – Island, Rural Forestry, or Agriculture zoned land and meet any additional~~ eligibility
166 criteria as defined in the ~~PDR program CEP~~ guidelines. (Ord. 2018-065 Exh. A; Ord. 2011-025 § 1 Exh. A;
167 Ord. 2002-054 § 1).

168
169 ~~*The asterisk refers to Rural 5A areas depicted on the official zoning maps with an asterisk that are~~
170 ~~subject to WCC 20.36.252, Rural residential density overlay.~~

171
172 **3.25A.080 Ranking system.**

173 In order to effectuate the purposes of this chapter, parcels for which conservation easement
174 applications have been received shall be evaluated by utilizing the site selection criteria as contained in
175 the ~~PDR program CEP~~ guidelines. The ranking system shall be used to prioritize the acquisition of
176 conservation easements. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

177
178 **3.25A.090 Conservation easement terms and conditions.**

179 Each conservation easement shall conform with the requirements of this chapter. The deed of easement
180 shall be in a form approved by the county attorney, and shall contain, at a minimum, the provisions
181 incorporated in the standard agricultural, ~~forestry, or ecological~~ conservation easement. Central to the
182 purpose of the ~~PDR program CEP~~ are the following:

183
184 A. Allowable Uses. Uses that are compatible with the long-term productivity of the soil for the pursuit of
185 farming or forestry enterprises and/or protection of ecosystem functions and values.

186
187 B. Designation of Easement Holders. The county shall be the easement holder, and, if designated by the
188 county council, one or more other public bodies or qualified organizations, as defined in RCW 64.04.130.

189
190 C. Conservation Easement Duration. A conservation easement acquired under the terms of this chapter
191 shall be in perpetuity. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

Comment [BSvW4]: Leave criteria in guidelines and not list in code.

Comment [BSvW5]: Ord. 2018-065 expanded program to also include forestry and ecological conservation easements.

193 **3.25A.100 Application and evaluation procedure.**

194 Beginning in the first year following the adoption of the ordinance codified in this chapter and
195 continuing thereafter, the county shall conduct a voluntary property selection process generally as
196 follows and pursuant to the PDR program CEP guidelines:

197
198 A. Application. Owners of qualifying lands ~~will be invited to make application for purchase of~~
199 ~~development rights may apply to the CEP- at any time by the county by giving notice in one newspaper of~~
200 ~~general circulation.~~ Application materials will be provided by the administrator and will include, at a
201 minimum, a standard application form and information about the PDR program CEP. Applications shall
202 be submitted to the administrator and reviewed for completeness.

203
204 B. Evaluation. The administrator shall review and determine eligibility and priority classification of
205 applications. The applications ranked by the administrator shall be forwarded to the PDR CEP oversight
206 committee. The committee shall review the applications and establish parcels for easement purchase
207 based on selection criteria contained in PDR program CEP guidelines. The committee shall then forward
208 the parcels to the county council which shall review and prioritize parcels on which it will seek to
209 purchase conservation easements.

210
211 C. Appraisal. ~~Based on anticipated funding, the administrator shall estimate the number of appraisals~~
212 ~~that can be completed during the fiscal year. For those applications that meet the requirements of~~
213 ~~subsection B of this section, the committee shall select applications to be appraised cause an appraisal~~
214 ~~of the applicant's development rights to be made~~ in accordance with PDR program CEP guidelines.

215
216 D. Requirements and Deadlines May Be Waived. Any requirement or deadline set forth in this chapter or
217 the PDR program CEP guidelines may be waived by the county council if, for good cause, it is shown that
218 urgent circumstances exist that warrant consideration of an application. Under such circumstances the
219 council may purchase a conservation easement at any time and through any process it deems necessary.

220
221 E. Reapplication. An owner of a parcel not selected by the county council for purchase of a conservation
222 easement may reapply in the future. (Ord. 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

223
224 **3.25A.110 Purchase of ~~development rights~~ conservation easements procedure.**

225 Each application for a conservation easement shall be processed and evaluated pursuant to the
226 requirements as contained in the PDR program CEP guidelines which will include at a minimum the
227 following:

228
229 A. Development Rights Conservation Easement Sale. ~~Based on anticipated funding the administrator~~
230 ~~shall estimate the number of development rights that can be acquired from the initial pool of parcels~~
231 ~~identified in WCC 3.25A.100(B). The administrator shall coordinate negotiations with the property~~
232 ~~owners. Upon completion of negotiations, the~~ The administrator shall arrange for an appraisal of the
233 ~~development rights value of placing a conservation easement on the property, to be completed by an~~
234 independent county-authorized appraiser. ~~The value of the conservation easement will include the~~
235 ~~value from eliminating select development rights and imposing certain use restrictions in perpetuity in~~
236 ~~order to protect the agricultural, forestry, and ecosystem values of the property.~~ The PDR CEP oversight
237 committee and administrator shall review the results of the appraisal. The administrator shall, in writing,
238 invite the property owner(s) to sell grant a conservation easement to the county ~~development rights~~ for
239 the amount of the appraised value of such development rights conservation easement, subject to the
240 terms and conditions of a proposed deed of easement. Property owners desiring to ~~sell and/or donate~~

Comment [BSvW6]: When the program started, it was set up to have an application deadline, giving a pool of applicants to evaluate. This was set up with the expectation that there would be a high volume of applicants. Due to a lower volume of applicants, the program has been operating on a rolling basis.

Comment [BSvW7]: Applications to be appraised will often be for projects that have already received an agreement for matching funds. This generally includes applicants who applied a previous year.

Comment [BSvW8]: Not necessary to budget for applications received this year, since the conservation easement sale occurs 2-3 years after application is submitted. Administrator can track funding when seeking council approval to purchase.

Comment [BSvW9]: Conservation easements do more than remove development rights. Some value comes from use restrictions. Examples of use restrictions in agricultural conservation easements include: limiting the amount of impervious surfaces, prohibiting uses that impair the ability to farm, limitations on separating water rights from the property, prohibiting mining and exporting material from property, prohibiting the granting of rights-of-way for power lines, among others.

Use restrictions in forestry conservation easements are similar to those in agricultural conservation easements, but with a prohibition on uses that impair the ability to forest the property.

Ecological conservation easements may include the following restrictions: prohibiting the harvest of timber, prohibiting motorized vehicles, prohibiting excavation or grading.

241 | ~~development rights~~grant a conservation easement shall submit a written acceptance of the offer to sell.
242 | Nothing in this chapter shall compel an owner to submit an acceptance of the offer to sell.

243 |
244 | B. Acceptance. ~~An offer to sell development rights~~Requests to purchase conservation easements shall be
245 | ~~forwarded made~~ to the county council for acceptance.

246 |
247 | C. Conservation Easement Established. A conservation easement shall be established when the owner
248 | and an authorized representative of the holder of the easement have each signed the deed of
249 | easement. The deed shall be recorded in the Whatcom County auditor's office.

250 |
251 | ~~D. Offers Not Made – Offers Not Accepted – Invitation to Other Owners. If an owner invited to sell elects~~
252 | ~~not to do so, then the county administrator may send an invitation to sell to the owner(s) of the next~~
253 | ~~highest prioritized parcel(s) remaining on the list of parcels.~~

254 |
255 | E. Costs. If the county council ~~accepts an offer to sell development rights~~approves the purchase of a
256 | conservation easement, the county may pay all other costs including environmental site assessments,
257 | surveys, recording costs, if any, and other charges associated with closing. However, the county shall not
258 | pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or
259 | other advice, or expenses or fees in connection with the release and subordination of liens to the
260 | easement purchased by the county. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).

261 |
262 | **3.25A.120 Restriction on buy-back – Extinguishment and exchange of easements.**

263 | If circumstances arise that render the purpose of this easement impossible to accomplish, the easement
264 | can be extinguished only by judicial proceedings. In the event of such an extinguishment or the taking of
265 | the property by the exercise of the power of eminent domain, grantors shall pay to Whatcom County an
266 | amount determined by subtracting the fair market value of the property subject to this easement from
267 | the fair market value of the property unrestricted by this easement, at the time of extinguishment or
268 | condemnation, if Whatcom County is not compensated for its property interests at the time of the
269 | extinguishment or condemnation. Other details regarding restrictions on buy-back or extinguishment as
270 | may be deemed necessary shall be contained in the PDR program CEP guidelines, and/or the easement
271 | deed. (Ord. 2018-065 Exh. A; Ord. 2013-015 Exh. A; Ord. 2002-054 § 1).

272 |
273 | **3.25A.130 Authorization.**

274 | A. The county is hereby authorized to acquire ~~development rights~~conservation easements from lands
275 | described and prioritized in WCC 3.25A.080. Such acquisition may be accomplished by purchase, gift,
276 | grant, bequest, devise, covenant or contract but only at a price which is equal to or less than the
277 | appraised value determined as provided in this chapter and the PDR program CEP guidelines.

278 |
279 | B. If the owner so elects, the county is authorized to pay the purchase price in a lump-sum single
280 | payment at time of closing, or to enter into contract for installment payments against the purchase
281 | price. When installment purchases are made, the county is authorized to pay interest on the declining
282 | unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the
283 | time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

284 |
285 | ~~C. After county acquisition of development rights, the county may purchase the remaining agricultural,~~
286 | ~~forestry, or ecosystem rights or other property interests in such land only when requested by the owner~~
287 | ~~and when such acquisition is necessary to maintain agricultural, forestry, or ecosystem uses of the~~
288 | ~~property. (Ord. 2018-065 Exh. A; Ord. 2002-054 § 1).~~

Comment [BSvW10]: Applications accepted on a rolling basis, with the purchase of easements also occurring continuously. There is no wait list.

Comment [BSvW11]: Amended and added to 3.25A.110.A

Exhibit B

Changes

Whatcom County

~~Agricultural, Forestry, and Ecological~~ ~~Purchase of Development~~ ~~Rights~~ Conservation Easement ~~PROGRAM~~ ~~GUIDELINES~~ Program Guidelines

Revised version adopted April 9, 2013,
Second revision adopted November 20, 2018
Third revision adopted [DATE]

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I. INTRODUCTION

These Program Guidelines are authorized under WCC Title 3.25A and serve as rules and procedures for administering the Whatcom County ~~Agricultural, Forestry, and Ecological Purchase of Development Rights (PDR)~~Conservation Easement Program (CEP).

The Guidelines serve two functions:

- A. To provide an overview of the land preservation process for the property owner. Specifically, this information can be found in Section V.
- B. To establish the rules and operational procedures that the ~~PDR-CEP~~ Oversight Committee and the Administrator must follow when operating a ~~Purchase of Development Rights program~~Conservation Easement Program.

II. ~~PDR PROGRAM~~CEP OBJECTIVE AND PRINCIPLES

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Responding to the loss of County farmland, the Whatcom County Executive initiated the development of a Purchase of Development Rights (PDR) program in September of 2001. A PDR Advisory Committee comprised of farmers, citizens and conservation organizations was formed and tasked with assisting County staff in the development of a proposal for County Council consideration. The Purchase of Development Rights Program was enacted through Ordinance 2002-054 in September of 2002.

Since that time, Whatcom County continues to experience a rapid development rate. In Response to the ~~continued~~ loss of ~~agricultural land and of other land types such as~~ forest resource lands and areas of ecological importance, the program expanded in 2018 to protect working forestlands and important ecosystem areas. This expansion was enacted through Ordinance 2018-065. In order to better reflect the program's purpose, the program changed names in 2021 to the Whatcom County Conservation Easement Program. This change was enacted through Ordinance 2021-XXX. These program guidelines have been updated accordingly.

Comment [BSvW1]: Update if approved.

A. Objective

The primary objective of the Whatcom County ~~Purchase of Development Rights~~Conservation Easement Program (CEP), in conjunction with other tools, is the protection of farmland. The secondary objective of the ~~PDR Program~~CEP is the protection of forestland and areas of ecological importance. The Whatcom County ~~Purchase of Development Rights~~Conservation Easement Program will help to sustain the farming and forestry enterprises as well as support healthy ecosystem function throughout Whatcom County.

B. Principles

The ~~PDR Program~~CEP provides a strategic tool to protect County farmland, forestland, and areas of ecological importance.

1. Preserve the County's Agricultural lands, Forestlands and Areas of Ecological Importance

Encourage the protection of a critical mass of agricultural and forestry land to sustain the farm-related and forestry-related businesses and activities that are necessary to support the agricultural and forestry industries in Whatcom County. Additionally, the Program will encourage the protection of areas of ecological importance necessary to sustain ecosystem health and function.

The primary ~~PDR Program~~CEP emphasis will be:

- a. Reduce conversion of land to non-agricultural uses within the Agricultural District;
- b. Provide a buffer to discourage encroachment into the Agricultural District;
- c. Consolidate and protect areas of agricultural land; and
- d. Protect agricultural lands located outside the Agricultural District that are under increased pressure of development.

| **The secondary ~~PDR Program~~CEP emphases will be:**

- a. Reduce conversion of land to non-forestry uses within the Forestry Districts;
- b. Provide a buffer to encroachment of the Forestry Districts;
- c. Consolidate and protect areas of forestry land;

- d. Address commercially significant forestry lands outside the Forestry Districts that are under pressure of development.
- e. Protect areas of ecological importance and support and enhance ecosystem functions within agricultural and forestry lands;
- h. Improve and support habitat connectivity and protection of critical habitat corridors.

2. Offer Effective Program Design

Maintain a voluntary tool for the preservation of productive agricultural and forestry lands, as well as areas of ecological importance in the County that will:

- a. Provide farmers and foresters with the market based economic value for agricultural and forestry land without selling the land;
- b. Provide property owners with the market based economic value for areas of ecological importance without selling the land.
- c. Support and promote ongoing agricultural and forestry activities by offering an attractive option for farmers, foresters, and landowners;
- d. Support and promote ecosystem function by offering an attractive option for landowners; and
- e. Provide for ongoing monitoring and enforcement.

3. Leverage Program Impact and Efficiency

Enhance and support a coordinated approach to the preservation of the agricultural and forestry lands, as well as areas of ecological importance that will:

- a. Create community support for agricultural and forestry preservation initiatives;
- b. Create community support for the protection of areas of ecological importance;
- c. Complement and foster other County programs and policies to preserve farming and agricultural lands;
- d. Complement and foster other County programs and policies to preserve forestry and forestry lands;
- e. Complement and foster other County programs and policies to enhance ecosystem function and protect areas of ecological importance; and
- c. Leverage other public and private funding sources and provide or increase property owner incentives and program effectiveness.

III. ELIGIBILITY CRITERIA

A. Priority Consideration

Areas around the county have been identified to receive priority consideration for ~~PDR Program~~CEP participation.

Agricultural priority areas (Appendix A) include a combination of the ~~twelve initial PDR Target Areas~~, Ten Rural Study Areas, Watershed Improvement District areas, ~~in addition to the~~ lands within the Agriculture Zone, ~~and additional areas identified in the 2019 Agricultural Landscape Analysis. The 2019 Agricultural Landscape Analysis also highlights active crop land and contiguous blocks of agricultural lands as identified by the Washington State Department of Agriculture as well as suitable agricultural soils as identified by USDA Natural Resource Conservation Service.~~ Preservation of these areas protect designated agricultural lands and can establish a perimeter of PDR farmlands to protect against development encroachment into large blocks of agricultural lands. These lands, due to their soils, land use, and proximity to core agricultural areas, are deemed priority farmlands for program participation due to their vulnerability for conversion to non- agricultural uses.

Comment [BSvW2]: Maps have been updated to include the 2019 Landscape Analysis data.

Forestry priority areas (Appendix B) include lands located within the Rural Forestry zone and areas designated by the Washington State Department of Natural Resources as being priority for protection from conversion under Washington's Forest Action Plan. ~~The 2019 Forestry Landscape Analysis did not identify additional priority areas.~~

Ecological priority areas (Appendix C) include lands containing a mapped Habitat Conservation Area or within 165' of habitat conservation feature, ~~such as. This includes~~ fish bearing streams, areas identified under the Washington State Department of Fish and Wildlife's Priority Habitats and Species, and the Chuckanut Wildlife Corridor. ~~Ecological priority areas also include~~ Additionally the mapped FEMA Floodplain and Flood Hazard areas, ~~the have been included in addition to a~~ 300' buffer of the Historic Meander Zone, ~~and additional areas identified in the 2019 Ecological Landscape Analysis. The 2019 Ecological Landscape Analysis also highlights watershed protection recommendations and freshwater habitat as identified by the Washington Department of Ecology, among other areas.~~

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B. ~~PDR Program~~CEP Eligibility

Two factors will be important in determining eligibility:

1. Availability of funding to expand the program and
2. Advancement of ~~PDR Program~~CEP objectives. Priority lands will continue to receive preference over other lands through weighted selection criteria.

All applicant properties for ~~PDR Program~~CEP participation must be:

1. Completely or partially within an Agriculture, Rural, Rural Residential, or Rural Forestry zoning designations. Properties located in Urban Growth

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Areas are ineligible to participate in the program, unless coordination with cities is a component of an application.

2. At least 1 acre in size.

3. Removing all development rights if the parcel is smaller than 10 acres.

Comment [BSvW3]: Added to match requirements in Section VI.C.1.c.

~~Applications received on parcels smaller than 10 acres may not retain any development rights.~~

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IV. SITE SELECTION CRITERIA

All valid applications will be reviewed to determine if the acquisition of development rights will promote the ~~PDR program's~~ **CEP's** goals and priorities. Selection criteria have been developed to guide, but not control, the review and assessment of eligible properties during selection.

Valid and accepted offers on eligible properties of greater points shall be considered for purchase with available funds before properties receiving lower scores. The criteria, which will be used to evaluate the applications, are outlined below.

Rating instructions: An application will be scored under one of three types of conservation easement selection criteria: 1) Agricultural, 2) Forestry, or 3) Ecological. The agricultural selection criteria allow for a score of up to 100, while the forestry and ecological selection criteria allow for a score of up to 100. This ensures that agricultural protection is the primary emphasis of the program, with all five criteria sections assessed. There are five to six criteria sections and each criteria section is rated and assigned a point value based on a 100 point scale. Then each section is assigned a weight factor. The five-six agricultural weight factors add up to 1.1 and the five forestry and ecological weight factors each add up to 1.0. When total point values for a section are multiplied by the weight factor, a score will be reached for that section. The total of the 5-section scores result in the final applicant score. Staff performs the ranking, with review and adjustment by the PDR-CEP Oversight Committee.

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Comment [BSvW4]: In 2018, the Program expanded to also include forestry and ecological conservation easements. Scoring needed to be updated to address this change, which resulted in three easement categories.

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A. Agricultural Site Selection Criteria

1. General Site Evaluation

The points for each criteria are based on a 100 point scale. Higher points are given to site characteristics that are more desirable, such as parcel size, characteristics that reflect a site's threat of conversion, and characteristics that make a site more desirable to farming, such as available water rights.

a. Total size of parcel(s) (nominal acres)

1a. 0 – 49.99	0 points
2b. 10 – 19.99	15 points
3c. 20 – 49.99	30 points
4d. 50 – 79.99	70 points
5e. ≥80	100 points

b. Number of existing development rights offered under current zoning

a. 1-2	20 points
b. 3	40 points
c. 4	60 points
d. 5	80 points
e. ≥6	100 points

e.b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)

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a1. ≥ 1 mile.....0 points
b2. $\frac{0.50}{2}$ to $\frac{0.99}{4}$ mile.....25
points

e3. $\frac{0.25}{4}$ to $\frac{0.49}{2}$ mile.....50 points

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- ~~d4.~~ < ~~0.25~~^{1/4} mile.....-75 points
~~e5.~~ Adjacent.....-100 points

~~d.a. Percent of parcel actively farmed~~

- ~~a. 0-25%25 points~~
~~b. 26-50%50 points~~
~~c. 51-75%75 points~~
~~d. >75%100 points~~

~~e.c. Number of legal lots of record~~

- ~~1a. 0-2.....-20 points~~
~~2b. 3.....-40 points~~
~~e3. 4.....-60 points~~
~~4d. 5.....-80 points~~
~~5e. ≥>= 6.....-100 points~~

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~~d. Removal of all remaining unused development rights?~~

- ~~1. Unused development rights remaining0 points~~
~~2. All removed.....100-
points~~
~~2. Development rights remaining0 pts~~

~~e. Is located Number of within a priority areas parcel is located in:~~

- ~~1a. In priority
area0.....400 points~~
~~2b. Not in a priority
area1.....-500 points~~
~~3. 2-3.....100 points~~

~~f.a. Legal water availability documentation~~

- ~~a. Certified Water Right/Access to public water.....100 pts~~
~~b. Water Claim50 pts~~
~~c. No Water documentation or legal water access.....0 pts~~

~~g.a. Proximity to major roads or road intersections~~

~~(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)~~

- ~~1. Property is at an intersection of major roads.....100 Points~~
~~2.1. Property is within 1,500 feet of the intersection
of two major roads.....75 Points~~
~~3.1. Property fronts on a major road.....50 Points~~
~~4.1. Property is within 2,500 feet of a major road.....25 Points~~

~~h.a. Threat of Conversion/Parcelization~~

~~Total Number of Parcels in surrounding ¼ mile~~

- ~~a) Less than 20 parcels..... 50 Points~~
~~b) 20 – 50 parcels..... 100 Points~~
~~c) 50 – 100 parcels..... 50 Points~~
~~d) more than 100 parcels..... 0 Points~~

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.235, but is subject to ongoing review by the Committee).

2. Development Pressure

a. Number of existing unused development rights offered under current zoning

- 1a. 1-2..... 20 points
2b. 3..... 40 points
3e. 4..... 60 points
4d. 5..... 80 points
5e. ≥/≥6..... 100 points

b. Proximity to major roads or road intersections

(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

1. Property is within 2,500 feet of a major road..... 25 points
2. Property fronts on a major road..... 50 points
3. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
4. Property is at an intersection of major roads..... 100 pPoints
Property is within 1,500 feet of the intersection
of two major roads..... 75 Points
Property fronts on a major road..... 50 Points
Property is within 2,500 feet of a major road..... 25 Points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

- 1.a) Less than < 20 parcels..... 50
pPoints
2.b) 20 – 50 parcels..... 100 pPoints
3.e) 51 – 100 parcels..... 50 pPoints
4.d) more than > 100 parcels..... 0
pPoints

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

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2.3. Land Soil Evaluation

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Productive farming, forestry and associated activities depend on soil capability (the suitability of soils for most types of field crops and/or timber production). Therefore, emphasis should be placed on the property's soil characteristics. The scoring system uses the NRCS Prime Farmland classifications, LESA classifications and APO soils classifications, including classification of soils of statewide importance as well as consideration given to site index score for forest soils. Highest points are assigned to better agricultural soils and lower points to poorer agricultural soils. Forest soils also receive additional points. Points are assigned based on the productivity and/or characteristics of the soil (profile, texture, slope, other). A soils chart is included as Appendix D. If a soil has a site index rating and a prime soil rating, the rating with the highest number of points will be applied.

Below is a table detailing the soil point system:

LESA Rating	APO or Non-APO Prime 1	Non-APO - Prime 2-8	Soils of Statewide Importance	Site Index
1	100	90	0	0
2	95	85	0	0
3	90	80	0	0
4	85	75	0	0
No Rating	80	70	50	0
Site Index Rating				
1	0	0	0	60
2	0	0	0	50
3	0	0	0	40
4	0	0	0	30
5	0	0	0	20

Farm applications receive points for this section proportional to the percentage of each soil type that exists on the property. An example of how this would work follows: A farm under review is 40 acres, of which 29.79 acres (about 75%) is soil 179-Whatcom Silt Loam 4-9% slopes, which is classified as LESA 4, APO Prime 1; and 10.21 acres (about 25%) is soil 180-Whatcom Silt Loam 9-15% slopes, which is not classified as APO or Prime, but is a soil of Statewide Importance. This farm would score a total of 76.07 points for this Section, as shown:

A	B	C	D	E	F	G	H	I	J	K
Soil #	Area (in acres)	% (B/Total area)	APO Soil	Prime 1- 6?	LESA Rating	Prime Rating	Statewide Soil	Site Index	Points	score (J*C)
179	29.79	74.48%	Y	Y	4	1	0	2	85	63.30
180	10.21	25.53%	N	N	0	0	yes	2	50	12.76
Total area	40									76.07

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Land Soil Evaluation section has been 0.35, but is subject to ongoing review by the Committee).

4. Agriculture Evaluation

a. Percent of ~~parcel~~property actively farmed

- 1a. 0-25% 25 points
- 2b. 26-50% 50 points
- 3c. 51-75% 75 points
- 4d. >75% 100 points

b. Legal water availability documentation

1. No Water documentation or legal water access..... 0 points
2. Water Claim 50 points
3. Certified Water Right/Access to public water..... 100 points
- b. Water Claim 50 pts
- c. No Water documentation or legal water access..... 0 pts

c. Parcel is located in Agriculture District and is less than 40 acres or parcel is located in a Rural Study Area?

1. No..... 0 points
2. Yes..... 100 points

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3. Ecological Evaluation

~~The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds.~~

- ~~a. Protection (Overall importance to Water flow processes)~~
- | | |
|---|--------------------|
| a. Highest protection | 100 pts |
| b. Protection | 75 pts |
| c. Protection/Restoration | 50 pts |
| d. e. Conservation (no change) | 25 pts |

~~b. a. Water Flow Restoration — Is property owner willing to restore ecosystem processes beyond the minimum required practices?~~

- | | |
|------------------------|-------------------|
| a. Yes | 50 pts |
| b. Maybe/No | 0 pts |

~~c. a. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)~~

- | | |
|-------------------|-------------------|
| a. Yes | 50 pts |
| b. No | 0 pts |

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for ~~Ecological-Agriculture~~ Evaluation section has been 0.150, but is subject to ongoing review by the Committee).

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4.5. Special Considerations

a. Site contains heritage/historical significance, i.e. Heritage Barn Registry

- | | |
|---------------------|------------------------|
| 1. 4- No | 0 points |
| Yes | 1050 points |
| 2. 2- No | 0 pts |

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~~—The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds.~~

~~b. Protection (Overall importance to Water flow processes):~~

- | | |
|--|-----------------------|
| 1. Conservation (no change) | 25 points |
| 2. Protection/Restoration | 50 points |
| 3. Protection | 75 points |
| 4. a- Highest protection | 100 points |
| b. Protection | 75 pts |
| Protection/Restoration | 50 pts |
| Conservation (no change) | 25 pts |

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~~c. Water Flow Restoration — Is property owner willing to restore ecosystem processes beyond the minimum required practices?~~

- | | |
|---------------------------|---------------------|
| 1. a- Maybe/No | 0 points |
|---------------------------|---------------------|

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2. Yes..... 1050
points
- b. Maybe/No..... 0 pts
- d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)
1. ~~a.~~ No..... 0 points
2. -Yes..... 1050
points
- b. No..... 0 pts
- b. Bargain Sale Opportunity below market value
1. 91% Full Value..... 0 pts
2. 71% 90% 33 pts
3. 50% 70% 66 pts
4. < 50% Full Value..... 100 pts
- e.a. Removal of all remaining development rights?
1. All removed..... 100 pts
2. Development rights remaining 0 pts
- d.a. Is located within a priority area:
- a. In priority area..... 100 pts
- b. Not in a priority area..... 0 pts

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations ~~Points~~ section has been 0.10, but is subject to ongoing review by the Committee).

5-6. Matching Funds ~~Secured~~ or Bargain Sale

1. 4-0% secured..... 0 points
2. 25% secured..... 25 points
3. 50% secured..... 50 points
4. 75% secured..... 75 points
5. 100% secured..... 100 points
2. 75% secured..... 75 pts
3. 50% secured..... 50 pts
4. 25% secured..... 25 pts
5. 0% secured..... 0pts

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for ~~Bonus Points~~ Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

B. Forestry Site Selection Criteria

1. General Site Evaluation

a. Total size of parcel(s) (nominal acres)

1. 0 – 9.99.....0 points
2. 10 – 19.99 15 points
3. 20 – 49.99.....30 points
4. 50 – 79.99.....70 points
5. ≥80..... 100 points

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b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)

1. >1 mile.....0 points
2. 0.50 to 0.99 mile.....25 points
3. 0.25 to 0.49 mile.....50 points
4. < 0.25 mile.....75 points
5. Adjacent.....100 points

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c. Number of legal lots of record

1. 0-2.....20 points
2. 3.....40 points
3. 4.....60 points
4. 5.....80 points
5. ≥6.....100 points

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d. Removal of all unused development rights?

1. Unused development rights remaining0 points
2. All removed.....100 points

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e. Number of priority areas parcel is located in

1. 0.....0 points
2. 1.....50 points
3. 2-3.....100 points

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

a. Number of existing unused development rights offered under current zoning

1. 1-2.....	20 points
2. 3.....	40 points
3. 4.....	60 points
4. 5.....	80 points
5. >6.....	100 points

b. Proximity to major roads or road intersections

(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

5. Property is within 2,500 feet of a major road.....	25 points
6. Property fronts on a major road.....	50 points
7. Property is within 1,500 feet of the intersection of two major roads.....	75 points
8. Property is at an intersection of major roads.....	100 points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

1. < 20 parcels.....	50 points
2. 20 – 50 parcels.....	100 points
3. 51 – 100 parcels.....	50 points
4. > 100 parcels.....	0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Forestry Evaluation

a. Site index soil score, spatially weighted

1. 5.....	20 points
2. 4.....	40 points
3. 3.....	60 points
4. 2.....	80 points
5. 1.....	100 points

b. Property is identified as priority forestland based on State Forest Action Plan?

1. No.....	0 points
2. Yes.....	100 points

c. Parcel is located in Rural Forestry District or is enrolled as Designated Forest Land?

1. No.....	0 points
2. Yes.....	100 points

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d. Proximity to existing and contiguous blocks of forestland

1. >0.5 mile..... 0 points
2. 0.26 – 0.5 mile..... 50 points
3. 0.11 – 0.25 mile 75 points
4. ≤0.1 mile..... 100 points

e. Property is located at access to other working forestland?

1. No..... 0 points
2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Forestry Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

a. Site contains existing or proposed trails

3. No..... 0 points
4. Yes..... 100 points

b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):

5. Conservation (no change)..... 25 points
6. Protection/Restoration..... 50 points
7. Protection..... 75 points
8. Highest protection..... 100 points

c. Is property owner willing to implement forest management practices beyond the minimum required practices?

1. Maybe/No..... 0 points
2. Yes..... 100 points

d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)

1. No..... 0 points
2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

1. 0% secured..... 0 points
2. 25% secured..... 25 points
3. 50% secured..... 50 points
4. 75% secured..... 75 points
5. 100% secured..... 100 points

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Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

C. Ecological Site Selection Criteria

1. General Site Evaluation

a. Total size of parcel(s) (nominal acres)

1. 0 – 9.99.....	0 points
2. 10 – 19.99.....	15 points
3. 20 – 49.99.....	30 points
4. 50 – 79.99.....	70 points
5. >80.....	100 points

b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)

1. ≥1 mile.....	0 points
2. 0.50 to 0.99 mile.....	25 points
3. 0.25 to 0.49 mile.....	50 points
4. < 0.25 mile.....	75 points
5. Adjacent.....	100 points

c. Number of legal lots of record

1. 0-2.....	20 points
2. 3.....	40 points
3. 4.....	60 points
4. 5.....	80 points
5. ≥6.....	100 points

d. Removal of all unused development rights?

1. Unused development rights remaining.....	0 points
2. All removed.....	100 points

e. Number of priority areas parcel is located in

1. 0.....	0 points
2. 1.....	50 points
3. 2-3.....	100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

a. Number of existing unused development rights offered under current zoning

1. 1-2.....	20 points
2. 3.....	40 points
3. 4.....	60 points
4. 5.....	80 points

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5. >6..... 100 points

b. Proximity to major roads or road intersections

(For purposes of this evaluation, "major roads" means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

1. Property is within 2,500 feet of a major road..... 25 points
2. Property fronts on a major road..... 50 points
3. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
4. Property is at an intersection of major roads..... 100 points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

1. < 20 parcels..... 50 points
2. 20 – 50 parcels..... 100 points
3. 51 – 100 parcels..... 50 points
4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Ecological Evaluation

The 2019 Landscape Analysis for the program is used to answer Questions 3.a through 3.c.

a. Protect water quality and quantity landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

b. Ecologically important aquatic areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

c. Ecologically important terrestrial areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

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- d. Additional ecologically important areas not included in landscape analysis score?
1. No..... 0 points
 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Ecological Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

- a. Site contains existing or proposed trails
1. No..... 0 points
 2. Yes..... 100 points

- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):

1. Conservation (no change)..... 25 points
2. Protection/Restoration..... 50 points
3. Protection..... 75 points
4. Highest protection..... 100 points

- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
2. Maybe/No..... 0 points
 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

6. 0% secured..... 0 points
7. 25% secured..... 25 points
8. 50% secured..... 50 points
9. 75% secured..... 75 points
- 10..... 100% secured..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

6. Final Score

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-140). The higher the score, the more closely the property meets the

Revised version adopted, November 20, 2018[DATE]

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goals of the program and hence is a higher priority for purchase and preservation. Properties which score less than 40 (forty) points will not be recommended for program participation. The ~~PDR-CEP~~ Oversight Committee retains the ability to add or subtract up to 5 points on any application. A write-up of committee opinion will be included in all council proceedings.

V. OVERVIEW OF ~~PDR PROGRAM~~CEP PROCEDURES

A. Outreach and Publicity

Step 1: The County shall ~~annually give notice in one newspaper of general circulation in each area where eligible lands are located which may be acquired~~ develop and distribute outreach materials for the CEP. Outreach ~~The notice~~ shall include the properties eligible to participate, the application process and applicable timeframes and extensions.

Comment [BSvW9]: Applications received on a rolling basis, so an annual notice is no longer applicable.

The Administrator may identify each property with potential development rights within priority consideration areas and provide written notification to the property owners.

B. Application and Ranking

Step 2: Voluntary pre-application screening. Interested property owners may meet with the County ~~PDR Program~~CEP Administrator (Administrator) to review their eligibility and special circumstances, if any.

Step 3: Application. An owner of land eligible for ~~PDR Program~~CEP participation submits an application for County acquisition of property or development rights. The application must be submitted on the form provided by the County. ~~Lot of Record application must be submitted simultaneously unless determination has already been completed.~~

Comment [BSvW10]: Information on Lot of Record in Step 4 below.

Step 4: Lot of Record/Density Determination. An owner of land eligible for ~~PDR Program~~CEP participation submits a Lot of Record application, ~~and signs a Letter of Intent that states that payment for this service must be made upon closing of the easement or should the applicant wish to withdraw their application.~~ This application determines legal status of lots being considered and determines that number of development rights remaining on said lots. ~~PDR Program application may be submitted simultaneously. The Lot of Record determination must be completed before an appraisal can occur.~~

Comment [BSvW11]: Payment due at submittal of application

Step 5: The Administrator reviews each application for completeness, determines if the subject property meets minimum eligibility criteria and assigns a preliminary score based upon the ~~PDR-CEP~~ site selection criteria.

Step 6: The ~~PDR-CEP~~ Oversight Committee reviews ~~PDR Program~~CEP applications and recommends proposed development rights acquisition utilizing the selection criteria. Recommendations for development right acquisition are prepared and forwarded to County Council to approve, deny, or recommend modification.

Step 7: The Administrator estimates the number of appraisals that can be initiated based on available funds and chooses ~~based on the top ranked parcels from the County Council's list of parcels~~ and the timeline of projects with secured grant funding.

Comment [BSvW12]: Appraisals are only valid for one year, so it is important to coordinate with grant timelines.

The property owner is notified in writing of eligibility status.

~~Step 8: Property owners disputing their ranking may request a reconsideration of their ranking to the PDR Oversight Committee within 14 days after receiving written notice. The Committee shall review the reconsideration request at the next regularly scheduled meeting. Special consideration will be given if applicant modifies the original offer to include a bargain sale. The PDR Oversight Committee may, at its discretion, change the site's rank, recommend the site for subsequent consideration, or deny the request.~~

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Comment [BSvW13]: Applications are received and reviewed on a rolling basis, so this no longer applies.

C. Title

Step 9: The Administrator initiates a title search. Closing is conditioned on the resolution of all unapproved title exceptions, within the County's sole discretion, which may require the receipt of subordination agreements or payoff letter.

D. Pricing Estimate and Appraisal

Step 10: The Administrator or designee provides preliminary estimate of value, and notifies the property owner of an estimated range of value within which the appraisal will likely fall. The Administrator or designee sends the applicant a letter of intent, including range of expected value. The letter calls for the signature of property owner(s), ~~and spells out conditions under which costs for further due diligence and the lot of record must be reimbursed to the county if the property owner chooses to withdraw from the program within a specified period of time.~~

Comment [BSvW14]: No longer applicable

Step 10: The Administrator or designee proceeds to verify assumptions through official county processes, such as a formal Lot of Record and density determination, and conduct other due diligence as necessary (such as water rights research and Title research and clearing).

Step 11: Unless Council and the Executive specifically authorize an alternate approach to determine value, the Administrator commissions a full appraisal by a County authorized appraiser to appraise the value of placing a conservation easement on the land that removes development rights ~~value of the land proposed for development rights sale~~. The ~~development rights~~ conservation easement value is the difference between the market value of full ownership of the land, and the agricultural or forestry value.

Comment [BSvW15]: Appraisals value the conservation easement. See VII.E.1.

Step 12: The appraiser ~~submits the completed appraisal~~ (or the alternate determination of value is conducted and submitted) to the Administrator and the Oversight Committee for their review.

Step 13: The Administrator or designee meets with ~~the property owner to review the appraisal~~ (or alternate determination of value), state the offer, review the conservation easement provisions, agreement terms and conditions, and to answer the property owner's questions.

Step 14: If the property owner believes that the land has not been adequately appraised or valued, the owner may, within the time allowed in the schedule, commission an appraisal at the owner's expense.

|

E. Offer to Purchase Easement and Agreement

- | Step 15: A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget authorization by the County Council, and approval by the County Executive.
- | Step 16: Within 30 days, the property owner accepts, rejects or makes a counter ~~offer~~. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.
- | Step 17: Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

F. Adjacent Property Owner Notification

- | Step 18: Neighboring property owners are notified that adjacent land is in the process of being preserved.

G. Approval

- | Step 19: Review materials are presented to the County Executive for review and approval, rejection, or recommendation for modification.
- | Step 20: Review materials are sent to other participating entities for partially or ~~wholly~~ funded conservation easements several days prior to any deadline.

I. Settlement

- Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.
- | Step 23: Checks are ~~requested~~ from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

J. Recording

- Step 24: The conservation easement will be recorded at the County Auditor's office. The County or its designee will monitor the properties under easement at least annually to ensure compliance with the easement.

VI. CONSERVATION EASEMENTS

A. Description

A conservation easement deed is a legally binding document, which is recorded by the County Auditor, forever restricting the property to agricultural, forestry, and/or ecological and directly associated uses, and for which compensation may be paid. As an easement in gross in perpetuity, restrictions are binding upon the owner and future owners, and run with the land.

B. ~~PDR Program~~ Conservation Easements

At the time of acquisition of development rights from a participating property, a conservation easement is placed on the property permanently restricting development of the site and protecting/preserving the agricultural, forestry, and ecological values associated with the site. The conservation easement must be signed by both the property owner(s) and the County Executive or his/her designee and recorded with the property records for the property. A model conservation easement deed is included in these guidelines as attachment D.

1. Conservation Easement Requirements

Conservation easements shall be on a form approved by the Whatcom County Prosecuting Attorney and shall meet the following basic requirements:

- a. The deed shall be in recordable form and contain an accurate legal description setting forth the metes and bounds of the area subject to the easement;
- b. Restriction is granted in favor of Whatcom County, or if designated by the organizations as defined in RCW64.04.130;
- c. Restriction is granted in perpetuity, and shall bind existing and future property owners; and
- d. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the property, and the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement.

2. Filing

After the conservation easement is signed and notarized, it must be recorded with the Whatcom County Auditor's Office.

C. Conservation Easement Conveyance

Conservation easements may be either donated or sold, or a combination of both.

1. Conservation Easement Donation

- a. A donation of a total parcel will not be subject to eligibility except as below in section c. Partial parcel donation shall be considered under the same rule as for development rights sales. Notwithstanding the eligibility of the property, acceptance of a fee interest or partial donation is within the discretion of the County Council.
- b. Whatcom County will accept voluntary donations or bequests of development rights as perpetual easements in gross if meeting eligibility criteria (except priority area criteria) and within the discretion of the County Council.
- c. All properties offered for development rights donation must meet the following minimum eligibility criteria:
 - 1. The ~~PDR-CEP~~ Oversight Committee will consider each offer on a case by-case basis, considering the property's consistency with current and future land uses, and
 - 2. The property must be at least 1 acre in size, and
 - 3. Be in agricultural or forestry use or contain ecological values and has not been irrevocably devoted to a use inconsistent with the above values,
 - 4. Cannot be located within an Urban Growth Area, unless coordination with the proximal small city is a component of the donation.

2. Conservation Easement Sale

- a. Whatcom County will purchase perpetual conservation easements on qualified properties in accordance with the policies and procedures of the Whatcom County ~~Agricultural, Forestry, and Ecological Purchase of Development Rights~~ Conservation Easement Program, with Federal, State, County, and/or private funds and any combination thereof.
- b. All properties offered for conservation easement sale must meet minimum eligibility criteria as contained in Section III.

VII. OPERATIONAL PROCEDURES FOR ACQUIRING ~~PDR~~ CONSERVATION EASEMENTS

A. Outreach and Publicity

~~Annually, notice shall be published in one newspaper of general circulation~~ Outreach shall occur to inform landowners about the program and may include advertising in newspapers or other publications, landowner mailers, and presentations. Application opening and closing dates, if any, will be determined by the ~~PDR-CEP~~ Oversight Committee. The Committee shall have the discretion to consider applications in rounds, or individually on a rolling basis. If selection deadlines are extended, the committee will provide public notice of the extension.

B. Application and Ranking

1. Property owner(s) voluntarily submits an application(s) to the County. The application must be submitted to the County on the form provided by the ~~PDR Program~~ CEP, and according to the relevant public notice. Applicants are to include at a minimum:
 - a. Name(s) and address(es) of the property owner(s) of the site;
 - b. Legal description and parcel number(s);
 - c. Copy of the property deed and title;
 - d. Total acreage of farmland to be included in the ~~PDR Program~~ CEP;
 - e. Current land use and soils;
 - f. Number of dwelling units;
 - g. Description of the farming operation;
 - h. Other information necessary to evaluate property eligibility;
 - ~~i. Lot of Record/Density Determination application and payment, or Lot of Record/Density Determination application and signed Letter of Intent agreeing to terms of payment at the time of easement closing or upon withdrawal from program, or completed Lot of Record/Density Determination; and~~
 - j-i. Acknowledgement of intent to grant to Whatcom County a conservation easement in a form provided by the County.
2. The Administrator shall review each application to determine completeness and eligibility.
3. Applications meeting all minimum eligibility criteria shall be evaluated and scored by the administrator and Oversight Committee according to the site selection criteria. (See Section IV)
4. The ~~PDR-CEP~~ Oversight Committee shall provide the County Council with information and scoring of properties recommended for conservation easement acquisition by the committee. County Council shall approve or deny pursuit of conservation easement acquisitions on the parcels.

Comment [BSvW16]: Not needed with initial application

5. ~~The~~ Administrator shall then arrange appraisals (or alternate determination of value) of eligible applicant properties as determined by the County Council.
6. The ~~PDR-CEP~~ Oversight Committee and Administrator shall provide updates to the County Council discussing recommended purchases, possible program changes, and anticipated budget needs.

C. Appraisal

1. Appraisals for eligible properties shall be conducted to determine the value of ~~development rights~~ a conservation easement on parcels in the order of acquisition priority and in accordance with grant funding timelines until acquisition funds are expended.
- a. The appraisals are to be made by an independent appraiser qualified to appraise agricultural, forestry, and/or ecological land for ~~development rights~~ conservation easement purchases. An appraiser is deemed qualified if he or she possesses a State of Washington certification as a State Certified General Real appraiser, MAI designation by the Appraisal Institute (or equivalent), and at least five years agricultural lands appraisal experience. Appraisers shall supply a narrative or UAAR form report, which contains information as required by the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform ~~Appriaisal~~ Appraisal Standards of Federal Land Acquisition (UASFLA) and as specified in any contract with the County.
- b. An appraisal report is an objective report of market facts. The appraisal report must estimate both the unrestricted fee market value of the land only, excluding the value of buildings, and the agricultural or forestry value of the land only, of which the difference is the ~~development rights~~ conservation easement value.
- c. Both values shall be based primarily on an analysis of comparable sales. If comparable sales data is not available for agricultural lands, the appraiser may use local farmland rental values or capitalized production values to determine the agricultural values of the land.
- d. A description of the buildings or other improvements shall appear in the appraisal report; however, the buildings will not be valued and therefore will not be considered in determining the development rights value.
- e. The appraiser shall report whether the subject property has any land use restrictions, public or private and/or physical attributes, which limit the developmental capability of the land.
- f. The appraiser shall be advised that conservation easements are perpetual. The perpetual nature of the easement shall take precedent over any agricultural zoning status.

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Comment [BSvW17]: Appraisals have always been for conservation easement value. See VII.E.1.

Comment [BSvW18]: Appraisals are only valid for one year, so it is important to coordinate with grant timelines

Comment [BSvW19]: Critical areas restrictions captured here.

- g. The appraisal shall be in writing and may be discussed with the owners prior to the submission of written offers.

- h. ~~If~~ the property owner believes the property has not been adequately appraised, the owner may, within the time allotted, request that a review appraisal be made at the owner's expense. This appraisal must be completed in accordance with the guidelines set forth herein. If the review (owner's) appraisal is not completed within the allotted time, the application will be delayed for future committee consideration. If a review appraisal is completed, the appraisals will be reviewed by the County's Appraiser. The County's Appraiser in consultation with the Program Administrator and the ~~PDR-CEP~~ Oversight Committee will accept, modify or reject the review appraisal. The determination of the County's Appraiser is final.
- i. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the ~~farm~~ land's value before and after the voluntary conservation easement.
2. Council and the Executive may specifically authorize an alternate approach to determine value in accordance with state and local laws, in which case the conditions of that approach would substitute for the appraisal guidelines as set forth in C.1., above.

D. Title and Survey Issues

1. The Administrator shall request a title report confirming that applicant is the owner of the property and has unrestricted legal right to transfer the development rights (i.e. there must be clear title to transfer the property). The title report will be provided to the County Attorney for review.
2. All encumbrances (including but not limited to: liens, mortgages and judgments) against the property must be subordinated, satisfied or removed prior to development rights acquisition. Mortgage and/or lien holder subordination and releases may be required acknowledging that a conservation easement will be placed on the property and subordinating their interest in the property to the deed restriction.
3. At settlement for a County or joint development rights purchase, the ~~PDR Oversight Committee or applicant~~ Administrator shall provide a title insurance policy issued by a title insurance company authorized to conduct business in Washington State by the Washington State Office of Insurance Commissioner. The cost of such title insurance shall be a shared cost, with the county's portion considered a cost incident to the ~~development rights~~ conservation easement purchase and a reimbursable expense from the County's Conservation Futures Fund.
4. It is the property owner's responsibility to survey (or provide a legal description that meets specific standards) any exceptions from the easement and any graveyards or cellular towers that may be located on the property. It is the

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Comment [BSvW20]: Administrator initiates escrow with title company, which issues title insurance policy.

property owner's responsibility to provide a legal description for any commercial

operation on the farm that is not incidental to the overall farming operation, in order to exclude it from the easement. Surveys shall be conducted by a licensed surveyor in accordance with state and federal regulations.

E. Development Rights Value and Purchase Price

1. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Development rights may only be purchased in perpetuity.

F. Recommendation of ~~Development Rights~~Conservation Easement Purchases by the ~~PDR-CEP~~ Oversight Committee

1. The ~~PDR-CEP~~ Oversight Committee, in making recommendations concerning applications and purchase offers, shall consider the following:
 - a. Evaluation according to the site selection criteria
 - b. Consistency with County Comprehensive Plan
 - c. Cost relative to total allocations and appropriations
 - d. Proximity to other land subject to protection easements
2. Upon receiving the recommendations of the ~~PDR-CEP~~ Oversight Committee and the Administrator, the County Executive shall review the recommendations and shall take final action to authorize or deny proposed purchase terms and offers, consistent with authorization by the County Council.
3. If a property is approved for ~~development rights~~conservation easement purchase, the Administrator will meet with the property owner and review the terms, conditions and amount of the County's offer. A written offer will be provided to the property owner. Written notice shall also be provided to land not approved for ~~development rights~~conservation easement purchase.
4. Within 30 days of receipt of a written offer from the County an applicant must indicate in writing which of the following actions they intend to pursue:
 - a. Accept the offer.
 - b. Reject the offer.
 1. Reject offer outright
 - a. no further action
 - b. participate in future review
 2. Submit a counter offer within 90 days of written notice of offer by the County.
 - c. Failure to notify the County within 30 days shall constitute rejection of the offer.

5. ~~If~~ If the offer is accepted, the Administrator shall prepare a Purchase and Sale agreement. USDA or State Funds must be paid as lump sum. The method of payment shall be specified from the options listed below:
 - a. Lump Sum
 - b. Installment Purchase Agreement (IPA)
 - c. Like-Kind Exchange
 - d. Or a combination of the above
6. For ~~development rights~~conservation easement purchase utilizing the Installment Purchase Agreement (IPA) program, the County Council at settlement shall provide an opinion of legal counsel that the County's obligations to make installment payments of principal and tax-exempt interest over time are legal, valid, and binding. And that such payments are a general obligation of the County for which its full faith, credit, and taxing power are pledged. Interest paid by the County is exempt from federal income taxes.
7. All Agreements of Sale and Conservation Easements require the County Council's approval.

G. Grant of the Agricultural, Forestry, and/or Ecological Protection Conservation Easement

Before the purchase of development rights can be finalized, a conservation easement in a form approved by the County Attorney and consistent with the policies of the ~~PDR Program~~CEP Guidelines, must be placed on the property permanently restricting development of the site and preserving its agricultural, forestry and/or ecological values.


The principal interest of the County is to ensure that lands are preserved and subsequently stewarded in a manner that maintains and enhances their farmland, forestland, and/or ecological values. There may be some instances where there is a public interest in another public entity or non-profit organization to hold the conservation easement, for continued stewardship and protection of the land. The County will consider:

1. The preferences of the donor or seller;
2. Administrative, monitoring, and enforcement issues associated with the conservation easement and the resources available to address these issues;
3. Requirement of Federal, State or County funding sources utilized to purchase ~~development rights~~conservation easements.

H. ~~Development Rights~~Conservation Easement Purchase Recommendations/Submission Requirements

1. County Council: Each recommendation for ~~development rights~~conservation easement purchases with County funds, State funds, Federal funds, private donor funds or a combination of funds shall be presented to the County Council at a

regularly scheduled public meeting.

2.  Letters of Notification: Letters of notification for development rights purchases will be sent to adjoining property owners by the Administrator.

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VIII. CONSERVATION FUTURES FUND

A. Intent

This fund was established in 1992 to be used solely to acquire right and interests in open space land, farm and agricultural land, and timber land, so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use and enjoyment.

B. Fund Sources

This Conservation Futures Fund is funded by a real property tax applied to all real property within Whatcom County at a rate determined by the county administration and county council.

C. Fund Source Accounts

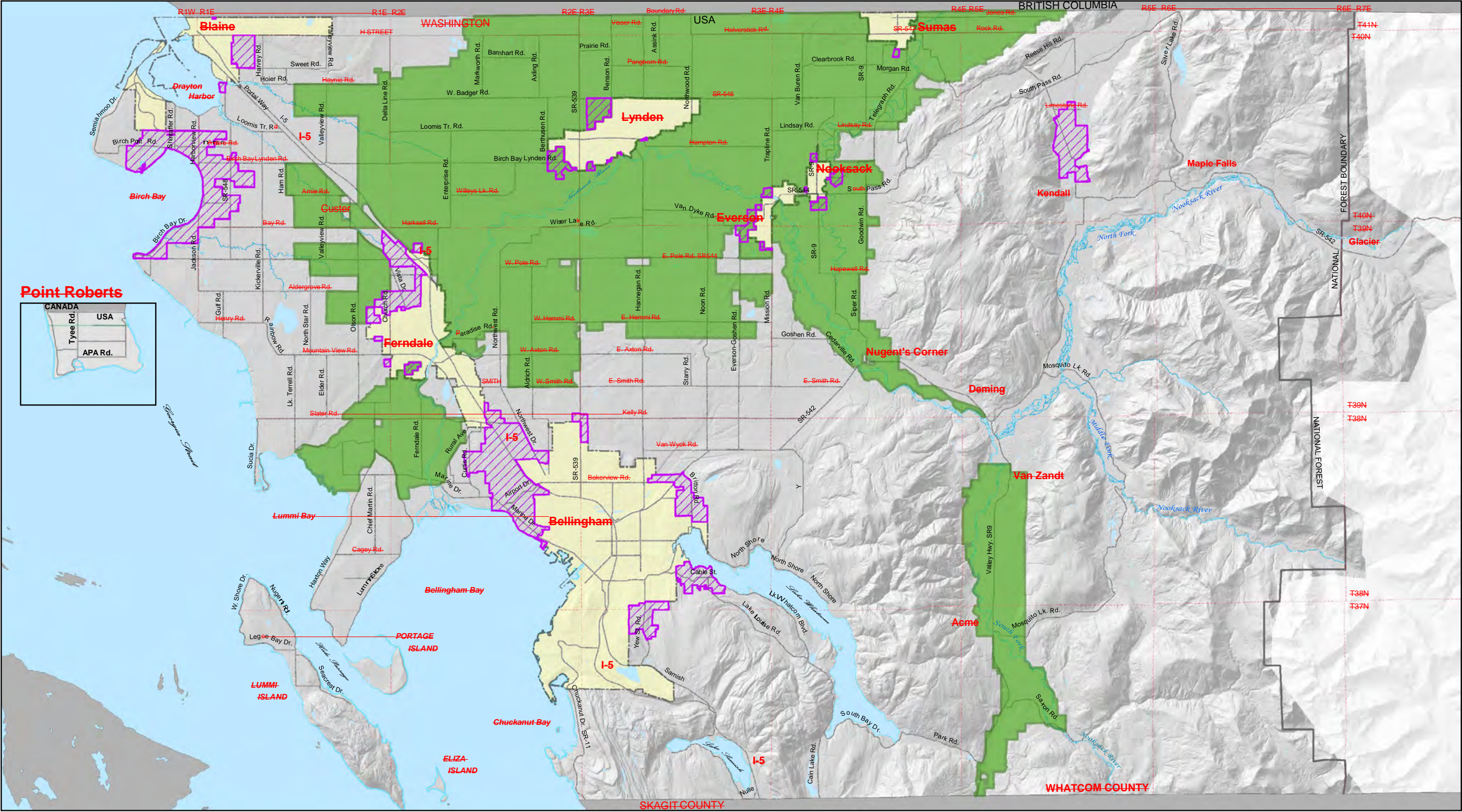
Council shall annually consider an allocation of Conservation Futures Fund to be placed in a ~~Purchase of Development Rights~~Conservation Easement Program Account.

D. Installment Payment Fund

1. The intent of installment payment funds, which are established by the County, is to encumber and invest committed funds for which recipient property owners have elected annual installment payments for a period, which may vary according to the wishes of the property owner.
2. The full consideration of any transaction for which installment payments of five years or less have been elected shall be placed in the fund, less the amount of any first installment to be paid at settlement. This amount shall be invested and annual installment payments shall include the interest accrued.
3. Annual installment payments shall be made on or before January 20th of each year.
4. A property owner may enter into an Installment Purchase Agreement for fifteen (15) to thirty (30) years at an interest rate to be negotiated between the property owner and the County. The property owner will receive semi-annual interest payments that are tax exempt. Principal will be paid in one lump sum at the end of term. The property owner will also receive a security representing the Installment Purchase Agreement. The property owner may sell or assign this Agreement.

E. Public Expenditures

1. All public expenditures from the Conservation Futures Fund are subject to approval by Whatcom County Council and will be made in accordance with approved disbursement procedures.
2. Expenditures from the ~~PDR Program~~CEP Account shall be limited to interests in qualified agricultural, forestry, and/or ecological land participating in the Whatcom County's ~~Agricultural, Forestry, and Ecological Purchase of Development Rights~~Conservation Easement Program, and other expenses necessary to the acquisition of conservation easements authorized under RCW 84.34.200-.240.
3. The annual appropriation to the ~~PDR Program~~CEP by the County Council shall be available for the calendar year in which the appropriation was made and or the subsequent calendar year.



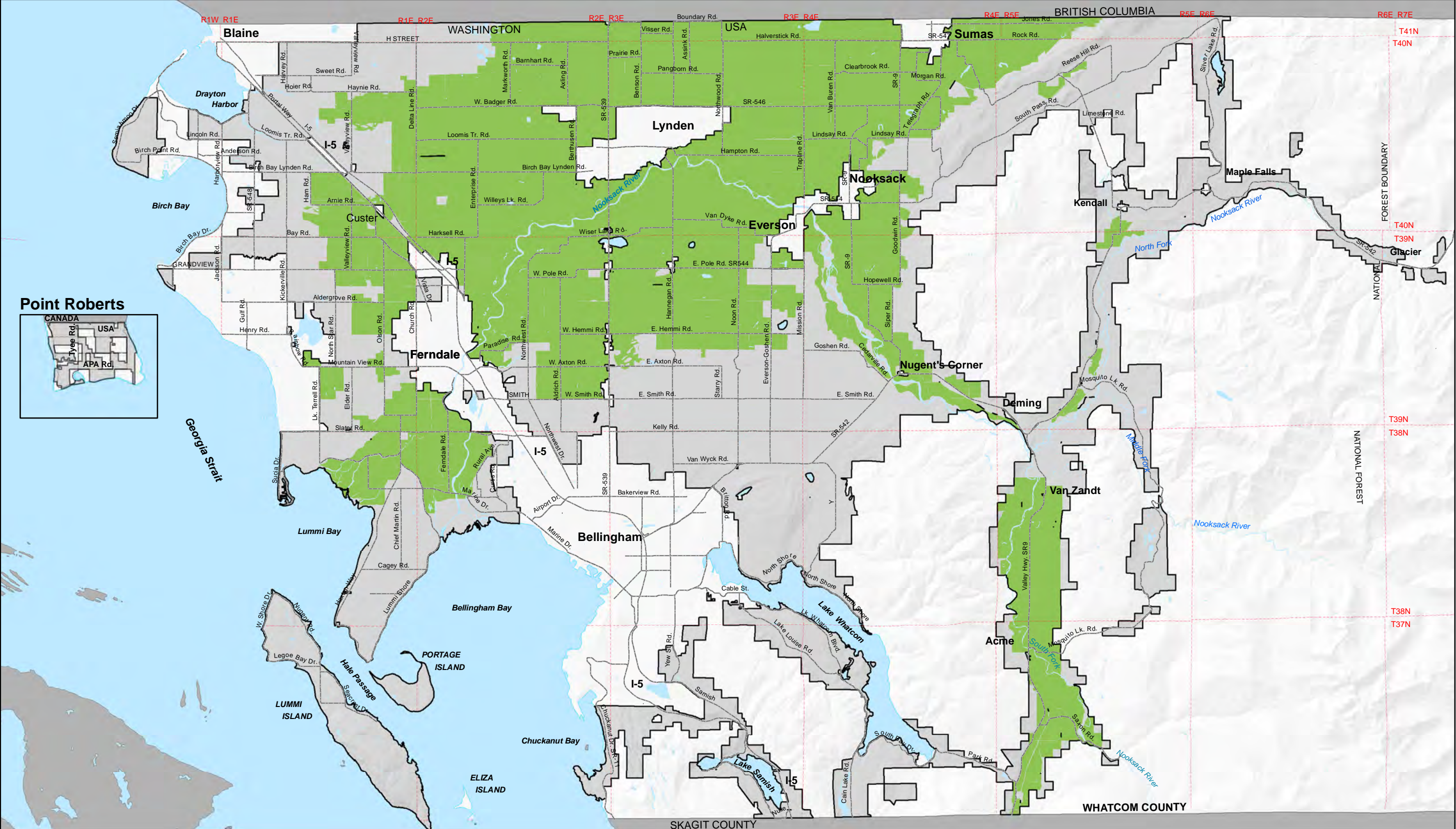
Whatcom County Agricultural Priority Areas
Agriculture Zone, Rural Study Areas,
Initial PDR Target Areas, and Watershed-
Improvement Districts

- Urban Growth Areas
- Ag. Zone/Rural Study Areas/PDR Target Areas/WIDs
- Incorporated City

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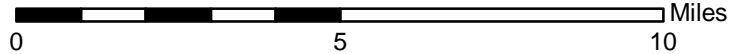
0 0.5 1 2 3 4 Miles



Whatcom County Agricultural Priority Areas

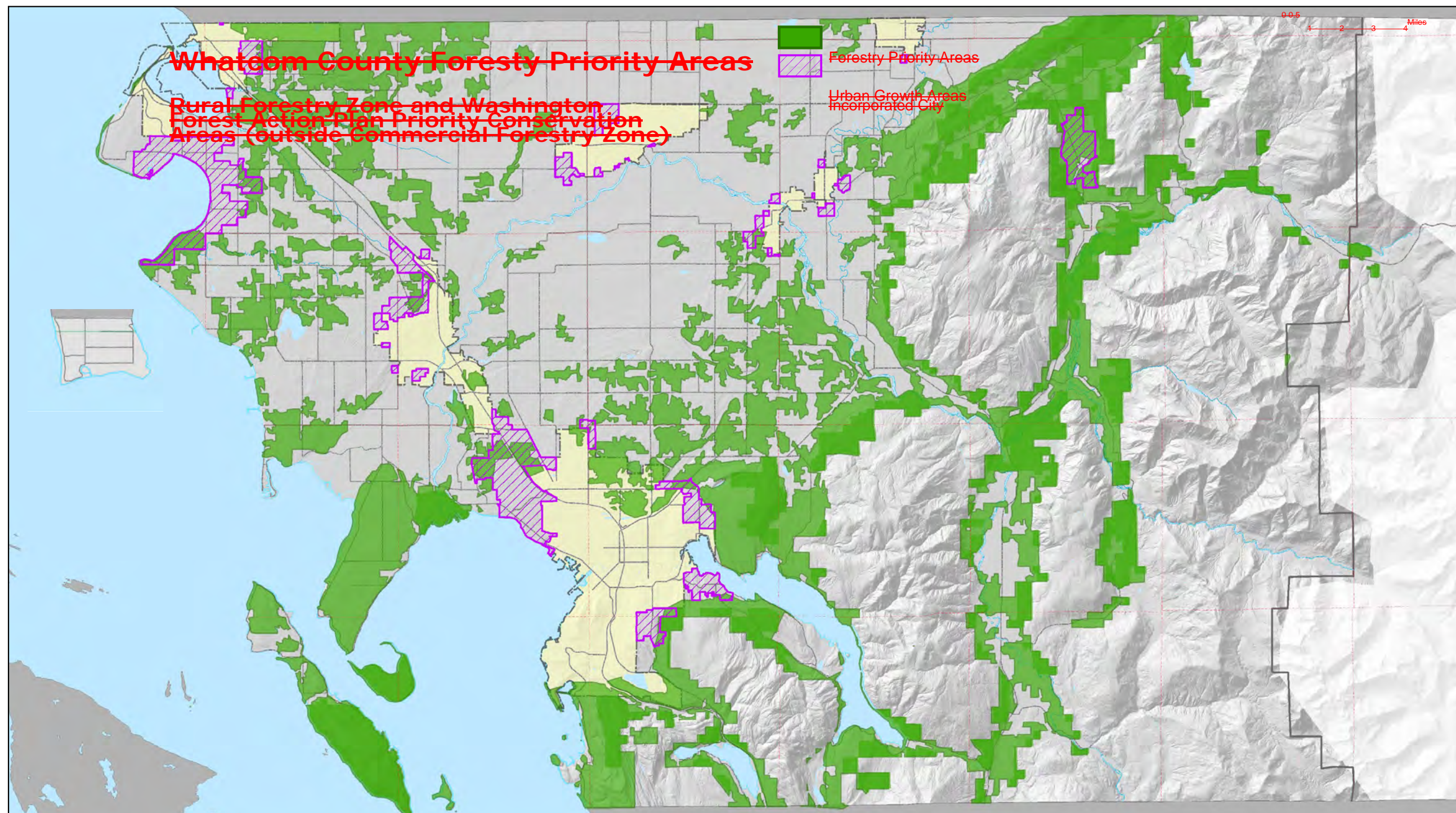
Agriculture Zone, Rural Study Areas, Watershed Improvement Districts, and Additional Areas Identified in the Agricultural Landscape Analysis

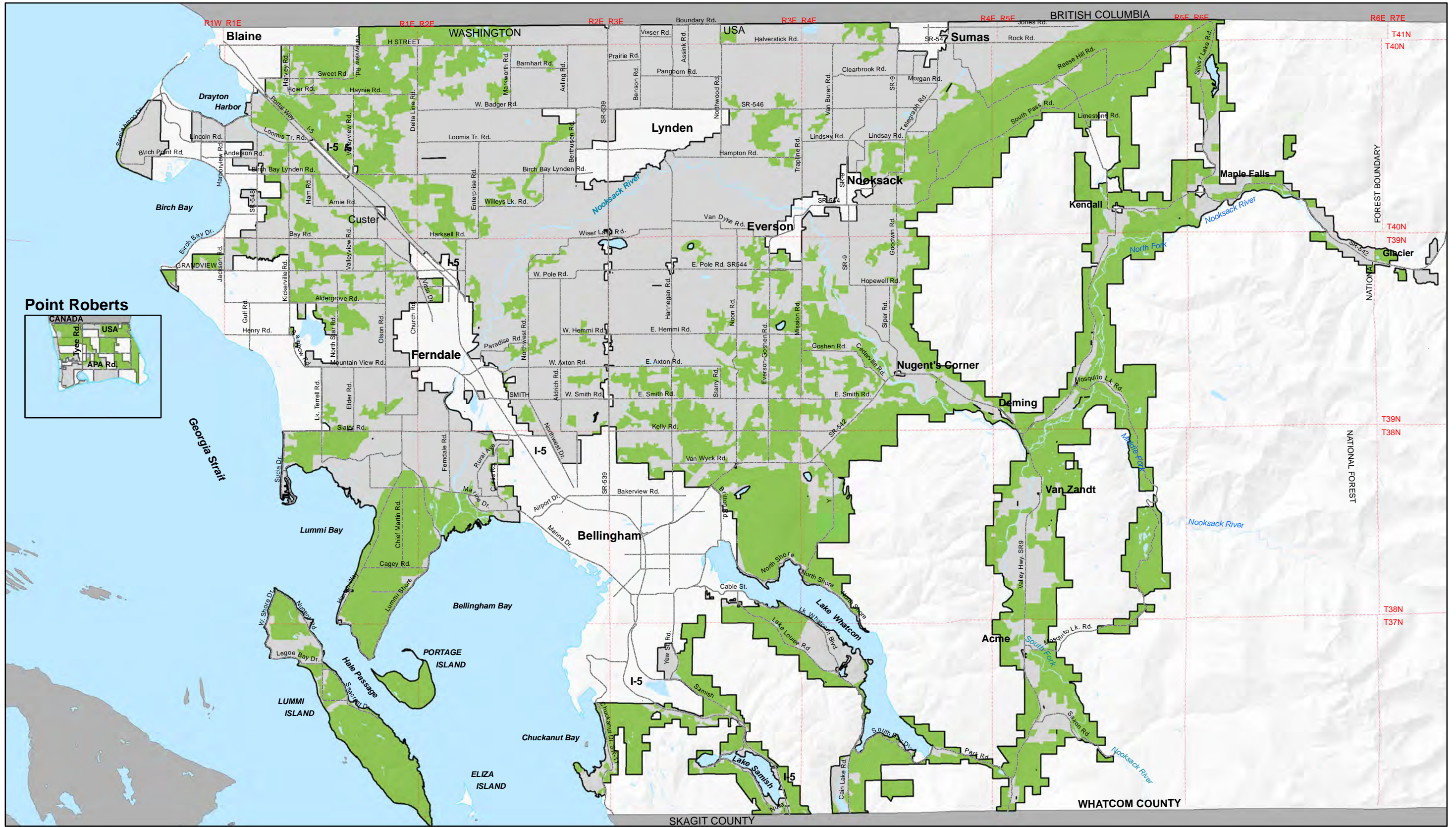
-  Agricultural Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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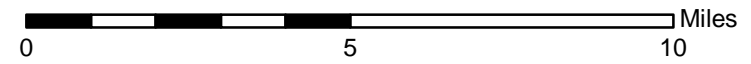




Whatcom County Forestry Priority Areas

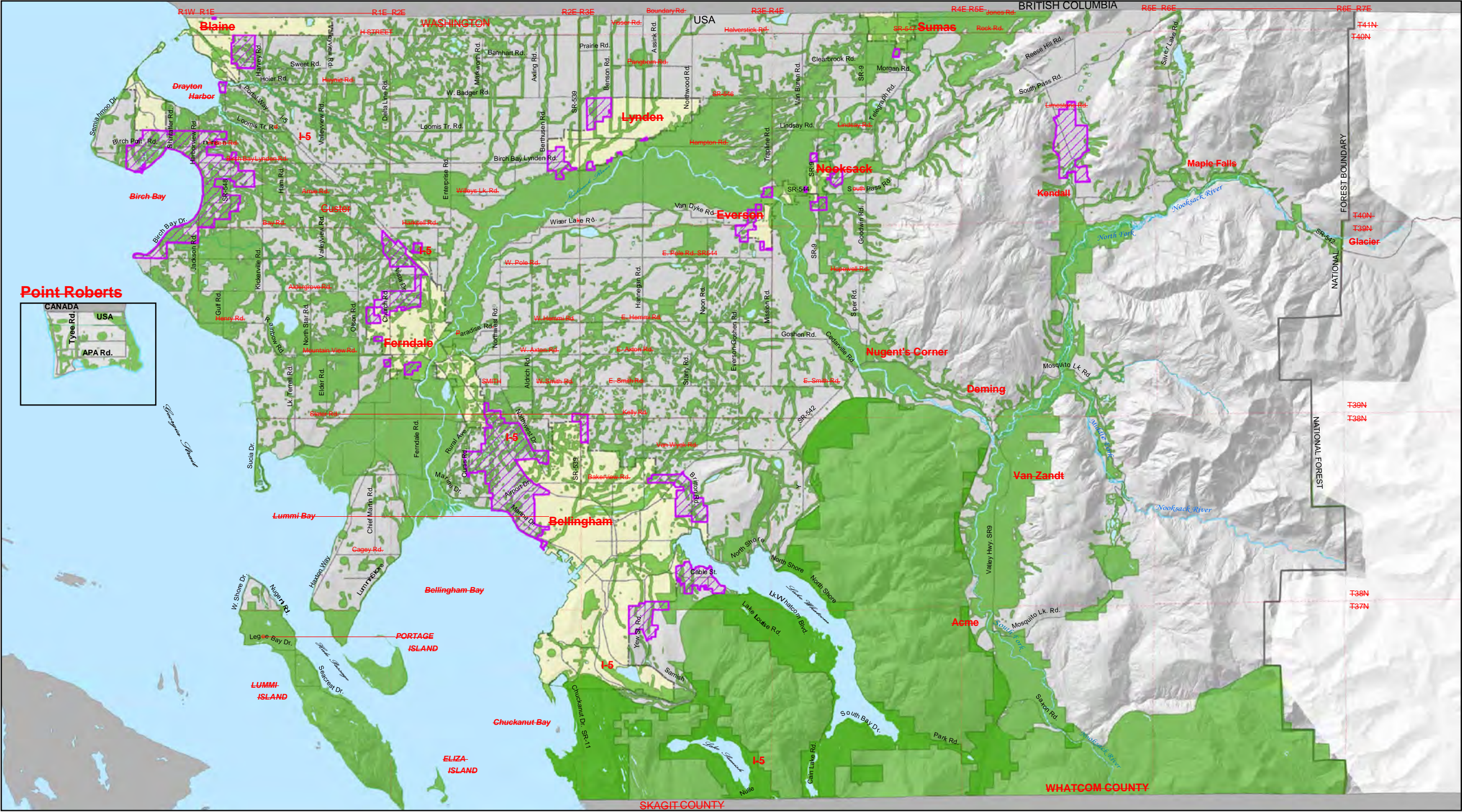
Rural Forestry Zone and WA Forest Action Plan Priority Areas

-  Forestry Priority Area
-  Conservation Easement Program Area
(Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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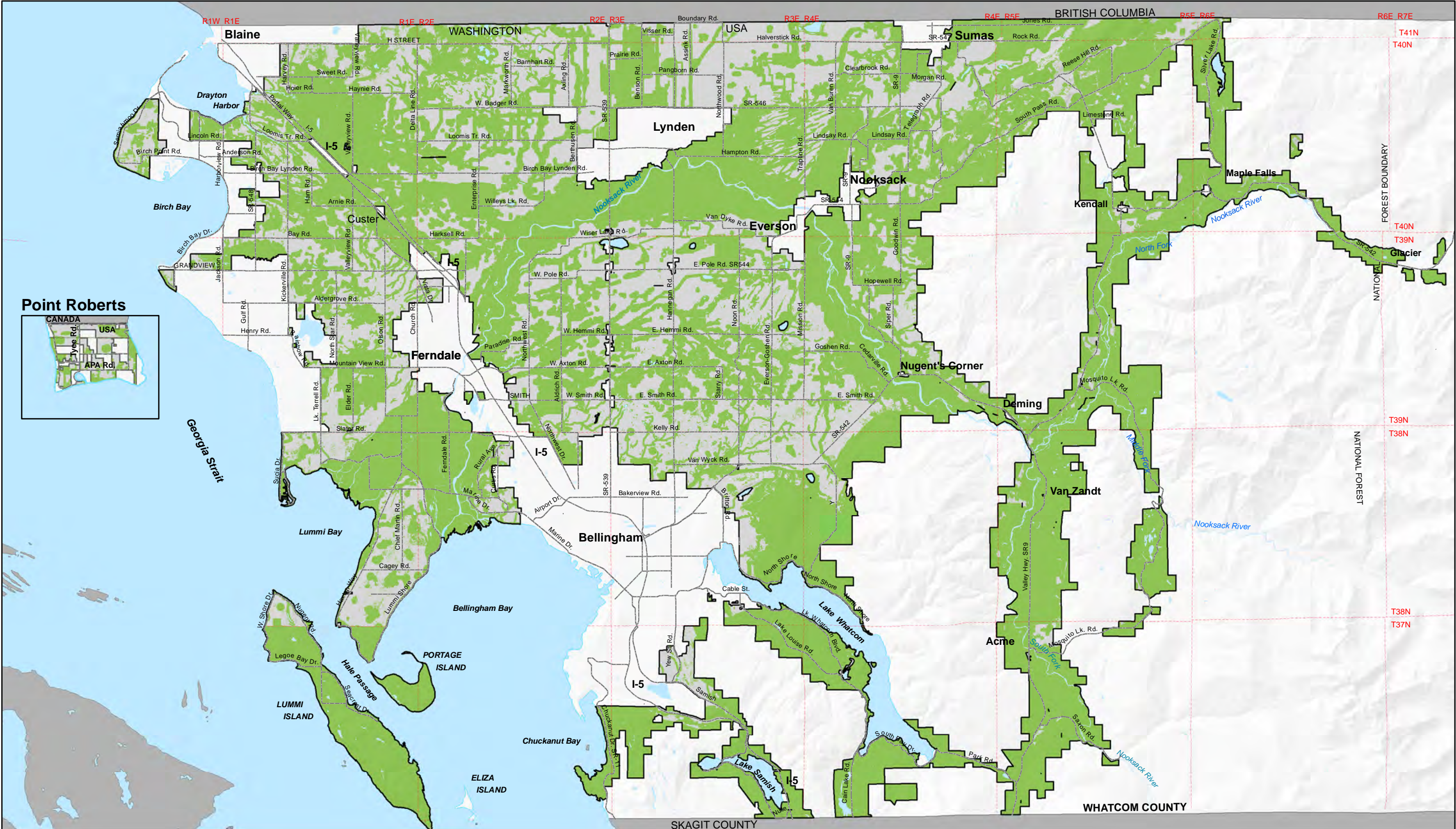


Whatcom County Ecological Priority Areas
Habitat Conservation Areas and FEMA Floodplain
(outside of Commercial Forestry Zone)

- Hab. Conservation Areas/Fema Floodplain
- Urban Growth Areas
- Incorporated City



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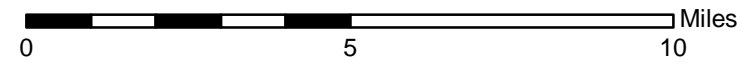




Whatcom County Ecological Priority Areas

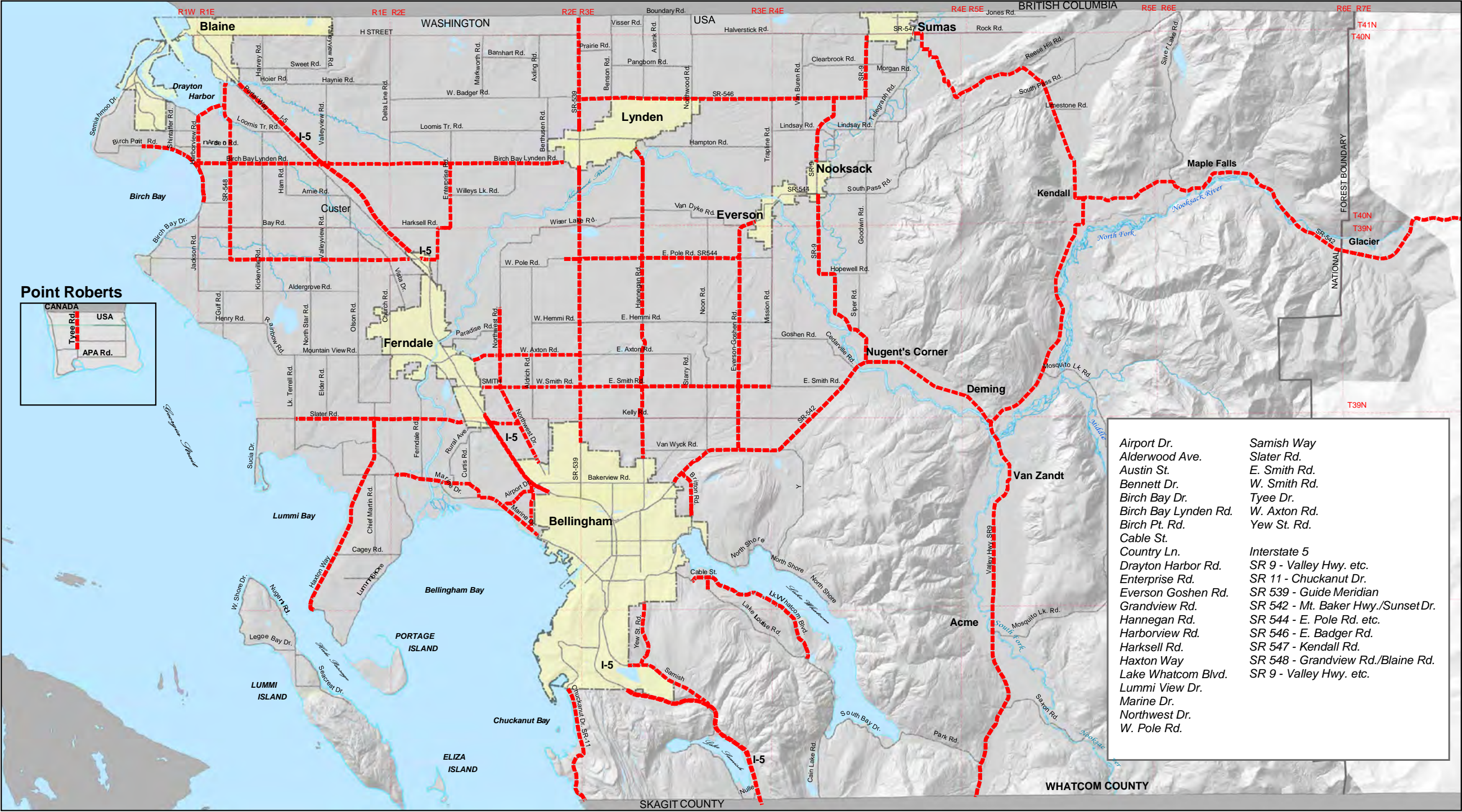
Habitat Conservation Areas, FEMA Floodplain, and Additional Areas Identified in the Ecological Landscape Analysis

-  Ecological Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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Whatcom County

Major Roads - >3,000 Average Daily Trips

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Miles

APPENDIX E

Soils List

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Soil #	Soil Name	APO y/n	LESA Group	PRIME	STATEWIDE IMPORTANCE	Site Index
1	ANDIC CRYOCHREPTS - 60 TO 90% SLOPES	NN	00	00		
2	ANDIC CRYOCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	NN	00	00		
3	ANDIC XEROCHREPTS - 60 TO 90% SLOPES	NN	00	00		3
4	ANDIC XEROCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	NN	00	00		3
5	ANDIC XEROCHREPTS-COOL ROCK OUTCROP COMPLEX-60 TO 90% SLOPES	NN	00	00		4
6	BARNESTON GRAVELLY LOAM - 0 TO 8% SLOPES	NN	30	40		2
7	BARNESTON VERY GRAVELLY LOAM - 8 TO 15% SLOPES	NN	00	40		2
8	BARNESTON VERY GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00		2
9	BARNESTON VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
10	BARNHARDT GRAVELLY LOAM - 0 TO 5% SLOPES	NN	14	14		3
11	BELLINGHAM SILTY CLAY LOAM - 0 TO 2% SLOPES	NN	00	22		
12	BIRCHBAY SILT LOAM - 0 TO 3% SLOPES	YY	14	14		3
13	BIRCHBAY SILT LOAM - 3 TO 8% SLOPES	YY	04	04	yes	3
14	BIRCHBAY SILT LOAM - 8 TO 15% SLOPES	NN	00	00	yes yes	3
15	BLAINEGATE SILTY CLAY - 0 TO 1% SLOPES	NN	00	00	yes	
16	BLAINEGATE-URBAN LAND COMPLEX - 0 TO 1% SLOPES	NN	00	00		
17	BLETHEN GRAVELLY LOAM - 5 TO 15% SLOPES	NN	00	00	yes yes	3
18	BLETHEN GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00	yes yes	3
19	BLETHEN GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		3
20	BLETHEN VERY BOULDERY LOAM - 5 TO 40% SLOPES	NN	00	00		3
21	BOROSAPRISTS - 0 TO 2% SLOPES	NN	00	00		
22	BRISCOT SILT LOAM DRAINED - 0 TO 2% SLOPES	YY	33	25		
23	BRISCOT ORIDIA AND SUMAS SOILS - 0 TO 2% SLOPES	NN	00	55		
24	CHUCKANUT LOAM - 3 TO 8% SLOPES	NN	00	04	yes	
25	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 5 TO 15% SLOPES	NN	00	00	yes yes	2
26	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 15 TO 30% SLOPES	NN	00	00	yes yes	2
27	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 30 TO 60% SLOPES	NN	00	00		2
28	CHUCKANUT-SHALCAR COMPLEX - 0 TO 15% SLOPES	NN	00	00	yes yes	2
29	CHUCKANUT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	NN	00	00		2
30	CLENDENEN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	00	00		
31	CLIPPER SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	22	22		
32	COMAR SILT LOAM - 5 TO 15% SLOPES	NN	00	00	yes yes	2
33	COMAR SILT LOAM - 15 TO 30% SLOPES	NN	00	00	yes yes	2
34	COMAR SILT LOAM - 30 TO 60% SLOPES	NN	00	00		2
35	CRINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		
36	CUPPLES GRAVELLY LOAM - 5 TO 30% SLOPES	NN	00	00		2
37	CUPPLES GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
38	DEKAPEN LOAM - 8 TO 25% SLOPES	NN	00	00	yes	3
39	DEMING GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	00	00		
40	DEMING GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		

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41	DIOBSUD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
42	EDFRO VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0		
43	EDFRO VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		

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94	LABOUNTY SILT LOAM-DRAINED - 0 TO 2% SLOPES	NN	00	22		
95	LARUSH SILT LOAM - 0 TO 3% SLOPES	YY	33	13		2
96	LAXTON LOAM - 0 TO 30% SLOPES	YY	1+	1+		2
97	LAXTON LOAM - 3 TO 8% SLOPES	YY	1+	1+		2
98	LAXTON LOAM - 8 TO 15% SLOPES	NN	00	00	yes yes	2
99	LYNDEN SANDY LOAM	YY	1+	14		3
100	LYNDEN SANDY LOAM - 3 TO 7% SLOPES	YY	1+	14		3
101	LYNDEN-URBAN LAND COMPLEX - 0 TO 5% SLOPES	NN	00	00		3
102	LYNNWOOD SANDY LOAM - 0 TO 5% SLOPES	NN	00	40		3
103	LYNNWOOD SANDY LOAM - 5 TO 20% SLOPES	NN	00	00	yes yes	3
104	MONTBORNE GRAVELLY LOAM - 5 TO 30% SLOPES	NN	00	00		3
105	MONTBORNE GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		3
106	MONTBORNE-RINKER COMPLEX - 30 TO 60% SLOPES	NN	00	00		3
107	MT. VERNON FINE SANDY LOAM - 0 TO 2% SLOPES	YY	22	13		2
108	NATI LOAM - 5 TO 15% SLOPES	NN	00	00	yes yes	2
109	NATO LOAM = 15 TO 30% SLOPES	NN	00	00	yes yes	2
110	NATI LOAM - 30 TO 60% SLOPES	NN	00	00		3
111	NEPTUNE VERY GRAVELLY SANDY LOAM- 0 TO 3% SLOPES	NN	00	40		3
112	OAKES VERY GRAVELLY LOAM - 8 TO 30% SLOPES	NN	00	00		2
113	OAKES VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
114	OAKES VERY GRAVELLY LOAM - 60 TO 80% SLOPES	NN	00	00		4
115	ORIDIA SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
116	PANGBORN MUCK-DRAINED - 0 TO 2% SLOPES	YY	33	22		
117	PICKETT-ROCK OUTCROP COMPLEX - 5 TO 30% SLOPES	NN	00	00		4
118	PICKETT-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	NN	00	00		4
119	PILCHUCK LOAMY FINE SAND - 0 TO 3% SLOPES	NN	00	70		3
120	PITS	NN	00	00		
121	POTCHUB LOAM - 8 TO 30% SLOPES	NN	00	00		
122	POTCHUB LOAM - 30 TO 60% SLOPES	NN	00	00		
123	PUGET SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
124	PUYALLUP FINE SANDY LOAM - 0 TO 2% SLOPES	YY	22	43		2
125	REVEL LOAM - 5 TO 30% SLOPES	NN	00	00		4
126	REVEL LOAM - 30 TO 60% SLOPES	NN	00	00		4
127	REVEL-WELCOME-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	NN	00	00		4
128	RINKER VERY CHANNERY SILT LOAM - 8 TO 30% SLOPES	NN	00	00	yes	3
129	RINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		3
130	RIVERWASH	NN	00	00		
131	ROCK OUTCROP	NN	00	00		
132	ROCK OUTCROP-KULSHAN COMPLEX - 60 TO 90% SLOPES	NN	00	00		
133	RUBBLE LAND	NN	00	00		
134	SAAR GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	00	00		
135	SAAR GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		
136	SAAR-HARTNIT COMPLEX - 5 TO 40% SLOPES	NN	00	00		
137	SANDUN VERY GRAVELLY SANDY LOAM - 5 TO 30% SLOPES	NN	00	00		
138	SANDUN VERY GRAVELLY SANDY LOAM - 30 TO 60% SLOPES	NN	00	00		
139	SEHOME LOAM - 2 TO 8% SLOPES	YY	00	1+		2
140	SEHOME LOAM - 8 TO 15% SLOPES	NN	00	00	yes yes	2
141	SEHOME GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00	yes	2

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					yes	
142	SEHOME GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
143	SHALCAR MUCK-DRAINED - 0 TO 2% SLOPES	YY	33	22		

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144	SHALCAR AND FISHTRAP SOILS - 0 TO 2% SLOPES	NN	00	22		
145	SHUKSAN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	NN	00	00		
146	SHUKSAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00	yes	
147	SHUKSAN-KULSHAN-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	NN	00	00		
148	SKIPOPA SILT LOAM - 0 TO 8% SLOPES	YY	00	2+		3
149	SKIPOPA-BLAINEGATE COMPLEX - 0 TO 8% SLOPES	NN	00	20	yes	3
150	SKYKOMISH VERY GRAVELLY LOAM - 3 TO 30% SLOPES	NN	00	00		3
151	SNOHOMISH SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
152	SNOQUALMIE GRAVELLY LOAMY SAND - 0 TO 3% SLOPES	NN	00	40	yes	3
153	SORENSEN VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	NN	00	00	yes	2
154	SORENSEN VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		2
155	SPRINGSTEEN VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		
156	SQUALICUM GRAVELLY LOAM - 5 TO 15% SLOPES	NN	00	00	yes yes	2
157	SQUALICUM GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00	yes	2
158	SQUALICUM GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
159	SQUALICUM-URBAN LAND COMPLEX - 5 ATO 20% SLOPES	NN	00	00		2
160	SQUIRES VERY CHANNERY LOAM - 5 TO 30% SLOPES	NN	00	00		2
161	SQUIRES VERY CHANNERY LOAM - 30 TO 60% SLOPES	NN	00	00		2
162	SUMAS SILT LOAM-DRAINED - 0 TO 2% SLOPES	YY	33	25		
163	TACOMA SILT LOAM - 0 TO 1% SLOPES	NN	00	50		
164	TACOMA SILT LOAM-DRAINED - 0 TO 1% SLOPES	NN	00	50		
165	TROMP LOAM - 0 TO 2% SLOPES	YY	1+	1+		3
166	TWINSI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		
167	TWINSI VERY STONY LOAM - 30 TO 60% SLOPES	NN	00	00		
168	TYPIC CRYORTHODS - 60 TO 90% SLOPES	NN	00	00		
169	TYPIC CRYORTHODS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	NN	00	00		
170	TYPIC PSAMMAQUENTS-TIDAL - 0 TO 1% SLOPES	NN	00	00	yes	
171	URBAN LAND	NN	00	00		
172	URBAN LAND-WHATCOM-LABOUNTY COMPLEX - 0 TO 8% SLOPES	NN	00	00	yes	2
173	VANZANDT VERY GRAVELLY LOAM - 5 TO 15% SLOPES	NN	00	00		2
174	VANZANDT VERY GRAVELLY LOAM - 15 TO 30% SLOPES	NN	00	00		2
175	VANZANDT VERY GRAVELLY LOAM - 30 TO 60% SLOPES	NN	00	00		2
176	WELCOME LOAM - 5 TO 30% SLOPES	NN	00	00	yes	3
177	WELCOME LOAM - 30 TO 60% SLOPES	NN	00	00		3
178	WHATCOM SILT LOAM - 0 TO 3% SLOPES	YY	22	1+		2
179	WHATCOM SILT LOAM - 3 TO 8% SLOPES	YY	44	1+		2
180	WHATCOM SILT LOAM - 8 TO 15% SLOPES	NN	00	00	yes	2
181	WHATCOM SILT LOAM - 30 TO 60% SLOPES	NN	00	00		2
182	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 8% SLOPES	NN	44	22		2
183	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 15% SLOPES	NN	00	20	yes	2
184	WHITEHORN WILT LOAM - 0 TO 2% SLOPES	YY	33	22		
185	WICKERSHAM CHANNERY SILT LOAM - 0 TO 8% SLOPES	NN	44	14		2
186	WINSTON SILT LOAM - 0 TO 3% SLOPES	YY	00	1+		2
187	WINSTON LOAM - 3 TO 15% SLOPES	NN	00	00	yes	2
188	WINSTON LOAM - 15 TO 40% SLOPES	NN	00	00	yes	2
189	WISEMAN VERY CHANNERY SAND LOAM - 0 TO 8% SLOPES	NN	00	40		3
190	WOLLARD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	NN	00	00		
191	YELM LOAM - 3 TO 8% SLOPES	YY	1+	1+	yes	2
192	YELM-URBAN LAND COMPLEX - 0 TO 3% SLOPES	NN	00	00		2

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APPENDIX F

Model Conservation Easement Deed

A sample Conservation Easement Deed based on the assumption of matching funds from the USDA-NRCS Agricultural Conservation Easement Program, is included in the following pages.

After Recording Return To:

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225-4082

DOCUMENT TITLE: AGRICULTURAL CONSERVATION EASEMENT

GRANTOR: OWNERS

GRANTEES: WHATCOM LAND TRUST AND WHATCOM COUNTY

ABBR. LEGAL DESCRIPTION: Parcel # XXXXXXXXXXXX 0000

AGRICULTURAL CONSERVATION EASEMENT DEED

This Agricultural Conservation Easement Deed ("Deed") is made and entered into this ____ day of ___, 20__ by OWNERS ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("Grantees"), and the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. Further, the State of Washington, by and through the Washington State Recreation and Conservation Office (RCO) is a third party beneficiary and has certain rights herein, including third party right of enforcement.

RECITALS:

The following recitals are a material part of this Easement:

Grantor is fee simple owner of real property (the "Protected Property") in Whatcom County, Washington, that is the subject of this Easement. Exhibit B is the legal

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~~description and Exhibit C is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.~~

~~Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture's Natural Resources Conservation Service (herein the "United States") has provided on behalf of the Commodity Credit Corporation \$XX,XXX (XX thousand and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.~~

~~While "Grantees" include the Whateom Land Trust and Whateom County, use of the term "Grantees" does not imply that joint approval is required to exercise Grantees' rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.~~

~~The Protected Property is approximately XX acres and is currently farmed.~~

~~The Protected Property has significant agricultural value to Grantees and to the people of Whateom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Exhibit E.~~

~~Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whateom County Ordinance No. 2002-054, provided in Exhibit D, to preserve land for agricultural purposes and has substantial public benefits.~~

~~As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.~~

~~This Easement is acquired in part with a grant from RCO pursuant to that certain grant agreement (#XX) between RCO and Grantee, signed by RCO on date and by Grantee on date ("RCO Grant Agreement"). RCO is a third-party beneficiary of certain rights under this easement, including those identified in Exhibit H (State of Washington Recreation and Conservation Office Third Party Rights and Requirements), which is attached hereto and incorporated herein by reference and will run with the land in perpetuity.~~

~~CONVEYANCE AND CONSIDERATION.~~

~~For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$XX,XXX by Whateom County, RCO and the United States to Grantor, Grantor~~

_____ hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.

_____ This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

_____ Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor's, successors and assigns in perpetuity.

_____ PURPOSE.

_____ The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The grant of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

_____ RELATIONSHIP OF PARTIES.

_____ Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.

_____ The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section III. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.

~~The above Section IV.A. does not pertain to monitoring and enforcement of a conservation plan, the responsibility for which rests with the Natural Resource Conservation Service and Whatecom County as described in Section VIII A below.~~

~~RIGHT OF ENFORCEMENT.~~

~~Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.~~

~~The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.~~

~~Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with Agricultural Conservation Easement Program requirements.~~

~~PERMITTED USES AND ACTIVITIES. Grantor may:~~

~~Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section VII below.~~

~~Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.~~

~~Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section XII of this Easement, and shown on Exhibit E, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section VII~~

~~Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm-worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.~~

~~On the "Farmstead", as defined in Section XII of this Easement, and shown in Exhibit D, engage in any uses or activities, including removal, replacement, maintenance, and remodeling of a single family residence, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section VII below. The construction and maintenance of an Accessory Dwelling Unit (ADU) is allowed within the "Farmstead" so long as it is allowed through Whatcom County Planning and Development Services.~~

~~Plant or maintain trees on the Agricultural Land, as defined in Section XII of this Easement only as follows:~~

~~Maintain a woodlot for the production of firewood to be used on the Protected Property;~~

~~Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.~~

~~Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.~~

~~Install a small scale wind power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small scale wind power generator prior to installation.~~

~~Grantor has the right to conduct non farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the~~

~~Protected Property and subordinate to the agricultural and residential use of the Protected Property.
Activities which market petroleum or chemical products are prohibited.~~

~~PROHIBITED USES AND ACTIVITIES.~~

~~Unless specifically permitted by Section VI above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:~~

~~Use or activities inconsistent with the purpose of this Easement.~~

~~Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.~~

~~Cover more than two percent (2%) of the area (approximately XX,XXX square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.~~

~~Construct non-agricultural structures or facilities.~~

~~Conduct any use or activity that removes or damages the long term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.~~

~~Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section VII, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.~~

~~Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres. Land subject to such alteration shall be returned to pre-activity conditions in accordance with baseline data set forth in Exhibit E.~~

~~Use off road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.~~

~~Grant easements or rights of way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.~~

~~Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.~~

~~The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by products generated on the Protected Property is permitted.~~

~~WATER RIGHTS:~~

~~The Parties agree that the Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.~~

~~Grantee Trust will include reference, in Baseline Report, to water rights associated with the Protected Property. The documentation of the water rights are attached to this Easement in Exhibit F. In its monitoring visits, Grantee Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Grantee Trust believes that Grantor is not sufficiently informed about protecting Grantor's water rights, Grantee Trust will refer Grantor to Whatecom County and will urge Grantor to take the Water Rights protection actions.~~

~~Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section IV. RELATIONSHIP OF PARTIES notwithstanding, Whatecom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatecom County may pursue remedies in accordance with Sections XIII and XIV of this Easement or may itself take appropriate action to protect the water rights.~~

~~If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture,~~

~~Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.~~

~~CONSERVATION PLAN:~~

~~As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.~~

~~In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.~~

~~If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.~~

~~For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement~~

_____ is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whateom County.

_____ **~~RIGHTS CONVEYED TO GRANTEES.~~**

_____ To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

_____ To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.

_____ (1) To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement;

_____ (2) To enter the land at such other times as necessary if the Trust has reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.

_____ In the event of uses or activities inconsistent with the purpose and provisions of this Easement, The Trust may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.

_____ Forbearance by The Trust to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

_____ **~~NO PUBLIC ACCESS.~~**

_____ This Easement provides no right of access to the general public.

_____ **~~BASELINE DATA.~~**

_____ To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare baseline data sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The baseline data may consist of reports, maps, photographs, and other documentation. Grantor and Grantee will execute a statement verifying that the baseline data accurately represents the condition of the Protected Property as of this time. Baseline data is contained in Exhibit E. The baseline data will delineate the Farmstead and Agricultural Land as defined below.

_____ The baseline data will specifically establish the extent of the Farmstead, which includes that portion of the Protected Property used for agricultural buildings, structures and improvements

~~and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.~~

~~The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas such as critical areas and woodlands as well as cropland or grazing land.~~

~~INFORMAL DISPUTE RESOLUTION.~~

~~Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.~~

~~GRANTEES' REMEDIES.~~

~~If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.~~

~~If Grantor does not take immediate action to cure the violation and restore the Protected Property, Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity.~~

~~In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.~~

~~If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement,~~

~~Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in paragraph A.~~

~~Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.~~

~~RESPONSIBILITY FOR COST AND LIABILITIES.~~

~~Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States and RCO, and hold Grantees and the United States and RCO harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section XIX. L. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.~~

~~EXTINGUISHMENT AND TRANSFER.~~

~~The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whateom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whateom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.~~

~~Grantor agrees to:~~

~~Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or~~

~~intends to divest itself, of any permanent or temporary interest in the Protected Property.~~

~~Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.~~

~~Whatecom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by United States and Whatecom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.~~

~~AMENDMENT:~~

~~Upon approval of the United States, Grantor and all Grantees may agree to amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose and that the result of the amendment is to strengthen the effectiveness of the Easement.~~

~~SUBORDINATION:~~

~~Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit G.~~

~~GENERAL PROVISIONS~~

~~Notices:~~

~~Any notice under this Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:~~

~~Grantor: Owners
Address
Bellingham, WA 98226~~

~~Grantee, Trust: Whateom Land Trust PO Box 6131
Bellingham, WA 98227~~

~~Grantee, County: Whateom County
Attn: Agricultural PDR Administrator 5280 Northwest Drive
Bellingham, WA 98226~~

~~NRCS: USDA NRCS
316 West Boone Avenue, Suite 450
Spokane, WA 99201~~

~~RCO: Recreation and Conservation Office PO Box 40917
Olympia WA 98504 0917~~

~~Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.~~

~~Controlling Law:~~

~~The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whateom County Superior Court.~~

~~Liberal Construction:~~

~~Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whateom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.~~

~~Severability:~~

~~If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.~~

~~Entire Agreement.~~

~~This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.~~

~~No Forfeiture.~~

~~Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.~~

~~Warranty of Good Title.~~

~~Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.~~

~~Grantor Grantees.~~

~~The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above named Grantees, their successors and assigns.~~

~~Successors and Assigns.~~

~~The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.~~

~~Federal Enforcement.~~

~~In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.~~

General Indemnification

~~Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.~~

Environmental Warranty

~~Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.~~

~~Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.~~

~~"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right to know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.~~

~~“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.~~

~~Merger~~

~~The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this conservation easement deed are set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the protected property by or to the Grantee, the United States, or any successor or assignee will be deemed to eliminate these conservation easement terms, or any portion thereof, pursuant to the doctrine of “Merger” or any other legal doctrine.~~

~~In the event that either Grantee takes legal title to Grantor’s interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 107(b)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.~~

~~This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT A is attached hereto and incorporated herein by reference and will run with the land in perpetuity [or for the maximum duration allowed under applicable State laws]. As required by 16~~

~~U.S.C. Section 3865 et seq. and 7 CFR Part 1468 et seq. and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT B is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT A that is appended to and made a part of this easement deed.~~

~~SCHEDULE OF EXHIBITS.~~

~~Minimum Terms for Agricultural Land Easements~~

~~Legal Description of Property Subject to Easement~~

~~Site Map~~

~~Ordinance # 2002-054~~

~~Baseline Data~~

~~Water Rights~~

~~Subordination Agreement example~~

~~State of Washington Recreation and Conservation Office Third Party Rights and Requirements~~

~~TO HAVE AND TO HOLD unto Grantees and the United States of America, and their successors, and assigns forever.~~

~~PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW~~

~~IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this~~
~~_____ day of __, 20____.~~

~~Grantor~~

~~Grantor~~

~~STATE OF WASHINGTON~~)

~~ss.~~

~~COUNTY OF WHATCOM~~)

~~I certify that I know or have satisfactory evidence that _____, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.~~

~~Dated: _____~~

~~Notary Public~~

Print Name

~~My commission expires _____~~

~~(Use this space for notarial stamp/seal)~~

 _____ WHATCOM COUNTY does hereby accept the above Agricultural Conservation Easement Deed.

 Dated:

_____Grantee

By _____

~~Jack Louws, County Executive~~

~~Approved as to Legal Form: By _____~~

~~Senior Civil Deputy Prosecuting Attney~~

~~STATE OF WASHINGTON~~)

_____) ss.

~~COUNTY OF WHATCOM~~)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____

_____ of _____ voluntary act of such party for the uses and purposes mentioned in the _____ to be the free and
instrument.

 Dated:

~~Notary Public~~

Print Name _____

~~My commission expires _____~~

~~_____ (Use this space for notarial stamp/seal)~~

The WHATCOM LAND TRUST, a Washington nonprofit corporation, does hereby accept the above-
Agricultural Conservation Easement Deed.

Dated: ____

By ____

Its ____

STATE OF WASHINGTON ____)

) ss.

COUNTY OF WHATCOM ____)

I certify that I know or have satisfactory evidence that ____ is the person who appeared before me, and
said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized
to execute the instrument and acknowledged it as the

____ of ____ voluntary act of such party for the uses and purposes mentioned in the ____ to be the free and
instrument.

Dated: ____

Notary Public

Print Name ____ My commission expires ____

(Use this space for notarial stamp/seal)

~~THE STATE OF WASHINGTON, BY AND THROUGH THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, Third Party Beneficiary, does hereby accept the above Grant Deed of Agricultural Conservation Easement.~~

 Dated:

By _____

_____Its_____

~~STATE OF WASHINGTON~~)

~~_____) ss.~~

~~COUNTY OF THURSTON~~)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____

_____ of _____ voluntary act of such party for the uses and purposes mentioned in the _____ to be the free and
instrument.

 Dated:

Notary Public

Print Name _____
My commission expires _____

~~(Use this space for notarial stamp/seal)~~

~~EXHIBIT A~~

~~MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS~~

~~The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit B, hereafter referred to as "the Protected Property", for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Protected Property.~~

~~The OWNERS (collectively Grantor), WHATCOM COUNTY AND WHATCOM LAND TRUST (collectively Grantee), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the "Parties") acknowledge that the ALE is acquired by the Grantee to protect the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses on the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is appended to this easement deed. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control. If other sections of the of the ALE have terms and conditions that are consistent with, but more restrictive than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive than Section I Paragraph 4 and Section II then Section I Paragraph 4 and Section II will control.~~

~~SECTION I. MINIMUM CONSERVATION DEED RESTRICTIONS~~

~~Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.~~

~~The Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:~~

~~**Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use~~

~~of the property will be subject to the ALE Plan on the Protected Property.~~

~~The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.~~

~~The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.~~

~~**Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 4% of the Protected Property, excluding NRCS approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property; including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.~~

~~**Limitations on Nonagricultural Uses.** Any activities inconsistent with the purposes of the ALE are prohibited. The following activities are inconsistent with the purposes of ALE and specifically prohibited, subject to the qualifications stated below:~~

~~*Subdivision*~~

~~Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited, except where State or local regulations explicitly require subdivision to construct residences for employees working on the Protected Property. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS or his or her authorized designee (Chief of NRCS) prior to division of the Protected Property.~~

~~*Industrial or Commercial Uses* Industrial or commercial activities on the Protected Property are prohibited except for the following:~~

~~agricultural production and related uses conducted as described in the ALE Plan;~~

~~the sale of excess power generated in the operation of alternative energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation~~

~~_____~~
~~_____~~ purposes of this Easement;
~~_____~~

~~_____~~ temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;
~~_____~~

~~_____~~ commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries; and
~~_____~~

~~_____~~ small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.
~~_____~~

~~_____~~ *Construction on the Protected Property* All new structures and improvements must be located within the Building Envelopes, containing approximately XX acres and described in EXHIBIT E which is appended to and made a part of the ALE.

~~_____~~ The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the agricultural use and future viability, and related conservation values of the Protected Property.
~~_____~~

~~_____~~ Utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph (4)(C)** and agricultural structures that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the utilities or agricultural structures are consistent with the ALE Plan described **Section I, Paragraph I**.
~~_____~~

~~_____~~ New roads may be constructed if they are within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.
~~_____~~

~~_____~~ Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.
~~_____~~

~~_____~~ Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property or to mark boundaries of the Protected Property.
~~_____~~

~~Granting of easements for utilities and roads~~—The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the agricultural use and future viability, and related conservation values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS.

~~Surface Alteration~~—Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

~~dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with an ALE Plan;~~

~~erosion and sediment control pursuant to a plan approved by the Grantee;~~

~~as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or~~

~~Agricultural activities conducted in accordance with the ALE Plan.~~

~~Oil, Gas, or Mineral Exploration and Extraction~~—Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited, except for limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Protected Property. Extraction of materials used for agricultural operations must be limited to a small, defined area or acreage identified in EXHIBIT E and must not harm the conservation values or the agricultural uses of the Protected Property.

~~Impervious surfaces as defined in **Section I, Paragraph (2)** of this Easement will include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses permitted by this paragraph.~~

~~If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).~~

~~Preserving Agricultural Uses.~~ The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the ALE Plan and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the ALE's protection for the agricultural use and future viability, and related conservation values of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i) (vii) and the following activities, subject to the qualifications stated below:

~~Agricultural Production~~ The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph I.

~~Forest Management and Timber Harvest~~ Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

~~On Farm Energy Production~~ Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

~~Grassland Uses of the Protected Property~~ Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct

~~livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Grantee or NRCS. Determinations of nesting seasons for birds whose populations are in significant decline will be made in writing to the Grantors, or set forth within the ALE Plan for the Protected Property.~~

~~SECTION II. PROTECTION OF THE UNITED STATES' INTERESTS~~

~~**United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.~~

~~In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.~~

~~The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.~~

~~In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.~~

~~**General Disclaimer.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims,~~

~~demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.~~

~~**Environmental Warranty.** Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.~~

~~Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.~~

~~"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right to know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.~~

~~"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.~~

~~**Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United~~

~~States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.~~

~~With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is 35 % percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.~~

~~If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.~~

~~The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.~~

~~**Amendment.** This ALE may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.~~

_____ 1	Exhibit C – Site Map
_____ 2	

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

**ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS
PROGRAM AND OVERSIGHT COMMITTEE**

WHEREAS, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land, and timber land; and

WHEREAS, Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to \$30,000 for outside contract assistance in preparing the PDR program; and

WHEREAS, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

WHEREAS, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

WHEREAS, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

WHEREAS, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

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

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.

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

ADOPTED this 10 day of September, 2002.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



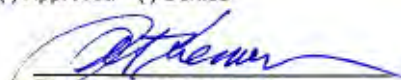
Dana Brown-Davis,
Clerk of the Council



Ward Nelson, Council Chair

APPROVED as to form

☒ Approved ☐ Denied


Karen N. Frakes, Civil Deputy Prosecutor
Pete Kremen, Executive

~~EXHIBIT E Baseline Documentation~~

~~The Baseline Data Inventory for the Agricultural Conservation Easement Deed is maintained by the
Whatecom Land Trust. The remainder of this page is intentionally blank.~~

1	EXHIBIT F Water Rights Documentation
2	
3	

~~EXHIBIT G Subordination Agreement~~

~~When recorded return to:~~

~~Grantor; Grantee: _____~~

~~Legal Description~~

~~Abbreviated form: _____ Additional legal at Exhibit A.~~

~~Assessor's Tax Parcel Number: _____~~

~~Reference number(s) of related/assigned/released documents: _____ Reference(s) to document(s) appears on page(s) _____~~

~~SUBORDINATION AGREEMENT~~

~~NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.~~

~~The undersigned subordinator agrees as follows:~~

~~_____ ("Subordinator") is the owner and holder of a mortgage dated _____, which was recorded under Auditor's File No. _____, records of _____ County;~~

~~_____ ("Easement Holder") is the holder of a conservation easement dated _____, 20____, executed by [("Owner") or ("Owners")] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;~~

~~_____, [husband and wife,] [("Owner") or ("Owners")] [is the owner or are the owners] of all the real property described in the conservation easement identified above in Paragraph 2.~~

In consideration of benefits to Subordinator from [("Owner") or ("Owners")], receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.

This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.

The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this ____ day of __, 20__.

SUBORDINATOR _____ SUBORDINATOR

(Name) (Name)

STATE OF WASHINGTON _____)

) ss.

COUNTY OF _____)

I _____ certify that I _____ know or _____ have _____ satisfactory _____ evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: __

~~EXHIBIT H~~

~~State of Washington Recreation and Conservation Office Third Party Rights and Requirements~~

~~GENERAL~~

~~As indicated on page 1, Washington State Recreation and Conservation Office (“RCO”) is a third-party beneficiary to this Easement, which was acquired in part with a grant from RCO pursuant to grant agreement #XX between RCO and Whatcom County.~~

~~Permanent protection of the Protected Property will further the purposes of the Washington State Farmlands Preservation Account (FPA) established under RCW 79A.15.130(1), which provides that moneys appropriated to the FPA “must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.” The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA), provide that “it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens.”~~

~~RCO PROHIBITED USES~~

~~**Commercial feedlots.** The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used to receive livestock that are confined solely for the purpose of growing or finishing. However, seasonal confinement of animals raised on the Protected Property and year round confinement for the commercial production of dairy products on the Protected Property are expressly permitted. Furthermore, nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.~~

~~**No aquaculture.** Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Protected Property.~~

~~**No Compensatory Mitigation.** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property (“Compensatory Mitigation”) is prohibited on the~~

~~Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property.~~

~~RCO THIRD PARTY RIGHT OF ENFORCEMENT~~

~~RCO is hereby granted third party right of enforcement of this Easement. As such, RCO may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. RCO and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that RCO expects that Grantee shall have primary responsibility for monitoring and enforcement of the Easement. In the event that RCO and Grantee do not agree as to whether the Grantor is complying with the terms of the easement, RCO or Grantee may proceed with enforcement actions without the consent of the other. If RCO elects to enforce the terms of this Easement, it shall first follow the dispute resolution process and remedies described in Sections XIII and XIV of the easement; provided, however, that RCO shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.~~

~~This third party right of enforcement does not extend to any other third party except as described within the terms of this easement and exhibits and will automatically transfer to another State agency charged with maintaining, preserving and/or restoring agricultural lands in the event RCO is dissolved or reorganized.~~

~~In the event that the Easement is transferred or assigned without the consent of RCO, which consent shall not be unreasonably withheld, RCO may require that Grantee pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section II (5) and distributed as further provided in Section II (5); or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time.~~

~~In the event that the Protected Property is used by Grantor in a manner that is not consistent with the Purpose of this Easement or the terms of the RCO Grant Agreement, RCO shall have the right, in addition to any other remedies described in this Easement, to require that Grantor pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section II (5) and distributed as further provided in Section II (5); or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time. Any costs, fees or damages paid by Grantor for enforcement of this Easement or restoration of the Conservation Values pursuant to Exhibit E shall be deducted from this amount. RCO agrees that it will follow the dispute~~

~~resolution process and remedies described in Sections XIII and XIV before exercising this right, unless legally compelled to do otherwise. Any amounts due and owing RCO under this paragraph shall be due and owing within 120 days of receiving a written demand for repayment by RCO. Upon Grantor's repayment of such amount to RCO, Grantee and RCO agree to prepare and record, a deed amendment to release Grantor from any further obligations to RCO or Grantee under this Easement.~~

~~SUBSEQUENT TRANSFER OR EXTINGUISHMENT~~

~~**Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.~~

~~The amount of the proceeds to which Grantee and any Beneficiary to this Easement shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XVI. Grantee may use all such proceeds for the acquisition of property interests that are substantially equivalent to those conveyed by this Easement. Grantee shall consult with and receive the approval of RCO in the selection of any replacement property interests. Upon acquisition of such replacement property interests, Grantee shall convey to RCO the same or substantially equivalent rights as provided for in this Easement.~~

~~In granting this Easement, Grantor has considered the fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement. Grantor's inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.~~

~~**Valuation.** This Easement constitutes a real property interest immediately vested in Grantee. For purposes of this Section, the Parties stipulate that this Easement has a fair market value determined by multiplying (a) the then fair market value of the Protected Property unencumbered by the Easement (minus any increase in value attributable to improvements on the Protected Property), at the time of termination or extinguishment, as determined by an appraisal that meets RCO requirements for appraisals, by (b) the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, unencumbered by the Easement, at the time of this grant.~~

~~For purposes of this Section, the Parties agree that the ratio of the value of the Easement to the value of Grantor's property unencumbered by the Easement is 35% and shall remain constant.~~

~~**Distribution of Proceeds.** In the event of extinguishment of this Easement pursuant to Section XVI, condemnation of this Easement pursuant to Exhibit A, or damages received by Grantor in an amount equal to the fair market value of this Easement pursuant to Section XIV, any proceeds attributable to the value of the Easement RCO is entitled to 45.75% of any such proceeds.~~

~~**Subsequent Transfers.** Grantor agrees to: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section 5.4 shall not impair the validity of this Easement or limit its enforceability in any way.~~

~~AMENDMENT.~~

~~**Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantee under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.~~

~~ASSIGNMENT~~

~~**Assignment.** Grantee's Interest. Grantee's interest in this Easement is transferable with prior written notice to and consent of RCO, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified holder at the time of transfer under RCW 64.04.130, as amended, and a qualified recipient of grant funds from the farmlands preservation account under RCW 79A.15.139. Grantee shall not assign this Easement without notice to and consent of Grantor and RCO, which consent shall not be unreasonably withheld. As conditions of such transfer, Grantee shall require that assignee (a) continue to carry out the Purpose of this Easement and (b) comply with the terms of the RCO Grant Agreement, as described in Section 1.1 of this exhibit. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice;~~

~~provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.~~

~~**Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, then Grantee's rights and duties hereunder shall become vested and fall upon RCO, who may then assign Grantee's rights and duties hereunder to an organization with a similar mission to that of Grantee.~~

~~**NO MERGER.**~~

~~**No Merger.** In the event that Grantee acquires all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantee covenants to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to Section XIX-M.~~

~~**COSTS OF ENFORCEMENT.**~~

~~**1.1. Costs of Enforcement.** In the event the RCO exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the RCO exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.~~

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PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

After Recording Return To:

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225

DOCUMENT TITLE: **AGRICULTURAL CONSERVATION EASEMENT**

GRANTOR: _____

GRANTEES: **WHATCOM LAND TRUST AND WHATCOM COUNTY**

ABBR. LEGAL DESCRIPTION:

Full Legal Description in Exhibit A

TAX PARCEL # _____

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed ("Deed") is made and entered into this _____ day of
20____, by _____ ("Grantor"), the WHATCOM LAND TRUST

(“Trust”), and WHATCOM COUNTY, WASHINGTON (“County”) (“collectively, Grantees”), and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

1. RECITALS

- 1.1. Grantor is fee simple owner of real property (the “Protected Property”) in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.
- 1.2. While “Grantees” include the Whatcom Land Trust and Whatcom County, use of the term “Grantees” does not imply that joint approval is required to exercise Grantees’ rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.
- 1.3. The Protected Property is approximately _____ acres and is currently farmed.
- 1.4. The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Baseline Documentation (Exhibit D). It is the intent of all parties that the agricultural values described in the baseline shall remain for the life of this easement and shall be used along with annual monitoring to identify future changes on the easement area.
- 1.5. Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, which establishes the Purchase of Development Rights Program to preserve land for agricultural purposes and has substantial public benefits.
- 1.6. As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.
- 1.7. Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture’s Natural Resources Conservation Service (herein “NRCS”) has provided on behalf of the Commodity Credit Corporation \$ _____ (_____ and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.

2. CONVEYANCE AND CONSIDERATION

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2.1. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$ _____ by the Whatcom County and the NRCS to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.

2.2. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

2.3. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor's, successors and assigns in perpetuity.

3. PURPOSE

The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The granting of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

4. RELATIONSHIP OF PARTIES

4.1. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.

4.2. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section 3. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.

4.3. The above Section 4.1. does not pertain to monitoring and enforcement of a conservation farm plan, the responsibility for which rests with NRCS and Whatcom County as described in Section 9.

5. RIGHT OF ENFORCEMENT

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.

Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with the Agricultural Conservation Easement Program requirements.

6. PERMITTED USES AND ACTIVITIES

Grantor may:

6.1. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section 7 below.

6.2. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.

6.3. Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section 12 of this Easement, and shown on Exhibit B, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section 7.4. Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property.

temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.

- 6.4. Remove, Maintain, Expand, or Replace temporary hoop houses and temporary greenhouses with no foundation outside of the Farmstead area so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.5. On the "Farmstead", as defined in Section 12 of this Easement, and shown in Exhibit B, engage in any uses or activities, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section 7 below.
- 6.6. Plant or maintain trees on the Agricultural Land, as defined in Section 12 of this Easement only as follows:
 - 6.6.1. Maintain a woodlot for the production of firewood to be used on the Protected Property.
 - 6.6.2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.
 - 6.6.3. Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.
 - 6.6.4. Plant and maintain trees to provide shading for grazing livestock.
 - 6.6.5. Plant and maintain trees used in fruit or nut production.
- 6.7. Install a small-scale wind and solar power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind and solar power generator prior to installation.
- 6.8. Grantor has the right to conduct non-farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.

7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

Unless specifically permitted by Section 6 above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:

- 7.1. Use or activities inconsistent with the purpose of this Easement.
- 7.2. Legal or “de facto” division, subdivision, or partitioning of the land or the separate sale of any portion of the Property, even if that portion of the Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss of land to the Property, and provided that no new parcel may be created by such boundary line adjustments, and such adjustments does not affect over two acres in total for the entire Property. Any new land gained through a boundary line adjustment is subject to the terms of this agreement.
- 7.3. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.
- 7.4. Cover more than two percent (2%) of the area (approximately _____ square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.
- 7.5. Construct non-agricultural structures or facilities.
- 7.6. Conduct any use or activity that removes or damages the long-term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.
- 7.7. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section 8, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.
- 7.8. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres.
- 7.9. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law

enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.

7.10. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.

7.11. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.

7.12. The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.

8. WATER RIGHTS

8.1. The Parties agree that any Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.

8.2. Trust will include reference, in Baseline Documentation (Exhibit D), to any water rights associated with the Protected Property. In its monitoring visits, Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Trust believe that Grantor is not sufficiently informed about protecting Grantor's water rights, Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions.

8.3. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section 4 RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections 13 and 14 of this Easement or may itself take appropriate action to protect the water rights.

8.4. If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.

9. CONSERVATION PLAN

9.1. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the Whatcom Conservation District and approved by NRCS. This conservation plan shall be developed

using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.

9.2. In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.

9.3. If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.

9.4. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

10. RIGHTS CONVEYED TO GRANTEES

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

10.1. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.

10.2. To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement.

10.3. To enter the land at such other times as necessary if Grantees have reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or

terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.

10.4. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, the Grantees may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.

10.5. Forbearance by the Grantees to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

11. NO PUBLIC ACCESS

This Easement provides no right of access to the general public.

12. BASELINE DOCUMENTATION

12.1. To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare Baseline Documentation sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The Baseline Documentation may consist of reports, maps, photographs, and other documentation. Grantor and Grantees will execute a statement verifying that the Baseline Documentation accurately represents the condition of the Protected Property as of this time. Baseline Documentation is contained in Exhibit D. The Baseline Documentation will delineate the Farmstead and Agricultural Land as defined below.

12.2. The Baseline Documentation will specifically establish the area and extent of the Farmstead, which includes that portion of the Property used for residential buildings and buildings and uses accessory to residential buildings, as well as that portion used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.

12.3. The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas, such as woodlands, as well as cropland or grazing land.

13. INFORMAL DISPUTE RESOLUTION

Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will

be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

14. GRANTEES' REMEDIES

14.1. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.

14.2. Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity if Grantor:

14.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees;

14.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period;
or

14.2.3. Fails to continue diligently to cure such violation until finally cured.

14.3. In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.

14.4. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in Section 14.1.

14.5. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

15. RESPONSIBILITY FOR COST AND LIABILITIES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section 19.12. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.

16. EXTINGUISHMENT AND TRANSFER

16.1. The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.

16.2. Grantor agrees to:

16.2.1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or intends to divest itself, of any permanent or temporary interest in the Protected Property.

16.2.2. Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.

16.3. Whatcom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by the United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to

give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

17. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantees under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.

18. SUBORDINATION

Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit E.

19. GENERAL PROVISIONS

19.1. Effective Date. The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.

19.2. Notices. Any notice under this Agricultural Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Grantor:

Grantee, Trust:

Whatcom Land Trust
PO Box 6131
Bellingham, WA 98227

Grantee, County:

Whatcom County PDS
Attn: PDR Program Administrator
5280 Northwest Drive
Bellingham, WA 98226

Third Party Grantee, NRCS: USDA-NRCS

Attn: Easement Programs

11707 E. Sprague Ave, Suite 301
Spokane Valley, WA 99206

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

19.3. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

19.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

19.5. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.

19.6. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.

19.7. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.

19.8. Warranty of Good Title. Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.

19.9. Grantor-Grantees. The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.

19.10. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

19.11. Federal Enforcement. In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of

Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.

19.12. General Indemnification. Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

19.13. Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

19.13.1. Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.

19.13.2. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar

environmental health, safety, building and land use as may now or at any time hereafter be in effect.

19.13.3. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

19.14. Recordation. Grantees shall record this instrument in a timely fashion in the official records of Whatcom County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

19.15. No Merger. In the event that Grantees acquire all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantees, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantees covenant to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party.

19.15.1. In the event that either Grantee takes legal title to Grantor's interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 170 (h)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.

20. RCPP MINIMUM DEED TERMS

This Conservation Easement is acquired with funds provided, in part, under the Regional Conservation Partnership Program (RCPP) (16 U.S.C. Section 3871 et seq. and 7 CFR part 1464). The Exhibit F is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by the RCPP, and as a condition of receiving RCPP funds, all present and future use of the Protected Property identified in Exhibit A (legal description) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled RCPP Minimum Deed Terms in Exhibit F that is appended to and made a part of this easement deed. The rights of the United States acquired under this Conservation Easement shall be unaffected by any subsequent amendments or repeal of the RCPP.

21. SCHEDULE OF EXHIBITS

21.1. Exhibit A. Legal Description

21.2. Exhibit B. Site Map

21.3. Exhibit C. Ordinance

21.4. Exhibit D. Baseline Documentation

21.5. Exhibit E. Subordination Agreement Example

21.6. Exhibit F. RCPP Minimum Deed Terms

TO HAVE AND TO HOLD unto Grantees and the State of Washington, and their successors, and assigns forever.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this _____ day of _____, 20____.

Grantor

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name
My commission expires _____

(Use this space for notarial stamp/seal)

WHATCOM COUNTY does hereby accept the above Agricultural Conservation Easement Deed.

Dated: _____
_____ Grantee

By _____

Satpal Sidhu, County Executive

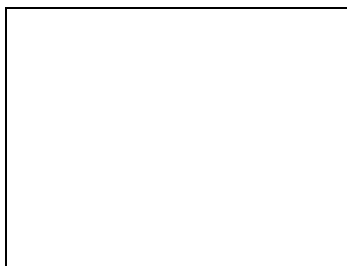
Approved as to Legal Form: _____ By _____

Senior Civil Deputy Prosecuting Attny

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

I certify that I know or have satisfactory evidence that _____ is the
person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated
that they were authorized to execute the instrument and acknowledged it as the
_____ of _____ to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name
My commission expires _____

The WHATCOM LAND TRUST, a Washington nonprofit corporation, does hereby accept the above
Agricultural Conservation Easement Deed.

Dated: _____

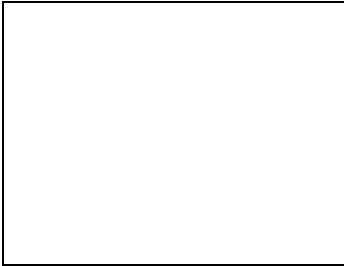
_____ By _____

Its _____

STATE OF WASHINGTON _____)
_____) ss.
COUNTY OF WHATCOM _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name
My commission expires _____

(Use this space for notarial stamp/seal)

THE UNITED STATES OF AMERICA, BY AND THROUGH THE NATURAL RESOURCES CONSERVATION SERVICE, Third Party Beneficiary, does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: _____

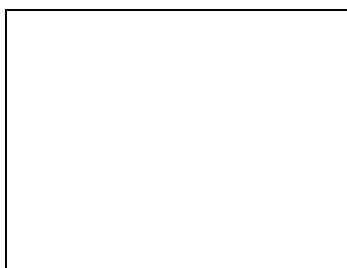
By _____

Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name
My commission expires _____

(Use this space for notarial stamp/seal)

1	
2	
3	<u>EXHIBIT A</u>
4	<u>Legal Description</u>
5	
6	<u>APN/Parcel ID:</u>

Exhibit B
Site Map

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EXHIBIT C
Ordinance

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EXHIBIT D
Baseline Documentation

The Baseline Documentation for the _____ Agricultural Conservation Easement is kept by the
Whatcom Land Trust at 412 N Commercial, Bellingham WA 98225. The remainder of this page is
intentionally blank.

EXHIBIT E
Subordination Agreement Example

When recorded return to:

Grantor: _____

Grantee: _____

Legal Description

Abbreviated form:

Additional legal at Exhibit B.

Assessor's Tax Parcel Number: _____

Reference number(s) of related/assigned/released documents: _____

Reference(s) to document(s) appears on page(s) _____

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

The undersigned subordinator agrees as follows:

1. _____ ("Subordinator") is the owner and holder of a mortgage dated _____, which was recorded under Auditor's File No. _____, records of _____ County;
2. _____ ("Easement Holder") is the holder of a conservation easement dated _____, 20____, executed by [("Owner") or ("Owners")] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;

SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

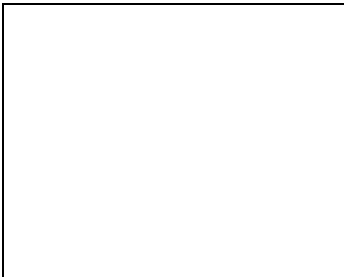
STATE OF WASHINGTON)

) ss.

COUNTY OF)

I certify that I know or have satisfactory evidence that
is the person who appeared before me, and said person acknowledged that they signed this instrument, on
oath stated that they were authorized to execute the instrument and acknowledged it as the
of to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public

Print Name

My commission expires

(Use this space for notarial stamp/seal)

EXHIBIT F
RCPP Minimum Deed Terms

The Regional Conservation Partnership Program (16 U.S.C. Section 3871 et seq.), facilitated and provided funding for the purchase of a Conservation Easement (“Conservation Easement”) on real property described in Exhibit A, hereafter referred to as the “Protected Property,” to further the restoration, protection, enhancement, management, maintenance, and monitoring of agricultural values on the Protected Property (the “Conservation Values”).

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The _____ (collectively “Grantor”), the **Whatcom Land Trust** (“Trust”), and **Whatcom County, Washington** (“County”) (“collectively, Grantees”), and the **United States of America** (the “United States”) and its assigns, acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”) (jointly referred to as the “Parties”) acknowledge that the Conservation Easement is acquired by the Grantee for the purpose of the restoration, protection, enhancement, management, maintenance, and monitoring of the Conservation Values (the “purposes of the Conservation Easement”). Decision making on behalf of NRCS is delegated to the Chief of NRCS or authorized designee (hereafter referred to as “Chief of NRCS”). Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Trust.

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In order to ensure compliance with the Regional Conservation Partnership Program, 16 U.S.C. Section 3871 et. seq. and 7 CFR part 1464, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the Conservation Easement. Notwithstanding any other provision of the Conservation Easement, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other sections of the Conservation Easement, Sections I and II will control; however, if other sections of the Conservation Easement have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other sections of the Conservation Easement are more restrictive to the rights of the Grantor than Section I, Paragraph 3 and Section II, then Section I, Paragraph 3 and Section II will control.

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SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of the Conservation Easement, and the restrictions and covenants of this Conservation Easement will apply to the Protected Property as a whole.

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The terms and conditions of the Conservation Easement run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. Limitation on Impervious Surfaces. Impervious surfaces will not exceed 2 percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Conservation Easement.

2. Limitations on Uses. Any uses or activities that are inconsistent with the purposes of the Conservation Easement are prohibited. The following activities are inconsistent with the purposes of the Conservation Easement and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Uses consistent with the purposes of the Conservation Easement;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the purposes of the Conservation Easement;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Conservation Values;

(iv) Commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.; and

(v) Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), containing approximately _____ total acres and described or shown in Exhibit B, which is appended to and made a part of this Conservation Easement.

The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Conservation Values. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Conservation Easement to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph 2(C)**, that neither individually nor collectively have an adverse impact on the Conservation Values, may be located outside of the Building Envelope(s) with prior written approval of the Grantee.

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New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

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Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

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Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the purposes of the Conservation Easement.

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(D) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Conservation Values as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the maintenance or construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the purposes of the Conservation Easement; and

(iv) Agricultural activities and related conservation activities conducted in accordance with this Conservation Easement and the RCPP Easement Plan as described in Section I, paragraph 4.

(F) Surface and Subsurface Mineral Exploration and Extraction –

Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Conservation Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited except as otherwise provided in this Paragraph (F).

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage approved prior to extraction by the Grantee, not to exceed two acres, and does not harm the Conservation Values.

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values;
- (iv) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Conservation Values, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (vi) Not be accomplished by any surface-mining method;
- (vii) Be within the impervious surface limits described in Section I, Paragraph 1; and
- (viii) Use practices and technologies that minimize the duration and intensity

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of impacts to the Conservation Values.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

3. Allowed Uses. The provisions of this Conservation Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purposes of the Conservation Easement. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Conservation Easement's protection for the Conservation Values. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) Agricultural Production – The production, processing, and marketing of agricultural crops, livestock, and forest products is allowed provided it is conducted in a manner consistent with the terms of the Conservation Easement and the RCPP Easement Plan described in Section I, Paragraph 4.

(B) On-Farm Energy Production – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the purposes of the Conservation Easement.

4. RCPP Easement Plan. The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and, as needed, the Chief of NRCS. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and as needed, the Chief of NRCS, in the event the uses or ownership of the Protected Property change. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The RCPP Easement Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, promote the long-term viability of the land to meet the purposes of the Conservation Easement, and identify, as applicable, permissible and prohibited activities and any associated restoration plans.

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SECTION II – PROTECTION OF THE UNITED STATES' INTERESTS AND EASEMENT ENFORCEMENT

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1. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

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Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

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2. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials (defined below), as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

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Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or

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connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

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▲ "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

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▲ "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

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▲ **3. Extinguishment, Termination, and Condemnation.** The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Conservation Easement is percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

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▲ If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

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The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

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4. Amendment. This Conservation Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws, regulations, and program policy. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Conservation Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

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5. United States Right of Enforcement. In consideration of the RCPP funds received for the acquisition of this Conservation Easement, the United States is also granted this right of enforcement that it may exercise only if the terms of the Conservation Easement are not enforced by the holder of the Conservation Easement. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

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In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Conservation Easement.

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The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, the United States will have reasonable access to the Protected Property. Prior to its inspection of

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the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Conservation Easement and will give notice to Grantee and Grantor at the earliest practicable time.

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Exhibit B

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Whatcom County Conservation Easement Program Guidelines

Revised version adopted April 9, 2013,
Second revision adopted November 20, 2018
Third revision adopted [DATE]



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I. INTRODUCTION

These Program Guidelines are authorized under WCC Title 3.25A and serve as rules and procedures for administering the Whatcom County Conservation Easement Program (CEP).

The Guidelines serve two functions:

- A. To provide an overview of the land preservation process for the property owner. Specifically, this information can be found in Section V.
- B. To establish the rules and operational procedures that the CEP Oversight Committee and the Administrator must follow when operating a Conservation Easement Program.

II. CEP OBJECTIVE AND PRINCIPLES

Responding to the loss of County farmland, the Whatcom County Executive initiated the development of a Purchase of Development Rights (PDR) program in September of 2001. A PDR Advisory Committee comprised of farmers, citizens and conservation organizations was formed and tasked with assisting County staff in the development of a proposal for County Council consideration. The Purchase of Development Rights Program was enacted through Ordinance 2002-054 in September of 2002.

Since that time, Whatcom County continues to experience a rapid development rate. In Response to the loss of forest resource lands and areas of ecological importance, the program expanded in 2018 to protect working forestlands and important ecosystem areas. This expansion was enacted through Ordinance 2018-065. In order to better reflect the program's purpose, the program changed names in 2021 to the Whatcom County Conservation Easement Program. This change was enacted through Ordinance 2021-XXX. These program guidelines have been updated accordingly.

A. Objective

The primary objective of the Whatcom County Conservation Easement Program (CEP), in conjunction with other tools, is the protection of farmland. The secondary objective of the CEP is the protection of forestland and areas of ecological importance. The Whatcom County Conservation Easement Program will help to sustain the farming and forestry enterprises as well as support healthy ecosystem function throughout Whatcom County.

B. Principles

The CEP provides a strategic tool to protect County farmland, forestland, and areas of ecological importance.

1. Preserve the County's Agricultural lands, Forestlands and Areas of Ecological Importance

Encourage the protection of a critical mass of agricultural and forestry land to sustain the farm-related and forestry-related businesses and activities that are necessary to support the agricultural and forestry industries in Whatcom County. Additionally, the Program will encourage the protection of areas of ecological importance necessary to sustain ecosystem health and function.

The primary CEP emphasis will be:

- a. Reduce conversion of land to non-agricultural uses within the Agricultural District;
- b. Provide a buffer to discourage encroachment into the Agricultural District;
- c. Consolidate and protect areas of agricultural land; and
- d. Protect agricultural lands located outside the Agricultural District that are under increased pressure of development.

The secondary CEP emphases will be:

- a. Reduce conversion of land to non-forestry uses within the Forestry

- Districts;
- b. Provide a buffer to encroachment of the Forestry Districts;
- c. Consolidate and protect areas of forestry land;
- d. Address commercially significant forestry lands outside the Forestry Districts that are under pressure of development.
- e. Protect areas of ecological importance and support and enhance ecosystem functions within agricultural and forestry lands;
- h. Improve and support habitat connectivity and protection of critical habitat corridors.

2. Offer Effective Program Design

Maintain a voluntary tool for the preservation of productive agricultural and forestry lands, as well as areas of ecological importance in the County that will:

- a. Provide farmers and foresters with the market based economic value for agricultural and forestry land without selling the land;
- b. Provide property owners with the market based economic value for areas of ecological importance without selling the land.
- c. Support and promote ongoing agricultural and forestry activities by offering an attractive option for farmers, foresters, and landowners;
- d. Support and promote ecosystem function by offering an attractive option for landowners; and
- e. Provide for ongoing monitoring and enforcement.

3. Leverage Program Impact and Efficiency

Enhance and support a coordinated approach to the preservation of the agricultural and forestry lands, as well as areas of ecological importance that will:

- a. Create community support for agricultural and forestry preservation initiatives;
- b. Create community support for the protection of areas of ecological importance;
- c. Complement and foster other County programs and policies to preserve farming and agricultural lands;
- d. Complement and foster other County programs and policies to preserve forestry and forestry lands;
- e. Complement and foster other County programs and policies to enhance ecosystem function and protect areas of ecological importance; and
- c. Leverage other public and private funding sources and provide or increase property owner incentives and program effectiveness.

III. ELIGIBILITY CRITERIA

A. Priority Consideration

Areas around the county have been identified to receive priority consideration for CEP participation.

Agricultural priority areas (Appendix A) include a combination of the Ten Rural Study Areas, Watershed Improvement District areas, lands within the Agriculture Zone, and additional areas identified in the 2019 Agricultural Landscape Analysis. The 2019 Agricultural Landscape Analysis also highlights active crop land and contiguous blocks of agricultural lands as identified by the Washington State Department of Agriculture as well as suitable agricultural soils as identified by USDA Natural Resource Conservation Service. Preservation of these areas protect designated agricultural lands and can establish a perimeter of PDR farmlands to protect against development encroachment into large blocks of agricultural lands. These lands, due to their soils, land use, and proximity to core agricultural areas, are deemed priority farmlands for program participation due to their vulnerability for conversion to non- agricultural uses.

Forestry priority areas (Appendix B) include lands located within the Rural Forestry zone and areas designated by the Washington State Department of Natural Resources as being priority for protection from conversion under Washington's Forest Action Plan. The 2019 Forestry Landscape Analysis did not identify additional priority areas.

Ecological priority areas (Appendix C) include lands containing a mapped Habitat Conservation Area or within 165' of habitat conservation feature, such as fish bearing streams, areas identified under the Washington State Department of Fish and Wildlife's Priority Habitats and Species, and the Chuckanut Wildlife Corridor. Ecological priority areas also include mapped FEMA Floodplain and Flood Hazard areas, the 300' buffer of the Historic Meander Zone, and additional areas identified in the 2019 Ecological Landscape Analysis. The 2019 Ecological Landscape Analysis also highlights watershed protection recommendations and freshwater habitat as identified by the Washington Department of Ecology, among other areas.

B. CEP Eligibility

Two factors will be important in determining eligibility:

1. Availability of funding to expand the program and
2. Advancement of CEP objectives. Priority lands will continue to receive preference over other lands through weighted selection criteria.

All applicant properties for CEP participation must be:

1. **Completely or partially within an Agriculture, Rural, Rural Residential, or Rural Forestry zoning designations. Properties located in Urban Growth Areas are ineligible to participate in the program, unless coordination with cities is a component of an application.**
2. **At least 1 acre in size.**
3. **Removing all development rights if the parcel is smaller than 10 acres.**

IV. SITE SELECTION CRITERIA

All valid applications will be reviewed to determine if the acquisition of development rights will promote the CEP's goals and priorities. Selection criteria have been developed to guide, but not control, the review and assessment of eligible properties during selection.

Valid and accepted offers on eligible properties of greater points shall be considered for purchase with available funds before properties receiving lower scores. The criteria, which will be used to evaluate the applications, are outlined below.

Rating instructions: An application will be scored under one of three types of conservation easement selection criteria: 1) Agricultural, 2) Forestry, or 3) Ecological. The agricultural selection criteria allow for a score of up to 110, while the forestry and ecological selection criteria allow for a score of up to 100. This ensures that agricultural protection is the primary emphasis of the program. There are five to six criteria sections and each criteria section is rated and assigned a point value based on a 100 point scale. Then each section is assigned a weight factor. The six agricultural weight factors add up to 1.1 and the five forestry and ecological weight factors each add up to 1.0. When total point values for a section are multiplied by the weight factor, a score will be reached for that section. The total of the section scores result in the final applicant score. Staff performs the ranking, with review and adjustment by the CEP Oversight Committee.

A. Agricultural Site Selection Criteria

1. General Site Evaluation

- a. Total size of parcel(s) (nominal acres)
 1. 0 – 9.99.....0 points
 2. 10 – 19.9915 points
 3. 20 – 49.99.....30 points
 4. 50 – 79.99.....70 points
 5. ≥ 80100 points
- b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)
 1. ≥ 1 mile.....0 points
 2. 0.50 to 0.99 mile.....25 points
 3. 0.25 to 0.49 mile.....50 points
 4. < 0.25 mile.....75 points
 5. Adjacent.....100 points
- c. Number of legal lots of record
 1. 0-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥ 6100 points

- d. Removal of all unused development rights?
 1. Unused development rights remaining0 points
 2. All removed.....100 points
- e. Number of priority areas parcel is located in
 1. 0.....0 points
 2. 1.....50 points
 3. 2-3.....100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2..... 20 points
 2. 3..... 40 points
 3. 4..... 60 points
 4. 5..... 80 points
 5. ≥6..... 100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)
 1. Property is within 2,500 feet of a major road..... 25 points
 2. Property fronts on a major road..... 50 points
 3. Property is within 1,500 feet of the intersection
 of two major roads..... 75 points
 4. Property is at an intersection of major roads..... 100 points
- c. Threat of Conversion/Parcelization
 Total Number of Parcels in surrounding ¼ mile
 1. < 20 parcels..... 50 points
 2. 20 – 50 parcels..... 100 points
 3. 51 – 100 parcels..... 50 points
 4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Soil Evaluation

Productive farming, forestry and associated activities depend on soil capability (the suitability of soils for most types of field crops and/or timber production). Therefore, emphasis should be placed on the property's soil characteristics. The scoring system uses the NRCS Prime Farmland classifications, LESA classifications and APO soils classifications, including classification of soils of statewide importance as well as consideration given to site index score for forest soils. Highest points are assigned to better agricultural soils and lower points to poorer agricultural soils. Forest soils also receive additional points. Points are assigned based on the productivity and/or characteristics of the soil (profile, texture, slope, other). A soils chart is included as Appendix D. If a soil has a site index rating and a prime soil rating, the rating with the highest number of points will be applied.

Below is a table detailing the soil point system:

LESA Rating	APO or Non-APO Prime 1	Non-APO - Prime 2-8	Soils of Statewide Importance	Site Index
1	100	90	0	0
2	95	85	0	0
3	90	80	0	0
4	85	75	0	0
No Rating	80	70	50	0
Site Index Rating				
1	0	0	0	60
2	0	0	0	50
3	0	0	0	40
4	0	0	0	30
5	0	0	0	20

Farm applications receive points for this section proportional to the percentage of each soil type that exists on the property. An example of how this would work follows: A farm under review is 40 acres, of which 29.79 acres (about 75%) is soil 179-Whatcom Silt Loam 4-9% slopes, which is classified as LESA 4, APO Prime 1; and 10.21 acres (about 25%) is soil 180-Whatcom Silt Loam 9-15% slopes, which is not classified as APO or Prime, but is a soil of Statewide Importance. This farm would score a total of 76.07 points for this Section, as shown:

A	B	C	D	E	F	G	H	I	J	K
Soil #	Area (in acres)	% (B/Total area)	APO Soil	Prime 1- 6?	LESA Rating	Prime Rating	Statewide Soil	Site Index	Points	score (J*C)
179	29.79	74.48%	Y	Y	4	1	0	2	85	63.30
180	10.21	25.53%	N	N	0	0	yes	2	50	12.76
Total area	40									76.07

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Soil Evaluation section has been 0.35, but is subject to ongoing review by the Committee).

4. Agriculture Evaluation

- a. Percent of property actively farmed
 - 1. 0-25% 25 points
 - 2. 26-50% 50 points
 - 3. 51-75% 75 points
 - 4. >75% 100 points
- b. Legal water availability documentation
 - 1. No Water documentation or legal water access..... 0 points
 - 2. Water Claim 50 points
 - 3. Certified Water Right/Access to public water..... 100 points
- c. Parcel is located in Agriculture District and is less than 40 acres or parcel is located in a Rural Study Area?
 - 1. No..... 0 points
 - 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Agriculture Evaluation section has been 0.15, but is subject to ongoing review by the Committee).

5. Special Considerations

- a. Site contains heritage/historical significance, i.e. Heritage Barn Registry
 - 1. No..... 0 points
 - 2. Yes..... 100 points
- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):
 - 1. Conservation (no change)..... 25 points
 - 2. Protection/Restoration..... 50 points
 - 3. Protection..... 75 points
 - 4. Highest protection..... 100 points
- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
 - 1. Maybe/No..... 0 points
 - 2. Yes..... 100 points
- d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)
 - 1. No..... 0 points
 - 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

6. Matching Funds or Bargain Sale

- | | |
|----------------------|------------|
| 1. 0% secured..... | 0 points |
| 2. 25% secured..... | 25 points |
| 3. 50% secured..... | 50 points |
| 4. 75% secured..... | 75 points |
| 5. 100% secured..... | 100 points |

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

B. Forestry Site Selection Criteria

1. General Site Evaluation

- | | |
|---|------------|
| a. Total size of parcel(s) (nominal acres) | |
| 1. 0 – 9.99..... | 0 points |
| 2. 10 – 19.99 | 15 points |
| 3. 20 – 49.99..... | 30 points |
| 4. 50 – 79.99..... | 70 points |
| 5. ≥80..... | 100 points |
| b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO) | |
| 1. ≥1 mile..... | 0 points |
| 2. 0.50 to 0.99 mile..... | 25 points |
| 3. 0.25 to 0.49 mile..... | 50 points |
| 4. < 0.25 mile..... | 75 points |
| 5. Adjacent..... | 100 points |
| c. Number of legal lots of record | |
| 1. 0-2..... | 20 points |
| 2. 3..... | 40 points |
| 3. 4..... | 60 points |
| 4. 5..... | 80 points |
| 5. ≥6..... | 100 points |
| d. Removal of all unused development rights? | |
| 1. Unused development rights remaining | 0 points |
| 2. All removed..... | 100 points |
| e. Number of priority areas parcel is located in | |
| 1. 0..... | 0 points |
| 2. 1..... | 50 points |
| 3. 2-3..... | 100 points |

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 - 1. 1-2..... 20 points
 - 2. 3..... 40 points
 - 3. 4..... 60 points
 - 4. 5..... 80 points
 - 5. ≥ 6 100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)
 - 5. Property is within 2,500 feet of a major road..... 25 points
 - 6. Property fronts on a major road..... 50 points
 - 7. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
 - 8. Property is at an intersection of major roads..... 100 points
- c. Threat of Conversion/Parcelization
Total Number of Parcels in surrounding $\frac{1}{4}$ mile
 - 1. < 20 parcels..... 50 points
 - 2. 20 – 50 parcels..... 100 points
 - 3. 51 – 100 parcels..... 50 points
 - 4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Forestry Evaluation

- a. Site index soil score, spatially weighted
 - 1. 5 20 points
 - 2. 4 40 points
 - 3. 3 60 points
 - 4. 2 80 points
 - 5. 1..... 100 points
- b. Property is identified as priority forestland based on State Forest Action Plan?
 - 1. No 0 points
 - 2. Yes..... 100 points
- c. Parcel is located in Rural Forestry District or is enrolled as Designated Forest Land?
 - 1. No..... 0 points
 - 2. Yes..... 100 points
- d. Proximity to existing and contiguous blocks of forestland
 - 1. >0.5 mile..... 0 points
 - 2. 0.26 – 0.5 mile..... 50 points
 - 3. 0.11 – 0.25 mile 75 points

4. ≤ 0.1 mile..... 100 points

e. Property is located at access to other working forestland?

1. No..... 0 points

2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Forestry Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

a. Site contains existing or proposed trails

3. No..... 0 points

4. Yes..... 100 points

b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):

5. Conservation (no change)..... 25 points

6. Protection/Restoration..... 50 points

7. Protection..... 75 points

8. Highest protection..... 100 points

c. Is property owner willing to implement forest management practices beyond the minimum required practices?

1. Maybe/No..... 0 points

2. Yes..... 100 points

d. Site contains conservation values (viewsheds, wetlands, notable wildlife habitat, other critical areas)

1. No.....0 points

2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

1. 0% secured..... 0 points

2. 25% secured..... 25 points

3. 50% secured..... 50 points

4. 75% secured..... 75 points

5. 100% secured..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

C. Ecological Site Selection Criteria

1. General Site Evaluation

- a. Total size of parcel(s) (nominal acres)
 1. 0 – 9.99.....0 points
 2. 10 – 19.9915 points
 3. 20 – 49.99.....30 points
 4. 50 – 79.99.....70 points
 5. ≥80.....100 points
- b. Adjacent land is conserved by easement or other means (Whatcom Land Trust, NRCS CREP Program, or owned by a municipality or NGO)
 1. ≥1 mile.....0 points
 2. 0.50 to 0.99 mile.....25 points
 3. 0.25 to 0.49 mile.....50 points
 4. < 0.25 mile.....75 points
 5. Adjacent.....100 points
- c. Number of legal lots of record
 1. 0-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥6.....100 points
- d. Removal of all unused development rights?
 1. Unused development rights remaining0 points
 2. All removed.....100 points
- e. Number of priority areas parcel is located in
 1. 0.....0 points
 2. 1.....50 points
 3. 2-3.....100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for General Site Evaluation section has been 0.2, but is subject to ongoing review by the Committee).

2. Development Pressure

- a. Number of existing unused development rights offered under current zoning
 1. 1-2.....20 points
 2. 3.....40 points
 3. 4.....60 points
 4. 5.....80 points
 5. ≥6.....100 points
- b. Proximity to major roads or road intersections
(For purposes of this evaluation, “major roads” means roads with a daily traffic

volume of 3,000 or more trips. A list of roads currently meeting this definition is included as Appendix D to this report.)

1. Property is within 2,500 feet of a major road..... 25 points
2. Property fronts on a major road..... 50 points
3. Property is within 1,500 feet of the intersection
of two major roads..... 75 points
4. Property is at an intersection of major roads..... 100 points

c. Threat of Conversion/Parcelization

Total Number of Parcels in surrounding ¼ mile

1. < 20 parcels..... 50 points
2. 20 – 50 parcels..... 100 points
3. 51 – 100 parcels..... 50 points
4. > 100 parcels..... 0 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Development Pressure section has been 0.2, but is subject to ongoing review by the Committee).

3. Ecological Evaluation

The 2019 Landscape Analysis for the program is used to answer Questions 3.a through 3.c.

a. Protect water quality and quantity landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

b. Ecologically important aquatic areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

c. Ecologically important terrestrial areas landscape analysis score, spatially weighted

1. 0 0 points
2. 0.01 – 0.99..... 20 points
3. 1 – 1.99 40 points
4. 2 – 2.99 60 points
5. 3 – 3.99 80 points
6. 4 – 5..... 100 points

d. Additional ecologically important areas not included in landscape analysis score?

1. No..... 0 points
2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Ecological Evaluation section has been 0.4, but is subject to ongoing review by the Committee).

4. Special Considerations

- a. Site contains existing or proposed trails
 - 1. No..... 0 points
 - 2. Yes..... 100 points
- b. The Washington State Department of Ecology Watershed Characterization report has identified recommendations for addressing water flow processes within sub-watersheds. Protection (Overall importance to Water flow processes):
 - 1. Conservation (no change)..... 25 points
 - 2. Protection/Restoration..... 50 points
 - 3. Protection..... 75 points
 - 4. Highest protection..... 100 points
- c. Is property owner willing to restore ecosystem processes beyond the minimum required practices?
 - 2. Maybe/No..... 0 points
 - 2. Yes..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Special Considerations section has been 0.10, but is subject to ongoing review by the Committee).

5. Matching Funds or Bargain Sale

- 6. 0% secured..... 0 points
- 7. 25% secured..... 25 points
- 8. 50% secured..... 50 points
- 9. 75% secured..... 75 points
- 10..... 100%
- secured..... 100 points

Once a point value for the section is determined, it is multiplied by a weight factor to indicate the importance (weighted factor for Matching Funds or Bargain Sale section has been 0.10, but is subject to ongoing review by the Committee).

Final Score

The points for each section are added up and multiplied by a weight factor, which indicates the importance that is placed on a particular characteristic. The weighted scores are then added to provide an overall score (0-110). The higher the score, the more closely the property meets the goals of the program and hence is a higher priority for purchase and preservation. Properties which score less than 40 (forty) points will not be recommended for program participation. The CEP Oversight Committee retains the ability to add or subtract up to 5 points on any application. A write-up of committee opinion will be included in all council proceedings.

V. OVERVIEW OF CEP PROCEDURES

A. Outreach and Publicity

Step 1: The County shall develop and distribute outreach materials for the CEP. Outreach shall include the properties eligible to participate, the application process and applicable timeframes and extensions.

The Administrator may identify each property with potential development rights within priority consideration areas and provide written notification to the property owners.

B. Application and Ranking

Step 2: Voluntary pre-application screening. Interested property owners may meet with the County CEP Administrator (Administrator) to review their eligibility and special circumstances, if any.

Step 3: Application. An owner of land eligible for CEP participation submits an application for County acquisition of property or development rights. The application must be submitted on the form provided by the County.

Step 4: Lot of Record/Density Determination. An owner of land eligible for CEP participation submits a Lot of Record application. This application determines legal status of lots being considered and determines that number of development rights remaining on said lots. The Lot of Record determination must be completed before an appraisal can occur.

Step 5: The Administrator reviews each application for completeness, determines if the subject property meets minimum eligibility criteria and assigns a preliminary score based upon the CEP site selection criteria.

Step 6: The CEP Oversight Committee reviews CEP applications and recommends proposed development rights acquisition utilizing the selection criteria. Recommendations for development right acquisition are prepared and forwarded to County Council to approve, deny, or recommend modification.

Step 7: The Administrator estimates the number of appraisals that can be initiated based on available funds and chooses based on the top ranked parcels from the County Council's list of parcels and the timeline of projects with secured grant funding.

C. Title

Step 9: The Administrator initiates a title search. Closing is conditioned on the resolution of all unapproved title exceptions, within the County's sole discretion, which may require the receipt of subordination agreements or payoff letter.

D. Pricing Estimate and Appraisal

- Step 10: The Administrator or designee provides preliminary estimate of value, and notifies the property owner of an estimated range of value within which the appraisal will likely fall. The Administrator or designee sends the applicant a letter of intent, including range of expected value. The letter calls for the signature of property owner(s).
- Step 10: The Administrator or designee proceeds to verify assumptions through official county processes, such as a formal Lot of Record and density determination, and conduct other due diligence as necessary (such as water rights research and Title research and clearing).
- Step 11: Unless Council and the Executive specifically authorize an alternate approach to determine value, the Administrator commissions a full appraisal by a County authorized appraiser to appraise the value of placing a conservation easement on the land that removes development rights. The conservation easement value is the difference between the market value of full ownership of the land, and the agricultural or forestry value.
- Step 12: The appraiser submits the completed appraisal (or the alternate determination of value is conducted and submitted) to the Administrator and the Oversight Committee for their review.
- Step 13: The Administrator or designee meets with the property owner to review the appraisal (or alternate determination of value), state the offer, review the conservation easement provisions, agreement terms and conditions, and to answer the property owner's questions.
- Step 14: If the property owner believes that the land has not been adequately appraised or valued, the owner may, within the time allowed in the schedule, commission an appraisal at the owner's expense.

E. Offer to Purchase Easement and Agreement

- Step 15: A written offer to purchase development rights based on appraised or determined value is made to the property owner following budget authorization by the County Council, and approval by the County Executive.
- Step 16: Within 30 days, the property owner accepts, rejects or makes a counter offer. Counter offers will be reviewed and evaluated by the Oversight Committee and the County's authorized appraiser.
- Step 17: Property owners desiring to sell their development rights sign a Purchase and Sale Agreement.

F. Adjacent Property Owner Notification

- Step 18: Neighboring property owners are notified that adjacent land is in the process of

being preserved.

G. Approval

- Step 19: Review materials are presented to the County Executive for review and approval, rejection, or recommendation for modification.
- Step 20: Review materials are sent to other participating entities for partially or wholly funded conservation easements several days prior to any deadline.

I. Settlement

- Step 21: Settlement will occur following County Executive approval of transaction terms and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- Step 22: Payment will be in full at time of settlement unless the County and property owner agree to an installment sale.
- Step 23: Checks are requested from the Finance Manager and settlement is scheduled within a week or two of approval. Federal or state money is dispersed according to federal or state regulation.

J. Recording

- Step 24: The conservation easement will be recorded at the County Auditor's office. The County or its designee will monitor the properties under easement at least annually to ensure compliance with the easement.

VI. CONSERVATION EASEMENTS

A. Description

A conservation easement deed is a legally binding document, which is recorded by the County Auditor, forever restricting the property to agricultural, forestry, and/or ecological and directly associated uses, and for which compensation may be paid. As an easement in gross in perpetuity, restrictions are binding upon the owner and future owners, and run with the land.

B. Conservation Easements

At the time of acquisition of development rights from a participating property, a conservation easement is placed on the property permanently restricting development of the site and protecting/preserving the agricultural, forestry, and ecological values associated with the site. The conservation easement must be signed by both the property owner(s) and the County Executive or his/her designee and recorded with the property records for the property. A model conservation easement deed is included in these guidelines as attachment D.

1. Conservation Easement Requirements

Conservation easements shall be on a form approved by the Whatcom County Prosecuting Attorney and shall meet the following basic requirements:

- a. The deed shall be in recordable form and contain an accurate legal description setting forth the metes and bounds of the area subject to the easement;
- b. Restriction is granted in favor of Whatcom County, or if designated by the organizations as defined in RCW64.04.130;
- c. Restriction is granted in perpetuity, and shall bind existing and future property owners; and
- d. Unless specifically provided for, nothing in the restrictions shall be construed to convey to the public a right of access or use of the property, and the owner of the property, his/her heirs, successors and assigns shall retain exclusive right to such access or use subject to the terms of the easement.

2. Filing

After the conservation easement is signed and notarized, it must be recorded with the Whatcom County Auditor's Office.

C. Conservation Easement Conveyance

Conservation easements may be either donated or sold, or a combination of both.

1. Conservation Easement Donation

- a. A donation of a total parcel will not be subject to eligibility except as below in section c. Partial parcel donation shall be considered under the same rule as for development rights sales. Notwithstanding the eligibility of the property, acceptance of a fee interest or partial donation is within the discretion of the County Council.
- b. Whatcom County will accept voluntary donations or bequests of development rights as perpetual easements in gross if meeting eligibility criteria (except priority area criteria) and within the discretion of the County Council.
- c. All properties offered for development rights donation must meet the following minimum eligibility criteria:
 - 1. The CEP Oversight Committee will consider each offer on a case by-case basis, considering the property's consistency with current and future land uses, and
 - 2. The property must be at least 1 acre in size, and
 - 3. Be in agricultural or forestry use or contain ecological values and has not been irrevocably devoted to a use inconsistent with the above values,
 - 4. Cannot be located within an Urban Growth Area, unless coordination with the proximal small city is a component of the donation.

2. Conservation Easement Sale

- a. Whatcom County will purchase perpetual conservation easements on qualified properties in accordance with the policies and procedures of the Whatcom County Conservation Easement Program, with Federal, State, County, and/or private funds and any combination thereof.
- b. All properties offered for conservation easement sale must meet minimum eligibility criteria as contained in Section III.

VII. OPERATIONAL PROCEDURES FOR ACQUIRING CONSERVATION EASEMENTS

A. Outreach and Publicity

Outreach shall occur to inform landowners about the program and may include advertising in newspapers or other publications, landowner mailers, and presentations. Application opening and closing dates, if any, will be determined by the CEP Oversight Committee. The Committee shall have the discretion to consider applications in rounds, or individually on a rolling basis. If selection deadlines are extended, the committee will provide public notice of the extension.

B. Application and Ranking

1. Property owner(s) voluntarily submits an application(s) to the County. The application must be submitted to the County on the form provided by the CEP, and according to the relevant public notice. Applicants are to include at a minimum:
 - a. Name(s) and address(es) of the property owner(s) of the site;
 - b. Legal description and parcel number(s);
 - c. Copy of the property deed and title;
 - d. Total acreage of farmland to be included in the CEP;
 - e. Current land use and soils;
 - f. Number of dwelling units;
 - g. Description of the farming operation;
 - h. Other information necessary to evaluate property eligibility;
 - i. Acknowledgement of intent to grant to Whatcom County a conservation easement in a form provided by the County.
2. The Administrator shall review each application to determine completeness and eligibility.
3. Applications meeting all minimum eligibility criteria shall be evaluated and scored by the administrator and Oversight Committee according to the site selection criteria. (See Section IV)
4. The CEP Oversight Committee shall provide the County Council with information and scoring of properties recommended for conservation easement acquisition by the committee. County Council shall approve or deny pursuit of conservation easement acquisitions on the parcels.
5. The Administrator shall then arrange appraisals (or alternate determination of value) of eligible applicant properties as determined by the County Council.
6. The CEP Oversight Committee and Administrator shall provide updates to the County Council discussing recommended purchases, possible program changes,

and anticipated budget needs.

C. Appraisal

1. Appraisals for eligible properties shall be conducted to determine the value of a conservation easement on parcels in the order of acquisition priority and in accordance with grant funding timelines until acquisition funds are expended.
 - a. The appraisals are to be made by an independent appraiser qualified to appraise agricultural, forestry, and/or ecological land for conservation easement purchases. An appraiser is deemed qualified if he or she possesses a State of Washington certification as a State Certified General Real appraiser, MAI designation by the Appraisal Institute (or equivalent), and at least five years agricultural lands appraisal experience. Appraisers shall supply a narrative or UAAR form report, which contains information as required by the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards of Federal Land Acquisition (UASFLA) and as specified in any contract with the County.
 - b. An appraisal report is an objective report of market facts. The appraisal report must estimate both the unrestricted fee market value of the land only, excluding the value of buildings, and the agricultural or forestry value of the land only, of which the difference is the conservation easement value.
 - c. Both values shall be based primarily on an analysis of comparable sales. If comparable sales data is not available for agricultural lands, the appraiser may use local farmland rental values or capitalized production values to determine the agricultural values of the land.
 - d. A description of the buildings or other improvements shall appear in the appraisal report; however, the buildings will not be valued and therefore will not be considered in determining the development rights value.
 - e. The appraiser shall report whether the subject property has any land use restrictions, public or private and/or physical attributes, which limit the developmental capability of the land.
 - f. The appraiser shall be advised that conservation easements are perpetual. The perpetual nature of the easement shall take precedent over any agricultural zoning status.
 - g. The appraisal shall be in writing and may be discussed with the owners prior to the submission of written offers.
 - h. If the property owner believes the property has not been adequately appraised, the owner may, within the time allotted, request that a review appraisal be made at the owner's expense. This appraisal must be completed in accordance with the guidelines set forth herein. If the review (owner's) appraisal is not completed within the allotted time, the application will be delayed for future

committee consideration. If a review appraisal is completed, the appraisal will be reviewed by the County's Appraiser. The County's Appraiser in consultation with the Program Administrator and the CEP Oversight Committee will accept, modify or reject the review appraisal. The determination of the County's Appraiser is final.

- i. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Council and the Executive may specifically authorize an alternate approach to determine value in accordance with state and local laws, in which case the conditions of that approach would substitute for the appraisal guidelines as set forth in C.1., above.

D. Title and Survey Issues

1. The Administrator shall request a title report confirming that applicant is the owner of the property and has unrestricted legal right to transfer the development rights (i.e. there must be clear title to transfer the property). The title report will be provided to the County Attorney for review.
2. All encumbrances (including but not limited to: liens, mortgages and judgments) against the property must be subordinated, satisfied or removed prior to development rights acquisition. Mortgage and/or lien holder subordination and releases may be required acknowledging that a conservation easement will be placed on the property and subordinating their interest in the property to the deed restriction.
3. At settlement for a County or joint development rights purchase, the Administrator shall provide a title insurance policy issued by a title insurance company authorized to conduct business in Washington State by the Washington State Office of Insurance Commissioner. The cost of such title insurance shall be a shared cost, with the county's portion considered a cost incident to the conservation easement purchase and a reimbursable expense from the County's Conservation Futures Fund.
4. It is the property owner's responsibility to survey (or provide a legal description that meets specific standards) any exceptions from the easement and any graveyards or cellular towers that may be located on the property. It is the property owner's responsibility to provide a legal description for any commercial operation on the farm that is not incidental to the overall farming operation, in order to exclude it from the easement. Surveys shall be conducted by a licensed surveyor in accordance with state and federal regulations.

E. Development Rights Value and Purchase Price

1. The maximum value of development rights purchased by the County shall be no more than the easement value contained in an appraisal report. The easement value is the difference between the land's value before and after the voluntary conservation easement.
2. Development rights may only be purchased in perpetuity.

F. Recommendation of Conservation Easement Purchases by the CEP Oversight Committee

1. The CEP Oversight Committee, in making recommendations concerning applications and purchase offers, shall consider the following:
 - a. Evaluation according to the site selection criteria
 - b. Consistency with County Comprehensive Plan
 - c. Cost relative to total allocations and appropriations
 - d. Proximity to other land subject to protection easements
2. Upon receiving the recommendations of the CEP Oversight Committee and the Administrator, the County Executive shall review the recommendations and shall take final action to authorize or deny proposed purchase terms and offers, consistent with authorization by the County Council.
3. If a property is approved for conservation easement purchase, the Administrator will meet with the property owner and review the terms, conditions and amount of the County's offer. A written offer will be provided to the property owner. Written notice shall also be provided to land not approved for conservation easement purchase.
4. Within 30 days of receipt of a written offer from the County an applicant must indicate in writing which of the following actions they intend to pursue:
 - a. Accept the offer.
 - b. Reject the offer.
 1. Reject offer outright
 - a. no further action
 - b. participate in future review
 2. Submit a counter offer within 90 days of written notice of offer by the County.
 - c. Failure to notify the County within 30 days shall constitute rejection of the offer.
5. If the offer is accepted, the Administrator shall prepare a Purchase and Sale agreement. USDA or State Funds must be paid as lump sum. The method of payment shall be specified from the options listed below:
 - a. Lump Sum
 - b. Installment Purchase Agreement (IPA)
 - c. Like-Kind Exchange
 - d. Or a combination of the above

6. For conservation easement purchase utilizing the Installment Purchase Agreement (IPA) program, the County Council at settlement shall provide an opinion of legal counsel that the County's obligations to make installment payments of principal and tax-exempt interest over time are legal, valid, and binding. And that such payments are a general obligation of the County for which its full faith, credit, and taxing power are pledged. Interest paid by the County is exempt from federal income taxes.
7. All Agreements of Sale and Conservation Easements require the County Council's approval.

G. Grant of the Agricultural, Forestry, and/or Ecological Protection Conservation Easement

Before the purchase of development rights can be finalized, a conservation easement in a form approved by the County Attorney and consistent with the policies of the CEP Guidelines, must be placed on the property permanently restricting development of the site and preserving its agricultural, forestry and/or ecological values.

The principal interest of the County is to ensure that lands are preserved and subsequently stewarded in a manner that maintains and enhances their farmland, forestland, and/or ecological values. There may be some instances where there is a public interest in another public entity or non-profit organization to hold the conservation easement, for continued stewardship and protection of the land. The County will consider:

1. The preferences of the donor or seller;
2. Administrative, monitoring, and enforcement issues associated with the conservation easement and the resources available to address these issues;
3. Requirement of Federal, State or County funding sources utilized to purchase conservation easements.

H. Conservation Easement Purchase Recommendations/Submission Requirements

1. County Council: Each recommendation for conservation easement purchases with County funds, State funds, Federal funds, private donor funds or a combination of funds shall be presented to the County Council at a regularly scheduled public meeting.
2. Letters of Notification: Letters of notification for development rights purchases will be sent to adjoining property owners by the Administrator.

VIII. CONSERVATION FUTURES FUND

A. Intent

This fund was established in 1992 to be used solely to acquire right and interests in open space land, farm and agricultural land, and timber land, so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use and enjoyment.

B. Fund Sources

This Conservation Futures Fund is funded by a real property tax applied to all real property within Whatcom County at a rate determined by the county administration and county council.

C. Fund Source Accounts

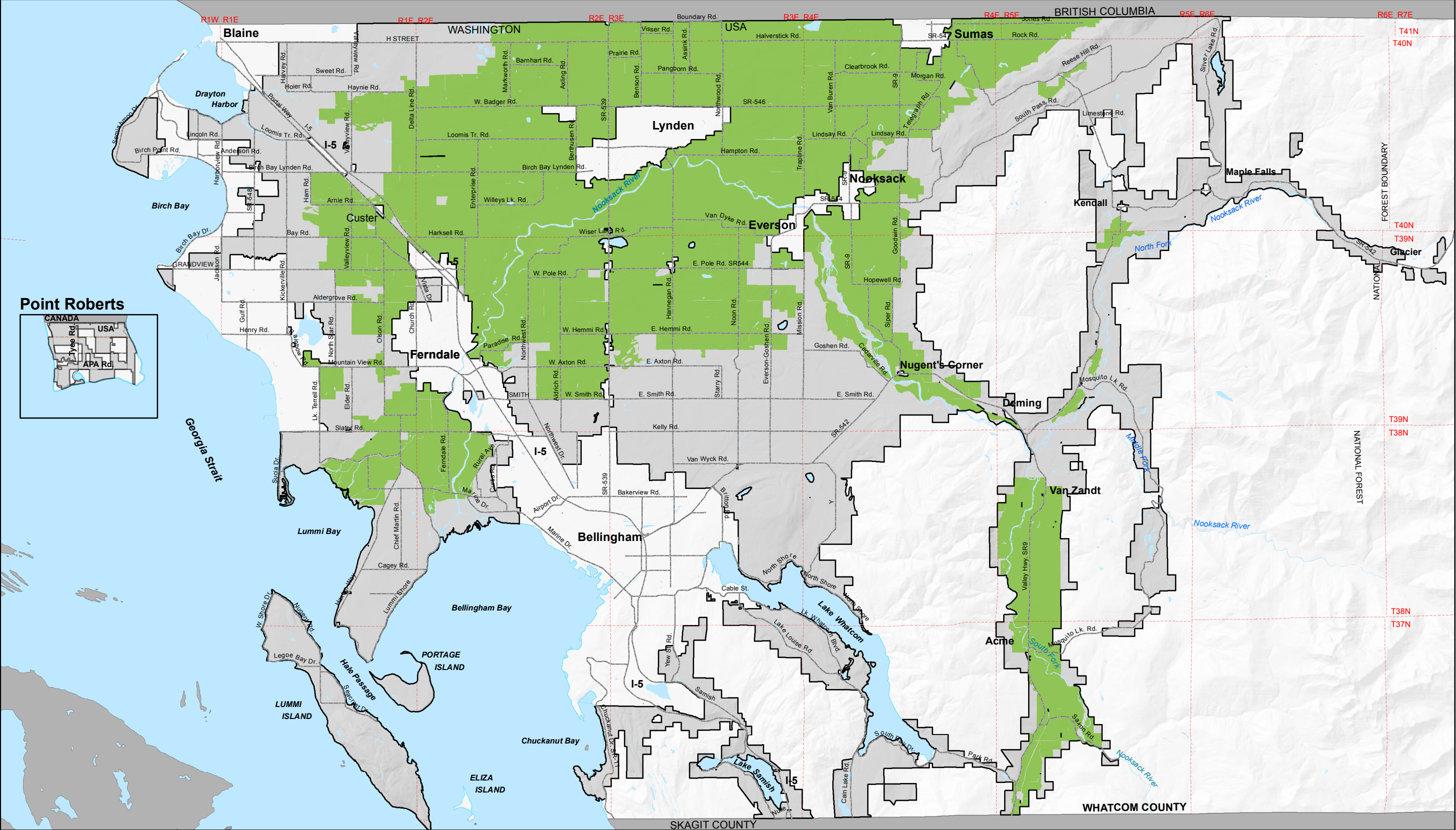
Council shall annually consider an allocation of Conservation Futures Fund to be placed in a Conservation Easement Program Account.

D. Installment Payment Fund

1. The intent of installment payment funds, which are established by the County, is to encumber and invest committed funds for which recipient property owners have elected annual installment payments for a period, which may vary according to the wishes of the property owner.
2. The full consideration of any transaction for which installment payments of five years or less have been elected shall be placed in the fund, less the amount of any first installment to be paid at settlement. This amount shall be invested and annual installment payments shall include the interest accrued.
3. Annual installment payments shall be made on or before January 20th of each year.
4. A property owner may enter into an Installment Purchase Agreement for fifteen (15) to thirty (30) years at an interest rate to be negotiated between the property owner and the County. The property owner will receive semi-annual interest payments that are tax exempt. Principal will be paid in one lump sum at the end of term. The property owner will also receive a security representing the Installment Purchase Agreement. The property owner may sell or assign this Agreement.



E. Public Expenditures

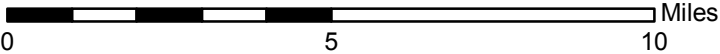
1. All public expenditures from the Conservation Futures Fund are subject to approval by Whatcom County Council and will be made in accordance with approved disbursement procedures.
2. Expenditures from the CEP Account shall be limited to interests in qualified agricultural, forestry, and/or ecological land participating in the Whatcom County Conservation Easement Program, and other expenses necessary to the acquisition of conservation easements authorized under RCW 84.34.200-.240.
3. The annual appropriation to the CEP by the County Council shall be available for the calendar year in which the appropriation was made and or the subsequent calendar year.



Whatcom County Agricultural Priority Areas

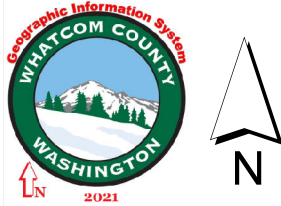
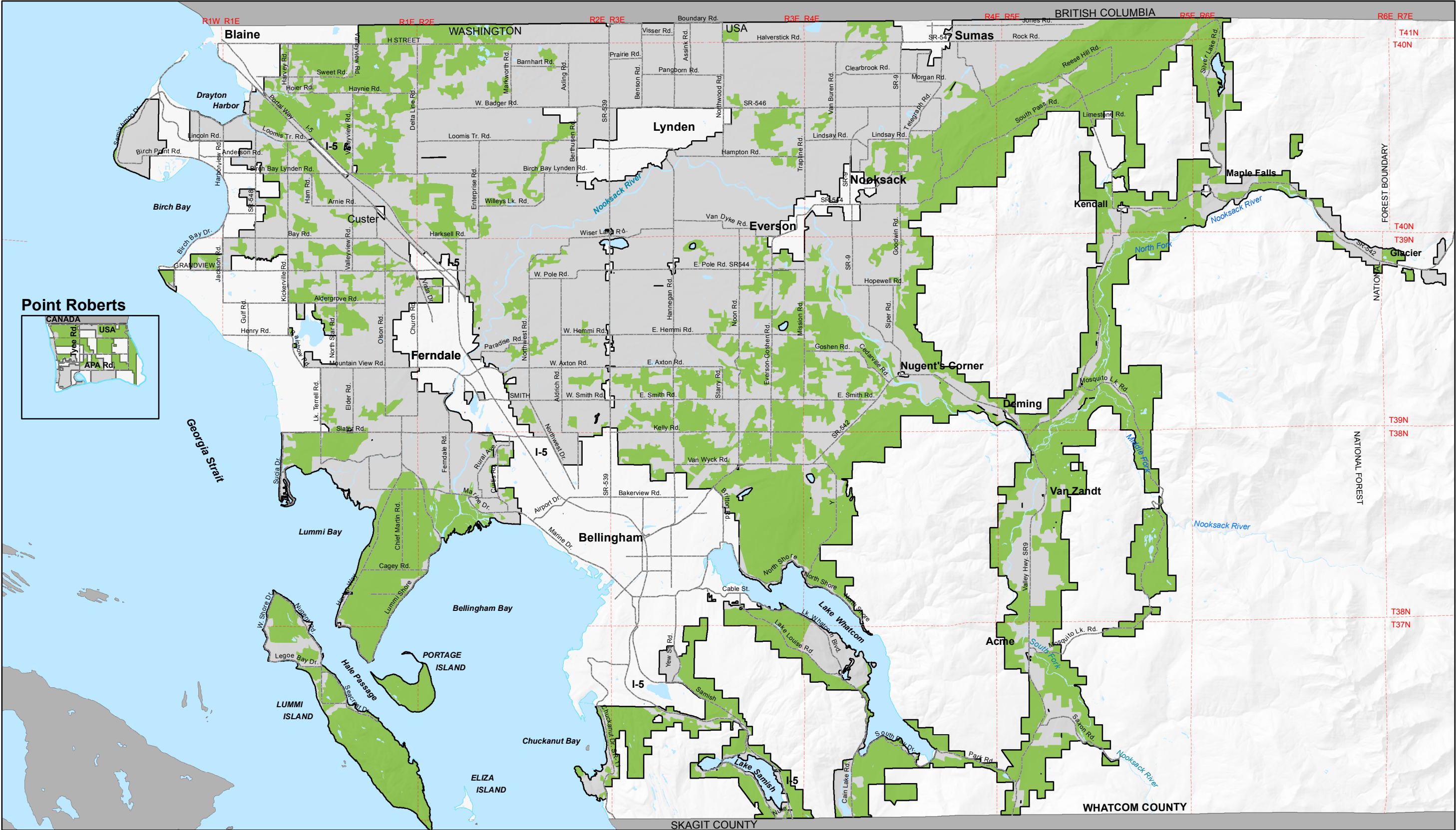
Agriculture Zone, Rural Study Areas, Watershed Improvement Districts, and Additional Areas Identified in the Agricultural Landscape Analysis

-  Agricultural Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)




USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

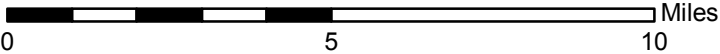
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Whatcom County Forestry Priority Areas

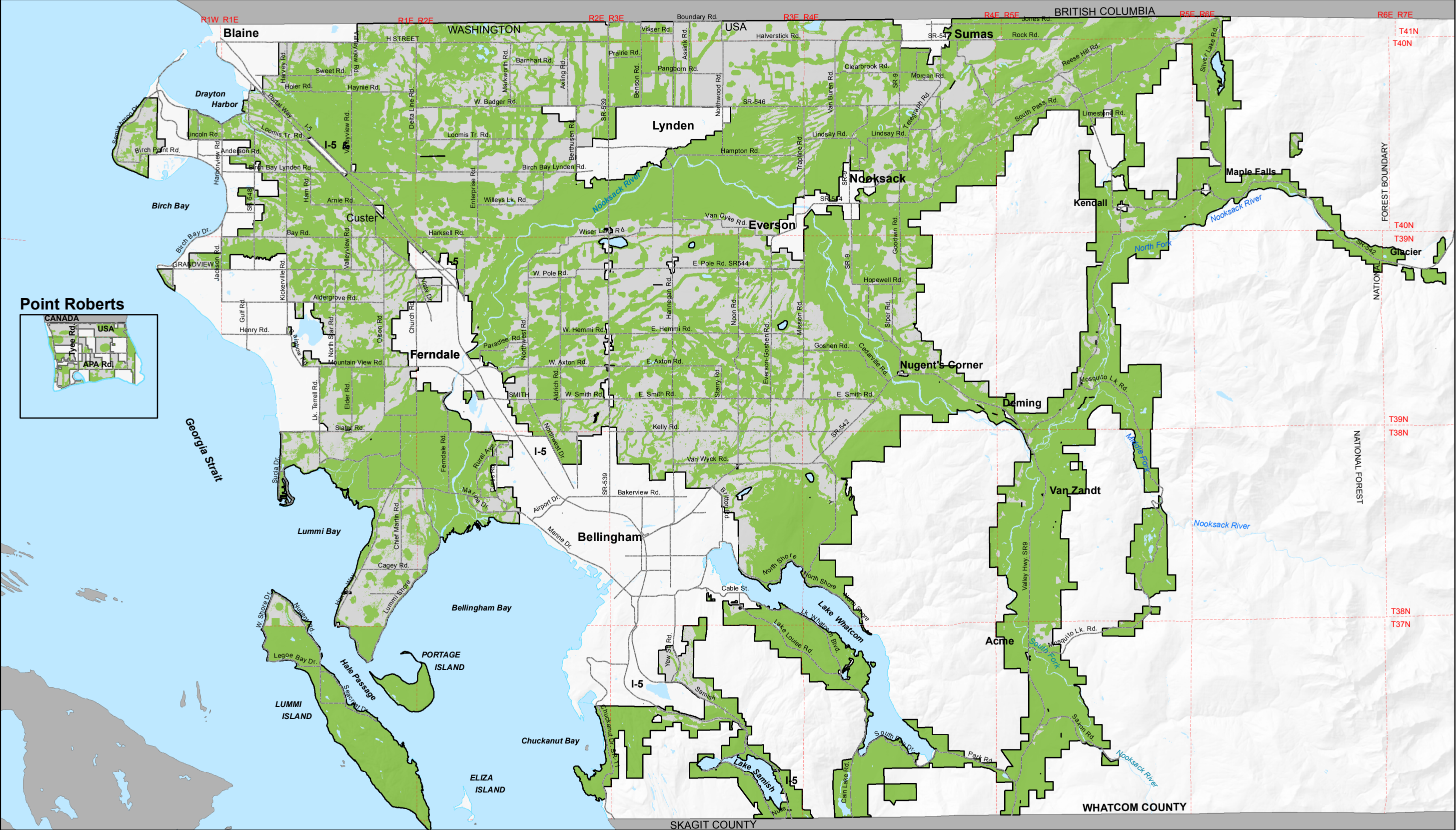
Rural Forestry Zone and WA Forest Action Plan
Priority Areas

-  Forestry Priority Area
-  Conservation Easement Program Area
(Agriculture, Rural, Rural Residential, and Rural Forestry
Zoning Outside Urban Growth Areas)





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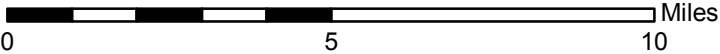
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Whatcom County Ecological Priority Areas

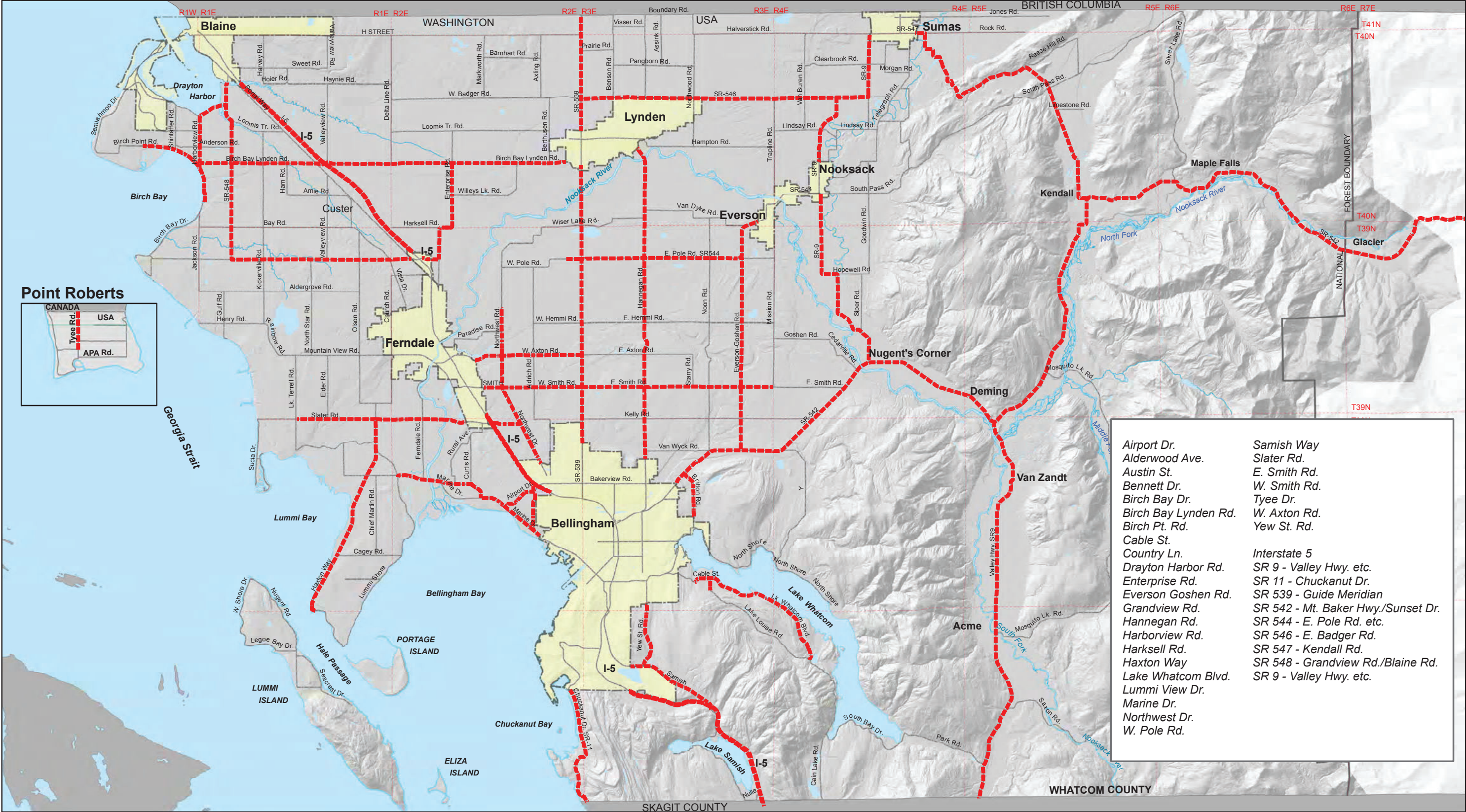
Habitat Conservation Areas, FEMA Floodplain, and Additional Areas Identified in the Ecological Landscape Analysis

-  Ecological Priority Area
-  Conservation Easement Program Area (Agriculture, Rural, Rural Residential, and Rural Forestry Zoning Outside Urban Growth Areas)



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Whatcom County

Major Roads - >3,000 Average Daily Trips

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0 0.5 1 2 3 Miles

841

APPENDIX E

Soils List

Soil #	Soil Name	APO y/n	LESA Group	PRIME	STATEWIDE IMPORTANCE	Site Index
1	ANDIC CRYOCHREPTS - 60 TO 90% SLOPES	N	0	0		
2	ANDIC CRYOCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	N	0	0		
3	ANDIC XEROCHREPTS - 60 TO 90% SLOPES	N	0	0		3
4	ANDIC XEROCHREPTS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	N	0	0		3
5	ANDIC XEROCHREPTS-COOL ROCK OUTCROP COMPLEX-60 TO 90% SLOPES	N	0	0		4
6	BARNESTON GRAVELLY LOAM - 0 TO 8% SLOPES	N	3	4		2
7	BARNESTON VERY GRAVELLY LOAM - 8 TO 15% SLOPES	N	0	4		2
8	BARNESTON VERY GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
9	BARNESTON VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
10	BARNHARDT GRAVELLY LOAM - 0 TO 5% SLOPES	N	1	1		3
11	BELLINGHAM SILTY CLAY LOAM - 0 TO 2% SLOPES	N	0	2		
12	BIRCHBAY SILT LOAM - 0 TO 3% SLOPES	Y	1	1		3
13	BIRCHBAY SILT LOAM - 3 TO 8% SLOPES	Y	0	0	yes	3
14	BIRCHBAY SILT LOAM - 8 TO 15% SLOPES	N	0	0	yes	3
15	BLAINEGATE SILTY CLAY - 0 TO 1% SLOPES	N	0	0	yes	
16	BLAINEGATE-URBAN LAND COMPLEX - 0 TO 1% SLOPES	N	0	0		
17	BLETHEN GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0	yes	3
18	BLETHEN GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0	yes	3
19	BLETHEN GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		3
20	BLETHEN VERY BOULDERY LOAM - 5 TO 40% SLOPES	N	0	0		3
21	BOROSAPRISTS - 0 TO 2% SLOPES	N	0	0		
22	BRISCOT SILT LOAM DRAINED - 0 TO 2% SLOPES	Y	3	2		
23	BRISCOT ORIDIA AND SUMAS SOILS - 0 TO 2% SLOPES	N	0	5		
24	CHUCKANUT LOAM - 3 TO 8% SLOPES	N	0	0	yes	
25	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 5 TO 15% SLOPES	N	0	0	yes	2
26	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 15 TO 30% SLOPES	N	0	0	yes	2
27	CHUCKANUT LOAM-BEDROCK SUBSTRATUM - 30 TO 60% SLOPES	N	0	0		2
28	CHUCKANUT-SHALCAR COMPLEX - 0 TO 15% SLOPES	N	0	0	yes	2
29	CHUCKANUT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	N	0	0		2
30	CLENDENEN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
31	CLIPPER SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	2	2		
32	COMAR SILT LOAM - 5 TO 15% SLOPES	N	0	0	yes	2
33	COMAR SILT LOAM - 15 TO 30% SLOPES	N	0	0	yes	2
34	COMAR SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
35	CRINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
36	CUPPLES GRAVELLY LOAM - 5 TO 30% SLOPES	N	0	0		2
37	CUPPLES GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
38	DEKAPEN LOAM - 8 TO 25% SLOPES	N	0	0	yes	3
39	DEMING GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
40	DEMING GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
41	DIOBSUD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
42	EDFRO VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0		
43	EDFRO VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		

44	EDFRO VERY STONY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
45	EDMONDS-WOODLYN LOAMS - DRAINED - 0 TO 2% SLOPES	Y	0	0		
46	ELIZA SILT LOAM - DRAINED - 0 TO 1% SLOPES	N	0	5		
47	ELIZA-TACOMA SILT LOAMS - 0 TO 1% SLOPES	N	0	5		
48	EVERETT GRAVELLY SANDY LOAM-HARD SUBSTRATUM - 2 TO 8% SLOPES	N	0	4		3
49	EVERETT VERY GRAVELLY SANDY LOAM - 8 TO 15% SLOPES	N	0	4		3
50	EVERETT VERY GRAVELLY SANDY LOAM - 15 TO 35% SLOPES	N	0	0	yes	3
51	EVERETT COMPLEX - 2 TO 8% SLOPES	N	0	4		3
52	EVERETT-URBAN LAND COMPLEX - 5 TO 20% SLOPES	N	0	0		3
53	EVERSON SILT LOAM-DRAINED - 0 TO 2% SLOPES	N	2	2		
54	FISHTRAP MUCK-DRAINED - 0 TO 2% SLOPES	Y	3	2		
55	GALLUP SILT LOAM - 30 TO 60% SLOPES	N	0	0		
56	GALLUP SILT LOAM - 60 TO 80%	N	0	0		
57	GALLUP SILT LOAM-COLD - 30 TO 60% SLOPES	N	0	0		
58	GALLUP SILT LOAM-COLD - 60 TO 80% SLOPES	N	0	0		
59	GETCHELL LOAM - 3 TO 30% SLOPES	N	0	0		
60	GETCHELL LOAM - 30 TO 60% SLOPES	N	0	0		
61	HALE SILT LOAM - 0 TO 2% SLOPES	N	0	2		4
62	HALE SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	2	2		4
63	HALLENTON SILT LOAM-DRAINED - 0 TO 1% SLOPES	N	0	2		
64	HANNEGAN VERY GRAVELLY LOAM - 15 TO 40% SLOPES	N	0	0		
65	HARTNIT SILT LOAM-COLD - 5 TO 30% SLOPES	N	0	0		
66	HARTNIT SILT LOAM-COLD - 30 TO 60% SLOPES	N	0	0		
67	HARTNIT-GALLUP-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	N	0	0		
68	HEISLER VERY GRAVELLY SILT LOAM - 8 TO 30%	N	0	0	yes	2
69	HEISLER VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
70	HINKER VERY CHANNERY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
71	HINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
72	HISTOSOLS-PONDED - 0 TO 1% SLOPES	N	0	2		
73	HOVDE SILT LOAM - 0 TO 2% SLOPES	N	0	0	yes	
74	HOZOMEEN GRAVELLY LOAM - 20 TO 45% SLOPES	N	0	0		
75	HYDRAQUENTS-TITAL - 0 TO 1% SLOPES	N	0	0		
76	JACKMAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
77	JORGENSEN GRAVELLY SILT LOAM - 3 TO 15% SLOPES	N	0	0		
78	JUG VERY GRAVELLY LOAM - 3 TO 15% SLOPES	N	0	0	yes	2
79	KICKERVILLE SILT LOAM - 0 TO 3% SLOPES	Y	1	1		2
80	KICKERVILLE SILT LOAM -3 TO 8% SLOPES	Y	1	1		2
81	KICKERVILLE SILT LOAM - 8 TO 15% SLOPES	N	0	0	yes	2
82	KICKERVILLE-URBAN LAND COMPLEX - 0 TO 3% SLOPES	N	0	0		2
83	KINDY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0		4
84	KINDY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		4
85	KINDY-OSO COMPLEX - 5 TO 40% SLOPES	N	0	0		
86	KLAWATTI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
87	KLAWATTI V. GRAVELLY SANDY LOAM-SERPENTINE-10 TO 30% SLOPES	N	0	0		
88	KLAWATTI V. GRAVELLY SANDY LOAM-SERPENTINE-10 TO 30% SLOPES	N	0	0		
89	KLAWATTI-ROCK OUTCROP COMPLEX - 60 TO 80% SLOPES	N	0	0		
90	KLINE GRAVELLY SANDY LOAM - 2 TO 8% SLOPES	N	0	4		3
91	KULSHAN LOAM - 5 TO 30% SLOPES	N	0	0		
92	KILSHAN LOAM - 30 TO 60% SLOPES	N	0	0		
93	LABOUNTY SILT LOAM - 0 TO 2% SLOPES	N	4	2		

94	LABOUNTY SILT LOAM-DRAINED - 0 TO 2% SLOPES	N	0	2		
95	LARUSH SILT LOAM - 0 TO 3% SLOPES	Y	3	1		2
96	LAXTON LOAM - 0 TO 30% SLOPES	Y	1	1		2
97	LAXTON LOAM - 3 TO 8% SLOPES	Y	1	1		2
98	LAXTON LOAM - 8 TO 15% SLOPES	N	0	0	yes	2
99	LYNDEN SANDY LOAM	Y	1	1		3
100	LYNDEN SANDY LOAM - 3 TO 7% SLOPES	Y	1	1		3
101	LYNDEN-URBAN LAND COMPLEX - 0 TO 5% SLOPES	N	0	0		3
102	LYNNWOOD SANDY LOAM - 0 TO 5% SLOPES	N	0	4		3
103	LYNNWOOD SANDY LOAM - 5 TO 20% SLOPES	N	0	0	yes	3
104	MONTBORNE GRAVELLY LOAM - 5 TO 30% SLOPES	N	0	0		3
105	MONTBORNE GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		3
106	MONTBORNE-RINKER COMPLEX - 30 TO 60% SLOPES	N	0	0		3
107	MT. VERNON FINE SANDY LOAM - 0 TO 2% SLOPES	Y	2	1		2
108	NATI LOAM - 5 TO 15% SLOPES	N	0	0	yes	2
109	NATO LOAM = 15 TO 30% SLOPES	N	0	0	yes	2
110	NATI LOAM - 30 TO 60% SLOPES	N	0	0		3
111	NEPTUNE VERY GRAVELLY SANDY LOAM- 0 TO 3% SLOPES	N	0	4		3
112	OAKES VERY GRAVELLY LOAM - 8 TO 30% SLOPES	N	0	0		2
113	OAKES VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
114	OAKES VERY GRAVELLY LOAM - 60 TO 80% SLOPES	N	0	0		4
115	ORIDIA SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
116	PANGBORN MUCK-DRAINED - 0 TO 2% SLOPES	Y	3	2		
117	PICKETT-ROCK OUTCROP COMPLEX - 5 TO 30% SLOPES	N	0	0		4
118	PICKETT-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	N	0	0		4
119	PILCHUCK LOAMY FINE SAND - 0 TO 3% SLOPES	N	0	7		3
120	PITS	N	0	0		
121	POTCHUB LOAM - 8 TO 30% SLOPES	N	0	0		
122	POTCHUB LOAM - 30 TO 60% SLOPES	N	0	0		
123	PUGET SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
124	PUYALLUP FINE SANDY LOAM - 0 TO 2% SLOPES	Y	2	4		2
125	REVEL LOAM - 5 TO 30% SLOPES	N	0	0		4
126	REVEL LOAM - 30 TO 60% SLOPES	N	0	0		4
127	REVEL-WELCOME-ROCK OUTCROP COMPLEX - 30 TO 60% SLOPES	N	0	0		4
128	RINKER VERY CHANNERY SILT LOAM - 8 TO 30% SLOPES	N	0	0	yes	3
129	RINKER VERY CHANNERY SILT LOAM - 30 TO 60% SLOPES	N	0	0		3
130	RIVERWASH	N	0	0		
131	ROCK OUTCROP	N	0	0		
132	ROCK OUTCROP-KULSHAN COMPLEX - 60 TO 90% SLOPES	N	0	0		
133	RUBBLE LAND	N	0	0		
134	SAAR GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
135	SAAR GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
136	SAAR-HARTNIT COMPLEX - 5 TO 40% SLOPES	N	0	0		
137	SANDUN VERY GRAVELLY SANDY LOAM - 5 TO 30% SLOPES	N	0	0		
138	SANDUN VERY GRAVELLY SANDY LOAM - 30 TO 60% SLOPES	N	0	0		
139	SEHOME LOAM - 2 TO 8% SLOPES	Y	0	1		2
140	SEHOME LOAM - 8 TO 15% SLOPES	N	0	0	yes	2
141	SEHOME GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0	yes	2
142	SEHOME GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
143	SHALCAR MUCK-DRAINED - 0 TO 2% SLOPES	Y	3	2		

144	SHALCAR AND FISHTRAP SOILS - 0 TO 2% SLOPES	N	0	2		
145	SHUKSAN GRAVELLY SILT LOAM - 5 TO 30% SLOPES	N	0	0		
146	SHUKSAN GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0	yes	
147	SHUKSAN-KULSHAN-ROCK OUTCROP COMPLEX - 50 TO 80% SLOPES	N	0	0		
148	SKIPOPA SILT LOAM - 0 TO 8% SLOPES	Y	0	2		3
149	SKIPOPA-BLAINEGATE COMPLEX - 0 TO 8% SLOPES	N	0	2	yes	3
150	SKYKOMISH VERY GRAVELLY LOAM - 3 TO 30% SLOPES	N	0	0		3
151	SNOHOMISH SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
152	SNOQUALMIE GRAVELLY LOAMY SAND - 0 TO 3% SLOPES	N	0	4	yes	3
153	SORENSEN VERY GRAVELLY SILT LOAM - 8 TO 30% SLOPES	N	0	0	yes	2
154	SORENSEN VERY GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
155	SPRINGSTEEN VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
156	SQUALICUM GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0	yes	2
157	SQUALICUM GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
158	SQUALICUM GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
159	SQUALICUM-URBAN LAND COMPLEX - 5 ATO 20% SLOPES	N	0	0		2
160	SQUIRES VERY CHANNERY LOAM - 5 TO 30% SLOPES	N	0	0		2
161	SQUIRES VERY CHANNERY LOAM - 30 TO 60% SLOPES	N	0	0		2
162	SUMAS SILT LOAM-DRAINED - 0 TO 2% SLOPES	Y	3	2		
163	TACOMA SILT LOAM - 0 TO 1% SLOPES	N	0	5		
164	TACOMA SILT LOAM-DRAINED - 0 TO 1% SLOPES	N	0	5		
165	TROMP LOAM - 0 TO 2% SLOPES	Y	1	1		3
166	TWINSI VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		
167	TWINSI VERY STONY LOAM - 30 TO 60% SLOPES	N	0	0		
168	TYPIC CRYORTHODS - 60 TO 90% SLOPES	N	0	0		
169	TYPIC CRYORTHODS-ROCK OUTCROP COMPLEX - 60 TO 90% SLOPES	N	0	0		
170	TYPIC PSAMMAQUENTS-TIDAL - 0 TO 1% SLOPES	N	0	0	yes	
171	URBAN LAND	N	0	0		
172	URBAN LAND-WHATCOM-LABOUNTY COMPLEX - 0 TO 8% SLOPES	N	0	0	yes	2
173	VANZANDT VERY GRAVELLY LOAM - 5 TO 15% SLOPES	N	0	0		2
174	VANZANDT VERY GRAVELLY LOAM - 15 TO 30% SLOPES	N	0	0		2
175	VANZANDT VERY GRAVELLY LOAM - 30 TO 60% SLOPES	N	0	0		2
176	WELCOME LOAM - 5 TO 30% SLOPES	N	0	0	yes	3
177	WELCOME LOAM - 30 TO 60% SLOPES	N	0	0		3
178	WHATCOM SILT LOAM - 0 TO 3% SLOPES	Y	2	1		2
179	WHATCOM SILT LOAM - 3 TO 8% SLOPES	Y	4	1		2
180	WHATCOM SILT LOAM - 8 TO 15% SLOPES	N	0	0		2
181	WHATCOM SILT LOAM - 30 TO 60% SLOPES	N	0	0		2
182	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 8% SLOPES	N	4	2		2
183	WHATCOM-LABOUNTY SILT LOAMS - 0 TO 15% SLOPES	N	0	2	yes	2
184	WHITEHORN WILT LOAM - 0 TO 2% SLOPES	Y	3	2		
185	WICKERSHAM CHANNERY SILT LOAM - 0 TO 8% SLOPES	N	4	1		2
186	WINSTON SILT LOAM - 0 TO 3% SLOPES	Y	0	1		2
187	WINSTON LOAM - 3 TO 15% SLOPES	N	0	0		2
188	WINSTON LOAM - 15 TO 40% SLOPES	N	0	0		2
189	WISEMAN VERY CHANNERY SAND LOAM - 0 TO 8% SLOPES	N	0	4		3
190	WOLLARD GRAVELLY SILT LOAM - 30 TO 60% SLOPES	N	0	0		
191	YELM LOAM - 3 TO 8% SLOPES	Y	1	1	yes	2
192	YELM-URBAN LAND COMPLEX - 0 TO 3% SLOPES	N	0	0		2

APPENDIX F

Model Conservation Easement Deed

A sample Conservation Easement Deed based on the assumption of matching funds from the USDA-NRCS Agricultural Conservation Easement Program, is included in the following pages.

After Recording Return To:

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225

DOCUMENT TITLE: _____ **AGRICULTURAL CONSERVATION EASEMENT**

GRANTOR: _____

GRANTEES: **WHATCOM LAND TRUST AND WHATCOM COUNTY**

ABBR. LEGAL DESCRIPTION:

Full Legal Description in Exhibit A

TAX PARCEL # _____

AGRICULTURAL CONSERVATION EASEMENT DEED

This Conservation Easement Deed ("Deed") is made and entered into this ____ day of _____ 20__, by _____ ("Grantor"), the WHATCOM LAND TRUST ("Trust"), and WHATCOM COUNTY, WASHINGTON ("County") ("collectively, Grantees"), and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space.

1. RECITALS

- 1.1. Grantor is fee simple owner of real property (the "Protected Property") in Whatcom County, Washington, that is the subject of this Easement. Exhibit A is the legal description and Exhibit B is a site plan for that Protected Property, both of which are attached and incorporated herein by reference.

- 1.2. While “Grantees” include the Whatcom Land Trust and Whatcom County, use of the term “Grantees” does not imply that joint approval is required to exercise Grantees’ rights and responsibilities under this Easement. Those rights and responsibilities may be independently exercised by any Grantee.
- 1.3. The Protected Property is approximately _____ acres and is currently farmed.
- 1.4. The Protected Property has significant agricultural value to Grantees and to the people of Whatcom County and the State of Washington. The agricultural values include productive soil types and agricultural infrastructure as described in Baseline Documentation (Exhibit D). It is the intent of all parties that the agricultural values described in the baseline shall remain for the life of this easement and shall be used along with annual monitoring to identify future changes on the easement area.
- 1.5. Grantor and Grantees agree that the conveyance of rights and imposition of restrictions described in this Easement furthers the intent of Whatcom County Ordinance No. 2002-054, provided in Exhibit C, which establishes the Purchase of Development Rights Program to preserve land for agricultural purposes and has substantial public benefits.
- 1.6. As owner of the Protected Property, Grantor has the right to convey the rights and restrictions contained in this Easement in perpetuity.
- 1.7. Under the authority of the Agricultural Conservation Easement Program, (16 U.S.C. Sections 3838h and 3838i) the United States Department of Agriculture’s Natural Resources Conservation Service (herein “NRCS”) has provided on behalf of the Commodity Credit Corporation \$_____ (_____ and 00/100 dollars) to Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.

2. CONVEYANCE AND CONSIDERATION

- 2.1. For the reasons stated above, in consideration of mutual covenants, terms, conditions, and restrictions contained in this Easement, and in consideration of payment of \$_____ by the Whatcom County and the NRCS to Grantor, Grantor hereby grants, conveys and warrants to Grantees a Conservation Easement in perpetuity over the Protected Property, consisting of certain rights and restrictions as defined in this Easement Deed.
- 2.2. This Easement Deed is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- 2.3. Grantor and Grantees intend that this Easement run with the land and that it shall be binding upon Grantor’s, successors and assigns in perpetuity.

3. PURPOSE

The purpose of this Easement is to: (1) protect the present and future ability to use the Protected Property for agricultural purposes; (2) preserve the soil as a valuable resource and prevent activities that will impair the ability, now or in the future, to use the soil to produce food and fiber; (3) enable the Protected Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use or condition of the Protected Property that would significantly impair or interfere with its agricultural values, character, use or utility. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose. The granting of this Easement will also serve the "conservation purpose" of farmland protection as identified in Section 170(h)(4)(A) of the Internal Revenue Code.

4. RELATIONSHIP OF PARTIES

- 4.1. Unless noted otherwise, Whatcom County and the Whatcom Land Trust share all rights and responsibilities of Grantees under this Easement. For purposes of administering, monitoring and enforcing the terms of the Easement, the Whatcom Land Trust is the lead Grantee, unless Grantor is notified otherwise. As the lead Grantee, the Whatcom Land Trust has authority to act alone and at its sole discretion in exercising all rights and responsibilities of Grantees under this Easement. Grantor shall treat the Whatcom Land Trust as its contact for all matters regarding this Easement. Whatcom County and the Whatcom Land Trust may jointly take enforcement action, or if the Whatcom Land Trust fails to enforce the terms of this Easement, Whatcom County may do so alone.
- 4.2. The Trust will consult the County regarding any violation of the Easement that threatens the purpose of this Easement as described in Section 3. If a less serious violation is determined to have occurred, the Trust will report to the County the nature of the violation and the response to that violation by the Trust.
- 4.3. The above Section 4.1. does not pertain to monitoring and enforcement of a conservation farm plan, the responsibility for which rests with NRCS and Whatcom County as described in Section 9.

5. RIGHT OF ENFORCEMENT

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantees fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.

Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property, in accordance with the Agricultural Conservation Easement Program requirements.

6. PERMITTED USES AND ACTIVITIES

Grantor may:

- 6.1. Engage in the production of food and fiber and other uses and activities consistent with the purpose of this Easement so long as those uses or activities are not expressly prohibited in Section 7 below.
- 6.2. Continue any use or activity not permitted by this easement at the time this Easement is signed provided it is not contrary to the purposes of this Easement and provided that such use or activity is described in this section.
- 6.3. Remove, Maintain, Expand, or Replace, existing agricultural structures and roads and construct new agricultural structures, roads, and improvements used primarily for agricultural enterprises on the Protected Property within the "Farmstead", as defined in Section 12 of this Easement, and shown on Exhibit B, so long as expansion or new construction does not exceed the area of impervious surfaces allowed in Section 7.4. Agricultural structures may include, without limitation, fencing, offices, warehouses, temporary farm worker housing, livestock housing and related structures, equipment storage and maintenance facilities, facilities related to the processing and sale of farm products predominately grown on the Protected Property, temporary hoop houses and temporary greenhouses with no foundation so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.4. Remove, Maintain, Expand, or Replace temporary hoop houses and temporary greenhouses with no foundation outside of the Farmstead area so long as the structures' primary use is to support the agricultural activities on the Protected Property or agricultural activities on other property under the control of the Grantor.
- 6.5. On the "Farmstead", as defined in Section 12 of this Easement, and shown in Exhibit B, engage in any uses or activities, that do not impair the ability to farm the remainder of the Protected Property in the present or future and that are not prohibited by Section 7 below.
- 6.6. Plant or maintain trees on the Agricultural Land, as defined in Section 12 of this Easement only as follows:

- 6.6.1. Maintain a woodlot for the production of firewood to be used on the Protected Property.
- 6.6.2. Plant Christmas trees and short rotation hardwoods not subject to the excise tax imposed by RCW 84.33, provided that adequate provision is made for the removal of trees, including stumps and roots, at the termination of the Christmas tree or short rotation hardwood farming operation.
- 6.6.3. Install and maintain trees on the riparian portion of the property according to the Conservation Reserve Enhancement Program and/or Best Management Practices in coordination with the Whatcom Conservation District.
- 6.6.4. Plant and maintain trees to provide shading for grazing livestock.
- 6.6.5. Plant and maintain trees used in fruit or nut production.
- 6.7. Install a small-scale wind and solar power generator for the primary purpose of generating electric power for use on the Protected Property, provided however that incidentally generated excess power may be sold through the electric grid and further provided that Grantee must approve the scale and location of any such small-scale wind and solar power generator prior to installation.
- 6.8. Grantor has the right to conduct non-farm related commercial or industrial activity provided that conduct of such activity uses no more than one percent (1%) or one acre of the Protected Property, whichever is less, or provided such activity utilizes buildings existing at the time the Conservation Easement is signed and does not involve installation of facilities or expenditure of capital that would hinder the future use of buildings for agricultural purposes. Said activity must be compatible with the purpose of this Conservation Easement and agriculture and forestry uses of the Protected Property and subordinate to the agricultural and residential use of the Protected Property. Activities which market petroleum or chemical products are prohibited.

7. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

Unless specifically permitted by Section 6 above, and as may be necessary to carry out those reserved rights, Grantor shall not engage in or permit any of the following activities on the Protected Property:

- 7.1. Use or activities inconsistent with the purpose of this Easement.
- 7.2. Legal or “de facto” division, subdivision, or partitioning of the land or the separate sale of any portion of the Property, even if that portion of the Property constitutes a separate legal parcel. This restriction does not prohibit minor boundary line adjustments with adjoining agricultural land, provided there is no net loss of land to the Property, and provided that no new parcel may be created by such boundary line adjustments, and such adjustments does not affect over

two acres in total for the entire Property. Any new land gained through a boundary line adjustment is subject to the terms of this agreement.

- 7.3. Place or construct any residential building, structures, or other residential improvements of any kind except those utilized to house farm workers.
- 7.4. Cover more than two percent (2%) of the area (approximately _____ square feet) of the Protected Property with impervious surfaces, including, without limitation, asphalt, concrete, buildings, or ponds, except animal waste holding ponds.
- 7.5. Construct non-agricultural structures or facilities.
- 7.6. Conduct any use or activity that removes or damages the long-term viability of the soil or impairs the ability to farm the Protected Property except for conservation or best management practices as specified in the NRCS Field Office Technical Guide for Whatcom County.
- 7.7. Transfer, encumber, sell, relinquish, forfeit or otherwise separate water rights from title to the Protected Property except that with the consent of the County, such portion of the Water Rights that are excess and not then needed for agricultural purposes on the Property may either be leased for a period not to exceed ten years for the beneficial use for agricultural activities on land other than the Protected Property, or temporarily enrolled in the state Trust Water Right Program for a period not to exceed ten years or conveyed to the County as provided in Section 8, so long as sufficient water rights are retained by grantor to ensure adequate water to carry on agricultural activities on the protected land now and in the future.
- 7.8. Mine or extract soil, sand, gravel, oil or other mineral, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Protected Property in a manner consistent with the conservation purposes of this easement. Such alteration shall not exceed two acres.
- 7.9. Use off-road motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agriculture, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purposes of this Easement Deed.
- 7.10. Grant easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms.
- 7.11. Expand or intensify any use or activity existing at the time this Easement Deed is signed that is contrary to the purpose of this Easement or prohibited in this section.
- 7.12. The dumping or accumulation of trash on the Protected Property is prohibited, except that the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property is permitted.

8. WATER RIGHTS

- 8.1. The Parties agree that any Water Rights must be maintained on the Protected Property to ensure the protection of the Agricultural Values.
- 8.2. Trust will include reference, in Baseline Documentation (Exhibit D), to any water rights associated with the Protected Property. In its monitoring visits, Trust will inquire regarding the status and protection of water rights and will include in its Annual Monitoring Report any new information about water rights on the Protected Property and concerns, if any, about whether water rights are being protected. If at any time Trust believe that Grantor is not sufficiently informed about protecting Grantor's water rights, Trust will refer Grantor to Whatcom County and will urge Grantor to take the Water Rights protection actions.
- 8.3. Under this Easement, Grantor is obligated to take appropriate action to protect water rights on the Protected Property. Section 4 RELATIONSHIP OF PARTIES notwithstanding, Whatcom County, not the Trust, has responsibility for enforcing this Grantor obligation. If Grantor fails to take appropriate action to protect water rights on the Protected Property, Whatcom County may pursue remedies in accordance with Sections 13 and 14 of this Easement or may itself take appropriate action to protect the water rights.
- 8.4. If Grantor is unable or unwilling to take the Water Rights protection action, and the Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to County for County's use in order to maintain the agricultural activity on the Protected Property.

9. CONSERVATION PLAN

- 9.1. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, its successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with the Whatcom Conservation District and approved by NRCS. This conservation plan shall be developed using standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date this Easement Deed is executed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with NRCS Field Office Technical Guide standards and specifications. The Conservation Plan is incorporated into this Conservation Easement Deed by reference. NRCS shall have the right to enter upon the Protected Property, with advanced notice to the Grantor, in order to monitor compliance with the Conservation Plan.
- 9.2. In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the County of the Grantor's noncompliance. The County shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to

correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations. The landowner shall be liable for any costs incurred by NRCS as a result of landowner's negligence or failure to comply with the easement requirements as it relates to conservation planning violations.

- 9.3. If the NRCS standards and specifications for highly erodible land are revised after the date of this Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect other natural resources conservation requirements to which the Grantor may be or become subject.
- 9.4. For the purpose of this Conservation Easement, references and requirements relating to highly erodible lands do not apply to land over which this Conservation Easement is granted. There are no highly erodible lands on the Protected Property and none have been designated in Whatcom County.

10. RIGHTS CONVEYED TO GRANTEES

To accomplish the purpose of this Easement, the following rights are conveyed to Grantees:

- 10.1. To accomplish the purpose of this Easement and to enforce specific rights and restrictions contained in the Easement Deed.
- 10.2. To enter the land at least once a year, at a mutually agreeable time and upon notice to the Grantor, for the purpose of inspection and monitoring compliance with this Easement.
- 10.3. To enter the land at such other times as necessary if Grantees have reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of the Easement. Such entry will be with prior notice as is reasonable under the circumstances.
- 10.4. In the event of uses or activities inconsistent with the purpose and provisions of this Easement, the Grantees may obtain damages, an injunction, abatement, rescission, restoration and any other remedies available in law or equity.
- 10.5. Forbearance by the Grantees to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantees' rights under the Easement.

11. NO PUBLIC ACCESS

This Easement provides no right of access to the general public.

12. BASELINE DOCUMENTATION

- 12.1. To establish the present condition of the Protected Property so that Grantees are able to monitor future uses and assure compliance with the terms of this Easement, Grantees will, at their expense, by the date of this Easement prepare Baseline Documentation sufficient to establish the condition of the Protected Property as of the signing of this Easement Deed. The Baseline Documentation may consist of reports, maps, photographs, and other documentation. Grantor and Grantees will execute a statement verifying that the Baseline Documentation accurately represents the condition of the Protected Property as of this time. Baseline Documentation is contained in Exhibit D. The Baseline Documentation will delineate the Farmstead and Agricultural Land as defined below.
- 12.2. The Baseline Documentation will specifically establish the area and extent of the Farmstead, which includes that portion of the Property used for residential buildings and buildings and uses accessory to residential buildings, as well as that portion used for agricultural buildings, structures and improvements and those adjacent areas where future expansion of buildings, structures and improvements are contemplated. In this Easement Deed, the Farmstead is located in the same area as delineated by the baseline data.
- 12.3. The area not included in the Farmstead will be depicted under the category of Agricultural Land. Agricultural Land may include nonfarm areas, such as woodlands, as well as cropland or grazing land.

13. INFORMAL DISPUTE RESOLUTION

Grantor agrees to notify the Trust of any intended action that a reasonable person might believe would violate the terms of this Easement. Should a dispute arise concerning compliance with this Easement, Grantor and the Trust will meet within 15 days to discuss the matter in dispute. By mutual agreement, the Grantor and the Trust may agree to refer the matter in dispute to mediation or arbitration under such rules as the parties may agree. If arbitration is pursued, the prevailing party will be entitled to such relief as may be granted, to a reasonable sum for its costs and expenses related to the arbitration, including fees and expenses of the arbitrator and attorneys. The Trust may, at its discretion, forgo these informal dispute resolution alternatives if continuation of the use or activity in dispute threatens the purpose of this Easement.

14. GRANTEES' REMEDIES

- 14.1. If Grantees determine that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and to restore the Protected Property to its prior condition.
- 14.2. Grantees may institute legal proceedings for injunctive relief, abatement, restoration, or damages, including costs and attorneys' fees reasonably incurred in prosecuting the action, and any other remedies available in law or equity if Grantor:

- 14.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees;
 - 14.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
 - 14.2.3. Fails to continue diligently to cure such violation until finally cured.
- 14.3. In the event Grantees or the United States take legal action to enforce the terms of this Easement, the cost of restoring the Protected Property and Grantees' and the United States' reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by the Grantor. In the event Grantees secure redress for an Easement violation without initiating or completing judicial proceedings, the cost of such restoration and reasonable expenses shall be borne by the Grantor. If Grantor ultimately prevails in any judicial proceedings initiated by Grantees or the United States to enforce the terms of this Easement, each party shall bear its own costs.
- 14.4. If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage in violation of this Easement, Grantees may immediately pursue their legal remedies without prior notice to Grantor as set forth in Section 14.1.
- 14.5. Grantees may not recover damages or require restoration for damage to the Protected Property resulting from causes beyond Grantor's control, such as fire, flood, storm, or earth movement that Grantor could not reasonably have anticipated or prevented.

15. RESPONSIBILITY FOR COST AND LIABILITIES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including maintenance of adequate liability insurance and payment of all taxes. Grantees assume no affirmative obligations for the management, supervision or control of the Protected Property or any of the activities occurring on the Protected Property. Grantor shall indemnify Grantees and the United States, and hold Grantees and the United States harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantees), and other expenses of every kind arising from or incident to any claim or action for damages including but not limited to, the release, use or deposit of any hazardous material (as defined in Section 19.12. below) on the Protected Property, injury or loss suffered or alleged to have been suffered on or with respect to the Protected Property.

16. EXTINGUISHMENT AND TRANSFER

- 16.1. The United States Right of Enforcement is a vested property right that cannot be condemned by State or local government. If circumstances arise that render the purpose of this Easement

impossible to accomplish, the Easement can be extinguished only by judicial proceedings and upon approval of the United States. In the event of such an extinguishment or the taking of the Protected Property by the exercise of the power of eminent domain, Grantor shall pay to Whatcom County and the United States in proportion to their contribution to the purchase price. At the time this Deed was recorded the United States contribution was 50 percent and Whatcom County's contribution was 50 percent. In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The Commodity Credit Corporation's share will be in proportion to its percentage of original investment.

16.2. Grantor agrees to:

16.2.1. Incorporate the terms of this Easement by reference in any deed, lease, executory contract or other legal instrument by which it divest itself, or intends to divest itself, of any permanent or temporary interest in the Protected Property.

16.2.2. Give written notice to the Grantees of the transfer of any interest in the Protected Property no later than 45 days prior to the date of such transfer. Such notice shall include the name, address, and telephone number of the prospective recipient. Failure to provide such notice to the Grantees shall not limit the legal obligations imposed by this Easement on any recipient of an interest in the Protected Property.

16.3. Whatcom Land Trust's rights and interest in this Easement are assignable only to an agency or organization that is approved by the United States and Whatcom County and authorized to hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Easement. Grantees shall notify Grantor and NRCS in writing in advance of such an assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment, nor shall it impair the validity of this Easement or limit its enforceability.

17. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement provided that the Parties first obtain the written consent of each Beneficiary to this Easement. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantees under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of Whatcom County, Washington, and any other jurisdiction in which such recording is required.

18. SUBORDINATION

Any mortgage or lien arising after the date of this conservation easement Deed shall be subordinated to the terms of this easement, substantially in the form of the instrument attached hereto as Exhibit E.

19. GENERAL PROVISIONS

19.1. Effective Date. The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.

19.2. Notices. Any notice under this Agricultural Conservation Easement Deed must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Grantor:

Grantee, Trust:

Whatcom Land Trust
PO Box 6131
Bellingham, WA 98227

Grantee, County:

Whatcom County PDS
Attn: PDR Program Administrator
5280 Northwest Drive
Bellingham, WA 98226

Third Party Grantee, NRCS: USDA-NRCS

Attn: Easement Programs
11707 E. Sprague Ave, Suite 301
Spokane Valley, WA 99206

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

19.3. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Washington. Any legal proceeding regarding this Easement shall be initiated in Whatcom County Superior Court.

19.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW and Whatcom County Ordinance 2002-054. If any provision in this instrument is found to be

ambiguous, an interpretation consistent with the purpose of this Easement that would render that provision valid shall be favored over an interpretation that would render it invalid.

- 19.5. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the Easement, or its application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected.
- 19.6. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement.
- 19.7. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or revision of Grantor's title in any respect.
- 19.8. Warranty of Good Title. Grantor warrants that Grantor has good title to the Protected Property; that the Grantor has the right to convey this conservation easement; and that the Protected Property is free and clear of any encumbrances other than those listed below.
- 19.9. Grantor-Grantees. The terms "Grantors" and "Grantees," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include respectively the above named Grantor, its, successors, and assigns, and the above-named Grantees, their successors and assigns.
- 19.10. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- 19.11. Federal Enforcement. In the event that the Grantees fail to enforce the terms of this Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that Grantees attempt to terminate, transfer or otherwise divest themselves of rights, title or interest in the Easement or extinguish the Easement without prior consent of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America. The United States shall be entitled to recover any and all administrative and legal costs from the County Grantee, including attorney fees or expenses, associated with any enforcement or remedial action as it relates to the ACEP.
- 19.12. General Indemnification. Grantor shall indemnify and hold harmless Grantees and the United States, their employees, agents and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorney's fees and attorney's fees on appeal) to which Grantees may be subject or incur relating to the Protected Property, which may arise from, but is not limited to,

Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

19.13. Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

19.13.1. Moreover, Grantor hereby promises to hold harmless and indemnify the Grantees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Trust, the County, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by the Trust or the County at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Trust or the County.

19.13.2. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

19.13.3. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

19.14. Recordation. Grantees shall record this instrument in a timely fashion in the official records of Whatcom County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

19.15. No Merger. In the event that Grantees acquire all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge

the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantees, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantees covenant to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party.

19.15.1. In the event that either Grantee takes legal title to Grantor's interest in the Protected Property, that Grantee shall commit the monitoring and enforcement of the Conservation Easement to another qualified organization within the meaning of section 170 (h)(3) of the United States Internal Revenue Code (1986) as amended, which organization has among its purposes the conservation and preservation of land and water areas.

20. RCPP MINIMUM DEED TERMS

This Conservation Easement is acquired with funds provided, in part, under the Regional Conservation Partnership Program (RCPP) (16 U.S.C. Section 3871 et seq. and 7 CFR part 1464). The Exhibit F is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by the RCPP, and as a condition of receiving RCPP funds, all present and future use of the Protected Property identified in Exhibit A (legal description) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled RCPP Minimum Deed Terms in Exhibit F that is appended to and made a part of this easement deed. The rights of the United States acquired under this Conservation Easement shall be unaffected by any subsequent amendments or repeal of the RCPP.

21. SCHEDULE OF EXHIBITS

- 21.1. Exhibit A. Legal Description
- 21.2. Exhibit B. Site Map
- 21.3. Exhibit C. Ordinance
- 21.4. Exhibit D. Baseline Documentation
- 21.5. Exhibit E. Subordination Agreement Example
- 21.6. Exhibit F. RCPP Minimum Deed Terms

TO HAVE AND TO HOLD unto Grantees and the State of Washington, and their successors, and assigns forever.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

Its _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

[illegible]

Notary Public
Print Name _____
My commission expires _____

Dated: _____

By _____

Its _____

[illegible]

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

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EXHIBIT A
Legal Description

APN/Parcel ID: _____

Exhibit B
Site Map

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EXHIBIT C
Ordinance

SPONSORED BY: Planning

PROPOSED BY: Planning

INTRODUCTION DATE: 8/13/02

ORDINANCE NO. 2002-054

**ESTABLISHING AN AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS
PROGRAM AND OVERSIGHT COMMITTEE**

WHEREAS, Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens; and

WHEREAS, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural lands of long term commercial significance and encourage the use of innovative techniques to do so; and

WHEREAS, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring open space, wetlands, farm and agricultural land , and timber land; and

WHEREAS, Resolution # 2001-049 authorized the creation of a Purchase of Development Rights Steering Committee with the charge to develop a PDR program for Whatcom County by April 30, 2002 and authorized the County Executive to expend up to \$30,000 for outside contract assistance in preparing the PDR program; and

WHEREAS, Resolution #2001-049 also committed the Council to expend a fair and significant share of the Conservation Futures Funds for acquiring interest in agricultural lands; and

WHEREAS, The Purchase of Development Rights Steering Committee met regularly from October 2001 through April 2002 and forwarded a recommendation in May of 2002; and

WHEREAS, Council reviewed the Purchase of Development recommendation from the PDR Steering Committee and requested PDS staff to develop a Purchase of Development Rights Ordinance; and

WHEREAS, Council held a public hearing on September 10, 2002 to take public comment on the Agricultural Purchase of Development Rights program.

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

1. The Agricultural Purchase of Development Rights program is adopted as attached in Exhibit 1.

- 1 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this
2 ordinance shall not affect or impair the validity of the ordinance as a whole or any
3 part thereof other than the part so declared to be invalid.
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8 ADOPTED this 10 day of September, 2002.
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10
11 **ATTEST:**

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13 

14 Dana Brown-Davis,
15 Clerk of the Council

16 **WHATCOM COUNTY COUNCIL**
17 **WHATCOM COUNTY, WASHINGTON**

18 
19 Ward Nelson, Council Chair

20 **APPROVED** as to form

21 ☒ Approved ☐ Denied

22 
23 Karen N. Frakes, Civil Deputy Prosecutor


Pete Kremen, Executive

Date: _____

EXHIBIT D
Baseline Documentation

The Baseline Documentation for the _____ Agricultural Conservation Easement is kept by the Whatcom Land Trust at 412 N Commercial, Bellingham WA 98225. The remainder of this page is intentionally blank.

EXHIBIT E
Subordination Agreement Example

When recorded return to:

Grantor: _____

Grantee: _____

Legal Description

Abbreviated form: _____

Additional legal at Exhibit B.

Assessor's Tax Parcel Number: _____

Reference number(s) of related/assigned/released documents: _____

Reference(s) to document(s) appears on page(s) _____

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

The undersigned subordinator agrees as follows:

1. _____ ("Subordinator") is the owner and holder of a mortgage dated _____, which was recorded under Auditor's File No. _____, records of _____ County;
2. _____ ("Easement Holder") is the holder of a conservation easement dated _____, 20__, executed by [("Owner") or ("Owners")] (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;

3. _____, [*husband and wife,*] [("*Owner*") **or** ("*Owners*")] [*is the owner or are the owners*] of all the real property described in the conservation easement identified above in Paragraph 2.
4. In consideration of benefits to Subordinator from [("*Owner*") **or** ("*Owners*")], receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2.
5. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.
6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this _____ day of _____, 20__.

SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

STATE OF WASHINGTON)
) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that they signed this instrument, on
oath stated that they were authorized to execute the instrument and acknowledged it as the
_____ of _____ to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT F

RCPD Minimum Deed Terms

The Regional Conservation Partnership Program (16 U.S.C. Section 3871 et seq.), facilitated and provided funding for the purchase of a Conservation Easement (“Conservation Easement”) on real property described in Exhibit A, hereafter referred to as the “Protected Property,” to further the restoration, protection, enhancement, management, maintenance, and monitoring of agricultural values on the Protected Property (the “Conservation Values”).

The _____ (collectively “Grantor”), the **Whatcom Land Trust** (“Trust”), and **Whatcom County, Washington** (“County”) (“collectively, Grantees”), and the **United States of America** (the “United States”) and its assigns, acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”) (jointly referred to as the “Parties”) acknowledge that the Conservation Easement is acquired by the Grantee for the purpose of the restoration, protection, enhancement, management, maintenance, and monitoring of the Conservation Values (the “purposes of the Conservation Easement”). Decision making on behalf of NRCS is delegated to the Chief of NRCS or authorized designee (hereafter referred to as “Chief of NRCS”). Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Trust.

In order to ensure compliance with the Regional Conservation Partnership Program, 16 U.S.C. Section 3871 et. seq. and 7 CFR part 1464, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the Conservation Easement. Notwithstanding any other provision of the Conservation Easement, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other sections of the Conservation Easement, Sections I and II will control; however, if other sections of the Conservation Easement have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other sections of the Conservation Easement are more restrictive to the rights of the Grantor than Section I, Paragraph 3 and Section II, then Section I, Paragraph 3 and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of the Conservation Easement, and the restrictions and covenants of this Conservation Easement will apply to the Protected Property as a whole.

The terms and conditions of the Conservation Easement run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. Limitation on Impervious Surfaces. Impervious surfaces will not exceed 2 percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Conservation Easement.

2. Limitations on Uses. Any uses or activities that are inconsistent with the purposes of the Conservation Easement are prohibited. The following activities are inconsistent with the purposes of the Conservation Easement and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Uses consistent with the purposes of the Conservation Easement;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the purposes of the Conservation Easement;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Conservation Values;

(iv) Commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.; and

(v) Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, all structures and improvements must be located within the Building Envelope(s), containing approximately ____ total acres and described or shown in Exhibit B, which is appended to and made a part of this Conservation Easement.

The identified boundaries and locations of the approved Building Envelope(s) may be adjusted only with prior written approval from the Grantee and the Chief of NRCS. The adjusted Building Envelope(s) may not be larger than the approved Building Envelope(s) and must provide equal or greater protection of the Conservation Values. Following receipt of written approval to adjust identified Building Envelope(s), the Grantor and Grantee shall amend this Conservation Easement to add an exhibit that describes the subsequently approved boundaries and locations of the Building Envelope(s).

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph 2(C)**, that neither individually nor collectively have an adverse impact on the Conservation Values, may be located outside of the Building Envelope(s) with prior written approval of the Grantee.

New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the purposes of the Conservation Easement.

(D) *Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Conservation Values as determined by the Grantee in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;
- (ii) Erosion and sediment control pursuant to a plan approved by the Grantee;
- (iii) Soil disturbance activities required in the maintenance or construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the purposes of the Conservation Easement; and
- (iv) Agricultural activities and related conservation activities conducted in accordance with this Conservation Easement and the RCPP Easement Plan as described in Section I, paragraph 4.

(F) Surface and Subsurface Mineral Exploration and Extraction –

Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Conservation Easement or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited except as otherwise provided in this Paragraph (F).

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property prior to the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Conservation Easement are subordinate to the terms of this Conservation Easement and must incorporate by reference this Conservation Easement.

Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage approved prior to extraction by the Grantee, not to exceed two acres, and does not harm the Conservation Values.

Subsurface mineral development on the Protected Property is allowed in accordance with this Paragraph (F), if approved by Grantee and Chief of NRCS. Grantee and Grantor must demonstrate prior to the initiation of mineral development activity that such subsurface mineral development shall—

- (i) Be conducted in accordance with applicable State law;
- (ii) Have a limited and localized impact;
- (iii) Not harm the Conservation Values;
- (iv) Not materially alter or affect the existing topography, as determined by Grantee and the Chief of NRCS;
- (v) Comply with a subsurface mineral development plan that includes a plan for the remediation of impacts to the Conservation Values, which includes reclaiming and restoring all areas of the Protected Property that are impacted by the subsurface mineral development and such plan is approved by Grantee and the Chief of NRCS prior to the initiation of mineral development activity;
- (vi) Not be accomplished by any surface-mining method;
- (vii) Be within the impervious surface limits described in Section I, Paragraph 1; and
- (viii) Use practices and technologies that minimize the duration and intensity

of impacts to the Conservation Values.

All areas of the Protected Property that are impacted by subsurface mineral development pursuant to this section must be reclaimed and restored within a reasonable time, as determined by the Grantee and Chief of NRCS, at cessation of subsurface mineral development activities.

Impervious surfaces, as defined in Section I, Paragraph 1, include any surface disturbance or impervious surfaces associated with subsurface mineral development allowed by this paragraph.

3. Allowed Uses. The provisions of this Conservation Easement and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purposes of the Conservation Easement. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Conservation Easement's protection for the Conservation Values. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of agricultural crops, livestock, and forest products is allowed provided it is conducted in a manner consistent with the terms of the Conservation Easement and the RCPP Easement Plan described in Section I, Paragraph 4.

(B) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the purposes of the Conservation Easement.

4. RCPP Easement Plan. The Grantee shall prepare an RCPP Easement Plan in consultation with the Grantor and, as needed, the Chief of NRCS. The Grantee agrees to update the RCPP Easement Plan, in consultation with the Grantor and as needed, the Chief of NRCS, in the event the uses or ownership of the Protected Property change. A copy of the current RCPP Easement Plan is kept on file with the Grantee.

The RCPP Easement Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, promote the long-term viability of the land to meet the purposes of the Conservation Easement, and identify, as applicable, permissible and prohibited activities and any associated restoration plans.

SECTION II – PROTECTION OF THE UNITED STATES’ INTERESTS AND EASEMENT ENFORCEMENT

1. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor’s negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

2. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials (defined below), as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or

connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

3. Extinguishment, Termination, and Condemnation. The interests and rights under this Conservation Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this Conservation Easement, any proposed extinguishment, termination, or condemnation action that may affect the United States' interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the Conservation Easement is percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

If this Conservation Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

4. Amendment. This Conservation Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws, regulations, and program policy. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Conservation Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

5. United States Right of Enforcement. In consideration of the RCPP funds received for the acquisition of this Conservation Easement, the United States is also granted this right of enforcement that it may exercise only if the terms of the Conservation Easement are not enforced by the holder of the Conservation Easement. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms **of this Conservation Easement, as determined in the sole discretion of the Secretary.**

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the Conservation Easement.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, the United States will have reasonable access to the Protected Property. Prior to its inspection of

the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of this Conservation Easement and will give notice to Grantee and Grantor at the earliest practicable time.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-303

File ID:	AB2021-303	Version:	1	Status:	Agenda Ready
File Created:	05/18/2021	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Council Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Appointment of Starck Follis and Carolyn Mason to the Criminal Justice Treatment Account panel

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Staff Memo for background information.

Requested Action:

The County Council is asked to approve a motion to appoint Mr. Follis to the criminal defense bar position with a first term ending January 31, 2025 and to affirm the Council's previous appointment of Ms. Mason with a first term ending January 31, 2024, per WCC.2.03.020 and .230.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo

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

June 1, 2021

TO: County Councilmembers

FROM: Jill Nixon, Legislative Coordinator II

SUBJ: Appointments to the Criminal Justice Treatment Account Panel

RCW 71.24.580(6) regarding the Criminal Justice Treatment Account (CJTA) establishes a local panel to oversee priorities for funding which are then referred to the County Authority for approval. Two of the positions on the panel are to be appointed by the County Council:

"(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court..."

- Whatcom County Public Defender Starck Follis has historically served in the position designated for a member of the criminal defense bar, although he is unappointed by Council.
- On September 29, 2020, Council appointed Carolyn Mason to the substance abuse treatment provider position, but did not designate a term length or end date.

Whatcom County Code 2.03.020 requires that appointments to boards, committees and commissions of noncouncilmembers made by the council shall be for terms that are no longer than 4 years

Whatcom County Code 2.03.030 limits the number of terms to two consecutive full terms.

Requested Action: The County Council is asked to approve a motion that will:

1. Appoint Mr. Follis to the criminal defense bar position with a first term ending January 31, 2025, per WCC.2.03.020 and .230.
2. Affirm the Council's previous appointment of Ms. Mason with a first term ending January 31, 2024, per WCC.2.03.020 and .230.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-341

File ID:	AB2021-341	Version:	1	Status:	Agenda Ready
File Created:	06/09/2021	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Council Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Appointment to the Flood Control Zone District Advisory Committee as an alternate member -
Applicant: Daniel Dahlquist (Council Acting as the Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

FLOOD CONTROL ZONE DISTRICT ADVISORY COMMITTEE

Any person interested in serving on the advisory committee may be appointed as an alternate for a term of six years. Alternate members shall be notified of each meeting and are encouraged to attend.

Committee assists and makes recommendations to the Board of Supervisors in performing flood damage repairs, maintenance and improvements, and minimizing future flood damage through prevention and management on the Nooksack River, its watershed, and the other watersheds within Whatcom County. Meets the second Thursday of the month or as needed. Flood Control Zone District Board of Supervisors-appointed

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Dahlquist Application

Subject: Online Form Submittal: Board and Commission Application
Date: Wednesday, June 9, 2021 3:05:23 PM

Board and Commission Application

Step 1

Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

Title Mr.

First Name Daniel

Last Name Dahlquist

Today's Date 2/19/1989

Street Address 1386 W Axton Rd

City Ferndale

Zip 98248

Do you live in & are you registered to vote in Whatcom County? Yes

Do you have a different mailing address? *Field not completed.*

Primary Telephone 3604837141

Secondary Telephone *Field not completed.*

Email Address dj@pottleandsons.com

Step 2

1. Name of Board or Flood Control Zone District Advisory Committee

Committee

Flood Control Zone District Advisory Committee Position:	Alternate
--	-----------

2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
--	-----

3. Which Council district do you live in?	District 4
---	------------

4. Are you a US citizen?	Yes
--------------------------	-----

5. Are you registered to vote in Whatcom County?	Yes
--	-----

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
--	----

7. Have you ever been a member of this Board/Commission?	No
--	----

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
---	----

You may attach a resume or detailed summary of experience, qualifications, & interest in response to	Resume 2021 Dahlquist.pdf
--	---

the following questions

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

See attached resume.

10. Please describe why you're interested in serving on this board or commission

It is relevant to my interests and professional experience, and I want to help improve my local community.

References (please include daytime telephone number):

Field not completed.

Signature of applicant:

Daniel J Dahlquist

Place Signed / Submitted

Ferndale, WA

(Section Break)

Email not displaying correctly? [View it in your browser.](#)

Daniel Dahlquist

360-483-7141

thedjdahlquist@gmail.com

Expertise

Skills

Google Ads
Google Analytics
Facebook Analytics
Social Media Management
Project Management
SEO & SEM
CRM
Editing

Technology

Proficiency

Google Suite
Adobe Photoshop
Adobe InDesign
Adobe Spark
Adobe Premiere Pro
Microsoft Office
Wordpress w/ Elementor
Mailchimp
Windows & OSX

Certificates

Exceed

Google Ads Certified

Education

Washington State University • Pullman • WA

(Jan 2017 - Dec 2019)

BA Business Administration - Marketing ; Minor Biological Science

As a student at Washington State University there were several projects which provided the opportunity to learn about data analysis and how to apply that data to bring value to both customers and the business. I led groups where we designed ad campaigns, managed marketing budgets, incorporated Google and Facebook analytics, performed SEO, and much more. I passed WSU's graduation writing requirement with a distinction award, putting me among the top 10% of my peers for writing proficiency. I also attained a minor in Biology during this time.

Work Experience

Pottle & Sons Construction • Bellingham • WA

(April 2020 - Present)

Project Manager; Proposal Developer

Working for a relatively small construction firm I was given the opportunity to work in and across many disciplines. I originally came on to develop and implement their COVID mitigation plan, soon took over development of their safety protocols, which then led to me designing and consolidating their project proposals. Through this process I got to corroborate with every level of the business from estimation and finance to direct contact with suppliers. I also supervised projects on-site, gaining experience in the delivery side of the industry. During this period I also reworked the company website which was wildly out of date; incorporated SEO and monitored for KPIs. This job is great, but work can be very seasonal and I want the opportunity to utilize my degree and the technical knowledge I have obtained over the years.

Pottle & Sons Construction • Bellingham • WA

(Jan 2010 - Dec 2016)

Office Assistant ; I.T.

My responsibilities as an office assistant included answering phones, greeting walk-ins, data entry, computer troubleshooting, sorting mail, and cleaning. I would also run errands, making bank deposits

References

Pavan Munaganti

Teaching Assistant – Washington State University

pavan.munaganti@wsu.edu

509-335-4102

Mark Pottle

VP - Pottle & Sons Construction

mark@pottleandsons.com

360-384-1543

My references prefer to be contacted by email. More available upon request.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-371

File ID:	AB2021-371	Version:	1	Status:	Agenda Ready
File Created:	06/17/2021	Entered by:	SMildner@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Executive Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Request confirmation of the County Executive's reappointments of Georgiann Dustin, Shirley Forslof, Denise Irely, and Kathleen O'Connor to the Northwest Senior Services Board

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memorandum

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Recommendation Memo, Member List



RECEIVED

JUN 17 2021

WHATCOM COUNTY
EXECUTIVE'S OFFICE

To: Whatcom County Council

From: Dan Murphy, Executive Director 

Re: Northwest Senior Services Board

Date: June 16, 2021

Background

Currently, Whatcom County has no vacant slots on the Northwest Senior Services Board (NWSSB) for Northwest Regional Council.

Recommendations

On June 30, 2021 the terms for Georgiann Dustin, Shirley Forslof, Denise Irey, and Kathleen O'Connor are set to expire. However, each of these four individuals have not only provided exemplary service to the NWSSB, but they have each expressed an interest in remaining active on our advisory council. NWSSB members would welcome their continued participation and appointment to the NWSSB.

If approved by the Whatcom County Council, these four appointments will run through June 30, 2024.

If I can provide you any additional information, please do not hesitate to contact me.

*Suzanne,
Please re-appoint.
Satpal
6/17*

An Association of County Governments
Serving the People of Island, San Juan, Skagit and Whatcom Counties
600 Lakeway Drive – Bellingham, WA 98225 – 360.676.6749- nwrwa.org

Name: **Northwest Senior Services Board**

Membership: 9 Members

Purpose: The Northwest Senior Services Board serves as advisors to the Area Agency on Aging in order to develop and enhance a comprehensive service delivery system which meets the physical, social, and psychological needs of older people

Enabling Statute(s): WSSCS Act Title IXX Older AM Act 73 (Older Americans Act of 1965)

Term Information: 4 years, no term limit

Meeting Information: Meetings are coordinated through Northwest Regional Council – meets (mostly) on a monthly basis

Member Name	Term Information
Douglas Cornelsen	Term ends 6/30/23
Georgiann Dustin	Term ends 6/30/21
George Edward	Term ends 6/30/22
Jana Finkbonner	Term ends 6/30/23
Shirley Forslof	Term ends 6/30/21
Marshall Gartenlaub	Term ends 6/30/22
Denise Irey	Term ends 6/30/21
Jennifer Lautenbach	Term ends 6/30/24
Kathleen O'Connor	Term ends 6/30/21
Jodi Sipes	Term ends 6/30/23

Updated: 6/18/21



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-379

File ID:	AB2021-379	Version:	1	Status:	Agenda Ready
File Created:	06/21/2021	Entered by:	smildner@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Executive Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Request confirmation of the County Executive's appointment of William Zidel to the Point Roberts Community Advisory Committee

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See application for appointment

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Zidel Application



Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

Title	Mr.
First Name	William
Last Name	Zidel
Today's Date	5/3/2021
Street Address	1876 Washington Drive
City	Point Roberts
Zip	98281
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	13607907398
Secondary Telephone	Field not completed.
Email Address	bzidel@comcast.net
1. Name of Board or Committee	Point Roberts Community Advisory Committee
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 5
4. Are you a US citizen?	Yes
5. Are you registered to vote in Whatcom County?	Yes

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?

No

7. Have you ever been a member of this Board/Commission?

No

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?

No

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

Bill Zidel Resume 2021 R.pdf - attached

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

Please see attached

10. Please describe why you're interested in serving on this board or commission

I am new to the Point. I have been in Private sector most of my career and I have an extensive skill set. My last employment was 38 years with JP Morgan. I will bring that experience to working with others on the Point to improve our Community.

References (please include daytime telephone number):

Steve Church 360-739-3030
Doug Andressen 206-300-3701

Signature of applicant:

William (Bill) Zidel

Place Signed / Submitted

Point Roberts

BILL ZIDEL

☎: 360-790-7398 📍: 1876 Washington Drive, Point Roberts, WA 98281 ✉: bzidel@comcast.net

PROFILE SUMMARY

Over 45 years of Relationship, Product and Project Management experience, including 24 years in the financial services industry managing Stored Value, Debit, and Branded cards for State and Federal benefit programs. Recently completed 37 years with J.P. Morgan Chase Treasury Services. In addition to managing multiple Electronic Benefits Transfer (EBT) conversion projects, the long-term EBT contract requirements, and responding to day-to-day state change requests, served as J.P. Morgan Chase's expert witness for EBT fraud investigations and trials.

PROFESSIONAL EXPERIENCE

Relationship Manager **13 years, 11 months** **January 2004 - December 2017**
J.P. Morgan Chase – Olympia, WA

- Responsible for day-to-day management of large Federal and State EBT programs, Women, Infants, and Children (WIC) programs, and Direct Benefit programs such as Unemployment Insurance and Child Support. At various times concurrently supported up to 8 programs.
- Most significant lengths of tenure were managing Hawaii EBT for 9 years; Territory of Guam EBT for 14 years, Washington State EBT for 19 years, Nevada EBT for 12 years, Nevada WIC for 10 years, and Nevada Child Support for 11 years.
- Managed the following EBT/WIC programs for 3 years or less: Alaska, Wyoming, Idaho, Arizona, Chickasaw Nation WIC, West Virginia, Utah, United States Virgin Island, Delaware, California EBT Retail, and Idaho.
- Responsible for the planning, design, development, testing, implementation, and post conversion activities of many EBT programs including conversions of EBT programs from paper-based systems to EBT, and transitioning the EBT system both to and from other vendors.
- Maintained remote office in support of J.P. Morgan Chase EBT programs until December 2017.

Relationship Manager – Operations **8 years, 9 months** **April 1995 – December 2003**
Citicorp EFS – Rapid City, South Dakota and Olympia, Washington

- Established and maintained a remote Citibank office in Rapid City, South Dakota from 1995 until transition to Washington State EBT management in 1998.
- Managed the planning, design, development, testing and implementation, and post conversion activities for the North and South Dakota EBT projects, transitioning from a paper-based system to an electronic system using EBT cards.
- Established a remote office in Washington State in 1998 with Citibank until the business was sold to J.P. Morgan in 2003.

Operations and Project Manager – Global Payments Products Division **14 years, 6 months** **November 1980 – April 1995**
Citibank – Citicorp New York, Tampa, Chicago, London, Delaware

- Director Global Cash Management and Customer Service Support, Citicorp Services Inc., Newcastle, Delaware
- Director of Europe, Middle East and Africa Operations, Global Payments Products Division, London England, Citicorp Services Inc.
- Director Travelers Cheques Product Engineering, Citicorp Services Inc., Chicago Illinois
- Director of Marketing, Retail Wholesale Banknote Business, Citicorp Services Inc., Chicago, Illinois
- Director of Distributions Services Operations, Product Engineering and Integration, Tampa, Florida
- Manager Agent Services Operations, New York and Tampa, Florida

Buyer for Sears and Roebuck and Hotel Manger Operations for Ramada Inns Inc. **1972 – 1979**

Service – US Army **1970 - 1972**

- Drill Sergeant and Calvary Scout

EDUCATION AND PROFESSIONAL ORGANIZATIONS

Seton Hall University **1966 - 1970**

- Seton Hall Bachelor of Science (BS) degree - Field of Study: Marketing and Sales Management
- Activities: Phi Sigma Epsilon – Professional Marketing Fraternity

Northern Pacific Railway Historical Society

- Board Memembr 2012 to present, President 2017 to present



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-346

File ID:	AB2021-346	Version:	1	Status:	Agenda Ready
File Created:	06/11/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance amending the project budget for the Silver Lake Park Improvement Fund, request no. 3

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Requests project budget appropriation of \$249,800 to fund additional costs to replace the shower and restroom facility at Maple Creek campground to be funded by a transfer from Real Estate Excise Tax II Fund.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Ordinance, Exhibit A, Supplemental Budget Request

PROPOSED BY: Executive
INTRODUCTION DATE: 06/29/21

ORDINANCE NO. _____

AMENDING SILVER LAKE PARK IMPROVEMENT FUND, REQUEST NO. 3

WHEREAS, Ordinance No. 2014-077 established the project budget for the 2015 Silver Lake Park Improvement Fund; and

WHEREAS, initial funding was used to realign the entrance area for better traffic flow; reconstruct the dump station; widen and rebuild the main road; resurface the group picnic parking lot and provide for drainage improvements; design, engineer and permit campground improvements and provide for a dry hydrant and mitigation area; plus other improvements; and

WHEREAS, additional funding in the 2019-2020 biennium provided for full renovation of the Maple Creek campground and construction of a new shower and restroom building for the Red Mountain campground; and

WHEREAS, initial funding for design and construction of a new shower and restroom facility at the Maple Creek campground was awarded through Amendment No. 2; and

WHEREAS, additional funding is now needed due to escalating construction costs caused by pandemic supply shortages, as well as additional utility improvement requirements are needed to bring the facility on line in accordance with state regulations, and

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

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance 2014-077 is hereby amended by adding \$249,800 of expenditure authority as presented in Exhibit A, to the amended project budget for a total project budget of \$6,388,100.

ADOPTED this ____ day of _____, 2021.

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
Civil Deputy Prosecutor

Satpal Sidhu, County Executive
Date:_____

EXHIBIT A

SILVER LAKE PARK IMPROVEMENTS FUND AMENDMENT #3 (Fund 361)

Account	Description	Current Amended <u>Project Budget</u>	2021 Amendment #3 <u>to Ord. 2014-077</u>	Total Amended <u>Project Budget</u>
Expenditures				
6190	Direct Billing Rate	\$151,250	\$0	\$151,250
6330	Printing	\$4,400	\$0	\$4,400
6630	Professional Services	\$428,000	\$25,300	\$453,300
6810	Advertising	\$3,250	\$0	\$3,250
7060	Repairs and Maintenance	\$880,000	\$0	\$880,000
7350	Buildings & Structures	\$1,500,000	\$186,500	\$1,686,500
7380	Other Improvements	\$3,171,400	\$38,000	\$3,209,400
		\$6,138,300	\$249,800	\$6,388,100
Revenues				
8301.324	Operating Transfer In - REET II	\$6,138,300	\$249,800	\$6,388,100
		\$6,138,300	\$249,800	\$6,388,100

Supplemental Budget Request

Parks & Recreation

Suppl ID # 3261 Fund 361 Cost Center 361100 Originator: Rod Lamb

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Silver Lake Park - Maple Creek Shower & Restroom

X

Department Head Signature (Required on Hard Copy Submission)

Date

6.9.21

Costs:	Object	Object Description	Amount Requested
	6630	Professional Services	\$25,300
	7350	Buildings & Structures	\$186,500
	7380	Other Improvements	\$38,000
	8301	Operating Transfer In	(\$249,800)
	Request Total		\$0

1a. Description of request:

This supplemental budget requests additional funding for the new Maple Creek Shower & Restroom building at Silver Lake Park. The additional funding is needed because the bid we received from the apparent low bidder was higher than was anticipated in the Engineer's Estimate. Tiger Construction submitted this bid. Escalating construction costs are a result of recent increases in material cost caused by the pandemic and supply shortages. Although the costs are higher than anticipated, Parks believes the costs are justified based on current market conditions. Tiger Construction is currently contracted to complete the new shower & restroom facility at the Red Mountain Campground at Silver Lake Park, and have consistently demonstrated a commitment to controlling project costs, and have performed well on the project.

In addition to building specific construction costs, there are other utility improvements that are needed to bring the facility on line. The Washington State Department of Health (DOH), is requiring that the water system at Silver Lake Park, be upgraded from what they call a Blue operating permit to a Green. Making this upgrade requires a system design approval. Approval requires demonstrating the system has sufficient capacity to meet a peak demand. Additionally, Washington State Department of Ecology, requires that we meet that demand while staying with our water right. Our engineer has determined that we can address both of these requirements by upgrading our well pump, and parts of our distribution system. Electrical upgrades by Puget Sound are also needed to service the new facility, including upgrading of a transformer and relocation of an electrical meter and cabinet.

1b. Primary customers:

Whatcom County residents are the primary customers of this new service. Silver Lake park has seen a large increase in park usage over the last six years, with visitation more than tripling since 2014. The last two years have seen more than 200,000 visitors each year and through September 30 of 2020 the park has had more than 275,000 visitors. Camping at Silver Lake generates more than \$200,000 per year and is trending upwards.

2. Problem to be solved:

Silver Lake Park was constructed in 1969, and is currently serviced by a single shower facility. Because of the age of the facility the existing septic system is challenged to handle current demand. The new shower & restroom facility at Maple Creek Campground will take a great deal of pressure off of the existing shower building while providing a convenient facility to campers at Maple Creek Campground and Group Camp. Visitor feedback, collected through surveys, has identified improved shower and restroom facilities as the number one way to improve visitor experience at the park. Aging vault toilets and a shower

Wednesday, June 09, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Parks & Recreation

Suppl ID # 3261 **Fund** 361 **Cost Center** 361100 **Originator:** Rod Lamb

building located outside of the campground no longer meets the needs of our large customer base.

3a. Options / Advantages:

There are few feasible options. Visitation has dramatically increased over the last several years, and overnight camping is becoming even more popular. For example, more than 275,000 visitors in 2020 so far, an increase of nearly 40 percent over 2019. This increase in use has allowed staff to get visitor feedback for ways to improve their experience at the park. The feedback has been clear, improved shower & restroom facilities are consistently identified as needing improvement. The park currently has only one shower facility, but three campgrounds and a group camp area.

3b. Cost savings:

This proposal doesn't specifically include a cost savings component except that maintenance and repair efforts on the existing bath facility and associated septic system will be reduced.

4a. Outcomes:

When completed, this proposal will result in the construction of a new shower & restroom building at Silver Lake Park. The new facility will offer greater convenience and services to the visitors of Silver Lake Park, and meet current Health Code (24.04.030) requirements for number of toilet, lavatory and bathing facilities for camping units at Maple Creek Campground.

4b. Measures:

Once the building is open for public use, the project objective will be realized. Success will be measured in visitor feedback that is solicited by the Parks Dept. by online visitor surveys, comment cards, and staff interactions with park users.

5a. Other Departments/Agencies:

Yes, Planning & Development Services and the Health will be involved in regulatory review and approval.

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

Unknown at this time.

6. Funding Source:

REET II



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-363

File ID:	AB2021-363	Version:	1	Status:	Agenda Ready
File Created:	06/15/2021	Entered by:	JFleisch@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	06/29/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance amending the Whatcom County Code and Comprehensive Plan, requiring a site-specific geotechnical analysis when mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A zoning code amendment and comprehensive plan text amendment requiring a site-specific geotechnical analysis when mineral resource extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, in response to a Council directive to determine the minimum safe distance between surface mining and pipelines to ensure pipeline integrity during seismic events. Final approval of these amendments would occur as part of concurrent review of comprehensive plan amendments from 2021.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Memo, Proposed Ordinance, Staff Report



Memorandum

TO: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Joshua Fleischmann, Planner

THROUGH: Mark Personius, Director

DATE: June 15, 2021

SUBJECT: PLN2019-00010 - Surface Mining Pipeline Buffer

This memo is intended to provide background on a docketed amendment for surface mining near gas or petroleum transmission pipelines. We request your consideration of proposed amendments to the zoning code related to the docketed proposal, which states:

Amend the Whatcom County Comprehensive Plan and Whatcom County Code to determine the minimum safe distance to allow surface mining to be conducted from a petroleum pipeline to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer. Determination should be based on independent sources where possible and assume a magnitude 9.0 or greater earthquake could occur.

In response to the proposal, staff reached out to multiple jurisdictions and pipeline operators in an attempt to find out if there is a minimum safe distance presently in use. The result of the inquiry is that there is not.

BP's response was the most thorough, stating:

"...we gathered a cross-functional team that included representatives from BP Operations and Maintenance, Engineering, Damage Prevention and Right of Way. The team ultimately concluded that the safe distance between surface mining and pipelines is case specific. There are too many variables - including the type of surface mining, location of the earthquake's epicenter, soil conditions, and topography - that preclude us from providing a universal answer that is scientifically supportable. Indeed, it is difficult to predict with certainty how a 9.0+ earthquake would affect any infrastructure including roads, power lines, and pipelines."¹

In response, without examples of minimum standards, the following language was drafted by PDS staff to be an additional Conditional Use Permit approval criterion for surface mining subject to the surface mining act:

WCC 20.73.153(9)

¹ Horn, Marc, District Operations Manager, BP USPL, "Horn Letter to Fleischmann 05.30.2019"

When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

In the proposed code language (above), "2 percent probability of exceedance in 50 years" is an industry standard for seismic designs that must consider large-magnitude, low-frequency seismic events. It is the common design standards for developments like essential or emergency facilities. By considering seismic events with this low recurrence potential, both on local crustal faults and at the Cascadia Subduction Zone, the required assessment essentially addresses a worst case scenario²

The Surface Mining Advisory Committee (SMAC) voted unanimously in support of forwarding this language to the Planning Commission for their review and recommendation to the County Council.

The Planning Commission held a public hearing on June 10th. As a result of public comment, additional language was proposed in WCC 20.81.030.A, requiring that transmission pipeline operators are provided 15 days to provide comments to Whatcom County on surface mining applications within 500 feet of the centerline of a pipeline corridor.

Additionally, the Planning Commission forwarded the following Comprehensive Plan policy amendment, as included in Exhibit A, for consideration by the County Council.

Policy 8L-9

Through a site specific geotechnical analysis of potential impacts, ensure mineral extraction within 500 feet of gas or petroleum transmission pipelines will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake.

Final approval of Comprehensive Plan Policy 8L-9 would occur as part of concurrent review of comprehensive plan amendments from 2021.

I look forward to discussing the merits of this recommendation with you.

² Wiser, Andy. "Earthquake Frequency." Received by Joshua Fleischmann, 6 Jun. 2019.

PROPOSED BY: _____
SPONSORED BY: _____
INTRODUCTION DATE: _____

**ORDINANCE NO. 2021-
AMENDING WHATCOM COUNTY CODE TITLE 20 AND THE COMPREHENSIVE
PLAN REGARDING SURFACE MINING APPLICATIONS WITHIN 500 FEET OF
GAS OR PETROLEUM PIPELINES.**

WHEREAS, Whatcom County Council docketed a proposal to amend the Whatcom County Comprehensive Plan and Whatcom County Zoning Code to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer; and

WHEREAS, the proposed amendment has been reviewed under the State Environmental Policy Act (SEPA); and

WHEREAS, in accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed zoning text and comprehensive plan amendments; and

WHEREAS, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald; and

WHEREAS, the Whatcom County Planning Commission held a work session on the proposed amendment; and

WHEREAS, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

WHEREAS, the Whatcom County Council has reviewed the Planning Commission recommendation; and

WHEREAS, the Whatcom County Council held a work session in the Natural Resources Committee; and

WHEREAS, the Whatcom County Council held a public hearing on the proposed amendment and considered all testimony; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusions:

FINDINGS

1. The proposed amendments were docketed by the Whatcom County Council on March 12, 2019.
2. The Surface Mining Advisory Committee recommended approval of the proposed amendments for approval on June 26, 2019.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 29, 2021. The associated comment period ended May 13, 2021, and the appeal period concluded May 24, 2021.
4. A comment was received by the Department of Ecology on May 13, 2021, recommending clarification on current issues with mineral extraction near pipelines, potential and actual incidents resulting in damage to pipelines or support structures due to mineral extraction, current restrictions on mineral extractions within the vicinity of pipelines, and suggesting consideration of additional safeguards.
5. A Revised DNS was issued on May 25, 2021, in response to Department of Ecology comments.
6. The Planning Commission held a duly noticed public hearing on the proposed amendments on June 10, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on April 21, 2021.
8. On April 21, 2021, the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
9. The Growth Management Act (GMA) includes a planning goal that is relevant to the proposed comprehensive plan amendment.
10. GMA Planning Goal #10: Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the

likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

11. The Growth Management Act (GMA) includes comprehensive plan mandatory elements that are relevant to the proposed comprehensive plan amendment and ensure coordination between communities and jurisdictions to reconcile conflicts.
12. Comprehensive Plan Land Use Element states, in part: The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

13. Comprehensive Plan Rural Element shall, in part: "include measures that apply to rural development and protect the rural character of the area, as established by the county, by protecting critical areas...and surface water and ground water resources.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

14. Whatcom County's County-Wide Planning Policy N-2 states: 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. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.

This amendment will require a site specific geotechnical analysis as part of the zoning regulations to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from petroleum pipelines to allow surface mining to be conducted, to ensure mining

operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

15. There are no interlocal agreements affecting the proposed amendments.
16. Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
17. Goal 5M: Protect the citizens and the environment of Whatcom County through informational, educational, and regulatory measures.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

18. Policy 5N-8: Require expanded land uses and facilities located nearer than 500 feet from the centerline of a transmission pipeline to not increase the level of risk from a pipeline failure and use site design, building, technological, and/or operational techniques to reduce or minimize risk.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

19. Policy 8L-1: Avoid significant impacts on adjacent or nearby land uses, public health and safety, or natural resources from mineral extraction.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

20. Policy 8L-3: Avoid adversely impacting ground and surface water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse

impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using best management practices for reclamation or on-site storage.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

21. Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

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

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

23. Policy 10G-1: Maintain as a high priority the protection of water quality and quantity.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

24. There have been no studies made or accepted by PDS that indicate changed conditions that show the need for the amendments. However, seismic events are known to impact the structural integrity of infrastructure. The proposal aims to determine the minimum safe distance from a petroleum pipeline to

allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.

25. There would be no appreciable anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as anticipated in the Comprehensive Plan as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
26. There is no appreciable anticipated effect upon the ability of the County and/or other services 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 as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
27. There is no appreciable anticipated impact upon designated agricultural or forest lands. The proposal requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The findings of the geotechnical analysis may require a larger area of separation between mining activities and pipelines than would presently be required. This may protect the public interest of uncontaminated aquifers, as intended by the proposal.
28. The amendment does not include nor facilitate illegal spot zoning.

CONCLUSIONS

1. The subject comprehensive plan amendments and zoning text amendments are consistent with the approval criteria of WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit A.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan is hereby amended as shown in Exhibit A

BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid

or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

ADOPTED this _____ day of _____, 2021

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Royce Buckingham
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied Date

Signed: _____

Exhibit A

Whatcom County Code

Chapter 20.73 Mineral Resource Lands Special District (MRL)

20.81.030

A. Land Divisions, High-Consequence Land Uses, ~~and~~ Essential Public Facilities and Surface Mining.

20.73.150 Conditional uses.

. **153** Surface mining subject to Washington State's Surface Mining Act (Chapter [78.44](#) RCW); provided, that:

(9) When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

Whatcom County Comprehensive Plan

Chapter 8 - Resource Lands

Goal 8L: Ensure mineral extraction industries do not adversely affect the people and other properties in the vicinity, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Policy 8L-9: Through a site specific geotechnical analysis of potential impacts, ensure mineral extraction within 500 feet of gas or petroleum transmission pipelines will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake.

**WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT**

I. OVERVIEW

File # PLN2019-00010

File Name: Surface Mining Pipeline Buffer

Applicant: Whatcom County Council

Summary of Request: Amend the Whatcom County Comprehensive Plan and Whatcom County Code to determine the minimum safe distance to allow surface mining to be conducted from a petroleum pipeline to ensure a pipeline will not become exposed or rupture during an earthquake event and contaminate an aquifer. Determination should be based on independent sources where possible and assume a magnitude 9.0 or greater earthquake could occur.

Location: Countywide

Staff Recommendation: Approval

History: In response to the proposed amendment, staff reached out to multiple jurisdictions and pipeline operators in an attempt to find out if there is a standard minimum safe distance presently in use. The result of the inquiry is that there is not.

In response, without examples of minimum standards, the language within Exhibit A was drafted by PDS staff to be an additional Conditional Use Permit approval criterion for surface mining subject to the surface mining act.

In the proposed code language, "2 percent probability of exceedance in 50 years" is an industry standard for seismic designs that must consider large-magnitude, low-frequency seismic events. It is the common design standard for developments like essential or emergency facilities. By considering seismic events with this low recurrence potential, both on local and crustal faults and at the Cascadia Subduction Zone, the required assessment essentially addresses a worst case scenario.

The Surface Mining Advisory Committee (SMAC) voted unanimously in support of forwarding this language to the Planning Commission for their review and recommendation to the County Council.

II. ZONING CODE EVALUATION

In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan (WCC 20.10.060(2)).

The following goals and policies of the Comprehensive Plan apply to the subject zoning text amendments.

Natural Gas and Hazardous Liquid Transmission Pipelines

Goal 5M: Protect the citizens and the environment of Whatcom County through informational, educational, and regulatory measures

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Policy 5N-8: Require expanded land uses and facilities located nearer than 500 feet from the centerline of a transmission pipeline to not increase the level of risk from a pipeline failure and use site design, building, technological, and/or operational techniques to reduce or minimize risk

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Mineral Resources

Goal 8L: Ensure mineral extraction industries do not adversely affect the people and other properties in the vicinity, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.

Policy 8L-1: Avoid significant impacts on adjacent or nearby land uses, public health and safety, or natural resources from mineral extraction.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Policy 8L-3: Avoid adversely impacting ground and surface water quality. The protection of aquifers and recharge zones should have precedence over

surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using best management practices for reclamation or on-site storage.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Environmental Management

Goal 10A: Protect natural resources and systems, life, and property from potential hazards

Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

Surface Water and Groundwater

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

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

Policy 10G-1: Maintain as a high priority the protection of water quality and quantity.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation,

enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

Staff Comment: The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

III. COMPREHENSIVE PLAN EVALUATION

In order to approve the proposed Comprehensive Plan amendments, pursuant to Whatcom County Code (WCC) 22.10.060, the planning commission and county council must find:

- 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.

A. That 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.

The proposal conforms to the requirements of the Growth Management Act outlined in the planning goals and comprehensive plan mandatory elements as described below.

RCW 36.70A.020 - Planning Goals:

GMA planning goal #10 states: "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water" (RCW 36.70A.020(10)).

Staff Comment: This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

RCW 36.70A.070 - Comprehensive plans - Mandatory elements:

RCW 36.70A.070(1) - Land Use Element

The land use element states, in part: "The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies.

Staff Comment: This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

RCW 36.70A.070(5) - Rural Element

The rural element shall (in part): "include measures that apply to rural development and protect the rural character of the area, as established by the county, by protecting critical areas...and surface water and groundwater resources." (RCW 36.70A.070(5)(c)(iv))

Staff Comment: This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

County-Wide Planning Policies

County-Wide 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. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.

Staff Comment: This amendment will require a site specific geotechnical analysis as part of the zoning regulations to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

Interlocal Agreement

Staff Comment: Staff is not aware of any interlocal agreements affecting the proposed amendments.

B. That further studies made or accepted by the department of planning and development services indicate changed conditions that show the need for the amendment.

There have been no studies made or accepted by PDS that indicate changed conditions that show the need for the amendments. However, seismic events are known to impact the structural integrity of infrastructure. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event

C. That 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:

1. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

Staff Comment: There would be no appreciable anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.

2. The anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

Staff Comment: There is no appreciable anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.

3. Anticipated impact upon designated agricultural, forest and mineral resource lands.

Staff Comment: There is no appreciable anticipated impact upon designated agricultural or forest lands. The proposal requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The findings of the geotechnical

analysis may require a larger area of separation between mining activities and pipelines than would presently be required. This may protect the public interest of uncontaminated aquifers, as intended by the proposal.

D. That the amendment does not include nor facilitate illegal spot zoning.

According to the Official Whatcom County Zoning Ordinance:

“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).

Staff Comment: The proposed amendments do not change the zoning of any area, therefore the amendment does not include nor facilitate illegal spot zoning.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. The proposed amendments were docketed by the Whatcom County Council on March 12, 2019.
2. The Surface Mining Advisory Committee recommended approval of the proposed amendments for approval on June 26, 2019.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 29, 2021. The associated comment period ended May 13, 2021, and the appeal period concluded May 24, 2021.
4. A comment was received by the Department of Ecology on May 13, 2021, recommending clarification on current issues with mineral extraction near pipelines, potential and actual incidents resulting in damage to pipelines or support structures due to mineral extraction, current restrictions on mineral extractions within the vicinity of pipelines, and suggesting consideration of additional safeguards.
5. A Revised DNS was issued on May 25, 2021, in response to Department of Ecology comments.
6. The Planning Commission held a duly noticed public hearing on the proposed amendments on June 10, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on April 21, 2021.
8. On April 21, 2021, the Department of Commerce acknowledged receipt of the

notice, and that a copy of the notice had been forwarded to other state agencies.

9. The Growth Management Act (GMA) includes a planning goal that is relevant to the proposed comprehensive plan amendment.
10. GMA Planning Goal #10: Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

11. The Growth Management Act (GMA) includes comprehensive plan mandatory elements that are relevant to the proposed comprehensive plan amendment and ensure coordination between communities and jurisdictions to reconcile conflicts.
12. Comprehensive Plan Land Use Element states, in part: The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

13. Comprehensive Plan Rural Element shall, in part: "include measures that apply to rural development and protect the rural character of the area, as established by the county, by protecting critical areas...and surface water and ground water resources.

This amendment will require a site specific geotechnical analysis to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

14. Whatcom County's County-Wide Planning Policy N-2 states: 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. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.

This amendment will require a site specific geotechnical analysis as part of the zoning regulations to ensure aquifer protection is achieved through protection of gas and petroleum pipelines during seismic events. The proposal aims to determine the minimum safe distance from petroleum pipelines to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

15. There are no interlocal agreements affecting the proposed amendments.
16. Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
17. Goal 5M: Protect the citizens and the environment of Whatcom County through informational, educational, and regulatory measures.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

18. Policy 5N-8: Require expanded land uses and facilities located nearer than 500 feet from the centerline of a transmission pipeline to not increase the level of risk from a pipeline failure and use site design, building, technological, and/or operational techniques to reduce or minimize risk.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

19. Policy 8L-1: Avoid significant impacts on adjacent or nearby land uses, public health and safety, or natural resources from mineral extraction.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

20. Policy 8L-3: Avoid adversely impacting ground and surface water quality. The protection of aquifers and recharge zones should have precedence over surface mining in the event it is determined by the county that adverse impacts cannot be avoided through the standard use of best management practices. Avoid contamination of aquifers by using best management practices for reclamation or on-site storage.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

21. Policy 10A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The proposal will require a site specific geotechnical analysis of potential impacts to gas or petroleum transmission pipelines from mineral extraction within 500 feet of pipelines.

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

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

23. Policy 10G-1: Maintain as a high priority the protection of water quality and quantity.

The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer.

24. There have been no studies made or accepted by PDS that indicate changed conditions that show the need for the amendments. However, seismic events are known to impact the structural integrity of infrastructure. The proposal aims to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
25. There would be no appreciable anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as anticipated in the Comprehensive Plan as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
26. There is no appreciable anticipated effect upon the ability of the County and/or other services 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 as a result of the proposed amendment. The proposal simply requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event.
27. There is no appreciable anticipated impact upon designated agricultural or forest lands. The proposal requires a site specific geotechnical analysis to determine the minimum safe distance from a petroleum pipeline to allow surface mining to be conducted, to ensure mining operations will not increase the likelihood a pipeline becomes exposed or ruptures during an earthquake event and contaminates an aquifer. The findings of the geotechnical analysis may require a larger area of separation between mining activities and pipelines than would presently be required. This may protect the public interest of uncontaminated aquifers, as intended by the proposal.
28. The amendment does not include nor facilitate illegal spot zoning.

V. PROPOSED CONCLUSION

The subject comprehensive plan amendments and zoning text amendments are consistent with the approval criteria of WCC 22.10.060.

VI. RECOMMENDATION

Planning and Development Services recommends the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

ATTACHMENTS

1. Draft Ordinance
2. Exhibit A - DRAFT Comprehensive Plan and Zoning Code Regulations



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-365

File ID:	AB2021-365	Version:	1	Status:	Agenda Ready
File Created:	06/16/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance amending the Whatcom County Budget, request no. 11, in the amount of \$5,728,416

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #11 requests funding from the General Fund:

1. To appropriate \$52,616 in Health to fund Next Generation Project from grant proceeds.
From the Whatcom County Jail Fund:
2. To appropriate \$435,000 to fund inmate COVID-19 testing from ARPA funds.
From the Affordable & Supportive Housing Fund:
3. To appropriate \$525,000 to partially fund Phase 3 of Bellingham Housing Authority's (BHA) Samish Commons project.
From the American Rescue Plan Act (ARPA) Fund:
4. To appropriate \$435,000 to fund transfer to Jail for inmate COVID-19 testing.
From the Conservation Futures Fund:
5. To appropriate \$106,000 to fund Squires Lake Park additional land acquisition.
From the Real Estate Excise Tax I Fund:
6. To appropriate \$1,200,000 to fund Division Street property acquisition.
From the Real Estate Excise Tax II Fund:
7. To appropriate \$249,800 to fund transfer in support of Silver Lake Project Budget Amendment #3 for Maple Creek Campground shower & restroom building.
From the Public Utilities Improvement Fund:
8. To appropriate \$725,000 to partially fund Phase 3 of BHA's Samish Commons Project.

9. To appropriate \$2,000,000 to fund Lynden's West Front Street improvements.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
<hr/>			
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Attachments: Proposed Ordinance, Budget Summary, Supplemental Requests

**ORDINANCE NO.
AMENDMENT NO. 11 OF THE 2021 BUDGET**

WHEREAS, the 2021-2022 budget was adopted November 24, 2020; and,
WHEREAS, changing circumstances require modifications to the approved 2021-2022 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 2021-2022
Whatcom County Budget Ordinance #2020-068 is hereby amended by adding the following additional
amounts to the 2021 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
Health	52,616	(52,616)	-
Total General Fund	52,616	(52,616)	-
Whatcom County Jail Fund	435,000	(435,000)	-
Affordable & Supportive Housing Fund	525,000	-	525,000
American Rescue Plan Act Fund	435,000	-	435,000
Conservation Futures Fund	106,000	-	106,000
Real Estate Excise Tax I Fund	1,200,000	-	1,200,000
Real Estate Excise Tax II Fund	249,800	-	249,800
Public Utilities Improvement Fund	2,725,000	-	2,725,000
Total Supplemental	5,728,416	(487,616)	5,240,800

ADOPTED this ____ day of _____, 2021.

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 2021 Supplemental Budget Ordinance No. 11				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Health	To fund Next Generation Project from grant proceeds.	52,616	(52,616)	-
Total General Fund		52,616	(52,616)	-
Whatcom County Jail Fund	To fund inmate COVID-19 testing.	435,000	(435,000)	-
Affordable & Supportive Housing Fund	To partially fund Phase 3 of BHA's Samish Commons project.	525,000	-	525,000
American Rescue Plan Act Fund	To fund transfer to Jail to fund COVID-19 testing.	435,000	-	435,000
Conservation Futures Fund	To fund Squires Lake Park additional land acquisition.	106,000	-	106,000
Real Estate Excise Tax I Fund	To fund Division Street property acquisition.	1,200,000	-	1,200,000
Real Estate Excise Tax II Fund	To fund transfer in support of Silver Lake Project Budget Amendment #3.	249,800	-	249,800
Public Utilities Improvement Fund				
Non Departmental	To partially fund Phase 3 of BHA's Samish Commons project.	725,000	-	725,000
Non Departmental	To fund Lynden's West Front Street improvements.	2,000,000	-	2,000,000
Total Public Utilities Improvement Fund		2,725,000	-	2,725,000
Total Supplemental		5,728,416	(487,616)	5,240,800

Supplemental Budget Request

Status: Pending

Health

Community Health

Suppl ID # 3189

Fund 1

Cost Center 621208

Originator: Judy Ziels

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Next Generation Project (DSHS-ESA)

X 

Department Head Signature (Required on Hard Copy Submission)

3/22/21

Date

Costs:	Object	Object Description	Amount Requested
	4334.0461	DSHS	(\$52,616)
	6120	Extra Help	\$17,112
	6320	Office & Op Supplies	\$1,542
	6610	Contractual Services	\$20,791
	7140	Meeting Refreshments	\$800
	8351	Operating Transfer Out	\$12,371
	Request Total		\$0

1a. Description of request:

We are requesting expenditure authority for a WA State Department of Social and Health Services / Economic Services Administration (DSHS-ESA) grant which was extended from last year into 2021. This grant funds our Community Health Division staff and community partners in an initiative whose purpose is to organize families around policy and advocacy and to develop local solutions for poverty reduction. This initiative is called the Next Generation Project and the funding is restricted to this specific project.

1b. Primary customers:

Over-burdened and under-resourced Whatcom County families and their children who are struggling to access appropriate services and resources for their families.

2. Problem to be solved:

It has been repeatedly identified that families in poverty have difficulty accessing what their families need. It had been identified locally that families with young children are challenged to find the services and resources their families need at the time they need them. This is especially true for families from marginalized communities, especially black, indigenous and people of color. Additionally, there is a great need to involve families in building the solutions for our community but there are limited opportunities for families to be authentically engaged in the process.

3a. Options / Advantages:

By partnering with DSHS-ESA on this project, we currently have an opportunity to further develop localized solutions while also identifying areas for state agency action to improve the system. It will provide significant advantage to have the solutions identified by those families that are currently experiencing the greatest challenges to accessing services and resources.

DSHS-ESA is working to reduce poverty in Washington State with a racial equity lens. DSHS-ESA has specifically requested to partner with the Generations Forward Children's Collaborative (for which the Health Department acts as backbone support) because of its strong family engagement and focus on racial equity.

3b. Cost savings:

Investing in young children and families decreases the cost burden on the County in the long-term. According to Nobel Prize winning economist, James Heckman, investments in high quality early childhood

Supplemental Budget Request

Status: Pending

Health

Community Health

Suppl ID # 3189

Fund 1

Cost Center 621208

Originator: Judy Ziels

programs and supports have an annual rate of return of 7%-13% for communities.

4a. Outcomes:

1. Expand engagement and leadership from families and communities experiencing inequities and adversity.
2. Increase the capacity of local organizations to provide family-centered services.
3. Increase the number of families that are getting the services and resources they need to improve the well-being of their children.

4b. Measures:

1. Number and diversity of parents in leadership roles throughout this process.
2. Number of organizations reporting increased capacity to provide family-centered services.
3. Number of families reporting improved access to culturally-appropriate and responsive services and resources.

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 Social and Health Services/ Employment Services Administration (DSHS-ESA)

Supplemental Budget Request

Status: Pending

Jail

Suppl ID # 3220

Fund 118

Cost Center 118163

Originator: Wendy Jones

Year 1

2021

Add'l FTE ☐

Priority

1

Name of Request: COVID PCR testing

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6635	Health Care Services	\$435,000
	8301	Operating Transfer In	(\$435,000)
	Request Total		\$0

1a. Description of request:

This Supplemental budget request will provide funding for PCR testing for the COVID-19 virus.

1b. Primary customers:

Offenders and Corrections staff members.

2. Problem to be solved:

Beginning in January of 2021 we begin seeing increasing numbers of offenders needing PCR testing to either confirm or rule out COVID-19 disease. This included an outbreak of the virus at the Work Center that lasted approximately 1 month. In order to meet requirements of the CDC, State Health Department and our local Health Department, repeated PCR tests were needed to identify offenders and staff who had been exposed. The end result was 48 out of 52 offenders ultimately came down with the virus. While the outbreak is over, the need to test both offenders and staff has continued. As of the end of April billing, we have spent \$108,132. The costs, not included in our 2021/2022 budget, are being temporarily covered by pulling funding from different areas of the jail budget. The funds will need to be replaced and additional funding will need to be allocated to cover the costs for the balance of 2021. We are utilizing the same service provider used by the County Health Department (NW Labs). They have agreed to provide the PCR testing at a 50% discount and have provided excellent and rapid service, critical when dealing with an ever changing population.

In an effort to support prevention efforts in the community, we have now been approved to be a vaccination site by the State Department of Health (DOH) and are able to provide COVID vaccines to the offender population. Our hope is that a robust vaccination program will help reduce the incidents of COVID, both in the facilities and in the community and ultimately reduce the need for PCR testing in the future.

Our protocols call for routine screening, all offenders with a rapid Antigen test and screening for symptoms. The offenders are then placed in medical quarantine for up to 14 days, with repeat testing during this time. Offenders who are symptomatic or who test positive on the Antigen test are further tested with a PCR. All staff are screen tested on their Monday with an Antigen test. If they are positive, they are also tested with a PCR test and sent home to follow quarantine protocol. This has been a cost-effective process as the Antigen tests do not need to be sent to a lab, are provided by the State and operate well as a screening tool per both the CDC and our local Health Department.

While booking restrictions remain in place, the Average Daily Population (ADP) is slowly increasing, as is the number of short stay offenders. The more offenders entering the jail means a higher probability of COVID getting into the jail and the need to have funding in place to cover the costs of continued PCR testing through at least 2021.

Supplemental Budget Request

Status: Pending

Jail

Suppl ID # 3220

Fund 118

Cost Center 118163

Originator: Wendy Jones

3a. Options / Advantages:

1) Depend on the Antigen testing system for all COVID testing in the jail: The latest information from the CDC is that while Antigen tests are useful, they are generally less sensitive than the PCR testing. As a screening tool, with follow up PCR and quarantine, it provides an adequate level of testing. As the only tool to detect COVID, it will not be as accurate, increasing the chances of an outbreak at either the Downtown Jail and/or Work Center.

2) Not perform COVID testing on any asymptomatic individuals, Offenders or staff: Since COVID can be easily spread prior to a person showing any symptoms, this would create a high risk environment for the rapid transmission of what can be a fatal disease. During the outbreak at the Work Center, we were fortunate that although offenders contracted the disease, none had to be hospitalized or died. A relatively healthy group of younger individuals, who were quickly provided with appropriate health care, helped mitigate the seriousness of the illness. Had the outbreak been at the main jail, things would most probably been very different due to the medical status and age of the offenders.

Continuing the current testing protocols creates a significant safety net for the offender population, the staff and the community.

3b. Cost savings:

The average cost per person for someone hospitalized for COVID ranges from \$51,000 to \$78,000 based on their age (Healthcare Finance News 11/05/2020). Those costs increase with individuals who have other, high risk conditions such as diabetes, kidney, liver or heart disease or COPD. In those cases, the costs were approximately 30% higher. A significant percentage of offenders housed in the Downtown jail have high risk medical conditions. By screening for COVID, medically segregating offenders who may have been exposed and who now show positive on their tests, and then providing appropriate health care, we can significantly reduce the number of hospitalization and thus costs to the County. To quantify probable savings: If testing protocols had not been instituted and followed, it would have taken the hospitalization of only 6 high risk offenders to equal the funds being requested in this Supplemental request.

4a. Outcomes:

PCR testing will continue to occur whenever it is medically indicated. The protocols are already in place and we are monitoring the number of tests that are given, to whom they are given, and the results of those tests on an aggregated basis.

4b. Measures:

- 1) The number of tests that are given within any given timeframe
- 2) the number of positive tests.
- 3) The number of offenders who become ill with COVID once they are in custody.
- 4) the number of COVID cases that are caught either at booking or within the quarantine period.

5a. Other Departments/Agencies:

Whatcom County Health Department. This would occur when/if we identify any positive COVID test and/or any symptomatic offenders. If we have an instance of COVID disease within either facility, we will work cooperatively with the Health department team to isolate and contain, and assist with contact tracing as needed.

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

N/A

6. Funding Source:

We anticipate being able to use funding provided through the American Rescue Plan Act,.

Supplemental Budget Request

Health

Human Services

Suppl ID # 3267 Fund 129 Cost Center 129100 Originator: Anne Deacon

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Housing Authority Samish Commons Phase 3

X

Erika Jantzenbach

6/14/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7350	Buildings & Structures	\$525,000
	Request Total		\$525,000

1a. Description of request:

The Health Department is requesting expenditure authority to provide partial funding support for Phase Three of the Samish Commons construction project. This project will provide newly-constructed apartments for households in Whatcom County.

1b. Primary customers:

Households in Whatcom County who are at or below 60% of the Area Median Income and are in need of affordable housing.

2. Problem to be solved:

The insufficient supply of affordable housing in Whatcom County has created housing instability for low-income households.

3a. Options / Advantages:

New units of affordable housing will increase opportunities for households to secure stable housing. These units will be close to services and public transportation.

3b. Cost savings:

Permanent and stable housing reduces the need for emergency support or sheltering, and provides an opportunity for federal funds to support rent, thereby reducing the need for local funding support.

4a. Outcomes:

Forty-nine (49) new apartments will be constructed and offered to Whatcom County households. The Samish Commons complex will be completed.

4b. Measures:

Completion of 49 new apartments that are all leased to households with low-income.

5a. Other Departments/Agencies:

The Bellingham/Whatcom Housing Authority is the owner and manager of Samish Commons.

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

N/A

6. Funding Source:

Local Affordable and Supportive Housing Sales and Use Tax Fund, created by a local sales tax "rebate" pursuant to RCW 82.14.540, and WCC 3.45.

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3268	Fund	Cost Center	Originator: M Caldwell
Year 1	2021	Add'l FTE <input type="checkbox"/>	Priority 1

Name of Request: Trf from ARPA Fund to Jail for COVID testing

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$435,000
	Request Total		\$435,000

1a. Description of request:

Companion to Jail Supplemental ID #3220 COVID PCR testing
Request to use American Rescue Plan Fund to fund this allowable COVID-related cost

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:

ARPA Fund

Supplemental Budget Request

Parks & Recreation

Suppl ID # 3265 Fund 175 Cost Center 17500 Originator: Michael McFarlane

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Squires Lake Park Acquisition

X

Department Head Signature (Required on Hard Copy Submission)

Date

6-11-21

Costs:	Object	Object Description	Amount Requested
	7320	Land	\$106,000
	Request Total		\$106,000

1a. Description of request:

Purchase of 5.6-acres of undeveloped property for park and open space purpose adjoining Squires Lake Park.

1b. Primary customers:

Park visitors. In 2020, Squires Lake Park hosted over 35,000 visitations

2. Problem to be solved:

Acquisition of this property for park purposes will preserve and protect the northwestern portion of the park, provide public access and viewing to a small waterfall and preserve the wooded buffer between the park's main access trail and adjoining highway. This will also give the County control of the outfall area downstream from the park's dam to the roadway and provide further upstream protection for the small tributary feeding Friday Creek.

3a. Options / Advantages:

The County tried unsuccessfully to acquire this property when the park was purchased in 1995. Ownership by the county will help preserve the natural character of the park, protect resources and provide a better experience for park visitors.

3b. Cost savings:

N/A

4a. Outcomes:

The property will be protected from future development and incorporated into the existing park.

4b. Measures:

County ownership and management by the Parks & Recreation Department.

5a. Other Departments/Agencies:

No

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

N/A

6. Funding Source:

Conservation Futures Fund

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3262

Fund 326

Cost Center 32600

Originator: T. Helms

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Division St. Property Acquisition

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7320	Land	\$1,200,000
	Request Total		\$1,200,000

1a. Description of request:

Whatcom County has entered into a purchase and sale agreement with the owner of the property located at 2000 Division Stree, Bellingham. The propety will be acquired pending the completion of all closing requirements. The property may be used for expanded county services.

1b. Primary customers:

Whatcom County citizens

2. Problem to be solved:

The opportunity to purchase adjacent property to county owned land just came up and is a valuable investment for expansion of Whatcom County services in that area.

3a. Options / Advantages:

n/a

3b. Cost savings:

n/a

4a. Outcomes:

Whatcom County will acquire property that can be utilized for future expansion projects in an area where existing county buildings are situated.

4b. Measures:

Property will be acquired by Whatcom County.

5a. Other Departments/Agencies:

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

6. Funding Source:

REET I

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3266 Fund 324 Cost Center 32400 Originator: M Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: REET transfer in support of Silver Lake Project

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$249,800
	Request Total		\$249,800

1a. Description of request:

Transfer in support of Silver Lake Project Budget Amendment #3, Supplemental ID #3261 for increased costs of Maple Creek campground shower & restroom building.

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

REET II

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3259 Fund 332 Cost Center 332242 Originator: Suzanne Mildner

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: BHA Samish Way Urban Village Phase 3-EDI

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7220	Intergov Subsidies	\$725,000
	Request Total		\$725,000

1a. Description of request:

Request budget authority to provide partial funding support for Phase Three of the Samish Commons construction project. This is a multi-phase mixed-use development and will provide 49 apartments affordable to the workforce in addition to parking, a new Early Learning Center and additional road improvements.

1b. Primary customers:

Households in Whatcom County who are at or below 60% of the Area Median Income and in need of affordable housing

2. Problem to be solved:

Housing instability for low-income households. Since the first phase of this project was planned the urban village area has seen an explosion of growth, demonstrating the need for new infrastructure. The current EDI request for phase 3 is for a loan of \$725,000.

3a. Options / Advantages:

The Bellingham Housing Authority is leveraging public funding, federal tax credits, tax-exempt bonds and private conventional financing to make this project successful and bring new units of affordable housing to an area that is close to services and public transportation.

3b. Cost savings:

Permanent and stable housing reduces the need for emergency support or sheltering, and provides an opportunity for federal funds to support rent, thereby reducing the need for local funding support.

4a. Outcomes:

49 new apartments will be constructed and surrounding infrastructure improved.

4b. Measures:

Completion of 49 new apartments that are leased to low-income households. This will help stabilize the workforce by reducing residents' rent burden, which frees up expendable income for other needs and discretionary spending.

5a. Other Departments/Agencies:

The Bellingham/Whatcom Housing Authority is the owner and manager of Samish Commons.

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

Jenny Weinstein is the Housing Authority's project manager for this project.

6. Funding Source:

Public Utilities Improvement Fund.

A companion supplemental (#267) from the health department reflects an allocation of \$525,000 from the 1406 fund.

Monday, June 14, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3260

Fund 332

Cost Center 332251

Originator: Suzanne Mildner

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Lynden West Front St Improvement-EDI

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7220	Intergov Subsidies	\$1,333,333
	7221	Intergov Subsidies-Grants	\$666,667
	Request Total		\$2,000,000

1a. Description of request:

City of Lynden's West Front Street project: construction/replacement of 1,900-feet of sub-standard roadway to bring it to an all-weather commercial arterial standard. The project meets eligibility requirements and objectives of the EDI Program.

1b. Primary customers:

City of Lynden and Whatcom County

2. Problem to be solved:

In May of 2021 the EDI Board reviewed and supported a revised EDI Program application for loan and grant funding to support the West Front Street Arterial Improvement project. Lynden has value-engineered the project design and focused on essential immediate public improvements. The fund request includes a grant in the amount of \$666,667 and a loan in the amount of \$1,333,333. The Interlocal Loan and Grant Agreement is scheduled for Council consideration in July 2021, simultaneously with this budget request.

3a. Options / Advantages:

West Front Street acts as the primary access to approximately 46 acres of Lynden's prime commercial/industrial zoned properties located to the west of Guide Meridian and will ultimately provide commercial transportation access to about 100 acres of Lynden's growing commercial services regional (CSR) and industrial (IBZ) zoned land.. It has been classified as a Federally Functional Classified street by the FHWA. The EDI Board recommends approval of this fund request.

3b. Cost savings:

N/A

4a. Outcomes:

1,900 feet of new all-weather, illuminated, arterial street section and multi-modal facilities, resulting in new business start-ups, jobs and increased assessed valuation (property tax revenue).

4b. Measures:

Final project report and budget summary.

5a. Other Departments/Agencies:

City of Lynden Public Works Department will oversee this project

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

Steve Banham is the Public Works Director for Lynden

6. Funding Source:

Public Utilities Improvement Fund



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-370

File ID:	AB2021-370	Version:	1	Status:	Agenda Ready
File Created:	06/17/2021	Entered by:	CHalka@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County and approving the program guidebook and related documents required to implement the program

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Ordinance, Program Guide

PROPOSED BY: DONOVAN, BUCHANAN
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ORDINANCE ADOPTING WHATCOM COUNTY CODE CHAPTER 16.50
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-
PACER) PROGRAM WITHIN WHATCOM COUNTY AND APPROVING THE
PROGRAM GUIDEBOOK AND RELATED DOCUMENTS REQUIRED
TO IMPLEMENT THE PROGRAM**

WHEREAS, commercial and multi-family buildings are major sources of energy use, 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 encourages sustainability by supporting renewable energy and energy resiliency; 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 benefits 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 chapter 36.165 RCW promotes voluntary energy efficiency programs, energy conservation, and resiliency; and

WHEREAS, the C-PACER program authorized in chapter 36.165 RCW is consistent with goals and policies of the Whatcom County Comprehensive Plan and the Whatcom County Climate Protection and Energy Conservation Action Plan; and

WHEREAS, on October 27, 2020 and November 10, 2020, Whatcom County Council discussed the C-PACER program, a proposed ordinance, program administration, and costs; and

WHEREAS, on June 29, 2021, Whatcom County Council introduced an ordinance designating a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County; and

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Code is hereby amended to establish chapter 16.50, Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County, as outlined in Exhibit A to this ordinance.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

() Approved () Denied

Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date Signed: _____

EXHIBIT A:

Chapter 16.50

Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County

- 16.50.010 Establishment
- 16.50.020 Definitions
- 16.40.030 Territory
- 16.50.040 Program Administration
- 16.50.050 C-PACER Financing
- 16.50.060 C-PACER Lien
- 16.50.070 Application and Review
- 16.50.080 Program Guidebook
- 16.50.090 Collection and Enforcement
- 16.50.100 Fees
- 16.50.110 Enactment
- 16.50.120 Effective Date
- 16.50.130 No Liability. No Public Funds.
- 16.50.140 Sunset clause

16.50.010 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.

16.50.020 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 assignees 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 chapter 36.165 RCW that are to be financed as described in a Project Application and approved by the Program Administrator, are a Qualified Project.

16.50.030 Territory.

The Program shall be available to all Eligible Property within the following Region, defined by the County in accordance with chapter 36.165 RCW, within the boundaries of the County, including both incorporated and unincorporated territory. The Region is the incorporated and unincorporated areas of Whatcom County.

16.50.040 Program Administration

- A. Pursuant to the C-PACER Act, the County designates the Planning and Development Services Director or their designee as the Program Administrator. The Program Administrator shall review and approve the Project Applications submitted in accordance with the Program Guidebook, collect any fees, cause the County Executive to execute the documents required by the Program Guidebook to enable a C-PACER Financing and provide documents to the applicant or lender to record with the County Auditor.
- 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.

16.50.050 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.
- 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.

16.50.060 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 WCC 16.50.050.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.

16.50.070 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 WCC 16.50.020 (14) of this Ordinance and 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 Planning and Development Services Department for execution by the County Executive at least five (5) business 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.
- E. The County Auditor 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. It is the responsibility of the applicant or lender to record the documents at the County Auditor's Office and pay any applicable recordation fees.
- 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 Hearing Examiner, consistent with the County's rules and subject to the applicable provisions of Washington's Administrative Procedures Act, chapter 34.05 RCW.

16.50.080 Program Guidebook.

A. The C-PACER Program shall be administered in accordance with the requirements contained in the Program Guidebook, adopted herein by reference and available through the Whatcom County Council Office and online at www.whatcomcounty.us through an ordinance search. 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 review and 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 16.50.070 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 Whatcom County Council, so long as it complies with this Ordinance and chapter 36.165 RCW.

16.50.090 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.

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 deemed non-delegable by the County shall be performed, on a reimbursable basis, by the County on behalf of the Capital Provider.

16.50.100 Fees.

An application fee as provided in the Unified Fee Schedule 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 program fee as provided in the Unified Fee Schedule, 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.

16.50.110 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 Whatcom County Code or violation of any provision of the Whatcom 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 Whatcom 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.

16.50.120 Effective Date.

This Ordinance shall take effect ten days after enactment. The County Planning and Development Services Department shall begin accepting applications for review no later than ninety (90) days after the effective date.

16.50.130 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.

16.50.140 Sunset clause

The Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program shall be dissolved twenty-four (24) months after the effective date of this ordinance, unless specifically extended by ordinance. The County Council shall review the need to continue the C-PACER program four months prior to the sunset date.

PROGRAM GUIDEBOOK:

Commercial Property Assessed Clean Energy + Resilience (C-PACER) Program

Whatcom County, Washington



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MAP 1: Whatcom County C-PACER Boundary Map

Exhibit 1: Project Application and Checklist

Exhibit 2: Assessment Agreement

Exhibit 3: Notice of Assessment Interest and C-PACER Lien

Exhibit 4: Assignment of Notice of Assessment Interest and Assessment Agreement

I. Introduction

CLIMATE PROTECTION AND ENERGY CONSERVATION ACTION PLAN

The 2007 Whatcom County Climate Protection and Energy Conservation Action Plan aims to reduce the County's greenhouse gas (GHG) emissions. Strategies such as energy efficiency improvements in homes and businesses are noted in the plan as the easiest and most cost-effective methods.

In 2016, the Whatcom County Council added Policy 10D-6 to the Comprehensive Plan calling for the creation of a Climate Impact Advisory Committee to, in part, review the implementation of the 2007 Climate Action Plan. The County Council established the Whatcom County Climate Impact Advisory Committee in December 2017 (Ordinance 2017-080) to review and provide recommendations to the County Council and Executive on issues related to the preparation and adaptation for, and the prevention and mitigation of, impacts of climate change (WCC 2.126).

In 2019, the Community Research Project was launched to collect information from local stakeholders on strategies to reduce or mitigate GHG emissions and support climate resiliency and adaptation. A set of actions were developed for consideration in a revised Climate Action Plan, including strategies to increase energy efficiency and conservation in buildings and support for a Property Assessed Clean Energy program to subsidize energy conservation and renewable energy improvements to buildings.

In 2021, the Climate Impact Advisory Committee began working to update the Climate Action Plan using information collected in recent years such as a GHG inventory, vulnerability assessments, and other sources. The focus of the plan is addressing human-built infrastructure, including buildings as well as land use, to reduce GHGs.

ABOUT C-PACER

The Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program is voluntary and allows owners of eligible properties to seek long-term financing from private capital providers for qualified improvements including energy efficiency, renewable energy, water conservation, and resiliency investments. Capital providers offer financing and the property owner repays the loan to the capital provider over time, such as the case with a traditional loan. However, with C-PACER financing, the loan is assigned to the property as an assessment and remains with the property until it is repaid, regardless of any transfers of property ownership. Collection of the assessment is assigned by the County to the capital provider, and the property owner pays the assessment directly to the capital provider.

Like other assessments, C-PACER financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whoever owns the property at the time. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, solar installations, or seismic upgrades – over the useful life of the measures. The period of the financing agreement will not exceed the useful life of the qualified project or weighted useful life if more than one qualified improvement is included.

Enforcement of the C-PACER lien is the responsibility of the capital provider. In the event of default, only the payments in arrears are due.

LEGAL AUTHORITY

In 2020, the Washington State legislature passed C-PACER enabling legislation, HB 2405, which allows counties to establish C-PACER programs. The legislation specified that the efficiency and resiliency of buildings is essential for ensuring the health and safety of residents, employees, and tenants. Whatcom County (the “County”) administers a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing program (the “C-PACER Program” or the “Program”) under chapter 36.165 of the Revised Code of Washington (RCW) (the “C-PACER Act”).

The responsibility of the County is limited to a) an ordinance and guidelines that govern how its C-PACER program works and b) review of the lien application for compliance with the C-PACER state law, and then recording a unique agreement that includes the acknowledgement of a special property assessment by the County. The repayment of the C-PACER financing is between a private lender and a property owner, when the lender’s lien against the property is filed, with no obligation on the part of the County.

WHATCOM COUNTY C-PACER PROGRAM GUIDEBOOK

This Program Guidebook aims to assist eligible property owners to understand the provisions of Whatcom County’s C-PACER program and navigate the application process.

In this document you can find information about the eligibility requirements for C-PACER properties and projects in Whatcom County and the process for applying for C-PACER project approval.

II. Whatcom County C-PACER Guidelines

The C-PACER Program enables financing for eligible property owners (“Property Owners”) to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a “Qualified Improvement”) as described in the C-PACER Act and further clarified in this Guidebook. The purpose of this Program Guidebook is to provide clarity on the guidelines of the Whatcom County C-PACER program, in compliance with the state enabling legislation.

This Program Guidebook (the “Guidebook”) is prepared as required by the C-PACER Act, at the direction of Whatcom County, and is approved in connection with, and as an attachment to, the enabling ordinance (Ord. 2021-____) for this program (the “C-PACER Ordinance”) dated _____, 2021. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Ordinance and the C-PACER Act.

The Guidebook provides information on guidelines, eligibility, approval criteria, and the application form and checklist for the administration of the C-PACER Program for Whatcom County.

Qualified Improvements, including all eligible costs that are to be financed as permitted by the C-PACER Act and described in a project application (the “Project Application”) approved by the Program, constitute a “Qualified Project.” Property Owners may receive funding for their Qualified Improvements only from qualified private investors (“Capital Providers”) pursuant to a separate Financing Agreement negotiated between the Property Owner and Capital Provider (a “Financing Agreement”).

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for C-PACER project financing in Washington State, and
- The appropriate steps and forms needed for a C-PACER application to Whatcom County.

1. C-PACER Program Boundaries

Whatcom County Council adopted Ordinance number 2021-____ on _____, 2021, establishing the C-PACER Program for all eligible properties within the boundaries of the County, including both incorporated and unincorporated areas (the “Region”). The Region is illustrated in Map 1.

2. Administration of Program; Authorized Officials

The Planning and Development Services Director or their designee (the “Director”) is designated and authorized to review each Project Application to confirm that it is complete. The Director will then obtain signatures from the County Executive to execute the Assessment Agreement and C-PACER Lien documents on behalf of the County and release the documents for the applicant or capital provider to record with the real property records via the County Auditor.

As part of Program operation, the Director will:

- Accept the Project Applications and Checklist (see Exhibit 1) from applicant (Property Owners and/or Capital Provider) for prospective C-PACER projects;
- Review the Project Application and Checklist to determine completion;

- Approve, conditionally approve, or disapprove the Project Application and communicate to applicant;
- Request the County Executive’s signature on the Assessment Agreement (Exhibit 2), Notice of Assessment Interest and C-PACER Lien (“Notice of Assessment Interest”) (Exhibit 3) and Assignment of Notice of Assessment Interest and Assessment Agreement (“Assignment”) (Exhibit 4); and
- Release documents for the applicant or capital provider to record with the County Auditor.

3. Eligibility Requirements

Eligible Property means any privately-owned commercial, agricultural, industrial, or multi-family real property of five (5) or more dwelling units located within the boundaries of the Region. Eligible properties include those owned by a not-for-profit organization.

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Ordinance are met, including requiring the Property Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the assessment and C-PACER Lien encumber the fee interest in the property, not the ground leasehold.

Property Owner means an owner of qualifying eligible property, which is the record owner of title to the Eligible Property. The Property Owner may be any type of business, corporation, individual, or non-profit organization.

Qualified Improvement means a permanent improvement affixed to the real property that meets at least one of the following criteria:

- Decreases energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, or allows for the reduction in demand, or reduces greenhouse gas emissions (“Energy Efficiency Improvement”);
- Supports the production of clean, renewable energy, as defined in the Clean Energy Transformation Act (RCW 19.405.020(34)), 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 (“Renewable Energy Improvement”);
- Decreases water consumption or demand and addresses 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 (“Water Conservation Improvement”); or
- Increases resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids (“Resiliency Improvement”).

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of

a Qualified Improvement permanently affixed to an Eligible Property.

- For Renewable Energy Improvements, “permanently affixed” includes Qualified Projects that are subject to a power purchase agreement or lease between the Property Owner/applicant and the owner of the renewable energy system, if the power purchase agreement or lease contains all of the following provisions:
 - a) The Renewable Energy Improvement relates to a Renewable Resource, defined in RCW 19.405.020(34) as follows: (a) water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first-growth forests; or (i) biomass energy.
 - b) The term of the power purchase agreement or lease is at least as long as the term of the related Assessment Agreement.
 - c) The owner of the Renewable Energy Improvement agrees to install, maintain, and monitor the system for the entire term of the Assessment Agreement.
 - d) Neither the owner of the Renewable Energy Improvement, nor the Property Owner, nor any successors in interest are permitted to remove the system prior to completion of the full repayment of the C-PACER Lien.
 - e) After installation, the power purchase agreement or lease is paid, either partially or in full, using the funds from the C-PACER financing.
 - f) The power purchase agreement or lease specifies the holder of the C-PACER Lien is a third-party beneficiary of the power purchase agreement or lease until the C-PACER Lien has been fully repaid.
- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed.

Qualifying Capital Provider may be any of the following:

- a corporation, partnership, or other legal entity that provides proof that it is currently registered as a C-PACER Capital Provider in two different states with C-PACE programs;
- a federal -chartered bank or credit union; or
- a state-chartered bank or credit union

Qualifying costs that can be C-PACER financed include:

- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Lender’s fees;
- Program application and administrative fees;
- Project development and engineering fees;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance; and
- 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.

4. Application Process

The Planning and Development Services Department will review the Application for proof of compliance with the requirements of the statute that are necessary for the County to approve the application and execute the applicable documents for the proposed C-PACER transaction. All applicants are encouraged to review the Project Application and Checklist to ensure that the types of documentation and information required are present in the completed Application.

The process of obtaining financing under the Program starts when a Property Owner approaches a Capital Provider. The Capital Provider will work with the Property Owner to collect a number of application and due diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties may agree to the loan terms.

The general flow of the C-PACER application process will be as follows:

- (1) The Property Owner and the Capital Provider prepare the Project Application, consisting of the Project Application, Checklist, and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that the County will rely upon to verify compliance with the C-PACER Act and C-PACER Ordinance are present in the completed Project Application.
- (2) The applicant submits the completed Project Application and Checklist with the corresponding application fee and additional information to Planning and Development Services. Applicants must submit a hard copy and an electronic copy of all application materials.
- (3) The Planning and Development Services Department will have 15 business days to review the Project Application and issue a determination (approve, conditionally approve, or deny). If the department has received an unusually high number of applications, or if review is delayed because of some force majeure event, the department may notify the applicant that the application review and determination will be delayed by no more than 15 additional business days.
- (4) The Planning and Development Services Department application review process is confined to confirming that the Project Application is complete and all attachments conform to these guidelines. *County approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.* The Planning and Development Services Department will review the Project Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Ordinance that are necessary for the County to approve the Project Application and execute the applicable documents for the proposed C-PACER transaction. Incomplete Project Applications will be returned to the applicant, and the Planning and Development Services Department will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.

- (5) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent (see Exhibit 5) is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.
- (6) Upon receipt of approval, the Capital Provider will draft the following “Closing Documents”: The Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment and Assessment Agreement. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.
- (7) If the Project Application received conditional approval, the Closing Documents executed by the County may not be released from escrow unless and until all lender consents have been received and executed in accordance with the C-PACER Act and C-PACER Ordinance.
- (8) At closing, after program fees have been paid, the Planning and Development Services Department will release executed agreements to the applicant or capital provider, including the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment Interest and C-PACER Lien, to record via the Whatcom County Auditor.
- (9) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement, and the Property Owner completes the Qualified Improvements and submits a certificate of completion to the Planning and Development Services Department.
- (10) The Property Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement

5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached) (see Exhibit 1)
 - Lienholder(s) Consent (form attached) (see Exhibit 5)
 - Certificate of Qualified Improvements: (see Exhibit 6)
- (1) For Renewable Energy Improvements or Energy Efficiency Improvements on an existing building:
A certification 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, or the addition of renewable sources of energy or water.

The certification must be performed by a licensed professional engineer or accredited individual or firm from the following list:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)
 - Building Energy Modeling Professional (BEMP)
 - Operations & Performance Management Professional Certification (OPMP)
 - High-Performance Building Design Professional Certification (HBDP)

- Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)
- Building Performance Institute
 - Energy Auditor
- Investor Confidence Project
 - ICP Quality Assurance Assessor

Other professional entities may be accepted by the Planning and Development Services Department at its discretion.

- (2) For Renewable Energy Improvements that are solar photovoltaics, a North American Board of Certified Energy Practitioners (NABCEP) PV design specialist certification is acceptable, or a licensed Electrical Engineer, Building Energy Assessment Professional (BEAP), Building Energy Modeling Professional (BEMP), Certified Energy Manager (CEM), Certified Measurement and Verification Professional (CMVP), or Certified Energy Auditor (CEA). Other professional entities may be accepted by the Planning and Development Services Department at its discretion.
- (3) For lead reduction in water improvements, a Water Quality Association Professional Certification.
- (4) For Resilience Improvements on an existing building: Certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience, including but not limited to seismic improvements, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
- (5) For new construction:
 - (A) Relating to energy or water efficiency, certification by a licensed professional engineer stating that each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency, water efficiency, or renewable energy code requirements. If the building as a whole performs above code, all energy and water-related improvements are eligible for financing.
 - (B) Relating to resilience, certification by a licensed professional Civil Engineer that the proposed Qualified Improvements will result in improved resiliency. If the building as a whole performs above or exceeds code requirements for resiliency, all resiliency-related improvements that relate to that particular requirement are eligible for financing.
- (6) For all Qualified Improvements, the licensed engineer, individual or firm providing the certification of eligibility of the Qualified Improvements must attest that the proposed term of the financing does not exceed the weighted average effective useful life of the proposed Qualified Improvements and that the Qualified Improvements are permanently affixed, as described in this Guidebook.

6. Closing Documents

The following documents require the signature of the County Executive and shall be part of the closing of any C-PACER transaction. Each document must be substantially similar in substance to the forms provided, although it is expected that Property Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Assessment Agreement (see Exhibit 2)
- Notice of Assessment Interest and C-PACER Lien (see Exhibit 3)
- Assignment of Notice of Assessment Interest and C-PACER Lien and Assessment Agreement (see Exhibit 4)

7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Property Owner and the Capital Provider. Whatcom County has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Property Owners and Capital Providers.

8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER financing installment payments, including foreclosure, remain the responsibility of the Capital Provider, and the terms are negotiated within the Financing Agreement.

9. Enforcement of C-PACER Lien

The C-PACER Lien may be 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 Whatcom County, by prosecution of foreclosure proceedings under chapter 84.64 RCW et seq., including 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 will be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration has the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050. Under the C-PACER Act, such enforcement may not occur until at least one year after delinquency.

By accepting a C-PACER Lien, the Capital Provider or its assignee, as applicable, agrees to assume responsibility for prosecution of said action of foreclosure pursuant to RCW 84.64.040, independent of and without assistance or consent from the prosecuting attorney, in accordance with the terms of the Financing Agreement.

10. Program Fee

Whatcom County, as compensation for time and costs incurred in the establishment of the C-PACER Program, including the C-PACER Ordinance, this Guidebook, the draft documents, as well as for reviewing

a Project Application for completeness and executing the Assessment Agreement, C-PACER Lien, and Assignment, is entitled to an application and program fee, which is specified in the Unified Fee Schedule. The Property Owner must pay this fee to the County as a condition precedent to releasing documents for recording.

11. Term of an Assessment; Calculation of Useful Life of Qualified Improvements

The maximum term of an assessment may not exceed the useful life of the Qualified Improvement, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

12. Form of Closing Documents

The Program has adopted form Closing Documents: Assessment Agreement, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessments Interest and Assessment Agreement. A Property Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms. By submitting the Closing Documents to the County, the applicant acknowledges there are no substantive changes to the forms. If any material or substantive terms are changed in the Closing Documents, the applicant must submit a summary of detailed changes formatted in a bulleted list with page references and descriptions of modifications.

The forms are attached as Exhibits 2, 3, and 4, and are incorporated herein as referenced.

13. Written Consent from Lienholder(s) Required

Before entering into an Assessment Agreement with the County, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the assessment and C-PACER Lien from any holder of a lien, mortgage, or security interest in the real property.

For qualifying multifamily projects (residential projects of 5 or more dwelling units), the Capital Provider must obtain written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements encumbering the real property as a condition precedent to the participation in the Program by the property.

If the consents are executed at closing, the signatures of the County to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Planning and Development Services Department, an amended Project Application with the consents attached must be sent to the Planning and Development Services Department. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Ordinance and C-PACER Act.

14. Provisions for Marketing and Participant Education

This Guidebook will be made available to the public on the Whatcom County website. Whatcom County may engage in events and/or provide written materials to increase awareness about the Whatcom County

C-PACER program. Whatcom County encourages other stakeholders to develop and share materials to promote the Whatcom County C-PACER program to serve the public benefit of health and safety.

15. County Has No Liability or Financial Responsibility

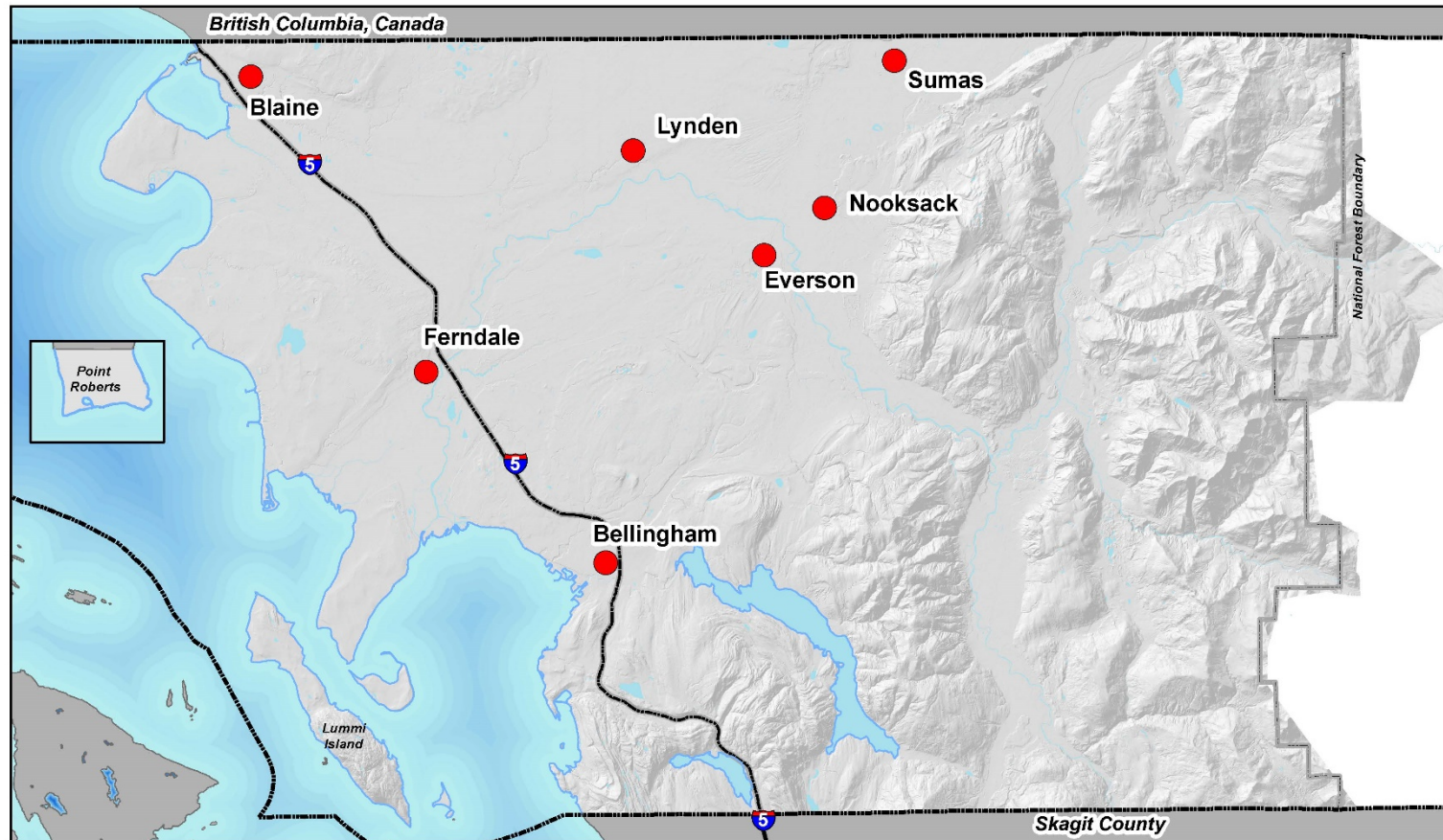
Neither Whatcom County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program.

The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the C-PACER program. No public funds may be used to repay any C-PACER financing obligation.

16. Limitation of Whatcom County's Authority



Whatcom County may not enforce any privately financed debt under this Program. Neither the State of Washington nor Whatcom County may use public funds to fund or repay any loan between a capital provider and property owner. No provisions of this Program shall be interpreted to pledge, offer, or encumber the full faith and credit of Whatcom County, nor shall Whatcom County pledge, offer, or encumber its full faith and credit for any lien amount through this Program.

MAP 1: Whatcom County C-PACER Boundary Map



Whatcom County

Legend

- Incorporated City
-  Interstate 5
-  Whatcom County Boundary

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

0 0.75 1.5 3 4.5 6 Miles



EXHIBIT 1: Project Application and Checklist

Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program

Whatcom County administers a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") financing program under Section [36.165](#) of the Revised Code of Washington (RCW) (the "C-PACER Act"). The C-PACER Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain qualified energy efficiency and resiliency improvements. The C-PACER program agreements create a property assessment and assign collection of the assessment to the capital provider or lender.

The Whatcom County C-PACER program was established in 2021 (Ordinance No. 2021-____) and is administered through the Planning & Development Services Department.

The following highlights the steps of the C-PACER application process:

1. Property Owner develops an energy generation, energy efficiency, water conservation, or resiliency project idea.
2. Property Owner identifies a registered C-PACER capital provider for their project.
3. Property owner and capital provider coordinate to complete application materials and submit to the Planning & Development Services Department (Program Administrator) with application fee.
4. Planning & Development Services Department reviews the application for completion.
5. Planning & Development Services Department issues a letter of approval, conditional approval, denial or request for additional information to the applicant (within 15 business days of receiving an application).
6. Capital provider drafts agreements and submits to the Planning & Development Services Department for review and signature of approval by County Executive.
7. Planning & Development Services Department issues a letter confirming agreements are ready for recordation and will be released upon payment of C-PACER program fees.
8. Applicant or Capital Provider submits payment for the C-PACER program fees to the Planning & Development Services Department.
9. Planning and Development Services releases the agreements to the applicant or capital provider for recordation with the County Auditor (standard [recordation fees](#) apply)
10. Applicant or lender provides recordation number to Planning and Development Services Department.
11. Capital provider funds the project.
12. After project completion, applicant provides a signed certification of completion form to the capital provider and the Planning & Development Services Department.
13. Loan payments are made by the property owner to the capital provider over the loan term.

**Commercial Property Assessed Clean Energy and Resiliency
(C-PACER) Project Application**

Applicant/Agent:

Name: _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Email: _____

Phone: _____

Property Owner(s) Information (legal names): ☐ Same as Applicant above

Name(s): _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Email: _____

Phone: _____

**If Applicant or Contact information changes please submit an updated Fee/Agent authorization form for each change.*

Property Information:

1. Property location and description:

Address: _____

Tax Parcel Number(s) (APN): _____

Property description: _____

2. Property type:

☐ Commercial ☐ Agricultural ☐ Industrial ☐ Multi-family of 5+ units

☐ Other _____

Building use(s): _____

3. Qualifying Owner

☐ Limited liability company ☐ General or limited partnership ☐ Corporation

☐ Individual/Sole proprietorship ☐ Trust

Proposed Qualified Improvements:

4. Qualifying Improvement Certification

A) FOR EXISTING BUILDINGS: (if new construction, skip to item B)

The improvements sought are (check all that applies):

☐ Energy Efficiency ☐ Renewable Energy ☐ Water Efficiency ☐ Building Resiliency

i. If Energy Efficiency, improvement is:

☐ HVAC system ☐ Windows & Doors ☐ Temperature Control System ☐ Lighting
☐ Siding/Insulation/Roofing ☐ Appliances ☐ other _____

ii. If Renewable Energy, improvement is:

☐ Solar Panels ☐ Thermal ☐ other _____

and is project:

☐ Direct Purchase ☐ Power Purchase Agreement ☐ N/A

iii. If Water Efficiency, improvement is:

☐ Lead Reduction ☐ Low-flow fixtures ☐ Irrigation System ☐ Control System
☐ Water Collection & Reuse ☐ other _____

iv. If Building Resiliency, improvement is:

☐ Seismic retrofits ☐ Flood mitigation ☐ Stormwater Management
☐ Fire suppression ☐ Wildfire resistance ☐ Wind resistance
☐ Energy storage ☐ Energy microgrids ☐ other _____

B) FOR NEW CONSTRUCTION:

The improvements being sought are (check all that applies):

☐ Energy Efficiency ☐ Renewable Energy ☐ Water Efficiency ☐ Building Resiliency

☐ Lead Reduction, water ☐ Resiliency

i. If Energy Efficiency, improvement is:

☐ HVAC system ☐ Windows & Doors ☐ Temperature Control System ☐ Lighting
☐ Siding/Insulation/Roofing ☐ Appliances ☐ other _____

ii. If Renewable Energy, improvement is:

☐ Solar Panels ☐ Thermal ☐ other _____

and is project:

☐ Direct Purchase ☐ Power Purchase Agreement ☐ N/A

iii. If Water Efficiency, improvement is:

- ☐ Lead Reduction ☐ Low-flow fixtures ☐ Irrigation System ☐ Control System
☐ Water Collection & Reuse ☐ other _____

iv. If Building Resiliency, improvement is:

- ☐ Seismic retrofits ☐ Flood mitigation ☐ Stormwater Management
☐ Fire suppression ☐ Wildfire resistance ☐ Wind resistance
☐ Energy storage ☐ Energy microgrids ☐ other _____

Capital Provider Information:

5. Capital Provider Information

Legal Name: _____

Contact Person: _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Email: _____

Phone: _____

Must answer 'Yes' to at least one of the following and provide required documentation as per Checklist:

- a) Federal or state-chartered bank, or credit union ☐ Yes ☐ No
b) Registered capital provider in more than 2 states: ☐ Yes ☐ No
c) Qualified to do business in Washington state: ☐ Yes ☐ No

6. Lienholder Consent Form (signed and notarized)

- ☐ Attached ☐ Delivered at close

IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN.

IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.

Signature on Application:

BY SIGNATURE BELOW, THE APPLICANTS (THE PROPERTY OWNER AND CAPITAL PROVIDER) AFFIRM THAT THE INFORMATION AND DOCUMENTATION ARE TRUE AND CORRECT TO THE BEST OF THEIR ABILITY AND THAT THE APPLICANTS HAVE READ THE DISCLOSURES AND DISCLAIMERS ATTACHED TO THIS APPLICATION AND UNDERSTAND THE RISKS OF PARTICIPATING IN THE C-PACER PROGRAM; FURTHER, THAT THE APPLICANTS AFFIRM THAT NEITHER THE COUNTY, ITS GOVERNING BODY, EXECUTIVES, NOR EMPLOYEES ARE PERSONALLY LIABLE AS A RESULT OF EXERCISING ANY RIGHTS OR RESPONSIBILITIES GRANTED UNDER THIS PROGRAM.

APPLICATION FORM SIGNED AND DATED ON: _____

ON BEHALF OF PROPERTY OWNER: _____

NAME & TITLE: _____

ON BEHALF OF CAPITAL PROVIDER: _____

NAME & TITLE: _____

TO BE COMPLETED BY AUTHORIZED COUNTY OFFICIAL

APPLICATION: ☐ APPROVED ☐ CONDITIONALLY APPROVED ☐ DENIED

ON BEHALF OF COUNTY: _____

NAME AND TITLE: _____

CONDITIONS OF APPROVAL (IF APPLICABLE): _____

C-PACER Project Checklist – Application (Step 1)

Applicant Checklist	<i>Please include this checklist with your application submittal - Applications will not be accepted without all necessary information compiled with a completed submittal.</i>	PDS Checklist
<input type="checkbox"/>	1. C-PACER Application Form (see pages 2-5) completed	<input type="checkbox"/>
<input type="checkbox"/>	2. Property Address a) Documentation of Property Address (Deed, Title Report, Assessor/Treasurer Record)	<input type="checkbox"/>
<input type="checkbox"/>	b) Address location is within Whatcom County	<input type="checkbox"/>
<input type="checkbox"/> <input type="checkbox"/>	3. Property Owner a) Documentation of Ownership (Deed, Title Report) b) Confirm property ownership names matches title report documentation If name(s) is different: provide one of the following: <input type="checkbox"/> Certified copy of personal/corporate name change <input type="checkbox"/> Certified power of attorney	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	4. Qualifying Property Documentation (Assessor/Treasurer official records, appraisal, zoning report, ground lease – if applicable)	<input type="checkbox"/>
<input type="checkbox"/>	5. Qualifying owner Documentation (Certificate of LLC or LP formation, Trust agreement or certificate, valid driver's license, power of attorney or corporate resolution authorizing representation) <i>If property is held by a limited liability company, general or limited partnership or a corporation, the applicant should include a copy of the certificate of formation, organization, incorporation or similar document and a good standing certificate/certificate of existence from the state or organization and, if not organized in Washington, a certificate of registration to conduct business in Washington as a foreign entity.</i> <i>If a trust, include a copy of the trust agreement or a trustees' certificate. If an individual, include a copy of a valid driver's license. If the application is to be signed by a party other than the applicant, then, in addition to the foregoing, include a power of attorney or corporate resolution authorizing said party.</i>	<input type="checkbox"/>
<input type="checkbox"/>	6. Capital Provider documentation a) If a federal or state-chartered bank, or credit union, the certificate of organization or similar document; OR b) If not an entity in a), evidence of registration as a C-PACE capital provider in two states; OR c) If not an entity in a), evidence of financing for at least one previous C-PACE transaction in another jurisdiction.	<input type="checkbox"/>

<input type="checkbox"/>	Certificate of Capital Provider Qualifications (see Program Guide, Exhibit 7)	<input type="checkbox"/>
<input type="checkbox"/>	7. Qualifying Improvement Certification	<input type="checkbox"/>
<input type="checkbox"/>	a) Original and copy of Energy, Water & Resilience Compliance <u>Certificate</u> that is complete, signed, with accompanying documentation (see Program Guide, Exhibit 6)	<input type="checkbox"/>
<input type="checkbox"/>	b) Description of improvements and certifications for improvements sought, including documentation of the appropriate license/qualifications required by the Guidebook.	<input type="checkbox"/>
<input type="checkbox"/>	8. Lienholder Consent	<input type="checkbox"/>
<input type="checkbox"/>	a) Lienholder Consent Form (must be substantially the same as Model form) (see Program Guide, Exhibit 5)	<input type="checkbox"/>
<input type="checkbox"/>	b) Form signed and notarized in appropriate places	<input type="checkbox"/>
<input type="checkbox"/>	c) Cross-check list of Lienholders from Title Report with Written Consents provided by Capital Provider	<input type="checkbox"/>
<input type="checkbox"/>	Additional written consent from any and all holders of affordable housing covenants, restrictions, or regulatory agreements	<input type="checkbox"/>
	IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN.	
	IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.	
<input type="checkbox"/>	9. C-PACER Application Fee – <i>See Unified Fee Schedule</i>	<input type="checkbox"/>
	<u>NOTE</u> : Fees will be assessed in accordance with the Whatcom County Unified Fee Schedule (UFS) in effect at the time of application submittal. Make checks payable to 'Whatcom County' or call Planning and Development Services to pay by credit card over the phone. Per UFS 2843 all permits and applications are subject to a Technology fee. The fee is calculated on the permit/application fees due.	

C-PACER Project Checklist – Recordation (Step 2)

Applicant Checklist	<i>Please include this checklist with your application submittal - Applications will not be accepted without all necessary Information compiled with a completed submittal.</i>	PDS Checklist
<input type="checkbox"/>	1. Assessment Agreement	<input type="checkbox"/>
<input type="checkbox"/>	2. Notice of Assessment Interest and C-PACER Lien	<input type="checkbox"/>
<input type="checkbox"/>	3. Assignment of the Notice of Assessment Interest and C-PACER Lien Assessment Agreement	<input type="checkbox"/>
<input type="checkbox"/>	4. Lienholder(s) Consent – if not already submitted with application	<input type="checkbox"/>
<input type="checkbox"/> N/A	5. Signatures a) All required applicant signatures b) All required County Executive signatures	<input type="checkbox"/> <input type="checkbox"/>
N/A	6. Letter to Applicant/Lender/Contact regarding documents ready to pick up for recordation	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/>	7. Provide recordation information to Planning & Development Services County Auditor, Recordation # _____	<input type="checkbox"/>
<input type="checkbox"/>	8. Project completion certification (see Program Guide, Exhibit 8) Date received: _____	<input type="checkbox"/>
C-PACER application complete		

Agent Authorization

If you are authorizing an agent to apply for permits on your behalf you must complete this form and have it notarized, which will provide authorization for a designated agent to apply for permits on your behalf.

I/we, _____, the owner(s) of the subject property, understand that by completing this form I hereby authorize _____ to act as my agent. I understand that said agent will be authorized to submit applications on my behalf, and that any fees associated with submitted applications are due to me and not to the said agent. I also understand that once an application has been submitted that all future correspondence will be directed to the agent.

Property Address

Parcel Number

Property Owner Printed Name

Property Owner Printed Name

Property Owner Signature

Property Owner Signature

Date

Date

I certify that I know or have satisfactory evidence that _____ is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public Signature

Notary Public Printed Name

Notary Public in and for the State of Washington
Residing at _____

My appointment expires: ____/____/____

Application received by _____ Date _____

EXHIBIT 2: Assessment Agreement

Assessment Agreement for C-PACER Financing

COUNTY OF WHATCOM, WASHINGTON

**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY
(C-PACER) PROGRAM**

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Assessment Agreement for C-PACER Financing

[Name] County, Washington

This ASSESSMENT AGREEMENT for C-PACER FINANCING (this "**Agreement**") is made and entered into as of this ____ day of _____, 20____, (the "**Effective Date**") by and between the County of Whatcom, Washington (the "**County**"), and _____, the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit A (the "**Property**").

RECITALS

WHEREAS, the County has, on _____, 2021 established the Commercial Property Assessed Clean Energy and Resiliency Program (the "**Program**") through the adoption of Ordinance No. 2021 - _____ ("**County Ordinance**") to allow the financing of certain renewable energy, energy and water efficiency, and resiliency improvements ("**Qualified Improvements**"), through the levy of contractual assessments pursuant to chapter 36.165 RCW (as may be amended from time to time, the "**C-PACER Act**"); and

WHEREAS, the purpose and method of approval of C-PACER financing under the Program are described in the Program Guidebook attached to the County Ordinance, as the same may have been amended from time to time prior to the Effective Date of this Agreement (the "**Program Guidebook**"); and

WHEREAS, the Property is located in the boundaries of the County and the County has consented to owners of eligible properties within its jurisdiction participating in the Program; and

WHEREAS, the Property Owner has submitted application materials including a description of the Qualified Improvements that will be acquired, constructed on and/or installed on the Property; and

WHEREAS, the County has reviewed such application materials to assess compliance with the C-PACER Act, the County Ordinance, and Program Guidebook, and the County has determined that the project proposed by the Property Owner complies with such criteria and is approved for participation in the Program (the "**Approved Project**"); and

WHEREAS, the Approved Project is to be financed pursuant to a financing agreement between the Property Owner (the "**Financing Agreement**") and a capital provider (together with its designee or assigns, the "**Capital Provider**") and under which the Property Owner agrees to repay such Capital Provider; and

WHEREAS, pursuant to chapter 36.165 RCW, the County and the Property Owner must enter into an agreement whereby the Property Owner voluntarily consents to have an assessment levied and a lien placed on the qualifying property in exchange for receiving and repaying C-PACER financing; and

WHEREAS, it is a condition to closing of the Financing Agreement that the Property Owner and the County enter into this Agreement and that this Agreement be assigned to the Capital Provider; and

WHEREAS, the Property Owner voluntarily and willingly agrees to have an assessment levied on the Property and to enter into this Agreement in order to finance the installation on the Property of the Qualified Improvements contemplated as part of the Approved Project, all on the terms set forth in the Financing Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Property Owner and the County formally covenant and agree as follows, with the intent to bind themselves and their respective successors and assigns:

AGREEMENT

Section 1. **Purpose.** The Property Owner and the County are entering into this Agreement for the purpose of subjecting the Property to a C-PACER assessment to finance or refinance the purchase, installation, or construction of the Qualified Improvements identified on Exhibit B on the Property.

Section 2. **The Property.** This Agreement relates to the real property identified in Exhibit A. The Property Owner has supplied to the County current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

Section 3. **Assessment and Lien; Assignment.**

(a) The Property Owner agrees that upon the execution and delivery of this Agreement by the parties, the Property Owner voluntarily and willingly consents to the placement of an assessment levied against the Property by the County pursuant to this Agreement and applicable law in the principal amount of \$[REDACTED], together with all interest, penalties, and fees as described in the Financing Agreement (the “**Assessment**”). Upon execution and delivery of this Agreement, the County will execute and cause to be recorded in the office of the County Auditor for the County, together with a copy of this Agreement, pursuant to chapter 36.165 RCW, the Notice of Assessment Interest and C-PACER Lien (“**Notice of Assessment**”), substantially in the form of Exhibit C. The recording of the Notice of Assessment will cause the Assessment to attach as a lien upon the Property for the benefit of the County (the “**C-PACER Lien**”) and provide record notice to third parties of the existence of the C-PACER Lien.

(b) The execution and delivery of this Agreement by the parties authorizes and effectuates the levy of the Assessment by the County against the Property without any further action required by the parties.

(c) The Property Owner hereby promises to pay the Assessment for a period of [REDACTED] years on the due dates set forth in Exhibit D hereto (the “**Assessment Schedule**”). The Property Owner agrees, as provided in the Financing Agreement, to pay the amount due in installments according to the Assessment Schedule (each, an “**Assessment Installment**”), each such Assessment Installment to be paid by the Property Owner by its due date in order to avoid delinquencies and the accrual of interest and related penalties.

(d) The Assessment shall be secured by the C-PACER Lien until paid in full. Failure to pay any Assessment Installment, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due on the terms and provisions of the Financing Agreement. In addition, under those circumstances, the C-PACER Lien may be foreclosed in the manner specified in Section 4, below.

(e) The Assessment and the C-PACER Lien shall be assigned, pursuant to the Assignment of Assessment Agreement (the “**Assignment**”), to the Capital Provider, its designee or assigns as set forth in the Financing Agreement. The Assignment shall be executed and delivered contemporaneously with this Agreement and recorded immediately following the Notice of Assessment.

Section 4. **Collection of Assessment; Foreclosure.**

(a) The Assessment Installments shall be collected in the manner specified in the Financing Agreement.

(b) The Property Owner acknowledges that if any Assessment Installment is not paid when due, the C-PACER lien may be 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. This enforcement may include prosecution of foreclosure proceedings under chapter 84.64 RCW et seq., including the provisions of RCW 84.64.040, excepting that a sworn declaration by the Capital Provider 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) As permitted by RCW 84.64.040, Property Owner expressly consents to prosecution of said action of foreclosure by Capital Provider in accordance with the terms of the Financing Agreement. The County shall have no obligation to prosecute such foreclosure on behalf of the Capital Provider, or to otherwise participate in such foreclosure except to the extent that any action on the part of the County or any County official is required in order to allow the Capital Provider to prosecute or effectuate the foreclosure under chapter 84.64 RCW, or to ratify or confirm any action of the Capital Provider taken in furtherance of the foregoing, as contemplated in the County Ordinance.

(d) [Because the Agreement covers multiple parcels, an action of foreclosure on a parcel or parcels pursuant to this section shall be brought in accordance with the terms specified in the Financing Agreement, to the extent consistent with the requirements of RCW 84.64.040.]

Section 5. **Term; Agreement Runs with the Land.**

(a) Except as otherwise set forth in this Agreement, this Agreement shall terminate upon the final payment or prepayment of the Assessment. Following such termination, the County shall cause to be executed, delivered, and/or recorded such instruments as are necessary in order to release the C-PACER Lien. The C-PACER Lien placed pursuant to this Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

(b) The balance 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 Property.

(c) In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will be assigned to each of the newly created parcels on the basis of [relative valuation], unless the Financing Agreement provides that the Assessment should be allocated in an alternate manner.

Section 6. **Recordation of Documents.** The County shall cause to be recorded in the office of the County Auditor the Notice of Assessment, which includes this Agreement as an attachment, and such other documents that are attached as Exhibits to this Agreement.

Section 7. **Amendment.** (a) This Agreement may be modified only by the written agreement of the Capital Provider and the Property Owner.

(b) The Property Owner agrees that it will, from time to time, execute,

acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Agreement.

Section 8. **Binding Effect; Assignment.** This Agreement inures to the benefit of and is binding upon the County, the Property Owner and their respective successors and assigns. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Financing Agreement) will impair in any way the right to pursue foreclosure of the C-PACER Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. With exception of Section 9, any assignee shall be a party to this Agreement and shall have all of the rights and obligations of the County hereunder to the extent that such rights and obligations have been assigned by the County pursuant to the assignment documentation between the County and the assignee. The County may furnish any information concerning the Property Owner in its possession from time to time to prospective assignees.

Section 9. **No Liability of the County.** Pursuant to chapter 36.165 RCW, the County shall incur no liability as a result of any provision of this Agreement, nor shall any members of the governing body, employees, board members and executives of the County be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of this Agreement. This provision shall inure only to the County, its governing body, employees, board members, and executives, and not to the benefit of the County's successors or assigns of this Agreement.

Section 10. **Indemnification.** Property Owner agrees to defend, indemnify and hold the County, its elected officials, employees, agents and contractors harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, the Approved Project, the Assessment and the C-PACER Lien. Property Owner's duty to indemnify the County shall not apply to liability for damages to the extent caused by or resulting from the sole or contributory negligence or willful misconduct of the County, its commissioners, employees, agents or contractors.

Section 11. **Governing Law; Venue.** This Agreement is governed by and construed in accordance with the laws of the State of Washington. Any legal action brought under this Agreement must be instituted in a superior court of the County.

Section 12. **Severability.** Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 13. **Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Signatures Appear on Following Page

985

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____,
by _____,
the _____, of _____ County, Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B
QUALIFIED IMPROVEMENTS

[To be inserted]

EXHIBIT C
FORM OF NOTICE OF ASSESSMENT

[To be inserted]

EXHIBIT D

ASSESSMENT SCHEDULE

Period	Bill date	Delinquent After Date	Payment	Interest	Principal	Principal Remaining	Annual Collection Costs**	Total Payment Due
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								

EXHIBIT 3: Notice of Assessment Interest and C-PACER Lien

RETURN NAME and ADDRESS

Please Type or Print Neatly and Clearly All Information

Document Title(s) NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN

Reference Number(s) of Related Documents

Grantor(s) [PROPERTY OWNER]

Grantee(s) WHATCOM COUNTY

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

Assessor's Tax Parcel ID Number

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party

Instrument Prepared By
And Recording Requested by:

Space Above for Recorder's Use

NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN

Washington RCW 36.165

Filed in Whatcom County

(GRANTEE) WHATCOM COUNTY

(GRANTOR) [PROPERTY OWNER]

Notice is hereby given that the person named below is placing a C-PACER Lien pursuant to chapter 36.165 RCW. In support of this lien the following information is submitted:

1. THE ASSESSMENT LIEN GRANTEE	WHATCOM COUNTY
2. DATE ON WHICH THE ASSESSMENT AGREEMENT WAS SIGNED GRANTING THE RIGHT TO PLACE AN ASSESSMENT AND C-PACER LIEN ON THE PROPERTY	[INSERT]
3. THE PROPERTY OWNER GRANTING THE PLACEMENT OF THE ASSESSMENT AND C-PACER LIEN	[INSERT]
4. THE PROPERTY AGAINST WHICH THE ASSESSMENT AND C-PACER LIEN IS PLACED IS LOCATED AT THE FOLLOWING MUNICIPAL ADDRESS:	[INSERT]
5. LEGAL DESCRIPTION OF THE PROPERTY IS AS FOLLOWS	SEE EXHIBIT A TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
6. ASSESSOR'S PARCEL NUMBER OF THE PROPERTY	[INSERT]
7. PRINCIPAL AMOUNT OF ASSESSMENT SECURED BY C-PACER LIEN	[INSERT]

8. TERMS AND LENGTH OF ASSESSMENT SECURED BY C-PACER LIEN	SEE EXHIBIT _ TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
9. COPY OF ASSESSMENT AGREEMENT (ATTACHED)	[INSERT]

IN WITNESS WHEREOF, Grantee and Grantor have caused this Notice of Assessment Interest and C-PACER Lien to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

GRANTEE:

Whatcom County, State of Washington

By: _____
Its: _____

GRANTOR:

[PROPERTY OWNER]

By: _____
Its: _____

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____, 20__, by
_____.

{the _____,

of _____} [Only if authorized party who is not the
Property Owner]

WITNESS my hand and official seal.

Signature : _____ (seal)

STATE OF WASHINGTON)
)
COUNTY OF _____)

This record was acknowledged before me on _____, by
_____, the
_____, of _____ County, Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

EXHIBIT 4: Assignment of Notice of Assessment Interested and C-Pacer Lien and Assessment Agreement

RETURN NAME and ADDRESS

Please Type or Print Neatly and Clearly All Information

Document Title(s) **ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSESSMENT AGREEMENT**

Reference Number(s) of Related Documents

Grantor(s)/Assignor **WHATCOM COUNTY**

Grantee(s)/Assignee **[CAPITAL PROVIDER OR DESIGNEE]**

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Section or Lot/Block/Subdivision)

Assessor's Tax Parcel ID Number _____

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is \$50.

Signature of Requesting Party

**ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN
AND ASSIGNMENT OF ASSESSMENT AGREEMENT**

This ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN AND ASSIGNMENT OF ASSESSMENT AGREEMENT (this “Assignment”) is dated as of [MONTH] __, 20__ by Whatcom County, Washington (“Assignor”), to [CAPITAL PROVIDER] (“Assignee”).

For value received, Assignor hereby grants, assigns and transfers to Assignee, without recourse or warranty of any kind, express or implied, all of Assignor’s rights in, title to, and interest under, that certain Notice of Assessment Interest and C-PACER Lien, dated as of [____], 20__, by [____] (“Property Owner”) and Assignor, recorded on [____], 20__ as Instrument No. _____ in the office of the records of Whatcom County, State of Washington (the “Notice of Assessment Interest”) and the Assessment Agreement dated as of [____], 20__, between Property Owner and Assignor and attached to such Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith. Assignee hereby accepts all of Assignor’s rights in, title to, and interest under the Assessment Agreement and the Notice of Assessment Interest, together with the obligations secured by the C-PACER Lien and all other instruments, documents and certificates executed in connection therewith.

Consistent with RCW 84.64.040, by accepting this Assignment, Assignee agrees for the benefit of Assignor that Assignee shall be solely responsible for enforcing the obligation of Property Owner to pay the Assessment described in the Assessment Agreement, including pursuing a foreclosure of the C-PACER Lien in accordance with chapter 84.64 RCW. Assignor shall have no obligation to prosecute such foreclosure on behalf of Assignee, or to otherwise participate in such foreclosure, except to the extent that any action on the part of Assignor or any official of Assignor is required in order to allow Assignee to prosecute or effectuate the foreclosure under chapter 84.64 RCW, or to ratify or confirm any action of Assignee taken in furtherance of the foregoing, as contemplated in the County Ordinance (as defined in the Notice of Assessment Interest).

Signatures appear on following page

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

“ASSIGNOR”

WHATCOM COUNTY, WASHINGTON

By: _____

Name: _____

Title: _____

STATE OF WASHINGTON)
 : ss.
WHATCOM COUNTY)

This record was acknowledged before me on _____, by
_____, the
_____, of _____ County,
Washington.

WITNESS my hand and official seal.

Signature : _____ (seal)

“ASSIGNEE”

[CAPITAL PROVIDER OR DESIGNEE]

By: _____

Name: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On [MONTH] ____, 20__ personally appeared before me, _____, who duly acknowledged to me that he/she executed the foregoing instrument on behalf of [CAPITAL PROVIDER OR DESIGNEE] in his/her capacity as _____ of [CAPITAL PROVIDER OR DESIGNEE]

NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

[INSERT]

EXHIBIT 5: Lienholder Consent

**Notice of Proposed C-PACER Assessment and
Request for Consent of Lien or Other Obligation Holder to C-PACER Assessment and C-PACER
Lien**

Notice Date:

Lien or Other Obligation Holder:

Street:

City/State/Zip Code:

ATTN:

Property/Loan Information:

Address: [_____] (the “Property”)

Loan Number:

Why has the Financial Institution received this notice?

The Property Owner listed below owns the subject Property. Your Financial Institution holds a lien, mortgage or security interest or other secured encumbrance on the Property.

[Property Owner] (the “Property Owner”) wishes to install energy efficiency, water conservation, renewable energy, and/or resiliency improvements to the property using Commercial Property Assessed Clean Energy and Resiliency (C-PACER) financing, known as the “C-PACER” program. The Property Owner requests your consent for the property to participate in the program.

Background on C-PACER in Washington

Washington statute (chapter 36.165 RCW) (the “C-PACER Act”) authorizes Washington counties to establish a C-PACER program in their communities. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Act.

C-PACER financing helps stimulate local economies by allowing owners of agricultural, commercial, and industrial and multi-family properties with 5 or more dwelling units to obtain low-cost, long-term financing for energy efficiency, renewable energy, and water conservation and resiliency projects. Whatcom County, where the subject property is located, has established a C-PACER program within its jurisdiction for qualifying property owners.

Through the C-PACER program, the financing for qualifying projects is provided by a private Capital Provider, and the principal amount is recorded by Whatcom County as a voluntary assessment and lien (“the C-PACER lien”) on the Property. The annual assessment payments relating to that lien are repaid to, and collected by, the private Capital Provider, which has the responsibility of administering the Property Owner’s C-PACER obligation. Assessments have long been used to pay for improvements to real property that meet a public policy objectives, such as sidewalks, parks, lighting districts, and water and sewer projects. Like other assessments, the C-PACER obligations remain with a property upon its sale, until the financing is fully repaid, at which point the C-PACER lien and assessment are retired.

Under chapter 36.165 RCW, once consent from pre-existing lien holders and, if applicable, the holders of certain other obligations, on a property is given, an assessment can be imposed and a C-PACER lien can be filed. Once filed, that lien, like other government-imposed liens, moves into a superior position above other obligations, except for property taxes and other qualifying government obligations.

To qualify for C-PACER financing, the proposed project must meet the following basic criteria:

- The property is located in Whatcom County, Washington, a county that has passed an ordinance authorizing a C-PACER program;
- The property is an agricultural, commercial, or industrial property, or multi-family property of 5 or more dwelling units;
- The proposed measures reduce energy consumption, reduce water consumption, increase the production of on-site renewable energy, reduce lead in potable water, and/or increase the resiliency of the property, as defined in the C-PACER Act;
- The proposed measures are permanently affixed to the property; and
- The Property Owner receives consent of the current mortgage/lien holder(s).

Why should your Financial Institution consent to the C-PACER Assessment and C-PACER Lien?

1. Property improvements financed through the C-PACER program have public benefits. To qualify for C-PACER, a project must install improvements that either conserve energy or water resources; reduce greenhouse gas emissions; reduce lead levels in potable water; or improve safety and public health through certain resiliency enhancements (e.g., seismic stability). Under the C-PACER program eligibility requirements, a proposed project must include verification by a qualified and licensed professional certifying that the improvements will provide these public benefits. Qualifying improvements typically enhance property value and improve its collateral value for the mortgage or other obligatory interests that your Financial Institution holds in the Property.
2. C-PACER payments do not accelerate. In the event a mortgage holder or lien holder forecloses on the property for any reason, only the C-PACER payments currently due and in arrears would be payable, which is likely a relatively small proportion of the total amount financed. *In the case of a default, the entire outstanding principal, interest and penalties of your Financial Institution's loan may be accelerated and come due; however, for the C-PACER financing, only the past due amounts may be collected in a default.* The remaining C-PACER financing balance runs with the land and regular installment payments would be paid by the new property owner.
3. Improvements financed through C-PACER often reduce a property's operating costs and/or the potential for catastrophic damage, and they often improve health and comfort of occupants, all of which make a property more attractive to tenants and future owners.
4. Property improvements financed through the C-PACER program align with public Climate Action Plans and, potentially, with your institution's sustainability plans and commitments, and to shareholder interests.

What should your Financial Institution know?

Property Owner has indicated its intention to apply for C-PACER financing for improvements outlined in on the Property. The C-PACER financing will be levied on the Property pursuant to an Assessment Agreement between the Property Owner and the County, and the amount of the C-PACER financing will be determined by a Financing Agreement between the Property Owner and the private Capital Provider. The C-PACER financing terms will consist of:

Total cost of improvements:	
Total C-PACER financing requested (+/- 5%):	
Annual interest rate not to exceed:	
Term of repayment:	
Total estimated annual C-PACER Payments:	

# Payments per year:	
----------------------	--

As required by the C-PACER Act, Property Owner is sending this Request for Consent of Lien or Other Obligation Holder to the creation of a C-PACER Assessment and Lien to:

- i. provide notice of Property Owner's proposed participation of the Property in the program;
- ii. request confirmation from your Financial Institution (a current mortgage/lien or other obligation holder) that the levy of the C-PACER payments will not trigger a default nor the exercise of any remedies under your current lien or other encumbrance relating to the Property;
- iii. provide notice that, due to the requirements under the County's Assessment Agreement with the Property Owner, the C-PACER private Capital Provider financing payments will be collected in installments that are subject to the same remedies and lien priorities as real property taxes; and
- iv. declare the Property Owner's agreement to uphold and pay on a timely basis both the existing obligations to your Financial Institution which are secured by the Property and the proposed C-PACER installments.

Execution and Return of Consent. The Property Owner would appreciate your executing the attached Consent Form for the Whatcom County C-PACER program and returning it to the undersigned at your earliest convenience.

Sincerely,

BY: (signature): _____

PROPERTY OWNER NAME: [_____]

MAILING ADDRESS (if different than Property address): [_____]

Lien or Other Obligation Holder Consent to C-PACER Assessment and Lien

Date:

Property/Loan Information Building

Address:

Tax key/Parcel:

Lien or Other Obligation Holder:

Loan Number:

This Lien or Other Obligation Holder Consent Acknowledgement to C-PACER Assessment and Lien (this “Consent”) is given by the undersigned entity (the “Holder”) with respect to the above-referenced C-PACER Assessment and Lien and property (“Property”) in relation to the Whatcom County C-PACER program (the “Program”).

RECITALS

A. The Holder is in receipt of written notice (“Notice”) from the owner of the Property (“Property Owner”) that it intends to finance the installation on the Property of certain Qualified Improvements according to chapter 36.165 RCW that will be permanently fixed to the Property and that will be financed by participating in the Program.

B. The Holder understands that, as a result of an Assessment Agreement between Whatcom County and the Property Owner, and a Financing Agreement between the Property Owner and [REDACTED] (the “C-PACER Capital Provider”), that the C-PACER Assessment and Lien against the Property, as described in the C-PACER Assessment Agreement between the County and Property Owner and in the C-PACER Financing Agreement between the private Capital Provider and the Property Owner (the “C-PACER Assessment”), will be levied on the Property, and that the C-PACER lien against the Property 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 Assessment, including any interest, penalties, and charges accrued or accruing under the terms of the Financing Agreement are paid in full.

C. The Property Owner has agreed in a manner acceptable to the Holder to uphold and pay on a timely basis both the existing obligations to the Holder which are secured by the Property and the proposed C-PACER Assessment payments.

D. The Holder consents to the Property’s participation in the C-PACER program and that the C-PACER lien will take precedence over all other liens except for a lien for taxes as described in paragraph B.

[Continued on next page]

ACKNOWLEDGEMENT

The undersigned hereby represents that it is authorized to execute this Acknowledgement on behalf of the Holder. The Holder hereby:

- (i) confirms that it has received the Notice;
- (ii) acknowledges the levy by Whatcom County of the C-PACER Assessment pursuant to the terms of the Assessment Agreement and C-PACER Financing Agreement; and
- (iii) agrees that the levy and payment of the C-PACER Assessment will not constitute a default nor trigger the exercise of any remedies under the Holder's Loan or other obligation documents.

The Holder hereby acknowledges that the Property Owner, the County, the C-PACER Capital Provider and the County's designated C-PACER Program Administrator, will rely on the representation and acknowledgement of the Holder set forth in this Acknowledgement. The Recitals are integrated into and made a part of this Acknowledgment.

Holder:

By:

Signature:

Title:

Date:

In witness whereof, _____ has caused its name to be signed this _____ day of

_____, _____.

By: _____

_____, _____

EXHIBIT 6: Certificate of Qualified Improvements
(Energy, Water, Renewable Energy, Resilience Certificate of Compliance)

I, the undersigned, hereby certify the following facts and make the following certifications with respect to the project described in the attached Project Application (the "Project") under the Whatcom County Commercial C-PACER Program:

1. I am a licensed Professional Engineer in the State of Washington, whose registration number and stamp are shown below, OR
2. I am accredited by or belong to a firm with an accreditation from:
 - American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)
 - Building Energy Modeling Professional (BEMP)
 - Operations & Performance Management Professional Certification (OPMP)
 - High-Performance Building Design Professional Certification (HBDP)
 - Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)
 - Building Performance Institute
 - Energy Auditor
 - Investor Confidence Project
 - ICP Quality Assurance Assessor
 - Other: _____

Please provide verification of professional accreditation and recognition

3. The application is for:
____ an existing building
____ new construction
4. Please describe your relationship to the project:
____ I am employed by the project applicant in my professional capacity
____ I am a contracted independent third-party reviewer
5. I reviewed the following information regarding the project (e.g. equipment specifications OR design drawings/modeling OR permit applications OR an ASHRAE Level 1 assessment/energy assessment): Please Describe: _____
6. The project proposal includes the "Qualified Improvements", as defined in chapter 36.165 RCW and the Program Guidebook, and the estimated useful life of each Qualified Improvement, which are listed in an attachment to this certification. (Please attach)
7. The Qualified Improvements will be permanently affixed to the property.

IF FOR AN EXISTING BUILDING (check those that apply):

I CERTIFY:

- _____ The proposed Qualified Improvements will result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.

- _____ The Qualified Improvements will result in improved resilience, which may include, without limitation, seismic resilience, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids. If other, specify: _____

IF FOR NEW CONSTRUCTION (check those that apply):

I CERTIFY:

- _____ Each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency or water efficiency or renewable energy code requirements
- _____ The building as a whole, as a result of the Qualified Improvements, performs above or exceeds applicable building energy and/or water codes
- _____ The proposed resiliency Qualified Improvements will enable the subject property to exceed the resiliency code requirements.

Signature: _____

NAME:

Business name:

Business address:

Business contact email:

Business contact phone:

IF APPLICABLE

License No. _____

Stamp: _____

ATTACHMENTS (Please attach to Certification)

EXHIBIT 7: Certificate of Capital Provider Qualifications

CERTIFICATE OF CAPITAL PROVIDER QUALIFICATION

Please check all of the following that apply to the qualifications of [] (“Capital Provider”), the capital provider that will supply the C-PACER financing for the project located at []. *Note: Capital Providers must meet at least one of the following.*

_____ Capital Provider is registered to provide C-PACE financing in at least two other states.

State: _____

Program Name: _____

State: _____

Program Name: _____

Please provide documentation. Appropriate documentation includes a certification or verified copy of registration as a C-PACE provider by a C-PACE program.

_____ Capital Provider is registered to provide C-PACE financing and has financed at least one previous C-PACE transaction in another jurisdiction.

State: _____

Program Name: _____

Transaction: _____

Please provide documentation. Appropriate documentation includes a copy of a recorded transaction document (such as Notice of Assessment or Lien) specifying that it is part of a C-PACE transaction.

_____ Capital Provider is a federally chartered bank, thrift institution, or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable federal regulatory body.

_____ Capital Provider is a state-chartered bank, thrift institution or credit union.

Please provide documentation. Appropriate documentation includes a copy of the latest public filing, license, or registration with the applicable state regulatory body.

The undersigned certifies that the above is true and accurate as of the current date:

[Capital Provider]

By: _____

Name and Date:

Title:

EXHIBIT 8: Certificate of C-PACER Improvements Completion

CERTIFICATE OF C-PACER IMPROVEMENTS COMPLETION

Property Owner: _____

Property Address: _____

C-PACER application approval date: _____

C-PACER financing closing date: _____

The undersigned certifies that the work under the above approved C-PACER Application, attached as **Exhibit A** hereto, has been satisfactorily and properly completed and all improvements are operating as intended.

PROPERTY OWNER:

[INSERT ENTITY NAME, IF APPLICABLE]

BY: _____

Signature

Printed Name

Title

Exhibit A

C-PACER Application

[See Attached]



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-375

File ID:	AB2021-375	Version:	1	Status:	Agenda Ready
File Created:	06/18/2021	Entered by:	SMildner@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Executive Sidhu proposes a change to the membership requirements of the Point Roberts Community Advisory Committee, at the request of the Point Roberts Chamber of Commerce.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Ordinance

ORDINANCE NO. _____

**AMENDING WHATCOM COUNTY CODE 2.98, POINT ROBERTS COMMUNITY
ADVISORY COMMITTEE, TO REVISE MEMBERSHIP**

WHEREAS, in December 2020 the Whatcom County Council adopted Ordinance 2020-078, amending Whatcom County Code (WCC) 2.98 to revise the membership and meeting procedures of the Point Roberts Community Advisory Committee (PRCAC); and

WHEREAS, the County Council and County Executive recently received communications from the Point Roberts Chamber of Commerce requesting that the county withdraw their representative position from the list of required members on the PRCAC; and

WHEREAS, the position originally reserved for the Point Roberts Chamber of Commerce will be unassigned as a result of the removal of a representative; and

WHEREAS, the County Executive proposes changing the unassigned position to an additional "citizen at large" position to be appointed by the County Executive.

NOW, THEREFORE, BE IT ORDAINED, that Whatcom County Code 2.98 shall be amended to revise section 2.98.040 as detailed in the attached Exhibit A.

BE IT FURTHER ORDAINED that the effective date of this code amendment shall be May 31, 2021.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Civil Deputy Prosecutor

Satpal Singh Sidhu, County Executive

() Approved () Denied

Date Signed: _____

EXHIBIT A

POINT ROBERTS COMMUNITY ADVISORY COMMITTEE

Sections:

- 2.98.010 Established.**
- 2.98.020 Purpose.**
- 2.98.030 Function.**
- 2.98.040 Membership – Term of office.**
- 2.98.050 Organization – Meetings.**
- 2.98.060 Committee staffing.**

2.98.010 Established.

There is hereby established the Point Roberts community advisory committee. (Ord. 2010-008).

2.98.020 Purpose.

The committee is created to provide advice and recommendation to the executive and to the council regarding needs and issues specific to the Point Roberts community. (Ord. 2010-008).

2.98.030 Function.

The committee shall utilize its ties to the community in order to identify community needs and to develop and propose methods to address those needs. (Ord. 2010-008).

2.98.040 Membership – Term of office.

The committee shall consist of the following individuals:

A. One representative from each of the following: The Point Roberts Taxpayers' Association, and the Point Roberts Voters' Association, ~~and the Point Roberts Chamber of Commerce.~~

B. ~~Four~~ **Five** representatives to be appointed by the executive.

Member terms will be two years; provided, that the terms of members first appointed will be staggered so that two of the committee members shall be appointed for one year. (Ord. 2010-008).

2.98.050 Organization – Meetings.

Meetings of the committee shall be open and accessible to the public and shall comply with the requirements of the Open Public Meetings Act. The committee shall determine its meeting schedule, but shall meet at least quarterly providing at least one week notice of all meetings and shall include the Agenda. Any item intended for a vote must be clearly and unambiguously defined on the agenda. The date of any meeting along with the agenda shall be published on the County Website a minimum of one week prior. At every meeting, the committee will schedule an open session to take public comment on issues consistent with the charge of the committee. Written and audio records of meetings, resolutions, findings and recommendations shall be kept and such records shall be public. Minutes must be sufficiently detailed to enable a reader to understand the topic discussed and the key points of any debate. All external communications made by the committee shall be in writing, approved by a majority vote with the names of the committee members and their votes attached. The committee shall adopt its own rules and procedures for the conduct of business. The committee shall elect a chairperson from among its members who shall preside at its meetings. (Ord. 2010-008).

2.98.060 Committee staffing.

The county may provide staffing based on the committee's timely notification of staffing needs at its meetings. The committee is authorized to request from the executive's office information from administrative departments. (Ord. 2010-008).



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-380

File ID:	AB2021-380	Version:	1	Status:	Agenda Ready
File Created:	06/21/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Whatcom County Comprehensive Plan relating to density credits, PDRs, and TDRs

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance would insert the concept of a density credit program into the Whatcom County Comprehensive Plan. A density credit program would allow development incentives, such as increased land use intensity, in exchange for a voluntary contribution towards preserving agricultural lands and open space. The proposal would also amend purchase of development right (PDR) and transfer of development right (TDR) provisions in the Comprehensive Plan.

This proposal was forwarded by Council on November 7, 2018, to be considered with other proposed Comprehensive Plan and zoning amendments from 2018/2019 (see AB2018-298). Per Whatcom County Code 2.02.115, because the ordinance was not adopted within 120 days of its original introduction date, it must be reintroduced, notice of introduction republished, and at least 13 days elapsed before the ordinance can come up for final consideration by the Council

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Ordinance, Planning Commission Findings and Minutes, Presentation, Work Group Final Report, Affidavit of Publication, Correspondence, Correspondence,

Correspondence

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 8, 2018

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

FROM: Matt Aamot, Senior Planner *MA*

THROUGH: Mark Personius, Director *MP*

RE: Density Credit Program – Comp Plan Amendments (PLN2018-00002)

The Whatcom County Council adopted a policy in the 2016 Comprehensive Plan update that included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.

In accordance with this policy, the County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. The Work Group met a total of 15 times between March 2017 and October 2018. The Work Group issued final recommendations on October 3, 2018.

The primary recommendation of the TDR/PDR Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer voluntarily makes a cash payment (instead of purchasing TDRs) to access development incentives (such as density bonuses). Any cash raised through this program would provide supplemental funding to the County's PDR program to help protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities. Therefore, the subject Comprehensive Plan amendments propose a shift in emphasis from a traditional TDR program to a density credit program.

The TDR/PDR Work Group made preliminary recommendations relating to the Whatcom County Comprehensive Plan amendments on March 7, 2018. It was discussed at this March 7 meeting that the Planning Commission may review these preliminary recommendations prior to issuance of the Work Group's final report.




The County Planning Commission recommended approval of these amendments on July 12, 2018. The TDR/PDR Work Group issued their final recommendations on October 3, 2018, which did not modify their preliminary Comprehensive Plan amendment recommendations from March.

We are now requesting Council review of the amendments and anticipate that the County Council would make a final decision in 2019, when all comprehensive plan amendments are reviewed concurrently.

Thank you for your consideration of this matter. We look forward to discussing it with you.

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2018-298

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Matt W. Amot	M.A.	10/8/2018		10/23/2018	Planning and Development Committee
Division Head: Mark Personius	MP	10-10-18		10/23/2018	Introduction
Dept. Head: Mark Personius	MP	10-10-18		11/7/18	Hearing
Prosecutor: Royce Buckingham		10-12-18			
Purchasing/Budget:					
Executive: Jack Louws		10.15.18			

TITLE OF DOCUMENT:

Whatcom County Comprehensive Plan amendments relating to density credits, purchase of development rights, and transfer of development rights.

ATTACHMENTS:

1. Memorandum
2. Draft Ordinance with Exhibit A
3. Planning Commission Findings
4. Planning Commission Minutes

NOTE: The TDR/PDR Multi-Stakeholder Work Group Final Report (Oct 2018) is on file at the County Council office.

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

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

NOTE: Final approval of these amendments would occur as part of concurrent review of comprehensive plan amendments in 2019.

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

The Whatcom County Council will consider a proposal to insert the concept of a density credit program into the Whatcom County Comprehensive Plan. A density credit program would allow development incentives, such as increased land use intensity, in exchange for a voluntary contribution towards preserving agricultural lands and open space. The proposal would also amend purchase of development right (PDR) and transfer of development right (TDR) provisions in the Comprehensive Plan.

COMMITTEE ACTION:

10/23/2018: Discussed

COUNCIL ACTION:

10/23/2018: Introduced 6-0
11/7/2018: Forwarded for concurrent review 7-0

Related County Contract #:

Related File Numbers:

County Planning File #
PLN2018-00002

Ordinance or Resolution Number:

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

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: October 23, 2018

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
WHATCOM COUNTY COMPREHENSIVE PLAN
RELATING TO DENSITY CREDITS, PDRs, AND TDRs**

WHEREAS, The Whatcom County Transfer of Development Right (TDR)/Purchase of Development Right (PDR) Multi-Stakeholder Work Group issued recommendations on the proposed amendments; and

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

WHEREAS, The County Council considered the TDR/PDR Multi-Stakeholder Work Group and Planning Commission recommendations; and

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

FINDINGS OF FACT

1. The subject amendments relate to the following Chapters of the Whatcom County Comprehensive Plan:
 - a. Chapter 2 - Land Use;
 - b. Chapter 3 - Housing;
 - c. Chapter 8 - Resource Lands; and
 - d. Chapter 10 - Environment.
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on April 4, 2018.
3. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 21, 2018.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 26, 2018.

5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 29, 2018.
6. Notice of the Planning Commission hearing and that the proposal had been posted on the County website was sent to citizen, media, and others on the County's e-mail list.
7. The Planning Commission held a public hearing on the subject amendments on July 12, 2018.

Comprehensive Plan Approval Criteria

8. The criteria of Whatcom County Code (WCC) 22.10.060, shown below, must be satisfied in order to approve a comprehensive plan amendment.
 - a. The amendment conforms to the requirements of 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 a 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 upon the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.

Intergovernmental Coordination / Public Participation

9. Growth Management Act (GMA) planning goals are set forth in RCW 36.70A.020. The GMA citizen participation and coordination planning goal is to "Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts" (RCW 36.70A.020(11)).
10. The Whatcom County Council adopted a policy in the Comprehensive Plan in the 2016 update which included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.
11. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. This Work Group issued recommendations to amend the Whatcom County Comprehensive Plan on October 3, 2018.

Growth Management Act / County Comprehensive Plan

12. GMA planning goal # 1 is to "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner" (RCW 36.70A.020(1)). Under the GMA, urban growth areas (UGAs) have been designated pursuant to RCW 36.70A.110.
13. GMA planning goal # 2 is to "Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development" (RCW 36.70A.020(2)).
14. GMA planning goal # 8 is to "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses" (RCW 36.70A.020(8)).
15. GMA planning goal # 9 is to "Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities" (RCW 36.70A.020(9)).
16. The subject amendments insert the concept of a density credit program in the Whatcom County Comprehensive Plan.
17. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to access incentives specifically set forth in the zoning code.

18. The GMA also requires internal consistency within a comprehensive plan (RCW 36.70A.070).

19. Whatcom County Comprehensive Plan policies relating to urban growth include:

Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.

Policy 3C-6: In UGAs, consider easing lot consolidation criteria, increasing density, and decreasing minimum lot sizes, in the interest of serving housing affordability.

Policy 3G-4: Allow development of smaller lots and creative options.

20. Whatcom County Comprehensive Plan goals and policies relating to development in rural and agricultural areas include:

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

Goal 8A: Conserve and enhance Whatcom County's agricultural land base for the continued production of food and fiber.

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

. . . Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

21. The Whatcom County Comprehensive Plan seeks to retain rural character and conserve agricultural lands. These goals and policies are primarily implemented through the Whatcom County Zoning Code, which restricts the uses and densities allowed in rural and agricultural areas. However, the County also adopted an "*Agricultural Purchase of Development Rights Program*" in 2002 (WCC 3.25A). The purpose of this program is:

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).

22. Whatcom County Comprehensive Plan Goal 2F is to "Make use of incentive programs that can effectively encourage achievement of land use goals." Policy 2F-3 is to "Revise regulations to include incentive programs."
23. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by seeking to concentrate urban levels of growth in UGAs, increase density, allow smaller lots, and provide creative options for developers in a UGA.
24. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing developer incentives to voluntarily contribute funds that would be utilized in the Agricultural Purchase of Development Rights Program, thereby helping to preserve rural character and agricultural lands.
25. In the past, the Agricultural Purchase of Development Rights Program has received matching funds (primarily from the federal government). Therefore, the potential exists to leverage additional matching funds with dollars from the new density credit program.
26. The subject amendments address a density credit program, providing incentive provisions that are entirely optional. A developer may choose to develop at the existing base densities allowed by a given zoning district. Alternatively, a developer may choose to utilize the incentives that allow increased land use intensity on a site through the purchase of density credits.
27. The subject amendments are internally consistent with the goals and policies of the Whatcom County Comprehensive Plan by promoting a voluntary program that would allow incentives, such as increased land use intensity, in designated areas while contributing to preservation of rural and agricultural lands.

County-Wide Planning Policies

28. Countywide Planning Policies include the following:
 - C-5 Urban Growth areas should be established in a way that preserves agricultural land, forestry, mineral resources, water resources, and critical areas. Urban growth shall maintain proper buffers from natural resource areas to minimize conflicts with natural resources and industries based on them.
 - D-4 Existing cities should absorb additional population at a range of densities appropriately responsive to the city's community vision before extending city Urban Growth Areas into areas where growth would adversely impact critical areas and resource lands. . .

- D-5 All cities should grow in an efficient manner while maintaining their character and, where reasonable, shall provide for adequate open space between cities to prevent strip development.
 - D-6 Cities should be encouraged to provide positive incentives for in-fill.
 - E-2 Non-city urban growth areas, for already urbanized unincorporated residential areas shall be encouraged to infill in a way that will facilitate efficient provision of facilities and services consistent with the scale of development.
 - H-1 Adequate open space is vital to the quality of life and sense of place in Whatcom County. The county, cities, Port of Bellingham, and other appropriate jurisdictions should coordinate protection of linked greenbelts, within and between Urban Growth Areas, parks, and open space to protect wildlife corridors and to enhance recreational opportunities, public access and trail development.
 - H-3 The county and the cities shall encourage, to the extent it is feasible, separation of Urban Growth Areas through planning, zoning, development regulations, open space purchase, conservation easements and other mechanisms which may be appropriate. Also, an array of incentives such as density bonuses, design flexibility and transferable development rights shall be offered to affected land owners.
 - I-9 The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.
29. The density credit policies would encourage increased densities in urban areas and contributions towards preservation of rural and agricultural lands.

Interlocal Agreements

30. Whatcom County and cities have interlocal agreements that address TDRs, PDRs, and in lieu fee programs. The subject amendments do not conflict with these interlocal agreements.

Further Studies/Changed Conditions

31. The Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report was issued on October 3, 2018

32. The primary recommendation in the TDR/PDR Multi-Stakeholder Work Group Final Report (October 2018) is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities.

Public Interest

33. The public interest will be served by approving the amendment.
- a. The density credit program would encourage development in UGAs, thereby potentially facilitating population growth in these areas as envisioned in the Comprehensive Plan.
 - b. Prior to actual development, review would be conducted to ensure that service providers are able to provide adequate services and public facilities.
 - c. The density credit program is intended to conserve designated agricultural lands, as envisioned in the Comprehensive Plan.

Spot Zoning

34. The subject Comprehensive Plan amendments do not include nor facilitate spot zoning.

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 Whatcom County Comprehensive Plan is hereby amended as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2019.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chairperson

APPROVED as to form:

() Approved () Denied



Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

Exhibit A – Comprehensive Plan Amendments

Chapter 2 (Land Use)

Policy 2A-14: Maintain a density credit program to incentivize increased land use intensity in designated areas and decrease residential density in agricultural and rural areas by authorizing density credits. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a higher density as specifically set forth in the Whatcom County Zoning Code.

~~Strive to establish by December 2017 a clear, predictable, and fair process for allowing expansion of urban growth areas that considers reasonable measures to mitigate the impacts of residential development in rural lands, agricultural areas (broadly defined), and sensitive watersheds. This process should include:~~

- ~~1. Consultation with a focus group of potential TDR/PDR users in the building industry;~~
- ~~2. Convening a multi-stakeholder work group, including the Cities, tasked with:~~
 - ~~• Reviewing the current TDR and PDR programs;~~
 - ~~• Identifying political, financial, and regulatory barriers to effective TDR and PDR programs;~~
 - ~~• Identifying opportunities and solutions for creating a workable TDR program;~~
 - ~~• Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands;~~
 - ~~• Recommending policy and regulatory amendments necessary to implement the above policy;~~
 - ~~• Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas;~~
 - ~~• Identifying receiving areas;~~

- ~~Identifying other factors and/or growth management tools.~~
 - ~~Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.~~
 - ~~Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.~~
3. ~~Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.~~

Rationale: In November 2017, the Whatcom County Council adopted a density credit program applicable to portions of the Birch Bay UGA (Ordinance 2017-062). The proposed Comprehensive Plan amendments would shift the emphasis in County Policy from a traditional TDR program, which has not worked well over the years, to the density credit program. Advantages of a density credit program, compared to a traditional TDR program, include:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);
- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios.

Summarized from *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* by Nelson, Pruetz, and Woodruff, 2012, pp. 45 and 47).

Additionally, the TDR/PDR Multi-Stakeholder Work Group will issue recommendations in 2018. It is anticipated that the County Council will make a final decision on these Comprehensive Plan amendments in 2019, after the Work Group completes its work.

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as ~~cluster~~-density bonuses in urban growth areas in association with the density credit program, purchase of development rights, transfer of development rights, and tax deferrals.

Rationale: This change incorporates a reference to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2H-2: Establish incentive programs such as ~~cluster~~-density bonuses in urban growth areas in association with the density credit program; and purchase of development rights, ~~and voluntary, workable transfer of development rights~~, where appropriate, to compensate property owners if rights are unduly infringed.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2N-3: Consider development incentives, such as density bonuses, in cities and UGAs in association with the density credit program. ~~as receiving areas for development rights transferred from sending areas. Encourage cities to consider development incentives in association with a cooperative City-County density credit program.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to a density credit program. It also encourages cities to establish density credit programs in conjunction with the County.

Policy 2U-5: Review and update the interlocal agreement with Bellingham, prior to expiration of the current interlocal agreement, to provide for:

- Coordinated growth management and capital facility planning;
- timing and provision of utility services and other urban services;
- timing and procedures to be used for review of adequate land supply;
- timing of annexations;
- revenue sharing formulas prior to and after annexation;
- development standards and regulations;

- joint City/County review of development proposals in the UGA;
- affordable housing; and
- a density credit program and/or transfer of development rights within the City of Bellingham.

Rationale: The existing interlocal agreement between Whatcom County and the City of Bellingham is valid through the year 2022. When the interlocal is updated in 2022, it should reference a density credit program. The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been utilized/extinguished.

Policy 2U-7: Whatcom County and Bellingham should designate areas that can accommodate density bonuses in association with a density credit program and/or receiving areas within the City of Bellingham and its UGA for Transfer of Development Rights from the Lake Whatcom Watershed.

Rationale: The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been extinguished.

Policy 2DD-10: Adopt and maintain incentive programs, such as purchase of development rights, the density credit program,~~transfer of development rights,~~ and tax deferrals, to achieve desired land use policies in rural areas and in areas where there are compelling reasons to do so.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2UU-4: Support the retention of open space and open space corridors through the use of education and incentives, such as purchase ~~or transfer~~ of development rights, density bonuses within UGAs in association with the density credit program, cluster development, and acquisition of easements.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2UU-6: Improve public access to shorelines and other lands using such mechanisms as purchase ~~or transfer~~ of development rights, density bonuses within UGAs in association with the density credit program, and open space tax status.

Rationale: Same as rationale for Policy 2UU-4 above.

Chapter 3 (Housing)

Policy 3F-1: Include incentives in land use regulations, in UGAs and in Planned Unit Developments (PUDs), to offset the reduced profit inherent in more affordable types of housing. Incentives might include ~~transfer of development rights~~, density bonuses, fee waivers, expedited permit review, and/or infrastructure concessions to protect developers wherever special needs populations are specifically served.

Rationale: This change reflects the shift away from a traditional TDR.

Chapter 8 (Resource Lands)

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

- Maintenance of 100,000 acres of agricultural land to support a healthy agricultural industry.
- A density credit program where development incentives are offered in cities and/or UGAs if density credits are purchased by the developer. Funds from the density credit program would supplement the existing Purchase of Development Rights (PDR) program funding. ~~workable transfer of development rights program (TDR) in which the development potential of a site could be transferred to another location where development is more favorable.~~
- ~~The workable TDR program shall give priority to the creation of economically viable receiving areas.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It recognizes that monies taken in through the density credit program would go towards reducing development potential in areas suitable for agriculture.

- Developing a marketplace approach to strengthening agricultural practices while enhancing larger-scale watershed processes and functions by identifying feasible opportunities on agricultural land to improve both watershed health and agricultural viability and developing incentives and tools to compensate farmers for actions that exceed minimum regulatory standards.
- Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms.
- Incentives and cooperation between landowners and public agencies such as the use of the current use tax assessment provisions.
- Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.
- Discouraging conversion of designated agricultural lands to non-agricultural uses.
- Track acres lost due to conversion, development, or policy implementation such as critical areas ordinance, so mitigation strategies can be implemented to offset the acres lost.
- Education and marketing of programs that emphasize recognition of the local and regional significance of agricultural land as a natural resource and the economic, social and ecological benefits it provides.
- Working cooperatively with local farmers and coordinating with local and state agencies to address water quality impacts of agricultural activities on local streams and groundwater.
- Securing an adequate, sustainable, and legal supply of irrigation water sufficient to support the long-term viability of the local agricultural industry.
- Identify and evaluate any new or changed zoning or comprehensive plan agricultural lands of long term commercial significance designations as needed or warranted for the Rural Study Areas.
- Economic development assistance to agricultural-related enterprises.
- Recognize regulatory impacts and encourage farm friendly regulations.

Chapter 10 (Environment)

Policy 10C-3: Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase/voluntary, ~~workable transfer~~ of development rights, the density credit program, and other mechanisms that assist affected property owners.

<p>Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.</p>

Policy 10E-6: Maintain a comprehensive program of regulatory and non-regulatory mechanisms to achieve Natural Hazard goals and policies. This program should include such mechanisms as education, tax incentives, zoning, land use regulations, conservation easements, purchase of development rights, ~~transfer of development rights,~~ and public acquisition.

Rationale: This change reflects the shift away from a traditional TDR. It does not reference the density credit program, because funds from density credits will go towards preserving rural and agricultural lands and are not specifically targeted towards naturally hazardous areas.

Policy 10L-16: Consider ~~establishing~~ important habitat areas (as set forth in best available science and Wildlife Advisory Committee recommendations) in the Purchase of Development Rights Program Guidelines site evaluation criteria. ~~as sending areas after creating a voluntary, workable transfer of development rights (TDR) program.~~

Rationale: This change reflects the shift away from a traditional TDR. It also recognizes that the existing PDR Program Guidelines "site evaluation" criteria include conservation values such as wildlife habitat.

Policy 10P-17: Consider establishing the Drayton Harbor Watershed as an area for directed PDR investments and encourage the cities of Blaine and Ferndale to establish density credit programs that provide funding to the County PDR program. ~~sending area when considering a transfer of development rights (TDR) program.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It also encourages a cooperative effort between the County and cities that would provide developer incentives in the cities while reducing development potential in the rural and/or agricultural areas of the Drayton Harbor Watershed.

**WHATCOM COUNTY
PLANNING COMMISSION**

**Density Credit Program
Comprehensive Plan Amendments**

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject proposal amends the following Chapters of the Whatcom County Comprehensive Plan:
 - a. Chapter 2 - Land Use;
 - b. Chapter 3 – Housing;
 - c. Chapter 8 – Resource Lands; and
 - d. Chapter 10 – Environment.
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on April 4, 2018.
3. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 21, 2018.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 26, 2018.
5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 29, 2018.
6. Notice of the Planning Commission hearing and that the proposal had been posted on the County website was sent to citizen, media, and others on the County's e-mail list.
7. The Planning Commission held a public hearing on the subject amendments on July 12, 2018.

Comprehensive Plan Approval Criteria

8. The criteria of Whatcom County Code (WCC) 22.10.060, shown below, must be satisfied in order to approve a comprehensive plan amendment.
 - a. The amendment conforms to the requirements of 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 a 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 upon the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.

Intergovernmental Coordination / Public Participation

9. Growth Management Act (GMA) planning goals are set forth in RCW 36.70A.020. The GMA citizen participation and coordination planning goal is to “Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts” (RCW 36.70A.020(11)).
10. The Whatcom County Council adopted a policy in the Comprehensive Plan in the 2016 update which included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.
11. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. This Work Group issued preliminary recommendations on Whatcom County Comprehensive Plan amendments on March 7, 2018.

Growth Management Act / County Comprehensive Plan

12. GMA planning goal # 1 is to “Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner” (RCW 36.70A.020(1)). Under the GMA, urban growth areas (UGAs) have been designated pursuant to RCW 36.70A.110.
13. GMA planning goal # 2 is to “Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development” (RCW 36.70A.020(2)).
14. GMA planning goal # 8 is to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses” (RCW 36.70A.020(8)).
15. GMA planning goal # 9 is to “Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities” (RCW 36.70A.020(9)).
16. The subject amendments insert the concept of a density credit program in the Whatcom County Comprehensive Plan.
17. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to access incentives specifically set forth in the zoning code.
18. The GMA also requires internal consistency within a comprehensive plan (RCW 36.70A.070).
19. Whatcom County Comprehensive Plan policies relating to urban growth include:
 - Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
 - Policy 3C-6: In UGAs, consider easing lot consolidation criteria, increasing density, and decreasing minimum lot sizes, in the interest of serving housing affordability.
 - Policy 3G-4: Allow development of smaller lots and creative options.
20. Whatcom County Comprehensive Plan goals and policies relating to development in rural and agricultural areas include:

- Goal 2DD: Retain the character and lifestyle of rural Whatcom County.
- Goal 8A: Conserve and enhance Whatcom County's agricultural land base for the continued production of food and fiber.
- Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

. . . Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

21. The Whatcom County Comprehensive Plan seeks to retain rural character and conserve agricultural lands. These goals and policies are primarily implemented through the Whatcom County Zoning Code, which restricts the uses and densities allowed in rural and agricultural areas. However, the County also adopted an "*Agricultural Purchase of Development Rights Program*" in 2002 (WCC 3.25A). The purpose of this program is:

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).
22. Whatcom County Comprehensive Plan Goal 2F is to "Make use of incentive programs that can effectively encourage achievement of land use goals." Policy 2F-3 is to "Revise regulations to include incentive programs."
23. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by seeking to concentrate urban levels of growth in UGAs, increase density, allow smaller lots, and provide creative options for developers in a UGA.
24. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing developer incentives to voluntarily contribute funds that would be utilized in the Agricultural Purchase of Development Rights Program, thereby helping to preserve rural character and agricultural lands.
25. In the past, the Agricultural Purchase of Development Rights Program has received matching funds (primarily from the federal government). Therefore, the potential exists to leverage additional matching funds with dollars from the new density credit program.

26. The subject amendments address a density credit program, providing incentive provisions that are entirely optional. A developer may choose to develop at the existing base densities allowed by a given zoning district. Alternatively, a developer may choose to utilize the incentives that allow increased land use intensity on a site through the purchase of density credits.
27. The subject amendments are internally consistent with the goals and policies of the Whatcom County Comprehensive Plan by promoting a voluntary program that would allow incentives, such as increased land use intensity, in designated areas while contributing to preservation of rural and agricultural lands.

County-Wide Planning Policies

28. Countywide Planning Policies include the following:
 - C-5 Urban Growth areas should be established in a way that preserves agricultural land, forestry, mineral resources, water resources, and critical areas. Urban growth shall maintain proper buffers from natural resource areas to minimize conflicts with natural resources and industries based on them.
 - D-4 Existing cities should absorb additional population at a range of densities appropriately responsive to the city's community vision before extending city Urban Growth Areas into areas where growth would adversely impact critical areas and resource lands. . .
 - D-5 All cities should grow in an efficient manner while maintaining their character and, where reasonable, shall provide for adequate open space between cities to prevent strip development.
 - D-6 Cities should be encouraged to provide positive incentives for in-fill.
 - E-2 Non-city urban growth areas, for already urbanized unincorporated residential areas shall be encouraged to infill in a way that will facilitate efficient provision of facilities and services consistent with the scale of development.
 - H-1 Adequate open space is vital to the quality of life and sense of place in Whatcom County. The county, cities, Port of Bellingham, and other appropriate jurisdictions should coordinate protection of linked greenbelts, within and between Urban Growth Areas, parks, and open space to protect wildlife corridors and to enhance recreational opportunities, public access and trail development.
 - H-3 The county and the cities shall encourage, to the extent it is feasible, separation of Urban Growth Areas through planning, zoning, development regulations, open space purchase, conservation easements and other mechanisms which may be appropriate. Also, an array of incentives such as density bonuses, design

flexibility and transferable development rights shall be offered to affected land owners.

I-9 The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.

29. The density credit policies would encourage increased densities in urban areas and contributions towards preservation of rural and agricultural lands.

Interlocal Agreements

30. Whatcom County and cities have interlocal agreements that address TDRs, PDRs, and in lieu fee programs. The subject amendments do not conflict with these interlocal agreements.

Further Studies/Changed Conditions

31. The Whatcom County TDR/PDR Multi-Stakeholder Work Group has been working on TDR, PDR, and density credit issues since 2017.
32. A preliminary recommendation of the TDR/PDR Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities.

Public Interest

33. The public interest will be served by approving the amendment.
- a. The density credit program would encourage development in UGAs, thereby potentially facilitating population growth in these areas as envisioned in the Comprehensive Plan.
 - b. Prior to actual development, review would be conducted to ensure that service providers are able to provide adequate services and public facilities.
 - c. The density credit program is intended to conserve designated agricultural lands, as envisioned in the Comprehensive Plan.

Spot Zoning

34. The subject Comprehensive Plan amendments do not include nor facilitate spot zoning.

CONCLUSIONS

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

RECOMMENDATION

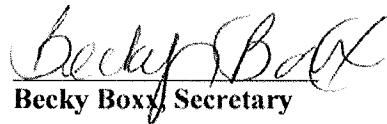
Based upon the above findings and conclusions, staff recommends approval of:

Exhibit A, Whatcom County Comprehensive Plan amendments.

WHATCOM COUNTY PLANNING COMMISSION



Nicole Oliver, Chair



Becky Boxy, Secretary

9/27/18
Date

9/27/18
Date

Commissioners present at the July 12, 2018 meeting when the vote was taken: Gary Honcoop, Stephen Jackson, Kimberly Lund, Jon Maberry, Natalie McClendon, Dominic Mocer, and Nicole Oliver.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 2. Motion carried to adopt the above amendments.

Planning Commission Exhibit A
is attached to the proposed Ordinance.

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

1

1 **Call To Order:** The meeting was called to order, by Whatcom County Planning
2 Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:30
3 p.m.
4

5 **Roll Call**

6 Present: Nicole Oliver, Natalie McClendon, Gary Honcoop, Dominic Mocerri, Stephen
7 Jackson, Jon Maberry, Kim Lund
8 Absent: Kelvin Barton, Atul Deshmane
9

10 **Staff Present:** Mark Personius, Matt Aamot, Becky Boxx
11

12 **Department Update**

13 Mark Personius updated the commission on the following:

- 14 • The County Council actions
- 15 • The Planning Commission schedule
16

17 **Open Session for Public Comment**
18

19 There was no public comment.
20

21 **Commissioner Comments**
22

23 There were no commissioner comments.
24

25 **Approval of Minutes**
26

27 June 14, 2018: Commissioner Jackson moved to approve the minutes as written.
28 Commissioner Lund seconded. The motion carried.
29

30 **Public Hearing**
31

32 File #PLN2018-00002: A proposal to insert the concept of a density credit program
33 into the Whatcom County Comprehensive Plan. A density credit program would allow
34 development incentives, such as increased land use intensity, in exchange for a
35 voluntary contribution towards preserving agricultural lands and open space. The
36 proposal would also delete many of the references to transfer of development rights
37 (TDRs) in the Comprehensive Plan.
38

39 Matt Aamot presented the staff report.
40

41 Some form of the Transfer of Development Rights (TDR) has existed, in the zoning
42 code, since 1982. In the 1990's and 2000's codes were enacted to try and get the TDR
43 program going but it never got off of the ground. 247 development rights have been
44 certified. Only 18 development rights have been transferred from one property to
45 another.
46

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

2

1 The county also has a Purchase of Development Rights (PDR) program that was
2 enacted in 2002. The PDR program's main source of local funding is the Conservation
3 Futures property tax. It is also eligible for federal and state matching funds. Over the
4 last 16 years 130 development rights have been purchased from agricultural and rural
5 lands and there are conservation easements on about 919 acres. The PDR program has
6 been more effective than the TDR program over the years.

7
8 The County Council adopted a new policy in the 2016 Comprehensive Plan update. It
9 says: convene a multi-stakeholder workgroup to review the existing TDR and PDR
10 programs and make recommendations for the future. This new policy specifically
11 mentions that cities would be represented on the work group as they are seen as
12 important partners in this process.

13
14 In February, 2017 the County Executive appointed 14 members to the work group,
15 representing a variety of interests. The work group has met 14 times, between March
16 2017 and June 2018. They have developed preliminary recommendations. They will
17 meet again, in the fall, after a summer break, in order to finalize those
18 recommendations.

19
20 One of the primary, preliminary recommendations of the work group is to transition
21 from a traditional TDR program, which has not worked that well in the past, to a
22 density credit program which would provide supplemental funding to the county's PDR
23 program.

24
25 Based upon this recommendation staff proposed a number of amendments to the
26 Comprehensive Plan which were reviewed by the work group in January and March. On
27 March 7th the work group gave preliminary approval to the draft Comprehensive Plan
28 policies.

29
30 What is a density credit program? It is a voluntary incentive program. There is no
31 obligation for a developer to use it. It is a method for developers or land owners to
32 acquire density bonuses or other incentives, in designated areas, without the need to
33 rezone. It would supplement existing funding for preservation of agricultural and rural
34 lands.

35
36 In 2017 the Planning Commission reviewed and the County Council approved the first
37 density credit zoning code provisions in the Birch Bay Resort Commercial zone. In that
38 zone a land owner could potentially increase the density, for single family
39 development, from 7 units per acre to 14 units per acre through the planned unit
40 development process if they purchase density credits. Each density credit purchased
41 would allow 1 additional dwelling unit on the property. In the county's Unified Fee
42 Schedule a fee was set of \$4000 per density credit.

43
44 A density program has several advantages. One of them is that developers know
45 upfront what the cost is and don't have to spend the time negotiating with TDR sellers.
46 The county can then use those funds on its highest priority preservation areas. Cash

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

3

1 can be used in the existing PDR program so we don't have to reinvent the wheel. The
2 potential exists to leverage matching funds from federal and state governments.

3
4 While the TDR/PDR workgroup recommends focusing on the density credit model in the
5 future, they also recommended retaining the existing TDR program. While it is not
6 used that often there are 247 certified rights, most of which have not been transferred.
7 The county would continue to recognize these rights.

8
9 Staff recommends approval of the proposed amendments.

10
11 Commissioner McClendon asked if there would be code amendments to go along with
12 the Comprehensive Plan amendments.

13
14 Mr. Aamot stated there will be zoning code amendments in the future. This is just the
15 first step of implementation.

16
17 Commissioner McClendon asked why the Planning Commission is having a hearing on
18 this now when the work group has not completed its recommendations.

19
20 Mr. Aamot stated because this proposal is part of the yearly Comprehensive Plan
21 docket. The review of this docket needs to be done by the end of the year. The work
22 group will not be meeting again until October which does not leave much time for the
23 commission to look at this later. The work group is fine with the commission looking at
24 it now.

25
26 The hearing was opened to the public.

27
28 Patrick Alesse, Whatcom County: Birch Bay is an area that is served by a water and
29 sewer district. Because the area has this it can grow densely. A lot of the Birch Bay
30 area is wetlands which is a resource that can't be built on. In Birch Bay it seems that
31 someone should be able to transfer a resource to someone else who wants to build at
32 Birch Bay. The money for development at Birch Bay should stay at Birch Bay to
33 perhaps build a park. There is an area near wetlands, about six acres, that someone is
34 planning on putting 46 units on. People have said that with the sea rise there can't be
35 that much density there. He should be able to sell his units and build at higher levels.
36 We have a situation where urban areas are sending its money resources to rural areas
37 which did not sit well with him.

38
39 The public hearing was closed.

40
41 Commissioner Honcoop asked how the cities will be integrated into this process.

42
43 Mr. Aamot stated the City of Bellingham already has a TDR/PDR program. They had
44 the first significant use of their TDR program, last year, on Telegraph Road. They had a
45 site that would allow 35 units and the developer purchased 48 additional units for
46 \$5,000 each. That money went to Lake Whatcom watershed preservation. The small
47 cities do not have any programs. The county does have interlocal agreements stating

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

4

1 the cities will work on this issue. The cities have had a somewhat cautious approach to
2 this. They have agreed to talk about it. Part of their concern is money leaving the city.

3
4 Ralph Black-local developer and chair of the work group: There will be some difficulty
5 meshing different city's priorities into the program. There are things the county can
6 directly influence the rest will be done through interlocal agreements. Bellingham is
7 most advanced in this process as they have been doing it for a while. They basically
8 have a cash-in-lieu-of program which works in conjunction with two different parts of
9 their program.

10
11 Mr. Aamot stated the county PDR administrator would like to integrate environmental
12 preservation and recreation into the program. Some of the cities like that idea of using
13 the money for trails, etc. near their jurisdictions.

14
15 Mr. Black stated a lot of the cities have urban growth areas (UGAs) where they have
16 not allowed extension of services without getting annexed. At one point Bellingham
17 allowed a TDR program by using density transfers as ways of extending services into
18 their UGA. There are other creative solutions that may benefit the small cities. The
19 GMA does not prohibit extending services outside of the UGAs provided you are
20 providing water at a rural service level.

21
22 Commissioner Lund stated the one advantage to the TDR program is it is less immune
23 to the economics of real estate prices whereas \$4000 is a set price.

24
25 Mr. Aamot stated the County Council set the price, based on recommendations of the
26 working group and the price can be changed, on an annual basis, if needed.

27
28 Commissioner Honcoop asked where staff sees this being used in the county.

29
30 Mr. Aamot stated they are hoping to work with the small cities. He sees it being used
31 in the Birch Bay UGA and also used for accessory dwelling units. Right now the size of
32 an accessory dwelling unit is 1, 248 square feet and it could be raised by 500 square
33 feet per unit if using density credits. Another requirement of accessory dwelling units is
34 that the landowner has to live in one of the units. An option is to delete this
35 requirement. Currently a maximum density in the R5A zone is five acres. This could be
36 reduced to 2.5 acres with density retired someplace else.

37
38 Commissioner Honcoop stated his concerns regarding the timing of this process as the
39 working group has not finalized their recommendations.

40
41 Commissioner Oliver asked how much funding has been spent on the PDR program and
42 how is it being monitored.

43
44 Mr. Aamot stated the County Council looks at the funds through the budget process.
45 The Conservation Futures fund takes in a bit over one million dollars per year. The
46 budget process breaks down what is spent every year.

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 12, 2018**

Regular Meeting

5

1 Mr. Personius stated the PDR administrator has been very successful in getting
2 matching funds to purchase properties so not as much county money is used.

3
4 Commissioner Oliver asked what other things the Conservation Futures money is used
5 for.

6
7 Mr. Personius stated the majority of it is used for parks.

8
9 **Commissioner McClendon moved to recommend approval of Exhibit A and the**
10 **Findings of Fact.**

11
12 **Commissioner Mocerri seconded.**

13
14 **Roll Call Vote: Ayes-Honcoop, Jackson, Lund, Maberry, McClendon, Mocerri,**
15 **Oliver; Nays-0; Abstain-0; Absent: Barton, Deshmane. The motion carried.**

16
17 File #PLN2018-00003: A proposal to repeal the Cherry Point Ferndale Subarea Plan,
18 which was adopted in 1981. The proposal would also amend related provisions in the
19 Whatcom County Comprehensive Plan and the Whatcom County Zoning Code.

20
21 Matt Aamot presented the staff report.

22
23 The Cherry Point/Ferndale Subarea Plan was adopted in 1981. At that time the new
24 Title 20 zoning would be applied to each subarea as it was adopted. When the county's
25 Comprehensive Plan was adopted, in 1997, it included text, goals and policies relating
26 to the Cherry Point industrial area. The Cherry Point UGA section of the Comprehensive
27 Plan was most recently updated in 2017. The area around Ferndale is also covered by
28 the subarea plan. The county's Comprehensive Plan contains text, goals and policies
29 relating to the Ferndale UGA. These were last updated in 2016. The subarea plan also
30 includes rural lands which have been subject to a high level of scrutiny because of
31 legal challenges to the county's rural element. These policies were updated in 2016.

32
33 The Growth Management Act (GMA) states that a comprehensive plan may include,
34 when appropriate, subarea plans, each of which is consistent with the comprehensive
35 plan. Subarea plans are optional under the GMA.

36
37 There are a number of inconsistencies between the subarea plan and the
38 comprehensive plan. The subarea plan's population projections go through the year
39 2000 whereas the comprehensive plan's projection goes through the year 2036. The
40 subarea plan had a 15 year planning horizon, which has ended. The comprehensive
41 plan has 2036 planning horizon.

42
43 The GMA was adopted in 1990 and required counties to designate UGAs for the first
44 time. The subarea plan was adopted in 1981, before the GMA criteria were enacted.
45 The subarea plan included urban reserves and they don't match the current
46 comprehensive plan.

Density Credit Comprehensive Plan Amendments

Whatcom County Planning and Development Services
Presentation at County Council's Planning & Development Committee
October 23, 2018

I. Background Information

II. Proposed Comp Plan Amendments

III. Conclusions

I. Background Information



Existing TDR Program

- TDR Program Established: 1982
- TDRs Certified: 247
- TDRs Transferred: 18

Existing PDR Program

- PDR Program Established: 2002
- Development Rights Purchased: 130
- Acres: 919

County Comp Plan – 2016 Update

- Convene Multi-Stakeholder Work Group
- Review current TDR and PDR programs
- Make policy recommendations

TDR / PDR Work Group

Ralph Black

Jori Burnett

Chris Behee

Michael Jones

Rollin Harper

Dave Timmer

Bill Henshaw

Betty Sanchez

Myrle Foster

Phil Thompson

Steve Powers

Rod Erickson

Karlee Deatherage

Rud Browne

TDR User (Chair)

City of Ferndale (Vice-Chair)

City of Bellingham

City of Blaine

Cities of Everson, Nooksack, and Sumas

City of Lynden

Building Industry

Realtors

Rural Property owner

Economist

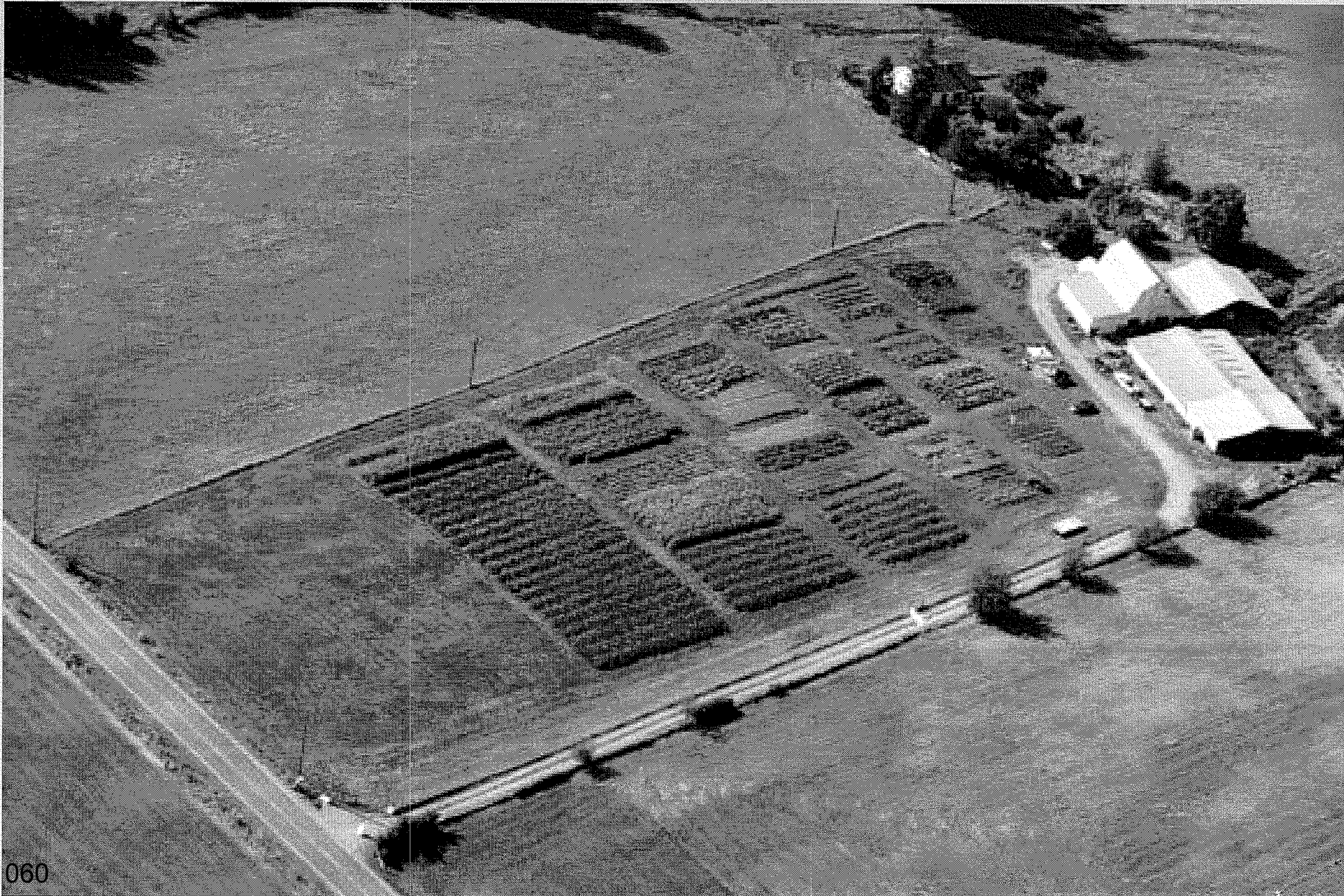
Affordable housing

Agriculture

Environmental

County Council Member

Work Group Recommendation



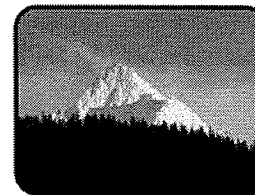
II. Proposed Comp Plan Amendments

Whatcom County Comprehensive Plan

Adopted August 9, 2016
Whatcom County Planning and Development Services



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What is a Density Credit Program?

- Voluntary – Developers may choose to develop under current zoning or purchase density credits.
- Density – Developers can access incentives such as increased density in designated areas.
- Ag Preservation – Any funding raised through the density credit program will go into the existing PDR program.

Birch Bay Example (2017)

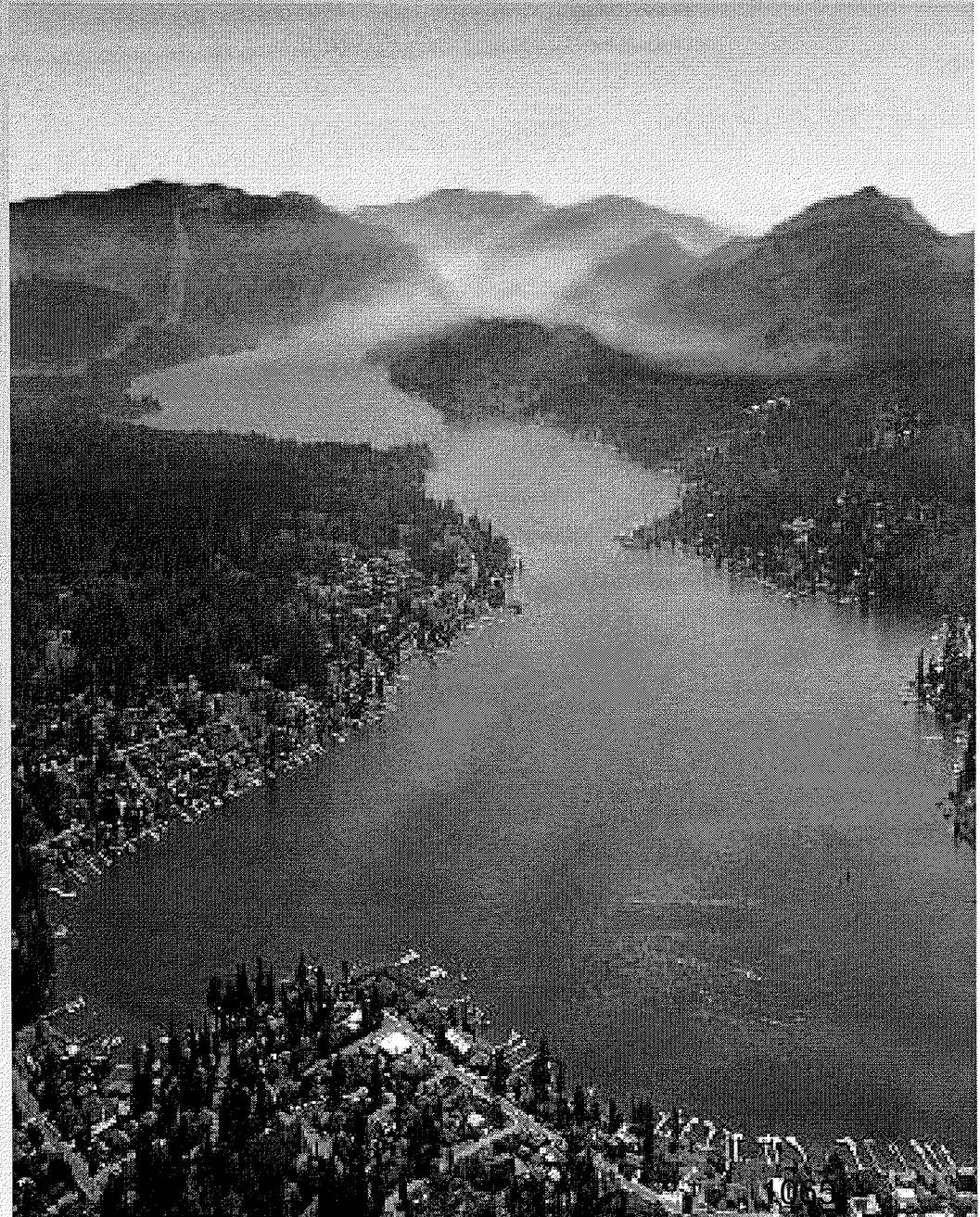


Density Credit - Advantages

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities;
- The cash can be utilized in an existing PDR program; and
- Simplifies administration of the program.

The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs
by Nelson, Pruetz, and Woodruff (2012)

Keeping TDR Program



III. Conclusions

Whatcom County TDR/PDR Multi-Stakeholder Work Group

Final Report

October 3, 2018

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1. Introduction

Whatcom County has an important interest in protecting agricultural lands, rural areas, and sensitive watersheds throughout the county. Protection of these areas benefits all County residents, including those living in cities. At the same time, cities have the responsibility to plan for future growth in their communities, providing adequate land and densities to accommodate urban growth over the 20-year planning period. These city planning efforts, intended to attract the majority of population growth into urban areas, also benefit the County as a whole. County and city planning efforts must be coordinated and consistent under the Growth Management Act or GMA (RCW 36.70A.100).

Agricultural and Rural Lands

Agriculture has been an important component of the Whatcom County economy for a long time and remains so today. The *Preliminary Assessment of Drivers of Agricultural Land Conversion in Whatcom County Washington* report (Aug. 2016, hereinafter referenced as "*Drivers of Agricultural Land Conversion* report") states:

. . . The county has always been a leader in agricultural products with dairy being the mainstay. Whatcom is the sixth largest agriculture county in Washington and ranks in the top 3% out of 3,065 U.S. agricultural counties. The 2012 Census of Agriculture shows that 1,702 Whatcom farms representing 115,831 acres produced 357 million dollars of agricultural goods, an average of nearly \$210,000 per farm. . . (pp. 14-15).

The GMA requires counties to designate and conserve agricultural lands of long-term commercial significance (RCW 36.70A.060 and .170). The Whatcom County Comprehensive Plan designates almost 86,000 acres of Agriculture land, most of which is in the central and northern areas of the County. The Comprehensive Plan indicates the purpose of the Agriculture designation is:

To recognize and promote agriculture in Whatcom County and protect prime agricultural soils and productive agricultural lands from conversion to other uses. To prevent conflicts between residential and agricultural uses (p. 2-90).

Designated Agriculture land is located adjacent to five of the seven cities in Whatcom County (Everson, Ferndale, Lynden, Nooksack, and Sumas).

The GMA also requires county comprehensive plans to include rural land use designations to protect rural character (RCW 36.70A.070(5)). Approximately 38,000 acres in the Rural one dwelling/five acres (R5A) and Rural one dwelling/ten acres (R10A) zones, which constitute almost 1/3 of these zoning districts, are actively farmed (*Drivers of Agricultural Land Conversion* report, p. 16). While agriculture is one valued component of rural lands, there are also other factors that make rural lands valuable to County residents. In fact the Whatcom County Comprehensive Plan addresses multiple factors in the purpose of the Rural designation, which is:

To provide opportunity for a variety of low-density residential development including cluster development with the flexibility to practice farming or forestry, or operate a home occupation or cottage industry; to retain a sense of community. Also to encourage agriculture and forestry activities through the use of incentives (p. 2-90).

Maintaining agricultural lands and rural character are both important to the quality of life and sense of place in Whatcom County.

Watersheds

Lake Whatcom is the drinking water source for approximately 100,000 people, many of whom live in Bellingham (<http://www.whatcomcounty.us/984/Lake-Whatcom-Management>). The Lake also provides swimming, fishing, and boating opportunities for both City and County residents, along with fish and wildlife habitat. The majority of the 36,000 acre watershed is located within unincorporated Whatcom County. Therefore, both the City of Bellingham and Whatcom County have important interests in preserving Lake Whatcom water quality by managing land use in the watershed.

The City of Blaine is located on Drayton Harbor. The Drayton Harbor Watershed is over 36,000 acres. The watershed includes a relatively large area in the City of Blaine, a smaller area in the City of Ferndale, rural lands, and agricultural lands. The Whatcom County Comprehensive Plan states:

Both the County and the City of Blaine are concerned about water quality in Drayton Harbor. Drayton Harbor has a rich history as a shellfish resource. Studies have shown that fecal coliform levels in Drayton Harbor are high and have led to the closure of shellfish harvesting beds. Harvest has been restricted due to fecal pollution since 1952 with closures beginning in 1988. In 1995 the Drayton Harbor Shellfish Protection District was established. Drayton Harbor was entirely closed to commercial shellfish harvest in 1999. In 2004, 575 acres were upgraded to conditionally approved with closures occurring after heavy rainfall. Currently the conditionally approved portion is closed from November through February. Several waterbodies in the watershed are on the 303(d) list, including California and Dakota Creeks. In 2007, the County adopted an update to the Drayton Harbor Shellfish Protection District Recovery Plan. This plan reflects the success of reopening some areas for shellfish harvesting in 2004 and outlines future plans for Drayton Harbor restoration. In 2014, the City initiated a three-year project intended to identify point and nonpoint sources of pollution and take corrective action. . . Land uses throughout the watershed contribute to water quality in the Harbor and efforts by both the County and the City are necessary to manage water quality (p. 2-28).

Both the City and the County have important interests in preserving Drayton Harbor water quality by managing land use in the watershed.

City Planning / Urban Growth

The GMA states that the county must “. . . designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. . .” (RCW 36.70A.110(1)). Additionally, the Whatcom County Comprehensive Plan’s vision statement indicates:

Whatcom County is a place where urban growth is concentrated in urban areas, where there is a distinct boundary between urban and rural uses, where agricultural use is encouraged, and where resource lands and water resources are protected. Rural areas are peaceful and quiet with less traffic and congestion than in urban areas. There is low-density development with open spaces allowing for privacy. A sense of community is retained and local input is considered in land use decisions (p. 2-1).

Whatcom County and the cities worked in close cooperation and coordination in the 2016 comprehensive plan updates. The County and cities jointly agreed on population growth allocations to the cities and the remainder of the County, which were incorporated into the Whatcom County Comprehensive Plan by Ordinance 2016-034. Finding 44 of this ordinance states:

The population growth allocations to the UGAs total 58,433 additional people over the planning period (which equates to approximately 84% of countywide population growth). The population growth allocation to the remainder of the county, outside UGAs, totals 11,217 additional people (which equates to approximately 16% of the countywide population growth).

Funneling urban growth into the cities is not only required by the GMA, but also helps preserve agricultural, rural, and environmental areas in unincorporated Whatcom County. Therefore, the cities and Whatcom County have an important shared interest in encouraging growth inside city limits and other urban growth areas (UGAs).

Existing TDR and PDR Programs

The County has an existing transfer of development rights (TDR) program and purchase of development rights (PDR) program. The TDR program is intended to move development rights from the Lake Whatcom Watershed and sensitive environmental areas in the Birch Bay area to urban locations that are more appropriate for growth. The PDR program purchases development rights from agricultural and rural lands and retires these rights in order to reduce development in these areas. The PDR program is funded by a combination of local dollars and grants. The main source of local funding for the PDR program is the Conservation Futures tax. However, Conservation Future funds are also used for park land and other conservation projects. The existing TDR and PDR programs are discussed in more detail later in this report.

Whatcom County Comprehensive Plan Policy 2A-14

The Whatcom County Council adopted the Comprehensive Plan update in August 2016 (Ordinance 2016-034). New Comprehensive Plan Policy 2A-14 includes convening a multi-stakeholder work group tasked with:

- Reviewing the current TDR and PDR programs.
- Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.
- Identifying opportunities and solutions for creating a workable TDR program.
- Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.
- Recommending policy and regulatory amendments necessary to implement the above policy.
- Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.
- Identifying receiving areas.
- Identifying other factors and/or growth management tools.
- Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.
- Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.

The Whatcom County Executive originally appointed the Whatcom County Transfer of Development Rights (TDR)/Purchase of Development Rights (PDR) Multi-Stakeholder Work Group in February 2017. Members of the Work Group are shown below:

Ralph Black	TDR User (Chair)
Jori Burnett	City of Ferndale (Vice-Chair)
Chris Behee	City of Bellingham
Michael Jones	City of Blaine
Rollin Harper	Cities of Everson, Nooksack, and Sumas
Dave Timmer	City of Lynden
Bill Henshaw	Building Industry
Betty Sanchez	Realtors
Myrle Foster	Rural Property owner
Phil Thompson	Economist
Steve Powers	Affordable housing
Rod Erickson	Agriculture
Karlee Deatherage	Environmental
Rud Browne	County Council Member

Former Members: Brad Rader and Steven Globerman

The Work Group met from March 2017 to October 2018. The primary recommendation of the Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other appropriate areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program. The Work Group's full recommendations are set forth in Section 12 of this report.

2. Current TDR Program

The Growth Management Act (GMA), originally adopted by the state legislature in 1990, states "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights" (RCW 36.70A.090). The Whatcom County Comprehensive Plan contains a number of policies relating to TDRs, including:

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as cluster density bonuses in urban growth areas, purchase of development rights, *transfer of development rights*, and tax deferrals.

Policy 8A-2: . . . Measures that can be taken to support working farms and maintain the agricultural land base should include . . . A workable *transfer of development rights program (TDR)* in which the development potential of a site could be transferred to another location where development is more favorable. . .

Whatcom County has adopted a series of ordinances relating to transfer of development rights over the last 35 years. These include:

- Ordinance 82-58 – The County adopted new Chapter 20.89, entitled "Density Transfer Procedure," in the Title 20 Zoning Ordinance in 1982. This code allowed increased multi-family densities when development rights were transferred from undeveloped single family lots or multi-family tracts. These provisions, which were adopted soon after approval of the Lake Whatcom Subarea Plan, were originally applied within Sudden Valley.
- Ordinance 97-046 – The County adopted a new Urban Residential - Mixed (URMX) zoning district in association with the Urban Fringe Subarea Plan update in 1997. The URMX zone was designated as a TDR receiving area in the Bellingham UGA. Development rights could be voluntarily transferred to increase the density allowed in the URMX zone.
- Ordinance 99-087 – Chapter 20.89 underwent a significant re-write and the Lake Whatcom Watershed was officially designated as a "sending area" in 1999.
- Ordinance 2004-044 - Several sections of the County Code were amended in 2004 to require TDRs for urban growth area expansions and rezones that increased residential density. However, there were several exceptions to these mandatory provisions, including requests initiated by a government agency.
- Ordinance 2005-002 - The Official Whatcom County Zoning Map was amended in 2005 to establish sending areas in the Birch Bay area.

At the current time, there are two main categories of TDR provisions in the Whatcom County Code (WCC): Optional provisions and mandatory provisions. These are addressed below.

Optional TDR Provisions

The County Zoning Code allows land owners to increase development in certain urban zones by transferring density from areas where County policy seeks to reduce development potential. These provisions are strictly voluntary. Developers may utilize these provisions, but are not required to use them.

Bellingham UGA - Urban Residential Mixed (URMX) Zoning District. The URMX zoning has a number of different densities including 6-10 dwellings/acre and 6-12 dwellings/acre. The lower density figure can be obtained if public water & sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and development rights are transferred from the Lake Whatcom Watershed. Each development right transferred from the Lake Whatcom watershed may be used to develop three additional dwelling units in the URMX zone (WCC 20.24.252). An example is provided below to illustrate how this could work in the URMX (6-12) zone. The example assumes a 20 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URMX (6-12)

Gross Acres	20
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	10
Units/Net Developable Acre (without using TDRs)	6
Total Units (without using TDRs)	60
Units/Gross Acre (using TDRs)	12
Total Units (using TDRs)	240

In the example above, 60 dwelling units could be constructed on the hypothetical 20 acre site in the URMX (6-12) zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 240. URMX zones only exist in the Bellingham UGA. However, Bellingham generally does not extend public water and sewer outside city limits. The maximum density in the UGA, outside city limits, is one dwelling/10 acres when public water and sewer are not available. Therefore, the URMX zone does not function well as a TDR receiving area.

Birch Bay UGA - Urban Residential Medium Density (URM-24) Zoning District. The URM-24 zoning allows 10 to 24 dwellings/acre. The lower density figure can be obtained if public water and sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and

development rights are transferred from the sending areas in the Birch Bay area or the Lake Whatcom Watershed. Each development right transferred may be used to develop three additional dwelling units in the URM-24 zone (WCC 20.22.252). An example is provided below to illustrate how this could work in the URM-24 zone. The example assumes a 40 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URM-24

Gross Acres	40
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	20
Units/Net Developable Acre (without using TDRs)	10
Total Units (without using TDRs)	200
Units/Gross Acre (using TDRs)	24
Total Units (using TDRs)	960

In the example above, 200 dwelling units could be constructed on the hypothetical 40 acre site in the URM-24 zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 960. This constitutes 760 additional dwelling units that could theoretically be added through the TDR program (at a 3:1 ratio, 254 development rights would have to be purchased to gain 760 more dwelling units). In this example, the gross density would be 24 units/acre (960 units/40 gross acres), but the net density would be 48 units/acre (960 units/20 net acres). It should be noted that the only URM-24 zone in the County is located in the Birch Bay UGA. Public water & sewer are generally available in the Birch Bay UGA and multi-family development is allowed in the URM-24 zone. However, an analysis of subdivisions and short plats conducted during the 2016 UGA review found that achieved net densities in the Birch Bay UGA averaged 5.9 dwellings/net acre (2004-2013). Additionally, wetlands will impact the extent to which future development can occur in the URM-24 zone. Given past development trends, and the critical areas present in the receiving zone, it may be unrealistic to expect the area to develop at the maximum density allowed by zoning with TDRs.

The Whatcom County Zoning Ordinance states:

A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Whatcom County planning and development services department. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel shall be certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. . . (WCC 20.89.061).

A total of 247 development rights have been certified for transfer in Whatcom County. Only 18 of these development rights have actually been transferred.

Mandatory TDR Provisions

The Whatcom County Code contains provisions that require utilization of TDRs under certain circumstances. If these conditions are met, then it is mandatory to transfer development rights.

Urban Growth Area Expansions - Proposed urban growth area expansions are required to acquire development rights from a designated TDR sending area at a ratio of one development right for every five acres added to the UGA (WCC 20.89.051(3)). These provisions, which were originally adopted in 2004 in Ordinance # 2004-044, contain several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Urban growth area expansions initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served are also exempt from the TDR requirement.

Rezones in Urban Growth Areas - Proposed rezones that would increase residential density in urban growth areas are required to acquire development rights from a designated TDR sending area (WCC 20.89.051(2)). These provisions, which were also adopted in 2004 in Ordinance # 2004-044, require one development right to be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. However, as with UGA expansions, there are several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Rezones initiated by a government agency, rezone correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that are intended to make a nonconforming use a conforming use or rezones where the public interest is served are also exempt from the TDR requirement.

Although these mandatory requirements were adopted in 2004, they have not resulted in transfer of any development rights to date. This is primarily due to the fact that cities requesting UGA expansions are exempt from the TDR requirements.

3. Current PDR Program

Whatcom County Comprehensive Plan Policy 8A-2 is to:

Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

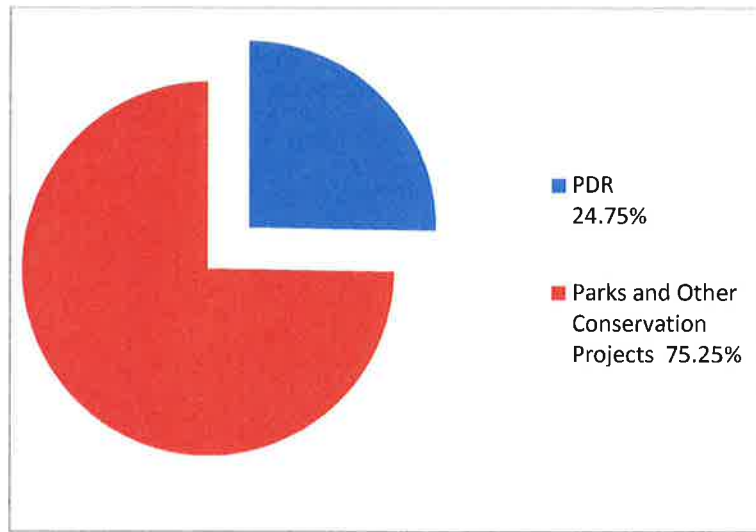
- . . . Maintaining a *Purchase of Development Rights (PDR)* program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

In 1992, the County established the Conservation Futures Property Tax Levy and Fund (Ordinance 92-002, now codified as WCC 3.25). This County Code states ". . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation" (WCC 3.25.010). As of 2018, the Conservation Futures tax rate is just under four cents per \$1,000 assessed valuation (*Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County*, Whatcom County Assessor). The revenue from the fund:

. . . shall be used solely to acquire rights and interests in open space land, farm and agricultural land, and timber land . . . so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use or enjoyment . . . (WCC 3.25.030).

Approximately \$1.1 million in Conservation Future taxes will be collected from County and city land owners in 2018. Additionally, as of the beginning of 2018, the Conservation Futures fund balance was about \$3.6 million. The fund is used for PDR easement purchases and acquisition/maintenance of parks and other conservation projects, as shown below.

Use of Conservation Futures Tax (2002-2017)



In 2001, the Whatcom County Council approved Resolution 2001-049 *In Support of Expenditures from Conservation Futures Fund to Acquire Property Interests in Agricultural Land for Strategic Conservation Purposes*. This Resolution recognized that productive farms have long served and still serve as a crucial component of the economic and cultural life of Whatcom County. The Resolution also stated:

. . . The Council commits itself to expend a fair and significant share of the Conservation Futures Funds for acquiring interests in agricultural lands;

. . . a Purchase of Development Rights Steering Committee be created by the Executive with the charge of developing a PDR program for Whatcom County in concert with the Whatcom County Agriculture Advisory Committee. . .

The Purchase of Development Rights Steering Committee issued its recommendations in May of 2002. The Whatcom County Council adopted the "Agricultural Purchase of Development Rights Program" (WCC 3.25A) in September 2002 under Ordinance No. 2002-054. This Ordinance stated that "Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens." The purpose of the PDR Program is:

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).

The *Whatcom County Agricultural Purchase of Development Rights Program Guidelines* (revised April 2013) provide the rules and procedures for operating the PDR Program. Properties must be in the Agriculture or Rural zoning districts to be

eligible for the PDR Program. The Guidelines provide five site selection criteria to guide the review of eligible properties:

- Land Evaluation (relating to soil characteristics);
- Site Evaluation (parcel size, # of development rights, % of parcel actively farmed, etc.);
- Special Considerations (historical significance, views, wetlands, wildlife habitat, etc.);
- Bargain Sale Opportunity (offer below market value);
- Bonus Points (sites in target or rural study areas).

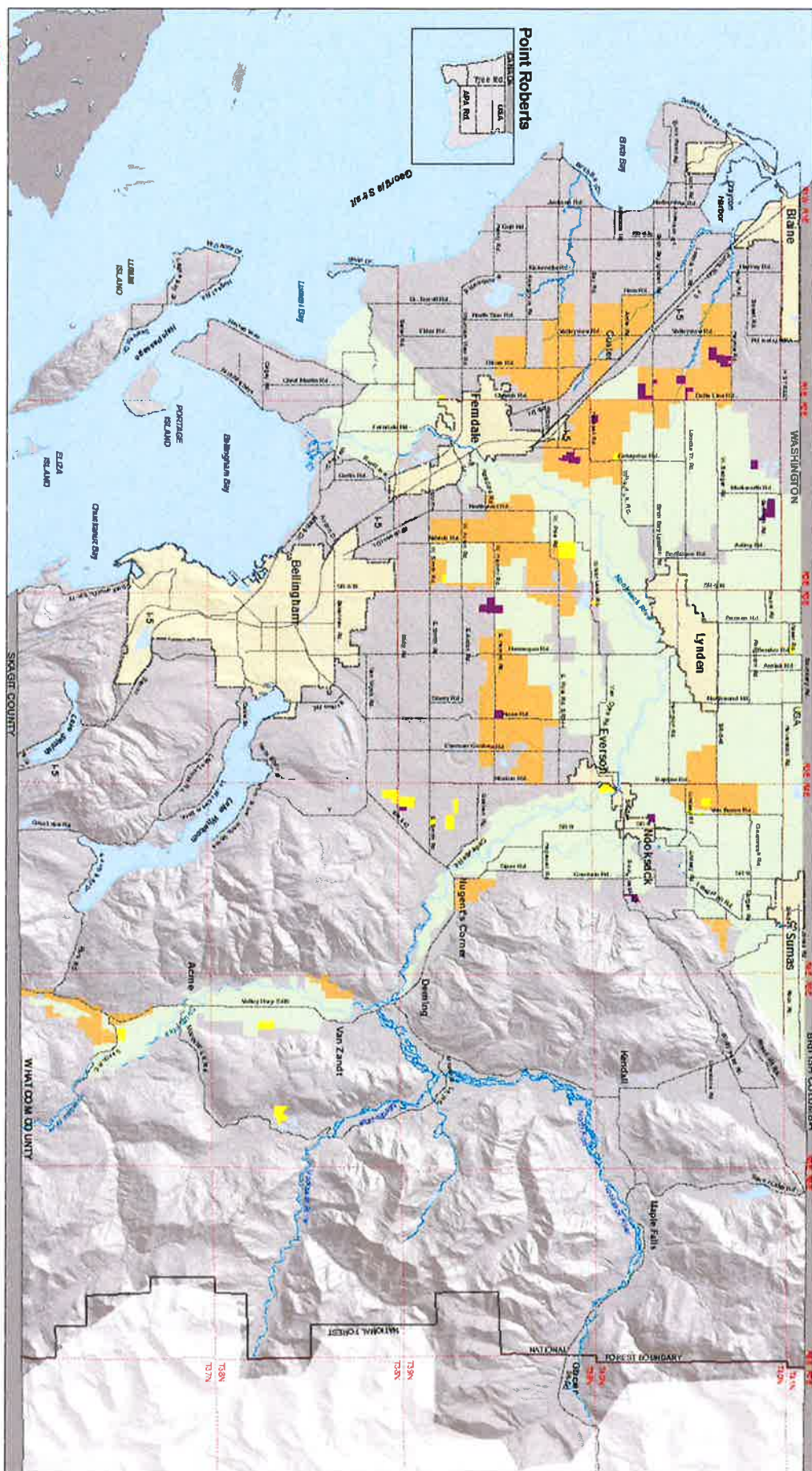
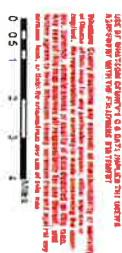
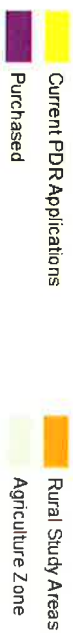
Staff ranks the applications, with review and adjustments by the PDR Oversight Committee. If the County Council approves the application, the County pays the land owner fair market value for the development rights, a conservation easement is placed on the land restricting future development, and the farmer continues agricultural practices on the land.

Since creation of the PDR Program, the County has purchased 130 development rights on 919 acres in the R5A, R10A, and Agriculture zoning districts. The total price tag has been approximately \$6.1 million. The County has spent more than \$3.2 million from the Conservation Futures Fund to purchase these development rights. The other \$2.9 million has come primarily from the U.S. Department of Agriculture (with relatively small shares from the state and a local non-profit organization). Agricultural conservation easements that the County has already purchased, along with current PDR applications, are shown on the map below.



Whatcom County

- Purchase of Development Rights 2018



4. Current Sending and Receiving Areas

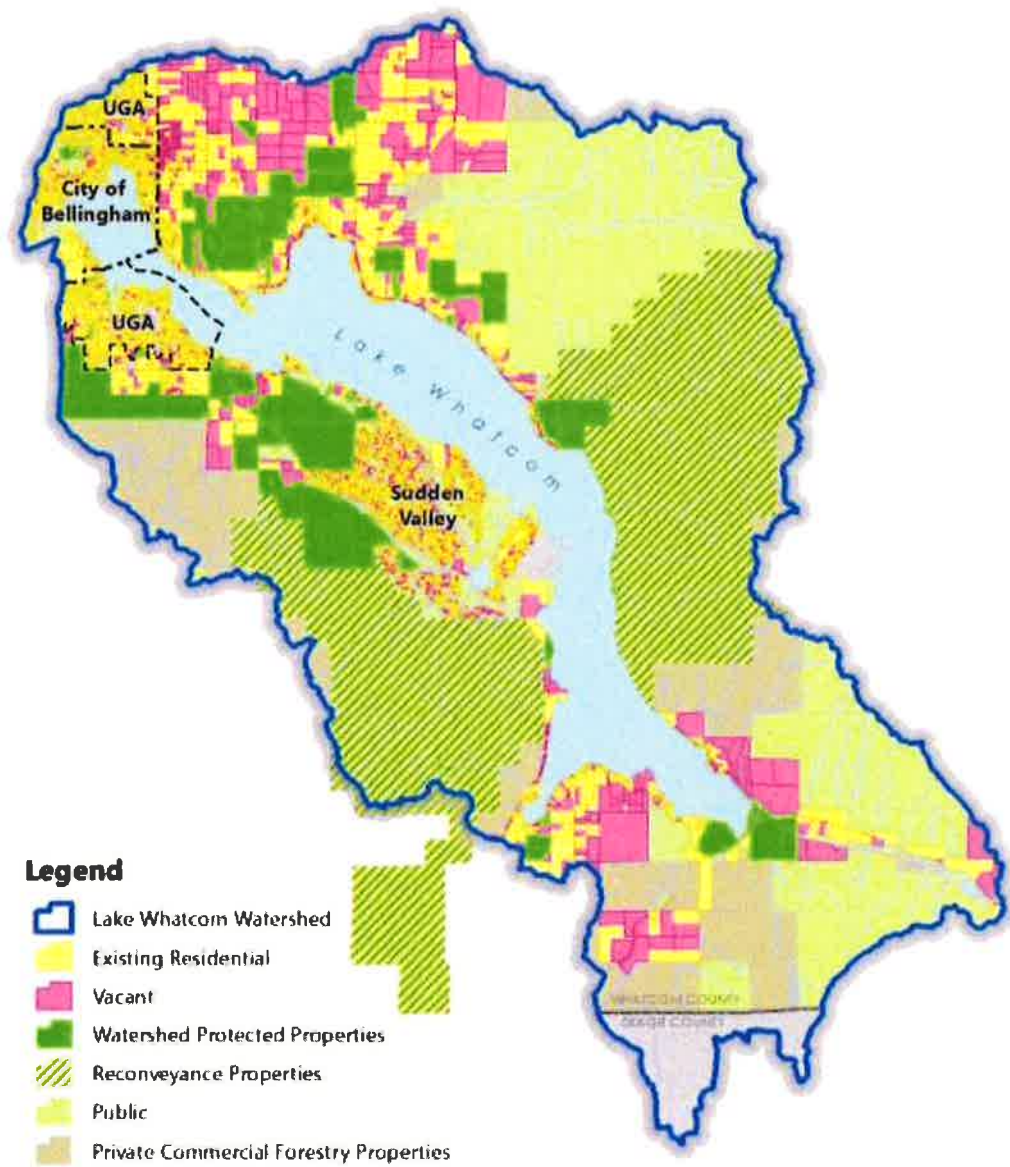
Lake Whatcom / Bellingham

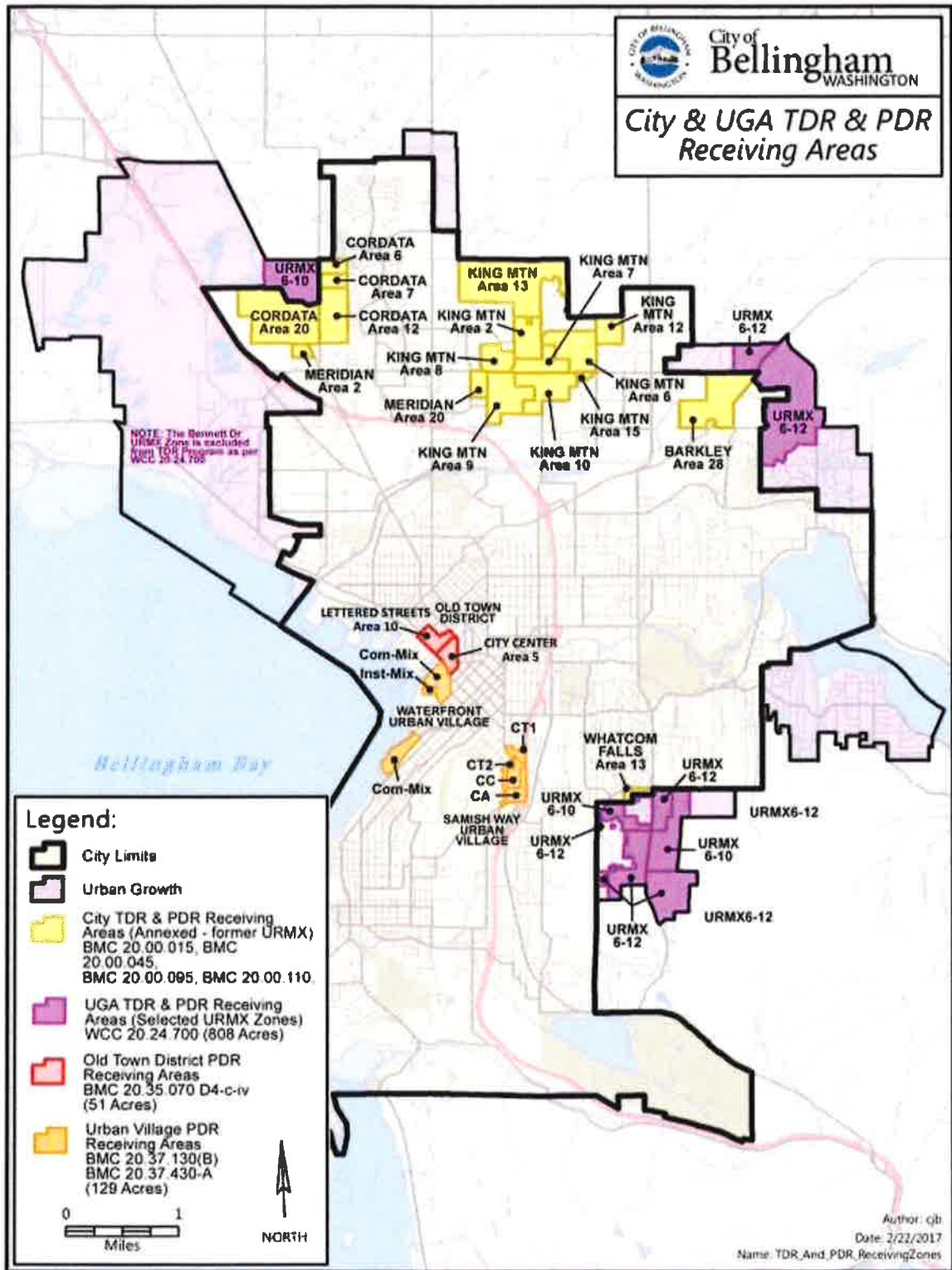
In 1997, the Whatcom County Council adopted a new Urban Residential - Mixed (URMX) zoning district, which served as a TDR receiving area in the Bellingham UGA (Ordinance 97-046). In 1999, the Lake Whatcom Watershed was designated as a TDR sending area (Ordinance 99-087). Only development rights from the Lake Whatcom Watershed sending area may be transferred to receiving areas within the Bellingham UGA (WCC 20.89.052(1)).

WCC 20.89.051(4) states "In cooperation with Whatcom County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purposes of receiving transferred densities pursuant to this chapter." The City of Bellingham has designated TDR receiving areas to accommodate development rights from the Lake Whatcom Watershed (including unincorporated portions of the Watershed).

There are an estimated 1,631 development rights in the Lake Whatcom Watershed that could, potentially, be transferred to receiving areas. The receiving areas within the City of Bellingham have an estimated capacity to accommodate up to 6,801 development rights from Whatcom County's TDR program or up to 7,378 development rights from Bellingham's PDR program. Additionally, once annexed, the URMX zones in the Bellingham UGA could accommodate an estimated additional 2,565 development rights from TDRs and/or PDRs. The capacity estimates for both sending and receiving areas were generated by City of Bellingham Planning staff utilizing 2017 property ownership, zoning, and permit system data.

Lake Whatcom Sending Area





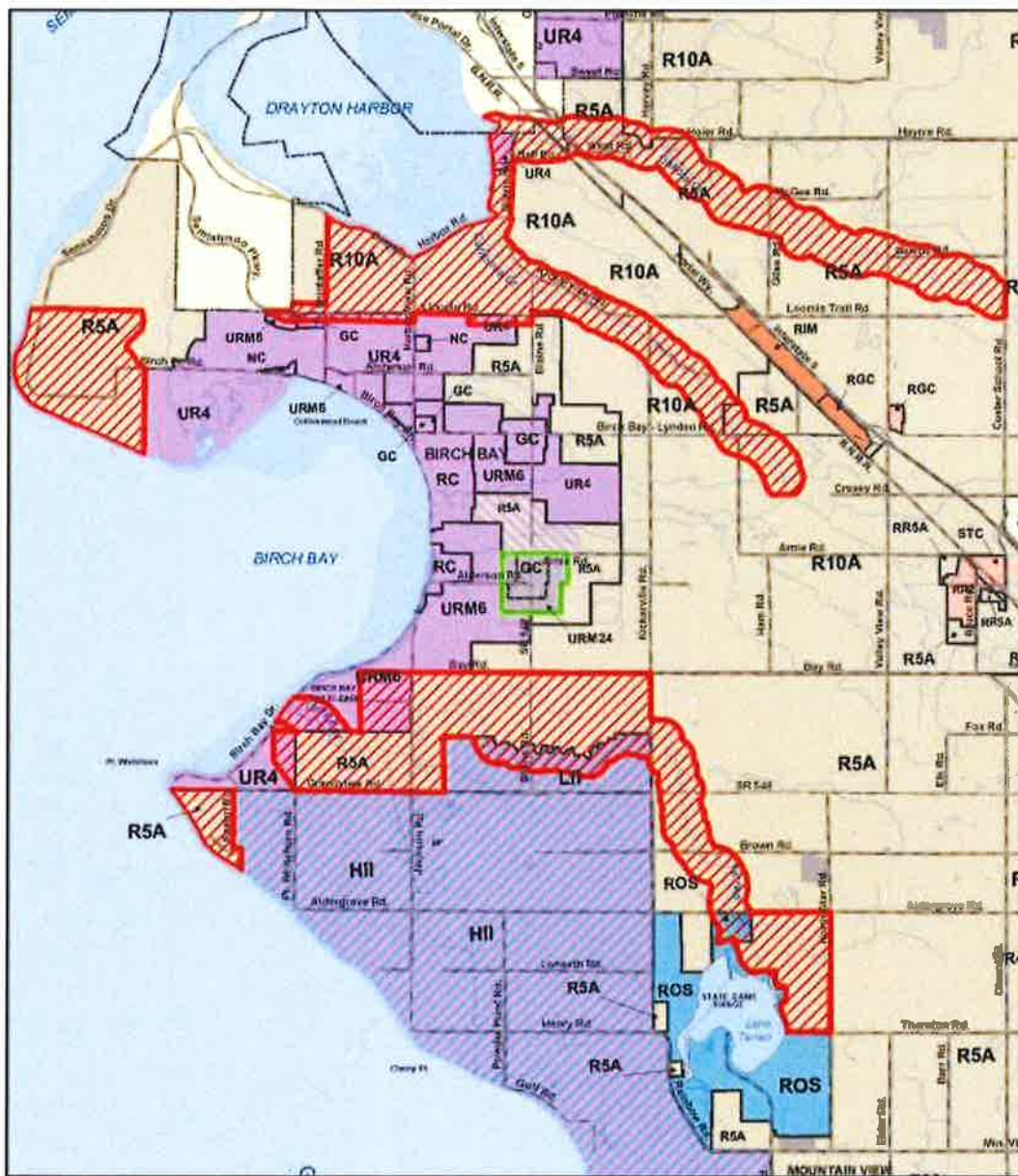
Small Cities

The cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas have not adopted TDR receiving areas.

Birch Bay

In 2005, the Official Whatcom County Zoning Map was amended to establish sending areas in the Birch Bay area (Ordinance 2005-002). Development rights from any sending area (Birch Bay or the Lake Whatcom Watershed) may be transferred to the receiving area within the Birch Bay UGA (WCC 20.89.052(2)).

There are approximately 703 potential development rights that could be transferred out of Birch Bay sending areas. The Birch Bay receiving area could theoretically accommodate 1,858 additional dwelling units if TDRs are utilized. However, the site would have to be developed at 24 dwellings/gross acre and critical areas exist on portions of the receiving area. Therefore, it may be unrealistic to expect that the Birch Bay receiving area will develop at the maximum density allowed by the zoning. In other words, this receiving area may not accommodate the full 1,858 additional dwellings allowed through the TDR program.



Birch Bay Area TDR Sending and Receiving Areas Legend

- TDR Sending Areas
- TDR Receiving Area

THIS MAP IS A PRELIMINARY DRAFT AND IS NOT A FINAL PRODUCT. THE USER'S RESPONSIBILITY IS TO VERIFY THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP.

Whitcomb County is a member of the North Carolina Statewide Geographic Information System (GIS). The information on this map is derived from the GIS. The user's responsibility is to verify the accuracy of the information shown on this map. The user's responsibility is to verify the accuracy of the information shown on this map.

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5. **Barriers to Effective TDR and PDR Programs**

Transfer of Development Rights Program

There are a number of barriers to an effective TDR program in Whatcom County. Identified barriers are set forth and discussed briefly below.

TDR Barrier # 1 – Lack of Market Demand for Higher Densities

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* (January 2009) was prepared by Property Counselors for the City of Bellingham. This report states:

. . . new subdivisions are being developed at densities below the base densities under current zoning. Developers are forgoing development rights they are already entitled to; they are not likely to pay for additional rights. . . (p. 4).

. . . The demand for development at different densities determines the degree to which a TDR program will provide an incentive to developers. If higher densities create value, a developer will be willing to spend a portion of that value in return for the density. . . (p. 12).

. . . existing areas in the UGA are not being built out to their theoretical maximum densities, it does not seem that there will be any significant demand for TDRs in the annexation areas in the next decade . . . (p. 14).

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* indicates that, as of 2009, builders were not building to the maximum density allowed by the zoning and, therefore, had no need to purchase development rights to achieve higher densities (pp. 4, 5, 12, 19, and 24). Between 1999 and 2008, the URMX zone in the Bellingham UGA built out at 43% of maximum capacity allowed by zoning (p. 13). Lack of demand is an important factor explaining why the TDR program isn't working well (pp. 4 and 19).

Since 2008, cities have generally increased allowed residential densities, which is in accordance with the Whatcom County Comprehensive Plan (e.g. Goal 2P and Policy 2N-5). At the current time, development is generally at or below maximum densities allowed by city zoning. Therefore, there is minimal demand to increase densities above the base densities allowed by existing zoning.

There is also a sense that, in some areas, the easy to develop land has already been built upon and that site conditions in remaining areas may not lend themselves to higher densities.

TDR Barrier # 2 – Lack of Relevant Incentives

The primary incentive for a developer to use the TDR program in the Whatcom County Zoning Code is the assumed ability to meet market demand, and thereby earn additional returns, through increased residential density. However, in order to meet market demand, land is often developed at densities at or below those allowed by zoning. Therefore, increasing residential densities has not provided a large incentive to entice developers to utilize the TDR program.

There are other incentives for using TDRs in the Whatcom County Zoning Code:

- Fee reductions (WCC 20.89.072);
- Landscaping requirement reductions (WCC 20.89.073);
- Increased lot coverage (WCC 20.89.073); and
- Lot size, lot width, setback, and parking modifications in subdivisions (WCC 20.89.090).

The County Zoning Code does not allow for increased building height or increased floor/area ratios for commercial buildings as an incentive for using TDRs at the current time.

Neither increased residential densities nor the other existing incentives have provided developers with sufficient opportunities to derive adequate profits to undertake the added risks associated with using the TDR program. Therefore, additional new incentives should be considered.

TDR Barrier # 3 – Limited County TDR Receiving Areas

The following TDR receiving areas have been designated in unincorporated Whatcom County:

- Receiving areas in the Bellingham UGA (outside city limits); and
- A receiving area in the Birch Bay UGA.

Bellingham UGA - The URMX receiving areas in the Bellingham UGA, outside city limits, can only be developed with urban residential densities if public water and sewer are available. City of Bellingham Municipal Code 15.36.010 generally prohibits extension of water and sewer outside city limits (see Ordinance 2011-05-025). Therefore, the Bellingham UGA does not provide effective TDR receiving areas at the current time.

Birch Bay UGA – The Birch Bay UGA has a URM-24 zone that is designated as a receiving area. Birch Bay generally has public water and sewer and this zoning district can accommodate both single family and multi-family dwellings. The URM-24 zone requires a minimum density of 10 dwelling units/net acre, which is above achieved densities for subdivisions in the Birch Bay UGA (2004-2013). Additionally, this receiving area would have to be developed at 24 dwellings/gross acre to accommodate the entire 1,858 dwelling units potentially available through the TDR

program. In light of recent achieved densities and critical area constraints, it may be unlikely that such a density would be developed.

TDR Barrier # 4 – City Participation

At the current time, the City of Bellingham has designated receiving areas for TDRs from the Lake Whatcom Watershed sending area. The City of Bellingham, with a 2018 population of 88,500, has a significant incentive to participate in this program because Lake Whatcom is the City's drinking water source. There are also several water districts that receive water from the City and/or draw water from the Lake.

The receiving areas within the City of Bellingham can accommodate an estimated 6,801 development rights from the Lake Whatcom Watershed TDR sending area and/or the City's PDR Program. Once annexed, the URMX zones in the Bellingham UGA could accommodate an additional 2,565 development rights. However, the receiving areas generally develop at densities allowed by the underlying zoning without the need for TDRs.

The six small cities have not designated receiving areas for TDRs from County sending areas. While preservation of agricultural lands, creek corridors, and rural areas may be desirable from a city perspective, stronger incentives may be needed to attract city participation in a TDR program. King County has provided "amenity funds" to cities participating in the TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from rural areas. However, in Whatcom County, no such amenity funds have been identified to encourage cities to participate in the TDR program.

TDR Barrier # 5 – Uncertainty / Complexity for Developers

The Whatcom County Zoning Code has a discretionary permitting process for increasing density at receiving areas through TDRs (WCC 20.89.065(2)). This means that a developer has to design a project, pay fees, and submit the application for County approval before finding out whether they can actually increase density through the TDR program.

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* (2009) indicates that:

. . . Most developers are skeptical about the value of TDRs primarily because of uncertainty about exactly how it would work and whether higher density projects could ultimately be approved. . . (p. 4).

. . . Several individuals representing the development community stated the TDR program had limited appeal due primarily to uncertainty associated with the program. Such uncertainty is manifested in a scenario whereby a developer purchases TDRs to obtain higher density, then encounters neighborhood opposition when they attempt to proceed with their proposed

project. In essence, they felt that TDRs had no value today due to such uncertainty, and this is evident by the program's lack of use. . . (p. 18).

The administrative requirements of the program may discourage its use. . . (p. 19).

TDR Barrier # 6 – Lack of In Lieu Fee

The Whatcom County Zoning Code allows "in lieu payments" if a development rights bank has been established. Specifically, WCC 20.89.034 states:

Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. In lieu payments shall be utilized by the development rights bank for purchase, sale or transfer of development rights. The development rights bank oversight committee shall establish procedures for the acceptance and utilization of in lieu payments.

At the current time, Whatcom County does not have a development rights bank. Therefore, in lieu payments are not authorized.

TDR Barrier # 7 – Additional Costs Act as Disincentive

Cities create a vision for their communities through the comprehensive planning process and enact zoning to fulfill that vision. Increasing density via TDRs may not be consistent with a city's vision or may change the character of the area. Additionally, TDR programs may create a disincentive for higher densities and affordable housing by increasing development costs when compared to simply rezoning property for higher densities.

The main goal of the County's existing TDR program is to extinguish development rights in the Lake Whatcom Watershed and other areas (rather than to achieve higher densities). At the current time, if cities want to encourage higher densities they simply modify the zoning to allow increased development. They do not have to provide benefits (i.e., extinguishment of development rights) in the unincorporated portion of the County to allow higher densities in cities.

Requiring TDRs for city upzones would provide a benefit in unincorporated areas of the County, but may also create a disincentive for higher densities and affordable housing projects inside the cities than would otherwise be the case. In some instances, reduced density in unincorporated areas may provide a significant benefit to city residents (such as Lake Whatcom water quality protection, which is advantageous to Bellingham residents who drink the water). However, in other cases the benefit of reduced densities in unincorporated areas may not be readily apparent to city residents.

TDR Barrier # 8 – State Law (RCW 82.02.020)

In 2016, the cities of Blaine and Ferndale submitted letters to the County Council regarding Policy 2A-14. These cities indicated that requiring TDRs for UGA expansions would essentially be a tax. Staff asked the Prosecuting Attorney's Office to review this issue.

Royce Buckingham, Civil Deputy with the Whatcom County Prosecuting Attorney's Office, discussed RCW 82.02.020 (state preempts certain tax fields) with the Work Group on June 7, 2017. RCW 82.02.020 states:

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

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

The Civil Deputy stated that requiring TDRs for UGA expansions would constitute a fee or charge on a re-classification of land. Therefore, under the statute, a jurisdiction can't require TDRs for UGA expansions.

The Civil Deputy indicated that there is an exception for "voluntary agreements." However, land re-classifications such as UGA expansions are not covered by the exception and such re-classifications do not create a direct, identifiable impact. The direct impact would occur later, if and when the land is developed.

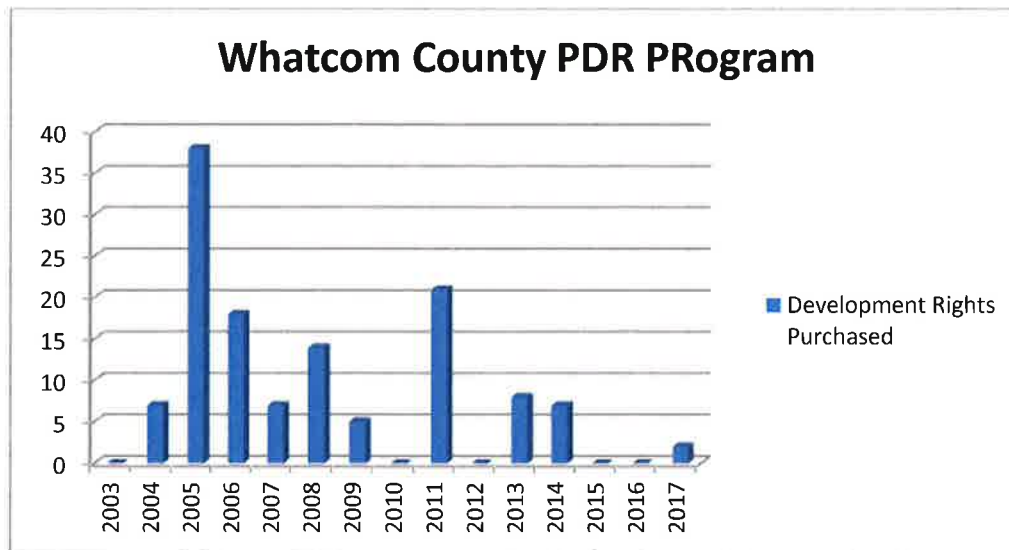
In summary, it's the opinion of the Civil Deputy from the Whatcom County Prosecuting Attorney's Office that the County can't require TDRs for UGA expansions under RCW 82.02.020. This opinion relates to a mandatory TDR program (a government *requirement* to purchase TDRs when expanding a UGA). However, there are no legal issues associated with a voluntary TDR program where developers may choose to purchase TDRs in order to acquire increased density or other incentives offered by the program.

Purchase of Development Rights Program

The Whatcom County PDR program has been more successful than the TDR program. The PDR program's local funding source is the Conservation Futures tax. The program has also received matching funds over the years. In the first 16 years of the PDR program (from the time it came into existence in September 2002 to September 2018), approximately \$6.1 million (over \$3.2 million of local funds and \$2.9 million of matching funds) has been expended to retire 130 development rights on 919 acres. The annual average figures shown below:

Development Rights Retired:	8.13 per year
Acres Preserved	57.44 per year
County Funds Expended	\$201,587 per year
Matching Funds Expended	\$181,881 per year
Total Funds Expended	\$383,469 per year

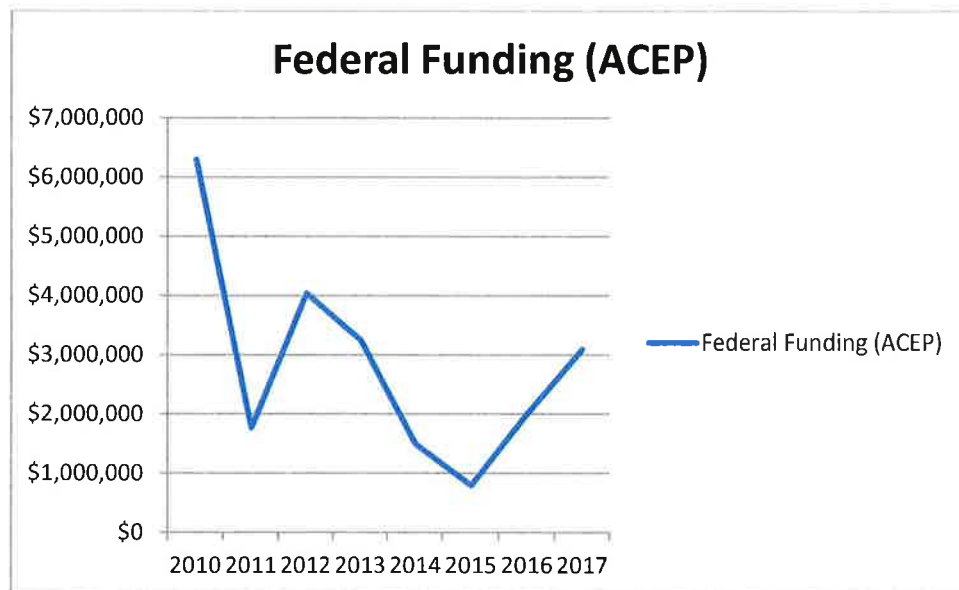
While the PDR program has enjoyed a measure of success, progress in purchasing agricultural development rights has slowed over the years as shown in the chart below.



There are several issues or barriers that may be hindering progress of the program, which are set forth and discussed briefly below.

PDR Barrier # 1 – Uncertainty / Variability in Federal Matching Funds

United States Department of Agriculture monies have accounted for over 91% of the matching funds received by the County (the remaining match has been received from the state and a local non-profit organization). Since 2010, federal funding allocated to Washington State has varied from a high of \$6.3 million in 2010 to a low of \$800,000 in 2015. The amount allocated to the state in 2017 is \$3.1 million (not including monies specifically earmarked for a certain area in eastern Washington). Federal monies, allocated to Washington State through the "Agricultural Conservation Easement Program" (ACEP) are shown below.



Federal funding available to the PDR program has been highly variable in the past and remains uncertain for the future. The County should continue to monitor this situation and explore alternative matching fund sources.

PDR Barrier # 2 – Uncertainty / Variability in Local Funds

The Conservation Futures tax provides the local funding source for the PDR program. The County Code, originally adopted in 1992, states that ". . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation. . . ." (WCC 3.25.010) but it currently is collected at a rate of about four cents per \$1,000 assessed valuation. Additionally, between 2002 and 2017, the PDR program has received about 25% of the Conservation Futures revenue, with the remainder going to parks and other conservation projects.

PDR Barrier # 3 – Federal Staffing

At times, it takes the federal government long periods to review local applications for match funding. The United States Department of Agriculture staff in Washington State assigned to reviewing local government applications for federal funding has been reduced in the last few years. It is also unclear to what extent federal government bureaucratic procedures slow down the processing of match funding applications submitted by local governments. In any event, the federal review process can make it difficult on PDR applicants waiting to hear if the County will, in fact, purchase their agricultural development rights.

6. Opportunities/Alternatives to a Workable TDR Program

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying opportunities and solutions for creating a workable TDR program.

Potential opportunities, solutions, and alternatives include:

- Density Credit Program: General Information and Price
- Density Credit Program: Incentives
- Density Credit Program: Density Bonus Areas in Cities
- Density Credit Program: Density Bonus Areas in UGAs
- Density Credit Program: Accessory Dwelling Units (ADU)
- Density Credit Program: Rural Areas
- Simplifying the TDR Program
- Establishing a TDR Bank

Opportunity # 1 - Density Credit Program: General Information and Price

The *Draft EIS Whatcom County Comprehensive Plan and Development Regulations Update and Urban Growth Area Review* (March 2015) states:

A TDR program relocates development potential from one property to another . . .

A Density Transfer Credit program uses the same principle, but allows the developer to obtain density through a purchase of density credits as opposed to actual development rights. The money generated through density credits can be used for the Purchase of Development Rights (PDR) program (p. 2-21).

The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs by Nelson, Pruetz, and Woodruff (2012) defines density transfer charges (DTCs – also known as density transfer credits) as a program in which “. . . developers gain bonus development potential at receiving sites using a cash payment instead of TDRs. The jurisdiction uses the revenue from these payments to preserve land . . .” (p. 45). A related concept is in lieu fees, where the developer can either pay cash or utilize TDRs. *The TDR Handbook* lists advantages of DTCs, which are summarized as follows:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);

- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios (pp. 45 and 47).

The TDR Handbook states “. . . DTCs can accomplish many of the same objectives as TDR programs but with far fewer complications. . .” (p. 45). *The TDR Handbook* provides a case study for Berthoud, Colorado, which charged DTC fees of \$3,000 for a single family residence and \$1,500 per multi-family dwelling unit from 2000-2009. Berthoud's DTC fees were discontinued in 2009 because of the recession (pp. 46-47). The Whatcom County PDR Oversight Committee looked at this issue on August 25, 2017, and recommended that the County consider a density credit charge of \$4,000. The City of Bellingham has a voluntary PDR program that charges \$5,000 for each bonus unit in the city. The money raised from the city's program goes towards Lake Whatcom Watershed preservation. Bellingham had their first significant private use of this program in 2017 for a development on Telegraph Rd. The TDR-PDR Work Group recommends the following density credit prices for each bonus dwelling unit acquired:

- Birch Bay UGA: \$ 4,000
- Rural Areas: Grand total average development right cost over the most recent five year period (this figure for 2013-2017 was \$58,945)

The Whatcom County Council adopted a new chapter in the Zoning Code entitled “Density Credits” (WCC 20.91) on November 21, 2017 (Ordinance 2017-062). The purposes of the new chapter are to incentivize increased land use intensity in urban growth areas and decrease residential density in agricultural and rural areas by authorizing density credits. The density credit program allows increased density in exchange for a voluntary contribution towards preserving agricultural lands and open space. This would be accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a density bonus as set forth in the Whatcom County Zoning Code. At the current time, the density bonus provisions allow higher density single family residential development in the Resort Commercial zone in the Birch Bay UGA. The County Council also adopted a \$4,000 density credit fee on December 5, 2017 (Ordinance 2017-072).

A density credit program is an attractive alternative to a traditional TDR program, as it would simplify the process and avoid several of the pitfalls associated with TDR programs. Therefore, the County and cities should give serious consideration to joint density credit programs. Additionally, the County should consider expanding

its existing density credit program to a variety of zoning districts. New or expanded programs could include utilizing density credits as an alternative to traditional upzones in areas deemed appropriate by the local jurisdiction. Additionally, the County and cities should primarily focus on the density credit model in the future and new incentives should be tied to a density credit program rather than the TDR program.

Opportunity # 2 – Density Credit Program: Incentives

The TDR Handbook indicates that there must be value in using TDRs in receiving areas – otherwise “the market has no incentive to acquire those rights” (p. 39). Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that if a developer can profit from the incentives offered by the TDR program, they will use the program. If they can’t profit from the TDR program, they simply will not use it.

At the current time, the Whatcom County density credit program provides the following incentive for developers using the program: Increased single family residential densities in the Birch Bay Resort Commercial zone (WCC 20.85.108(4) and WCC 20.91.020).

A report entitled *Regional Transfer of Development Rights in Puget Sound* by the State Department of Commerce, Puget Sound Regional Council, and Forterra (2013) states:

In most TDR programs that seek to protect open space or natural resource land in sending areas, the sending-area development right available for sale is the right to build a residential unit. In some TDR programs, however, the development right for sale from the sending area can be converted into another type of commodity in the receiving area. For example, a TDR created by extinguishing the right to build a residential unit in a residential area could be converted into the right to build additional commercial floor area or additional building height in the receiving area (p. 5).

The *Regional Transfer of Development Rights in Puget Sound* report indicates that, in addition to increased residential densities, other incentives offered by a TDR program that may be more attractive to developers and the community include but are not limited to:

- Increased commercial floor area;
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- Reduced open space requirements; and
- Reduced setbacks (p. 5).

Whatcom County should incorporate such additional incentives into the Zoning Code to provide a wide array of options for developers utilizing the density credit program. In addition to the above incentives, the County and cities may want to consider the following methods or other methods appropriate to the jurisdiction:

- Allowing developers to reduce minimum urban densities in cities (should not allow suburban densities though);
- Providing city water and/or sewer outside city limits; and
- Reducing critical area buffers.

Reducing minimum urban densities and providing city water and sewer would require agreement by the cities.

The Work Group recommends that the County establish a technical group to explore a density credit proposal that may allow a land owner to impact lower quality wetlands if they contribute funds to the Purchase of Development Rights Program used to protect higher quality wetlands. The Work Group recommends that the technical group consider the following, when developing this proposal:

- The geographic area where the program would apply, including whether cities could participate.
- The categories of wetlands and associated buffers that could be impacted under this program.
- Whether the program should only address wetland buffer impacts or should also address direct wetland alterations. State Department of Ecology is involved when the wetland is filled or altered. Ecology is not involved when wetland buffer encroachments are proposed.
- The categories of wetlands that would be preserved through this program.
- The method of protecting wetlands under this program. It is recommended that the developer contribute funds to the County's Purchase of Development Rights Program. The PDR Administrator would use these funds to retire development rights and/or acquire easements on properties that contain wetlands designated for preservation under the program consistent with the Critical Areas Ordinance's "Wetland Mitigation" regulations (WCC 16.16.680).
- The density credit fees that should be charged for wetland buffer impacts and/or direct wetland alterations.
- Any code changes necessary to implement the proposal.

Opportunity # 3 - Density Credit Program: Density Bonus Areas in Cities

If the cities and County partner together on a density credit program, it would be necessary to designate density bonus areas (where development incentives can be utilized) within City limits where public water and sewer infrastructure can be provided to serve urban development. As previously mentioned, the City of Bellingham has designated TDR receiving areas to accommodate TDRs from unincorporated Whatcom County (the Lake Whatcom Watershed). Bellingham also has designated areas that can utilize the city's PDR program to increase density. None of the small cities have designated bonus density areas for a density credit program at this time. There are several issues associated with small city participation:

- How would the city benefit?
- What city incentives would attract developers to use the density credit program?

Cities have raised the issue that a density credit program should be meaningful to city residents and decision makers. For example, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

However, cities have also expressed concern that extinguishing development rights adjacent to a city or UGA would limit future options for expansion. In any event, if there is no clear benefit to the city (i.e. development rights are purchased on the other side of the County), then the concept of providing "amenity funds" to cities should be explored.

King County has provided "amenity funds" to cities participating in their TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from unincorporated areas. Michael Murphy, King County TDR Program Manager, gave a presentation to the TDR/PDR Work Group via conference call on June 7, 2017. Mr. Murphy stated that King County provides amenity funds to cities in several forms. For example:

- Lump Sum – King County provided Bellevue with a lump sum up front, when they signed the interlocal agreement to participate in the TDR program. They used the money to purchase open space, but it could be used for street lights, sidewalks, parks, etc.

- Portion of TDR Sale Money – King County provides Sammamish with a percentage of the revenue from TDR sales by the TDR bank.
- Tax Revenue Sharing – King County shares property tax money with Seattle through the Landscape Conservation and Local Infrastructure Program (LCLIP), which is applicable to King, Pierce, and Snohomish Counties.

Identifying a benefit to city residents (or providing amenity funds) would be an important component of partnering with cities to develop a density credit program. In a density credit program, revenue generated from purchases of development incentives could be shared by the County and city, providing a simple method for cities to also benefit from the program.

If the cities were to participate in the density credit program, they would have to formulate incentives to make it attractive for developers to utilize the program. Cities have indicated that residential development is generally occurring at or below current zoned densities, so other incentives may be needed to entice developers to use a density credit program. City zoning code changes would be needed to implement such a program.

Opportunity # 4 - Density Credit Program: Density Bonus Areas in UGAs

As previously discussed, Whatcom County has designated TDR receiving areas in the Bellingham UGA and the Birch Bay UGA. The Bellingham UGA essentially does not function as a TDR receiving area because the City generally does not extend public water and sewer to the UGA anymore. Therefore, urban development does not occur until annexation. The Birch Bay UGA has one TDR receiving area, but no development rights have been transferred to this area yet.

The TDR/PDR Work Group recommends focusing on a density credit program, rather than on a traditional TDR program. This simplified approach would provide additional developer incentives for areas in the UGA when density credits are purchased. In November 2017, the County Council adopted a density credit program for the Resort Commercial zone in the Birch Bay UGA and should consider expanding this program to other areas in the UGA. Specifically, the lower density Urban Residential four dwellings/acre (and possibly Urban Residential Medium Density six dwellings/acre) zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program.

The Columbia Valley UGA, in the eastern part of the County, could also be designated as a receiving area. In fact, the Foothills Subarea Plan contains an implementation task to:

Revise the Official Whatcom County Zoning Ordinance to designate Rural and Rural Forestry areas in the Foothills Subarea as transfer of development rights (TDR) sending areas and the Columbia Valley UGA or other urban growth areas as TDR receiving areas in order to preserve open space in rural and forestry areas (p. 15-7).

However, increasing densities in the Columbia Valley UGA should be carefully considered in light of the long drive to major employment centers, medical facilities, social services, and shopping areas.

Opportunity # 5 – Density Credit Program: Accessory Dwelling Units (ADU)

King County allows TDRs from sending areas to rural receiving areas to increase the size of accessory dwelling units from 1,000 to 1,500 square feet (King County Code 21A.08.030).

The King County TDR Program Manager indicated that they have had some TDR transfers to rural areas, but that the majority of transfers have been into urban areas such as Seattle.

The Whatcom County Zoning Code currently allows accessory dwelling units, subject to a variety of conditions, in the following zones:

- Urban Residential (WCC 20.20.132);
- Urban Residential Medium Density (WCC 20.22.132);
- Urban Residential Mixed (WCC 20.24.133);
- Residential Rural (WCC 20.32.132);
- Rural Residential – Island, which is applicable to Lummi Island (WCC 20.34.132);
- Rural (WCC 20.36.132);
- Point Roberts Transitional District (WCC 20.37.132);
- Small Town Commercial (WCC 20.61.153); and
- Resort Commercial (WCC 20.64.132).

ADU Incentive 1 - Accessory dwelling units are currently limited to 1,248 square feet in these zoning districts. The TDR/PDR Work Group recommends increasing the size limit by 500 square feet to a maximum of 1,748 square feet if density credits are purchased. It is recommended that the price should be \$8/square foot up to the 500 square foot maximum. The Work Group recommends that this rural incentive should be available anywhere that accessory dwelling units are allowed in the County.

ADU Incentive 2 - Additionally, the TDR/PDR Work Group recommends allowing an investor to pay to retire one full development right in a rural or agricultural area in exchange for eliminating the following requirement, which is normally imposed on accessory dwelling units:

The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot.

This would allow an investor (who retires one full development right) to rent out both the main house and the accessory dwelling unit on the property, as the owner would not have to live on the site.

ADU Incentive 2 can be utilized, anywhere accessory dwelling units are allowed, in the areas shown below:

Rural Areas - In rural areas (outside UGAs) the parcel would have to be:

- a. Outside of Rural Study Areas (areas zoned R5A and R10A that are valuable for agriculture);
- b. Covered by less than 50% Agriculture Protection Overlay Soils;
- c. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- d. Outside the 100 year floodplain;
- e. Outside shoreline jurisdiction;
- f. Outside an alluvial fan;
- g. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- h. More than 1 mile from the runway of the Bellingham International Airport;
- i. Outside UGA Reserves;
- j. More than 1 mile from the boundary of a city;
- k. More than 1 mile from the boundary of a UGA;
- l. Within a Group A or Group B Public Water System Service Area, excluding:
 - o Group A Systems currently exceeding Water Right Limits;
 - o Group A Systems projected to exceed water right limits at full build-out; and
 - o Group A Systems with no data on system water rights or use.

UGA - In UGAs, the parcel would have to be:

- a. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- b. Outside the 100 year floodplain;
- c. Outside shoreline jurisdiction;

- d. Outside an alluvial fan;
- e. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- f. More than 1 mile from the runway of the Bellingham International Airport;
- g. Within a Group A or Group B Public Water System Service Area, excluding:
 - o Group A Systems currently exceeding Water Right Limits;
 - o Group A Systems projected to exceed water right limits at full build-out; and
 - o Group A Systems with no data on system water rights or use.

The Work Group recommends that more than one incentive may be used per parcel.

Opportunity # 6 - Density Credit Program: Rural Areas

King County allows TDRs from sending areas to rural receiving areas to increase the density in the "RA-2.5" zone from 0.2 dwellings/acre to 0.4 dwellings/acre (King County Code 21A.12.030). This is equivalent to going from one dwelling/five acres to one dwelling/2.5 acres.

Rural Incentive 1 - The TDR/PDR Work Group recommends allowing a density of one dwelling/2.5 acres in the Rural one dwelling/five acre (R5A) zone if the proposed density credit program is used. This proposal targets density bonus areas, which could be developed at a density of one dwelling/2.5 acres, that have access to an existing public water system. In return for the extra density, cash would be contributed to the County's PDR program through the purchase of density credits. One development right would have to be retired in a rural or agriculture area for every new lot allowed so that there would be no net increase in development potential. Additionally, this concept should be considered with a degree of caution, as it may come as a surprise to rural land owners who purchased property in the R5A zone expecting surrounding land uses to develop at a maximum density of one dwelling/five acres. Critical area regulations could also make development at a density of one dwelling/2.5 acres more challenging in some areas. To utilize Rural Incentive 1, the parcel would have to be in the R5A zone and meet the same criteria as ADU Incentive 2 for Rural areas (be outside of Rural Study Areas, covered by less than 50% Agriculture Protection Overlay Soils, etc.).

Opportunity # 7 - Simplifying the TDR Program

The existing TDR program is cumbersome and not used very often. Additionally, the density credit model provides an attractive alternative to a traditional TDR program. Therefore, the existing TDR program should be refined, but the County should not put major effort into reforming the program.

The existing TDR provisions (WCC 20.89 and other sections of the County Zoning Code) contain language that could be simplified or clarified. Examples are provided below:

- Definition of Development Rights – WCC 20.89.021 provides the following definition:

“Development rights” means the residential building rights permitted to a lot, parcel or area of land based on the gross density, established pursuant to the official Whatcom County zoning map and this title, and measured in maximum dwelling units per developable acre. Where land is impacted by critical areas, as defined in WCC Title 16, development potential shall be demonstrated by the owner with consideration given to opportunities for cluster development.

The first part of the definition indicates that development rights are based upon gross density (as defined in WCC 20.97.170). Gross density is computed based upon the total area of the parcel. For example, the R5A zone allows a gross density of one dwelling/five acres. On a 20 acre parcel, four homes would be allowed. This is a straightforward concept. However, the definition goes on to state that development rights are measured in maximum units per “developable acre” and that development potential must be demonstrated by the owner on lands impacted by critical areas. Developable land is land available after deductions for wetlands, roads, stormwater management facilities, etc. It adds a degree of complexity to require a rural sending property owner to “demonstrate” development potential when critical areas are present. Does this mean that the rural property owner must hire a consultant to perform a wetland delineation or other critical areas analysis? A less complex method would simply base development rights upon the gross density allowed on the sending area parcel.

- In Lieu Payments - WCC 20.89.025 defines in lieu payments as “. . . payment of funds to the development rights bank in lieu of the transfer of development rights from a sending area. . .” Additionally, WCC 20.89.034 states “Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. . .” Because the County adopted a density credit program (which is a similar concept), the in lieu payment language in WCC 20.89 could be deleted. This would eliminate the possibility for overlap/confusion between in lieu fees and the density credit program. Additionally, the density credit program can be accomplished without a development rights bank.
- Incentives – WCC 20.89.090 provides various incentives for long plats (such as modifying minimum lot size, lot width, setbacks, and building coverage) when TDRs are used. These incentives could be simplified and/or clarified. For example, WCC 20.89.090(1) allows the modification of lot width if TDRs are used. However, WCC 20.89.090(4) imposes additional criteria for

reducing lot width. These provisions should be harmonized so there is no confusion about the qualifications for using the incentives.

Opportunity # 8 – Establishing a TDR Bank (Development Rights Bank)

WCC 20.89.081 states:

Whatcom County may create a development rights (DR) bank to facilitate the exchange of development rights. Establishment of a DR bank does not preclude private party transactions.

- (1) The DR bank may purchase or sell development rights.
- (2) The DR bank may hold TDRs for any length of time.
- (3) The DR bank may accept in lieu payments for transfer of development rights.
- (4) The DR bank may accept donations of development rights.

The TDR Handbook – Designing and Implementing Transfer of Development Rights Programs (2012) outlines some of the advantages of a TDR bank:

- The sending site owners are assured of having a buyer whenever they want to sell.
- The price of development rights is more likely to stabilize when institutions operate in the market. Conversely, TDR prices can be more volatile and unpredictable when private parties make all sales and purchases.
- Developers have some assurance that they will be able to buy TDRs when needed, without having to negotiate individually with numerous sending site property owners.
- With the right procedures, TDR transactions can become fast, certain, and easy, comparable to banking transactions (p. 121).

Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that a TDR bank is an entity that buys and sells development rights. TDR banks have several advantages. There is greater convenience for developers. For example, a developer can get a number of TDRs from a single bank – they don't need to search for multiple land owners to put together enough TDRs. Additionally, TDR banks have discretion to spend the proceeds on higher priority conservation properties (as opposed to a developer potentially purchasing TDRs from lower priority conservation areas). However, when a bank is a public entity (like a county), an appraisal is needed because they cannot pay more than fair market value for development rights. Appraisals may cost \$3,000 to \$7,000. There needs to be enough transactions to justify a TDR bank. Nick did not recommend forming a TDR bank for an emerging TDR program, as it may be an inefficient use of public resources.

A TDR bank would provide a method to simplify the TDR process for people who sell or buy TDRs. However, a bank would require staffing, financial expertise, appraisals, an oversight committee, and funding to start the program. Additionally, it may not be needed at all because the County is transitioning to a "density credit" system, where developers simply contribute monies to the County PDR program in order to acquire higher densities or other incentives.

7. PDR Fund to Protect Agricultural and Rural Lands

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands."

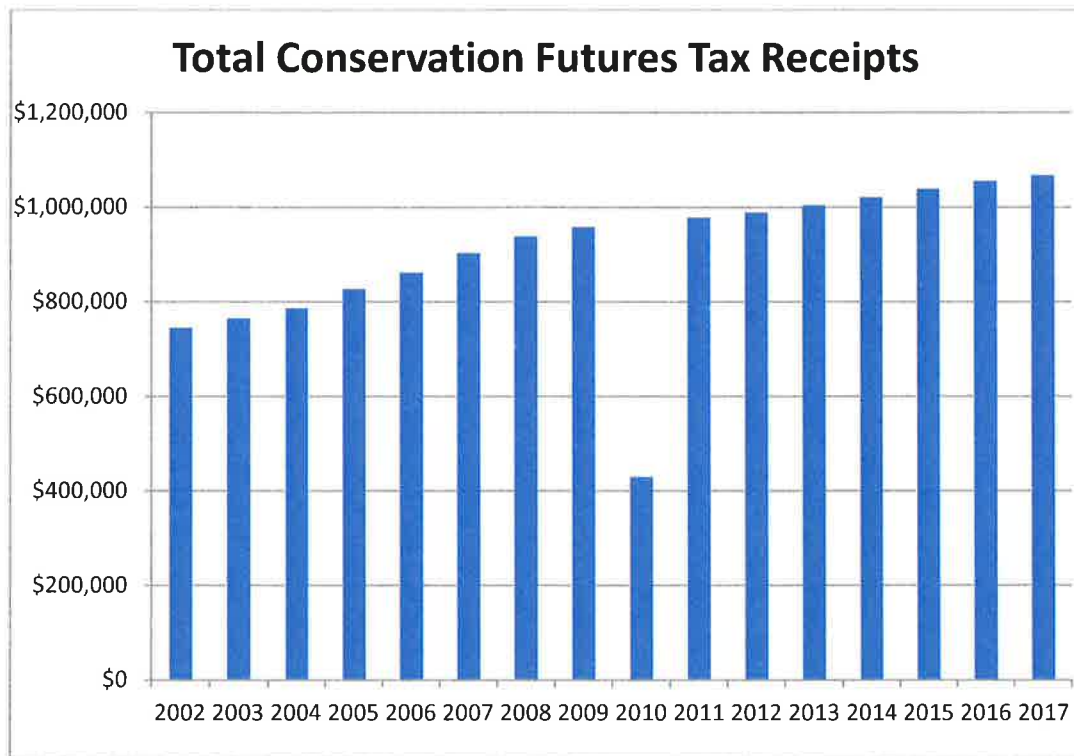
The Whatcom County 2017-2018 Budget states that the Conservation Futures fund is used for:

"Activities related to acquisition of parks land and development rights with the goal of conserving property for public use and enjoyment. Funded by a property tax collected in accordance with RCW 84.34.230" (Volume 2 – Page 65).

The Conservations Futures tax is the primary source of local funding for the Purchase of Development Rights Program. However, Conservation Futures funds are also used for parks and other conservation projects. The County also receives federal and state matching funds and seeks donations from other funding partners. The County Council determines allocation of Conservation Futures revenues.

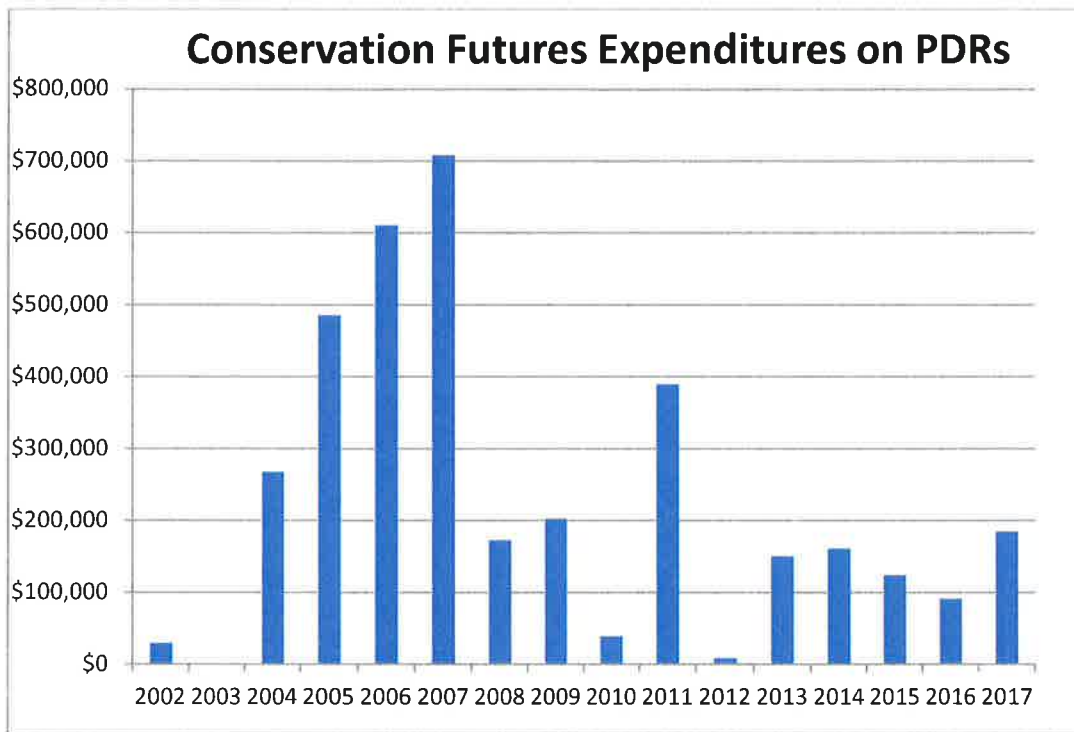
The following charts are shown below:

- Total Conservation Futures Tax Receipts – Shows the total Conservation Futures tax revenue collected each year.
- Conservation Futures Expenditures on PDRs – Shows the total spent on PDRs each year.
- % of Total Receipts Expended on PDRs – Shows the percentage of Conservation Futures tax revenue collected each year that is spent on the PDR program that same year.
- Conservation Futures Year-End Fund Balance – Shows the total amount in the Conservation Futures Fund at the end of each year.

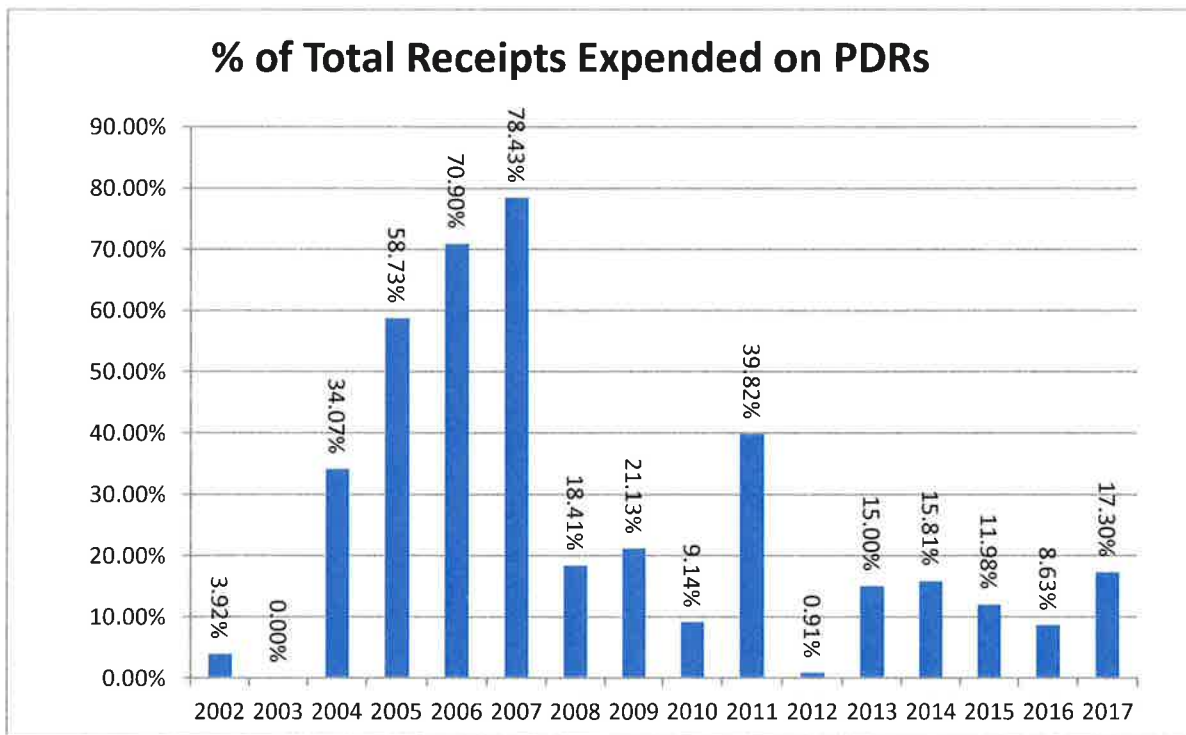


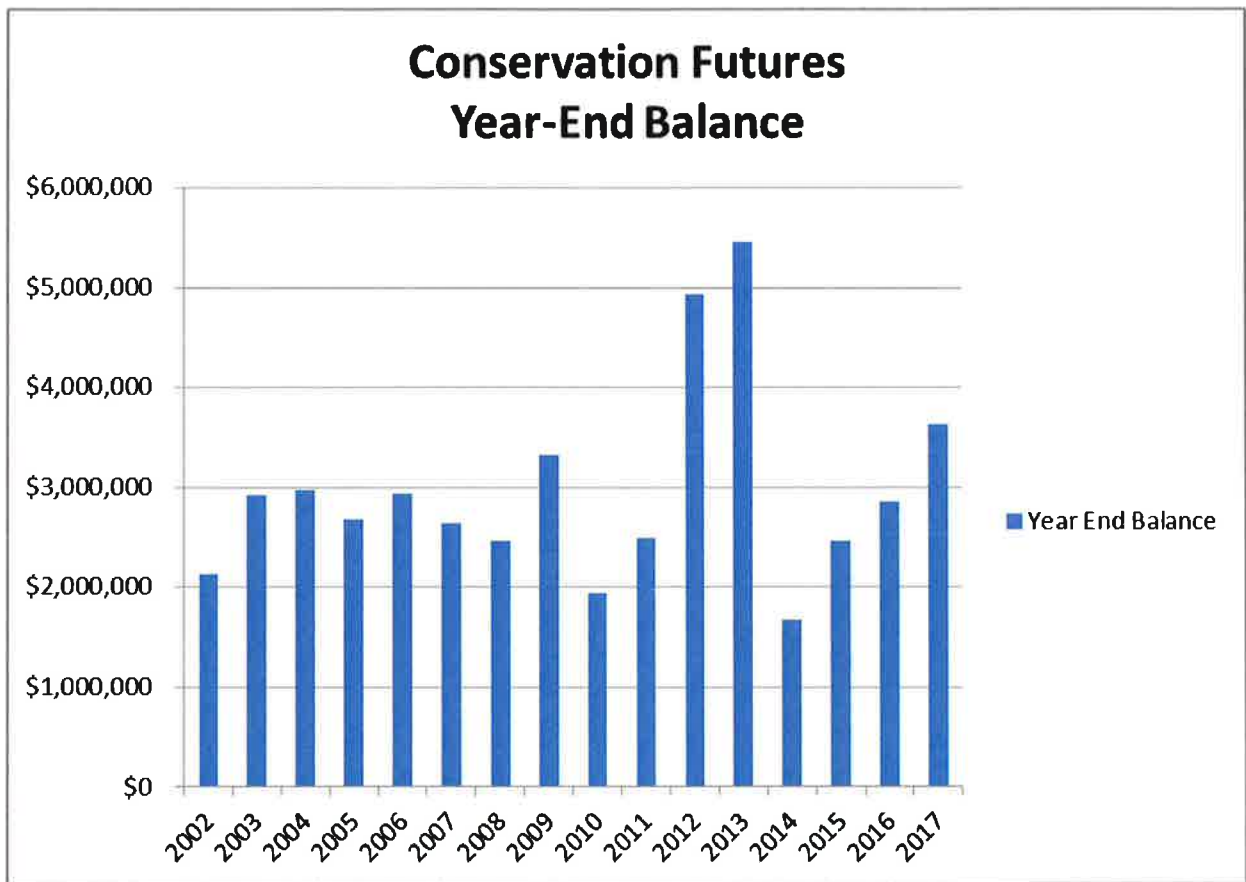
Source: Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).

NOTE: Whatcom County Ordinance 2009-080, which was adopted in the economic downturn, states ". . . the County Council has determined it is necessary to decrease the Conservation Futures tax levy by \$543,000 for 2010 and increase the General Fund property tax levy by an offsetting \$543,000 for 2010 to fund essential county services. . ."



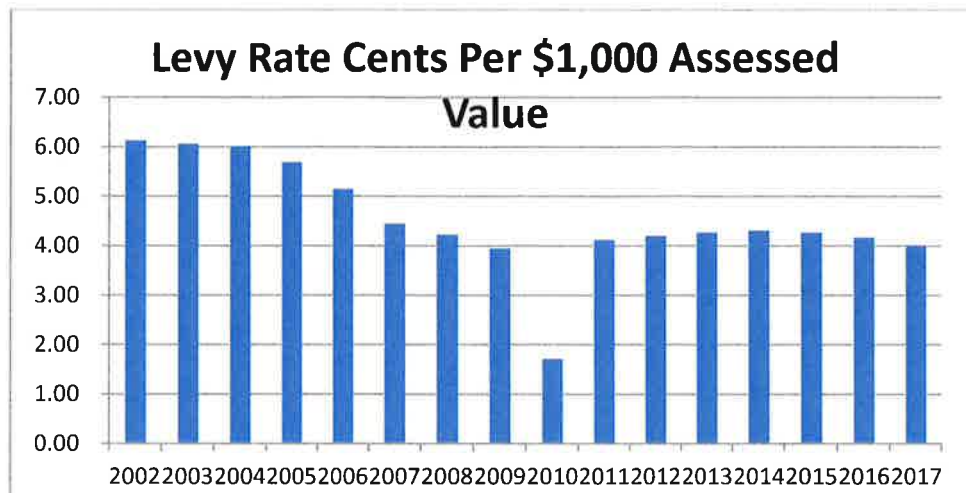
Source: Whatcom County Finance Department 1/31/2018. Chart shows net expenditures, because some expenditures were reimbursed by federal grants or other sources.





As previously mentioned, the County established the Conservation Futures Property Tax Levy and Fund in 1992. The County Code states “. . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation” (WCC 3.25.010). As of 2017, the Conservation Futures tax rate is approximately four cents per \$1,000 assessed.

The levy rate has declined over the last 15 years as assessed valuations of existing properties have increased, new construction has added assessed valuation to the tax rolls, and the County has chosen not to increase the amount of Conservation Futures tax collected (except for the increased property tax levy that is the result of new construction). It should be noted that the increase in taxes collected is limited by state law to a maximum of 1% per year or the rate of inflation, whichever is lower. The County has banked unused capacity and retains the ability to increase the taxes levied at a future date.



Source: *Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).*

The Conservation Futures tax is an existing local funding source and the County Council could modify the levy rate to collect additional revenue. The County has secured limited funding for the PDR program from the Whatcom Community Foundation. The Whatcom County Council adopted a new "Density Credit" Chapter in the Zoning Code (WCC 20.91) in November 2017 that could potentially raise revenue through developer incentives. While revenue from the Community Foundation and/or density credits may provide supplemental funding to the PDR program, it is not anticipated that they will provide funding at the level generated by the Conservation Futures tax.

At the current time, the County collects a real estate excise tax, which is a tax upon sales of real estate, under WCC 3.20.024 and 3.20.025. The tax on real estate sales is currently ½ of 1% of the selling price. An additional real estate excise tax is authorized for conservation areas by state law (RCW 82.46.070). The Municipal Research and Services Center (MRSC) website describes this option as follows:

A county legislative authority may submit a ballot proposition to the voters for an additional real estate excise tax on each sale of real property in the county at a rate not to exceed 1% of the selling price. The revenue from this tax is restricted to the acquisition and maintenance of conservation areas. Conservation areas are defined in RCW 36.32.570 as:

land and water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value for existing and future generations, and includes, but is not limited to, open spaces, wetlands, marshes, aquifer recharge areas, shoreline areas, natural areas, and other lands and waters that are important to preserve flora and fauna.

The property buyer, rather than the seller, pays this tax as outlined in RCW 82.46.070. Only San Juan County has levied this tax to date.

The County could also issue bonds for the PDR Program and repay the bondholders with future tax revenues.

The Whatcom County Budget (2017-2018) discusses the "Whatcom County Fund Structure." The County has six different fund types: General Fund, Special Revenue Funds, Debt Service Funds, Capital Projects Funds, Enterprise Funds, and Internal Service Funds. The County Budget describes the Conservation Futures Fund, which is under the Special Revenue Funds category, as:

A fund created to collect a real property tax levy applied to all taxable real property within Whatcom County. This fund may be used to acquire rights and interests in open space land, farm and agriculture land, and timberland with the goal of conserving property for public use or enjoyment" (Volume 1 – Page 23).

Planning & Development Services Department staff met with the County's Finance Manager and Senior Budget Analyst on August 16, 2017 to discuss the possibility of creating a new PDR fund. They indicated that the County Council could adopt an ordinance establishing a new PDR fund. However, the existing Conservation Futures fund, which can be used to hold other dedicated monies allocated to the PDR program, is functioning adequately at present. Additionally, there are administrative and reporting tasks associated with creating a new fund. Therefore, they recommended establishing a new fund only if significant new monetary resources become available that would be placed in the fund.

8. Proposed Sending and Receiving Areas

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying:

- Proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas; and
- Proposed receiving areas.

Density Credit Model Preferred Over Traditional TDR Model

The Work Group finds that the density credit model, where a developer pays to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could allow increased development potential in cities, UGAs, and other appropriate areas while also providing supplemental funding for reducing development in agricultural and rural areas and, potentially for city amenities. Therefore, the Work Group recommends that the County and cities should primarily focus on the density credit model in the future and that new incentives should be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program.

This shift in emphasis means that the County may direct PDR investments that utilize density credit funds to areas that also benefit the cities (rather than focusing on additional TDR sending areas). Additionally, areas may be designated in cities and UGAs for bonus densities under the density credit system (rather than focusing on additional TDR receiving areas).

Density Credit Program: Directed PDR Investments

It is anticipated that the majority of funding for the County's PDR program will continue to come from the Conservation Futures tax and funds from the federal government. The regular PDR site selection process will continue to apply to the development rights purchased with these funds.

However, if cities create density credit programs, and some of the money from these programs goes to the County's PDR program, investment of these funds may be directed to properties that benefit both the County and the applicable city. As previously mentioned, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

Comprehensive Plan Policy 2A-14 indicates that areas that are candidates for future sending areas are critical areas, the Agriculture zone, and Rural Study Areas. The PDR Oversight Committee recommended an update to the PDR Program Guidelines on January 26, 2018. This update includes identification of priority areas in three distinct categories: Agricultural, forestry, and ecological areas. It is anticipated that the PDR Program Guidelines will be presented to County Council for consideration and approval in fall 2018.

If city density credit programs are enacted, the County and the applicable city would need to work together to select PDR priority areas, identified in the PDR Program Guidelines, where funds from the city's density credit program would be invested.

Density Credit Program: Bonus Density Areas

The cities and County should designate areas that can accommodate increased land use intensity utilizing a density credit program.

The areas with the greatest potential for high intensity urban development are in the cities. While Whatcom County may negotiate with cities on density credit program provisions, it does not have direct control over land use regulations inside city limits. The City of Bellingham has already designated TDR receiving areas and has a PDR program intended to reduce development potential in the Lake Whatcom watershed. It is recommended that the six small cities designate areas within their respective cities and UGAs that could be developed at increased urban intensities in association with a density credit program. The cities would have to develop incentives that developers want to utilize (i.e. purchase density credits to obtain), such as:

- Increased residential densities;
- Reduced minimum lot sizes;
- Increased heights;
- Increased floor area ratios;
- Increased lot coverage; and/or
- Increased size of accessory dwelling units.

Additionally, cities would have to consider where the development incentives should be offered, such as:

- In specific zoning districts;
- In specified portions of a zoning district;
- In a specified section of the city; and/or
- In UGAs, outside of current city limits, once the area has been annexed.

Any funds acquired through such a program could be divided between the County and City (or used by the County to purchase development rights that benefit both the County and the city).

Whatcom County has direct control over land use regulation, including densities, in unincorporated areas such as the Birch Bay UGA and rural lands. The County should consider expanding the density credit program in the Birch Bay UGA and, in limited circumstances, utilizing the density credit program in rural areas (See *Section 6 Opportunities/Alternatives to a Workable TDR Program*).

TDR Program: Sending and Receiving Areas

As mentioned, the Work Group recommends focusing on the density credit model, rather than traditional TDR sending and receiving areas. However, using the traditional TDR program, an opportunity may exist to allow the owners of separate non-contiguous parcels to transfer density from one parcel to the other. This would encourage protection of higher quality agricultural soils and critical areas without an overall increase in the number of dwellings allowed in the rural area.

For example, if a land owner has two separate 20 acre parcels both zoned R5A, the owners would typically be allowed to divide the land and build four homes on each parcel under standard zoning rules. Under this approach, the density could be transferred from one of the parcels (e.g. that has development constraints or high quality agricultural soils) to the other parcel (which does not have as many constraints). The end result would be zero development capacity on one of the 20 acre parcels and eight dwellings on the other 20 acre parcel.

This concept could be utilized to transfer density from one part of the rural area to another part of the rural area. The receiving parcel would be developed as a cluster subdivision.

This concept should not be allowed to increase density in any of the following:

- Lake Whatcom Watershed;
- UGAs and UGA Reserves;
- Lummi Island;
- Agriculture zone;
- Rural Forestry zone;
- Commercial Forestry zone;
- Mineral Resource Lands Overlay.

The Work Group is not formally recommending that this concept be implemented, but has included it in the report to allow the concept to receive further consideration prior to a formal proposal. Any such proposal in rural areas would have to be carefully reviewed under the Growth Management Act and Whatcom County Comprehensive Plan to ensure that rural character is preserved in these areas.

9. Other Factors and/or Growth Management Tools

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying other factors and/or growth management tools" relating to UGA expansions and mitigating impacts of residential development in rural lands, agricultural areas, and sensitive watersheds.

Other Factors

The Whatcom County Code contains criteria for approving Comprehensive Plan amendments, which include UGA expansions. Additionally, the Whatcom County Comprehensive Plan includes the following policies:

- Policy 2GG-3 – Criteria for rezoning land in the Rural one dwelling/ten acre (R10A) district. In summary, these criteria address residential density in the area, not allowing rezones in UGA Reserves (which may be considered for inclusion in the UGA at a later date), and not allowing rezones in Rural Study Areas (that are valuable for agriculture).
- Policy 8A-3 – Criteria for de-designating lands from the Agriculture designation. In summary, these criteria address whether the land is already characterized by urban growth, whether the land is used or capable of being used for agricultural production, and whether the land has long term commercial significance for agriculture. The criteria are based upon the Growth Management Act (GMA), Washington Administrative Code, and applicable court cases.
- Policy 2N-5 – "Protect resource lands by controlling or buffering adjacent uses and encouraging increased densities within existing city boundaries before expanding into county resource lands." Resource lands include the Agriculture designation.
- Policy 10J-14 – "Existing Urban Growth Areas shall not be designated or expanded nor new Urban Growth Areas designated within the Lake Whatcom Watershed, and rezones that allow greater residential densities will not be allowed."
- Policy 2K-3 "Prohibit expansion of urban growth areas into floodplains, except where allowed under the GMA, and consider danger to individuals related to flooding when designating land use in other areas."
- Goal 2P – Encourages cities to approve new residential developments within a range of urban densities. Policy 2P-1 states "Encourage cities to adopt and implement policies and development regulations that promote urban densities."

The County has a process for evaluating UGA amendments. Additionally, existing policies require consideration of Agricultural lands and protection of the Lake Whatcom Watershed when UGA expansions are proposed.

In accordance with the GMA, Whatcom County completed the eight-year update of the Comprehensive Plan in August 2016 (Ordinance 2016-034). This update was conducted in close coordination with the cities, as required by the GMA. Finding 62 of the Ordinance states:

The County's population is projected to grow by 33.8% over the 23-year planning period. Prior to the 2016 UGA review, there were a total 51,684 acres in UGAs (including within cities). A total of 345 acres are added to UGAs in the 2016 UGA review. This constitutes a 0.7% increase in the land in UGAs on a county-wide basis. . .

The County worked together with the cities to judiciously size UGAs in the 2016 Comprehensive Plan update. Maintaining a high level of County/city coordination will help achieve the common goals of facilitating urban densities in cities, conserving Agricultural lands, and protecting sensitive watersheds.

Whatcom County Comprehensive Plan Policy 2A-14 was adopted in the 2016 update. This policy states:

. . . Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.

However, RCW 82.02.020 (relating to state preemption of certain tax fields) indicates:

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

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

The Civil Deputy from the Whatcom County Prosecuting Attorney's Office has expressed the opinion that requiring TDRs for UGA expansions or rezones would constitute a tax, fee, or charge on a re-classification of land, would not qualify for the "voluntary agreement" exception, and is not allowed under RCW 82.02.020. Therefore, TDRs should not be required in "exchange for UGA expansions and other

upzones” as suggested by existing Whatcom County Comprehensive Plan Policy 2A-14.

Additionally, WCC 20.89.051 (2) and (3) state that certain rezone requests and UGA expansions are required to transfer development rights from a designated TDR sending area. The County should also consider deleting this language from the Zoning Code.

Growth Management Tools

The County and Cities’ Planners Group issued a “Growth Management Tools Report” (March 2015). This report addresses both non-urban tools and urban tools designed to ensure that the majority of countywide growth takes place in UGAs, as planned. The tools identified in the report are:

Non-Urban Tools

- Decreased Non-Urban Densities
- Rural Lot Consolidation
- Transfer of Development Rights/Density Transfer Credits
- Purchase of Development Rights
- Rezone of Rural Land Study Areas to Agricultural Lands
- Require Agriculture as a Primary Use and Limited Accessory Uses
- Agricultural Mitigation
- Tools to Reduce Impacts on Agricultural and Rural Lands But Not Reduce Overall Density
- Permit Metering
- Water Well Limitations
- Impact Fees

Urban Tools

- Increased Urban Densities
- Minimum Urban Densities
- Urban Mixed Use
- Utility Extension Policy
- Annexation Policy
- Mix of Single- and Multi-family Capacity
- Lot Size Averaging
- Land Value Taxation
- Fee Reduction Incentives

The Work Group recognizes this report and refers the reader to it for further information on these potential tools.

10. Economic Value of Development Rights

Whatcom County Comprehensive Plan Policy 2A-14 includes examining "Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value."

As previously mentioned, the TDR/PDR Work Group recommends a shift in emphasis from a traditional TDR program to density credit programs. In this context, primary questions relating to economic value include:

- Are the incentives offered by the density credit programs desirable to developers?
- Does the price tag associated with the incentives provide developers the opportunity to increase profit?

If the answer to either of these questions is "no," then developers will not utilize the density credit programs.

Other jurisdictions in Western Washington have commissioned TDR market studies, with the average cost in the \$40,000 range. Whatcom County could hire a consultant to conduct a market study to recommend incentives that would be attractive to developers in the current economic environment along with associated price tags.

Alternatively, the cities and County could adopt incentives and adjust those incentives over time to provide developers with the opportunity to profit from increased land use intensities. Additionally, with the density transfer credit system, the local government could modify the density credit price in response to changing economic conditions. This approach is recommended as the lower cost alternative.

Density credit programs may be used to essentially transfer residential density from rural and agricultural areas to urban areas, where growth is targeted. However, as previously mentioned, there are also other incentives that may be employed in a density credit program. For example, if a developer voluntarily contributes to reduce development in rural or agricultural areas, a variety of urban incentives could be offered including but not limited to:

- Increased commercial floor area;
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- Reduced open space requirements; and
- Reduced setbacks (p. 5).

A variety of incentives should be explored that align with city and County goals and may be attractive to developers. The corresponding cost to developers to access these incentives will need to be developed and adjusted over time to meet market demands.

11. Interlocal Agreements

Comprehensive Plan Policy 2A-14 addresses interlocal agreements that “grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.”

Whatcom County has an interlocal agreement with each city concerning “Planning, Annexation and Development” within the UGA. These interlocal agreements, which were approved in 2012, address a number of topics including TDRs. The existing interlocal agreements include the following language:

Bellingham Interlocal - The City agrees to participate in a County initiated effort to further develop a TDR/PDR program for the Lake Whatcom Watershed (Section 11.B).

Blaine Interlocal - The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from the rural areas within the Drayton Harbor Watershed to the City and/or annexation areas (Section 11).

The Everson, Ferndale, Lynden, Nooksack, and Sumas interlocal agreements with the County each state:

The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from designated Agricultural resource lands or rural areas to the City and/or annexation areas (Section 11.B of each interlocal).

In order to facilitate cooperative efforts between the cities and County, it is recommended that new interlocal agreements be developed or that existing interlocal agreements be revised to address a density credit program. These interlocal agreements should generally include the following:

- Framework for inter-jurisdictional density credit program;
- Generalized statement of incentives that could be offered by the city;
- Generalized statement of where the development incentives could be offered within the City (and/or in the UGA following annexation);
- How any density credit fees collected by the City would be divided between the City and the County;
- Generalized statement of how the City would utilize any funds from developer participation in the City’s density credit program; and
- Agreement on how the County PDR Program would utilize any funds from developer participation in the City’s density credit program.

It is acknowledged that the City of Bellingham has an existing Lake Whatcom Watershed PDR program.

12. Recommended Policy and Regulatory Changes

TDR/PDR Work Group recommendations are shown below:

A. Voluntary Density Credit Program

The Work Group finds that the density credit model, where a developer pays cash to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could potentially provide supplemental funding to reduce development in agricultural and rural areas through the County's existing PDR program. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives should generally be tied to a density credit program (rather than existing TDR programs).

The City of Bellingham has an existing Purchase of Development Rights program aimed at reducing development in the Lake Whatcom Watershed. Whatcom County adopted a density credit program in 2017, but it only applies to Resort Commercial zones in the Birch Bay UGA at the current time. These existing programs allow developers to increase land use intensity by making a payment that would be utilized to purchase and retire development rights in the Lake Whatcom Watershed or the County's agricultural areas.

Expanding the density credit program is the highest priority change that has been identified. This is because it would help preserve agricultural and rural lands while providing a simple procedure for developers who want to access the incentives offered by the program. The density credit program should be expanded for the following, as discussed earlier in this report:

- Small cities;
- Additional areas in the Birch Bay UGA;
- Certain rural areas; and
- Accessory dwelling units.

B. Whatcom County Comprehensive Plan Amendments

The Work Group recommends amendments to the Whatcom County Comprehensive Plan as shown in Appendix A. These amendments reflect the proposed shift from a traditional TDR program to the new density credit model.

C. Voluntary TDR Program

The existing TDR program is cumbersome and not used very often. However, there are 247 certified TDRs in the County (some of which have been transferred). Therefore, the Work Group recommends keeping the existing TDR program. The existing TDR program should be refined, but the County should not put major effort into reforming the program. Specifically, the

existing TDR program should be simplified as much as possible. However, new incentives should generally be reserved for the density credit program.

D. Mandatory TDR Program

A Civil Deputy from the County Prosecuting Attorney's Office stated that, in his opinion, the County cannot require TDRs for UGA expansions or rezones under RCW 82.02.020.

The TDR/PDR Work Group recommends that the County consider deleting WCC 20.89.051 (2) and (3), which state that certain rezone requests and UGA expansions are required to transfer development rights from designated TDR sending areas.

E. TDR Bank

Establishing a TDR bank is not recommended at the current time. Staffing, financial expertise, appraisals, an oversight committee, and funding would be needed to start the bank (for a TDR program that has not been widely used in the past).

F. New PDR Fund

The TDR/PDR Work Group recommends that the County create a PDR fund, in consultation with the Whatcom County Finance Department, if significant new funding sources become available. The Conservation Futures fund is adequate at the existing time to serve the needs of the PDR program. If a separate County PDR fund is not created, the County Finance Department should track funds that are raised through the density credit program to ensure that these funds are used for their intended purpose.

Appendix A – Comprehensive Plan Amendments

Chapter 2 (Land Use)

Policy 2A-14: Maintain a density credit program to incentivize increased land use intensity in designated areas and decrease residential density in agricultural and rural areas by authorizing density credits. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a higher density as specifically set forth in the Whatcom County Zoning Code.

~~Strive to establish by December 2017 a clear, predictable, and fair process for allowing expansion of urban growth areas that considers reasonable measures to mitigate the impacts of residential development in rural lands, agricultural areas (broadly defined), and sensitive watersheds. This process should include:~~

- ~~1. Consultation with a focus group of potential TDR/PDR users in the building industry.~~
- ~~2. Convening a multi-stakeholder work group, including the Cities, tasked with:~~
 - ~~• Reviewing the current TDR and PDR programs.~~
 - ~~• Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.~~
 - ~~• Identifying opportunities and solutions for creating a workable TDR program.~~
 - ~~• Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.~~
 - ~~• Recommending policy and regulatory amendments necessary to implement the above policy.~~
 - ~~• Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.~~
 - ~~• Identifying receiving areas.~~

- ~~Identifying other factors and/or growth management tools.~~
 - ~~Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.~~
 - ~~Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.~~
3. ~~Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.~~

Rationale: In November 2017, the Whatcom County Council adopted a density credit program applicable to portions of the Birch Bay UGA (Ordinance 2017-062). The proposed Comprehensive Plan amendments would shift the emphasis in County Policy from a traditional TDR program, which has not worked well over the years, to the density credit program. Advantages of a density credit program, compared to a traditional TDR program, include:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);
- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios.

Summarized from *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* by Nelson, Pruetz, and Woodruff, 2012, pp. 45 and 47).

Additionally, the TDR/PDR Multi-Stakeholder Work Group will issue recommendations in 2018. It is anticipated that the County Council will make a final decision on these Comprehensive Plan amendments in 2019, after the Work Group completes its work.

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as ~~cluster~~-density bonuses in urban growth areas in association with the density credit program, purchase of development rights, transfer of development rights, and tax deferrals.

Rationale: This change incorporates a reference to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2H-2: Establish incentive programs such as ~~cluster~~-density bonuses in urban growth areas in association with the density credit program; and purchase of development rights, ~~and voluntary, workable transfer of development rights,~~ where appropriate, to compensate property owners if rights are unduly infringed.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2N-3: Consider development incentives, such as density bonuses, in cities and UGAs in association with the density credit program.~~as receiving areas for development rights transferred from sending areas. Encourage cities to consider development incentives in association with a cooperative City-County density credit program.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to a density credit program. It also encourages cities to establish density credit programs in conjunction with the County.

Policy 2U-5: Review and update the interlocal agreement with Bellingham, prior to expiration of the current interlocal agreement, to provide for:

- Coordinated growth management and capital facility planning;
- timing and provision of utility services and other urban services;
- timing and procedures to be used for review of adequate land supply;
- timing of annexations;
- revenue sharing formulas prior to and after annexation;
- development standards and regulations;

- joint City/County review of development proposals in the UGA;
- affordable housing; and
- a density credit program and/or transfer of development rights within the City of Bellingham.

Rationale: The existing interlocal agreement between Whatcom County and the City of Bellingham is valid through the year 2022. When the interlocal is updated in 2022, it should reference a density credit program. The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been utilized/extinguished.

Policy 2U-7: Whatcom County and Bellingham should designate areas that can accommodate density bonuses in association with a density credit program and/or receiving areas within the City of Bellingham and its UGA for Transfer of Development Rights from the Lake Whatcom Watershed.

Rationale: The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been extinguished.

Policy 2DD-10: Adopt and maintain incentive programs, such as purchase of development rights, the density credit program, transfer of development rights, and tax deferrals, to achieve desired land use policies in rural areas and in areas where there are compelling reasons to do so.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2UU-4: Support the retention of open space and open space corridors through the use of education and incentives, such as purchase ~~or transfer~~ of development rights, density bonuses within UGAs in association with the density credit program, cluster development, and acquisition of easements.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2UU-6: Improve public access to shorelines and other lands using such mechanisms as purchase ~~or transfer~~ of development rights, density bonuses within UGAs in association with the density credit program, and open space tax status.

Rationale: Same as rationale for Policy 2UU-4 above.

Chapter 3 (Housing)

Policy 3F-1: Include incentives in land use regulations, in UGAs and in Planned Unit Developments (PUDs), to offset the reduced profit inherent in more affordable types of housing. Incentives might include ~~transfer of development rights~~, density bonuses, fee waivers, expedited permit review, and/or infrastructure concessions to protect developers wherever special needs populations are specifically served.

Rationale: This change reflects the shift away from a traditional TDR.

Chapter 8 (Resource Lands)

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

- Maintenance of 100,000 acres of agricultural land to support a healthy agricultural industry.
- A density credit program where development incentives are offered in cities and/or UGAs if density credits are purchased by the developer. Funds from the density credit program would supplement the existing Purchase of Development Rights (PDR) program funding. ~~workable transfer of development rights program (TDR) in which the development potential of a site could be transferred to another location where development is more favorable.~~
- ~~The workable TDR program shall give priority to the creation of economically viable receiving areas.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It recognizes that monies taken in through the density credit program would go towards reducing development potential in areas suitable for agriculture.

- Developing a marketplace approach to strengthening agricultural practices while enhancing larger-scale watershed processes and functions by identifying feasible opportunities on agricultural land to improve both watershed health and agricultural viability and developing incentives and tools to compensate farmers for actions that exceed minimum regulatory standards.
- Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms.
- Incentives and cooperation between landowners and public agencies such as the use of the current use tax assessment provisions.
- Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.
- Discouraging conversion of designated agricultural lands to non-agricultural uses.
- Track acres lost due to conversion, development, or policy implementation such as critical areas ordinance, so mitigation strategies can be implemented to offset the acres lost.
- Education and marketing of programs that emphasize recognition of the local and regional significance of agricultural land as a natural resource and the economic, social and ecological benefits it provides.
- Working cooperatively with local farmers and coordinating with local and state agencies to address water quality impacts of agricultural activities on local streams and groundwater.
- Securing an adequate, sustainable, and legal supply of irrigation water sufficient to support the long-term viability of the local agricultural industry.
- Identify and evaluate any new or changed zoning or comprehensive plan agricultural lands of long term commercial significance designations as needed or warranted for the Rural Study Areas.
- Economic development assistance to agricultural-related enterprises.
- Recognize regulatory impacts and encourage farm friendly regulations.

Chapter 10 (Environment)

Policy 10C-3: Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase/~~voluntary, workable transfer~~ of development rights, the density credit program, and other mechanisms that assist affected property owners.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 10E-6: Maintain a comprehensive program of regulatory and non-regulatory mechanisms to achieve Natural Hazard goals and policies. This program should include such mechanisms as education, tax incentives, zoning, land use regulations, conservation easements, purchase of development rights, ~~transfer of development rights~~, and public acquisition.

Rationale: This change reflects the shift away from a traditional TDR. It does not reference the density credit program, because funds from density credits will go towards preserving rural and agricultural lands and are not specifically targeted towards naturally hazardous areas.

Policy 10L-16: Consider ~~establishing~~ important habitat areas (as set forth in best available science and Wildlife Advisory Committee recommendations) in the Purchase of Development Rights Program Guidelines site evaluation criteria. ~~as sending areas after creating a voluntary, workable transfer of development rights (TDR) program.~~

Rationale: This change reflects the shift away from a traditional TDR. It also recognizes that the existing PDR Program Guidelines "site evaluation" criteria include conservation values such as wildlife habitat.

Policy 10P-17: Consider establishing the Drayton Harbor Watershed as an area for directed PDR investments and encourage the cities of Blaine and Ferndale to establish density credit programs that provide funding to the County PDR program. ~~sending area when considering a transfer of development rights (TDR) program.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It also encourages a cooperative effort between the County and cities that would provide developer incentives in the cities while reducing development potential in the rural and/or agricultural areas of the Drayton Harbor Watershed.

THE BELLINGHAM HERALD

AFFIDAVIT OF PUBLICATION

Account #	Ad Number	Identification	PO	Amount	Cols	Lines
450919	0003920516	PUBLIC HEARING NOTICE (L0516) Whatcom Co	86601 OP	\$106.15	1	55

Attention: Marina Engels

WHATCOM CO COUNCIL
311 GRAND AVE STE 105
BELLINGHAM, WA 982254038

PUBLIC HEARING NOTICE

(L0516) Whatcom County Council will have a public hearing, consider adopting, and may amend the following at its November 7, 2018, meeting, or at a later date: **ORDINANCE ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO DENSITY CREDITS, PDRs, AND TDRs (AB2018-298):**

This ordinance amends the Whatcom County Comprehensive Plan to insert a density credit program that would allow development incentives, such as increased land use intensity, in exchange for a voluntary contribution towards preserving agricultural lands and open space. It also amends purchase of development right (PDR) and transfer of development right (TDR) provisions in the Comprehensive Plan.

ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY CODE CHAPTER 24.11, DRINKING WATER, TO ALLOW ADDITIONAL LANGUAGE REGARDING WATER ASSOCIATIONS (AB2018-303):

This ordinance amends Whatcom County Code Chapter 24.11.050 to allow rural landowners to use existing private wells for homes in water association service areas under certain, limited conditions. Council introduced the above at its October 23 meeting. Public documents are available for review in the Council Office, 311 Grand Avenue, Bellingham, and at www.co.whatcom.wa.us/council. Meetings are in the Council Chambers, same address, at 7:00 p.m., unless otherwise announced. The Council Chambers is handicapped accessible. People with special needs or disabilities who will be attending this meeting are asked to please contact our office (360-778-5010 or 800-676-6757) at least 96 hours in advance, so that we may make any needed accommodations. If interpretive services or transportation is needed, please call more than two days ahead of time.

KELSEY WYLIE, being duly sworn, deposes and says: That he/she is the Principal Clerk of The Bellingham Herald, a daily newspaper printed and published in Bellingham, Whatcom County, State of Washington, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of six months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Bellingham Herald, as amended, for:


1 Insertions

Published On:
October 27, 2018


(Principal Clerk)

Subscribed and sworn on this 29th day of October in the year of 2018 before me, a Notary Public, personally appeared before me Kelsey Wylie known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.




Notary Public in and for the state of Washington, residing in Whatcom County 1155 N State St, Bellingham, WA 98225

PUBLIC HEARING NOTICE

Whatcom County Council will have a public hearing, consider adopting, and may amend the following at its November 7, 2018, meeting, or at a later date:


ORDINANCE ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO DENSITY CREDITS, PDRs, AND TDRs

(AB2018-298): This ordinance amends the Whatcom County Comprehensive Plan to insert a density credit program that would allow development incentives, such as increased land use intensity, in exchange for a voluntary contribution towards preserving agricultural lands and open space. It also amends purchase of development right (PDR) and transfer of development right (TDR) provisions in the Comprehensive Plan.

Council introduced the above at its October 23 meeting. Public documents are available for review in the Council Office, 311 Grand Avenue, Bellingham, and at www.co.whatcom.wa.us/council. Meetings are in the Council Chambers, same address, at 7:00 p.m., unless otherwise announced. The Council Chambers is handicapped accessible. People with special needs or disabilities who will be attending this meeting are asked to please contact our office (360-778-5010 or 800-676-6757) at least 96 hours in advance, so that we may make any needed accommodations. If interpretive services or transportation is needed, please call more than two days ahead of time.

Dated October 24

ATTEST:


Dana Brown-Davis
Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


Rud Browne
Council Chair

Publish October 27

Jennifer Schneider

From: Karlee Deatherage <karleed@re-sources.org>
Sent: Friday, November 02, 2018 12:53 PM
To: Council; Barry Buchanan; Barbara Brenner; Rud Browne; Satpal Sidhu; Todd Donovan; Timothy Ballew; Tyler Byrd
Subject: Letter re: density credit amendments to the Comp Plan
Attachments: CompPlan_DensityCreditAmd_RESources_20181101.pdf

Good afternoon, Council Members.

Please find attached RE Sources' letter in support of the proposed density credit amendments to the Whatcom County Comprehensive Plan scheduled for a vote on Wednesday, November 8.

Thank you and have a good weekend!

Karlee

--

Karlee Deatherage

(she / her pronouns)

Policy Analyst, Clean Water Program

RE Sources for Sustainable Communities

Mobile: (425) 268-5245

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Whatcom County Council
311 Grand Ave.
Bellingham, WA 98225
Submitted via email: council@co.whatcom.wa.us

RE: Ordinance adopting amendments to the Whatcom County Comprehensive Plan relating to Density Credits, PDRs, and TDRs (AB2018-298)

November 2, 2018

Dear Honorable County Council Members:

We write to express our support of the proposed amendments to the Whatcom County Comprehensive Plan (Comp Plan) regarding density credits, Purchase of Development Rights (PDR), and Transfer for Development Rights (TDR) contained in Agenda Bill 2018-298.

RE Sources for Sustainable Communities (RE Sources) is a local organization in northwest Washington, founded in 1982. RE Sources works to build sustainable communities and protect the health of northwest Washington's people and ecosystems through the application of science, education, advocacy, and action. Our North Sound Baykeeper program is dedicated to protecting and enhancing the marine and nearshore habitats of northern Puget Sound and the Georgia Strait. Our chief focus is on preventing pollution from entering the North Sound and Strait, while helping our local citizenry better understand the complex connections between prosperity, society, environmental health, and individual wellbeing. Our North Sound Baykeeper is the 43rd member of the Waterkeeper Alliance, with over 300 organizations in 34 countries around the world that promote fishable, swimmable, drinkable water. RE Sources has over 20,000 members in Whatcom, Skagit, and San Juan counties, and we submit these comments on their behalf.

As a member of the TDR/PDR Multi-Stakeholder Work Group representing the environmental perspective, we see shifting the traditional TDR program to a density credit program as a more efficient tool to encourage the preservation of resource lands and critical areas while directing density or other development incentives to suitable urban areas. Approving this ordinance is one step in a multi-faceted process to establish a density credit program beyond Birch Bay, which you had approved earlier this year.

Other aspects of a density credit program you will hopefully be able to consider in the future, as identified in the TDR/PDR Work Group report include:

- **Establishing density receiving areas beyond certain areas in Birch Bay.**

- Interlocal agreements with the various cities will likely need to be pursued to send density into cities. We encourage the County Council to direct staff to start having these conversations with their counterparts in the various cities.
- When looking at other areas in the county to become density receiving areas, we urge you to avoid environmentally sensitive areas such as areas in river channel migration zones, 100 year floodplain, lahar zones, landslide prone areas, and areas with natural resource designated zoning.
- **Identifying other credit incentives aside from increased density.**
 - Such other incentives could include waived or reduced parking requirements (in the county or various cities), waiving the owner-occupied requirement for attached/detached dwelling units in the county, and increased size of attached/detached dwelling units in the county.
 - We urge you to avoid incentives that would cause further or unintended environmental degradation. This includes reduced buffers for wetlands and habitat conservation areas or waiving stormwater or local low-impact development requirements (which may not be legally permissible in the first place).

Thank you for considering our comments. We look forward to working together to grow the density credit program in order to protect our natural resources and the environment.

Please feel free to contact me if there are any questions or comments.

Sincerely,

Karlee Deatherage
Policy Analyst
karleed@re-sources.org

Jennifer Schneider

From: Matt Aamot
Sent: Wednesday, October 10, 2018 4:06 PM
To: Jack Louws; Council
Cc: Chris Elder; Mark Personius; Tyler Schroeder; Dana Brown-Davis; Betty Sanchez; Bill Henshaw; Chris Behee, City of Bellingham GIS Analyst; Dave Timmer, City of Lynden; Jori Burnett, City of Ferndale; Karlee Deatherage; Michael Jones, Blaine Planning; Myrle Foster; Phil Thompson, WWU; Ralph Black; Rod Erickson; Rollin Harper, Cities of Nooksack, Everson & Sumas; Rud Browne; Steve Powers
Subject: Whatcom County TDR/PDR Work Group - Final Report
Attachments: TDR-PDR Work Group - Final Report (Oct 2018).pdf

Dear Executive Louws and Council:

As you know, the County Council adopted the Comprehensive Plan update in August 2016. Comprehensive Plan Policy 2A-14 included convening a work group tasked with reviewing TDR and PDR program issues. In accordance with this policy, the Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017.

The Work Group met 15 times in 2017-2018 and issued their Final Report on October 3, 2018. We are hereby transmitting a copy of this report to you. Additionally, we would like to extend our thanks to the members of the Work Group for the knowledge, insight, and courtesy displayed over the last year and a half. We appreciate the Group's diligent effort and thoughtful work that went into the project.

Sincerely,

Matt Aamot
 Whatcom County Planning & Development Services

Whatcom County TDR/PDR Multi-Stakeholder Work Group

Final Report

October 3, 2018

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1. Introduction

Whatcom County has an important interest in protecting agricultural lands, rural areas, and sensitive watersheds throughout the county. Protection of these areas benefits all County residents, including those living in cities. At the same time, cities have the responsibility to plan for future growth in their communities, providing adequate land and densities to accommodate urban growth over the 20-year planning period. These city planning efforts, intended to attract the majority of population growth into urban areas, also benefit the County as a whole. County and city planning efforts must be coordinated and consistent under the Growth Management Act or GMA (RCW 36.70A.100).

Agricultural and Rural Lands

Agriculture has been an important component of the Whatcom County economy for a long time and remains so today. The *Preliminary Assessment of Drivers of Agricultural Land Conversion in Whatcom County Washington* report (Aug. 2016, hereinafter referenced as "*Drivers of Agricultural Land Conversion* report") states:

. . . The county has always been a leader in agricultural products with dairy being the mainstay. Whatcom is the sixth largest agriculture county in Washington and ranks in the top 3% out of 3,065 U.S. agricultural counties. The 2012 Census of Agriculture shows that 1,702 Whatcom farms representing 115,831 acres produced 357 million dollars of agricultural goods, an average of nearly \$210,000 per farm. . . (pp. 14-15).

The GMA requires counties to designate and conserve agricultural lands of long-term commercial significance (RCW 36.70A.060 and .170). The Whatcom County Comprehensive Plan designates almost 86,000 acres of Agriculture land, most of which is in the central and northern areas of the County. The Comprehensive Plan indicates the purpose of the Agriculture designation is:

To recognize and promote agriculture in Whatcom County and protect prime agricultural soils and productive agricultural lands from conversion to other uses. To prevent conflicts between residential and agricultural uses (p. 2-90).

Designated Agriculture land is located adjacent to five of the seven cities in Whatcom County (Everson, Ferndale, Lynden, Nooksack, and Sumas).

The GMA also requires county comprehensive plans to include rural land use designations to protect rural character (RCW 36.70A.070(5)). Approximately 38,000 acres in the Rural one dwelling/five acres (R5A) and Rural one dwelling/ten acres (R10A) zones, which constitute almost 1/3 of these zoning districts, are actively farmed (*Drivers of Agricultural Land Conversion* report, p. 16). While agriculture is one valued component of rural lands, there are also other factors that make rural lands valuable to County residents. In fact the Whatcom County Comprehensive Plan addresses multiple factors in the purpose of the Rural designation, which is:

To provide opportunity for a variety of low-density residential development including cluster development with the flexibility to practice farming or forestry, or operate a home occupation or cottage industry; to retain a sense of community. Also to encourage agriculture and forestry activities through the use of incentives (p. 2-90).

Maintaining agricultural lands and rural character are both important to the quality of life and sense of place in Whatcom County.

Watersheds

Lake Whatcom is the drinking water source for approximately 100,000 people, many of whom live in Bellingham (<http://www.whatcomcounty.us/984/Lake-Whatcom-Management>). The Lake also provides swimming, fishing, and boating opportunities for both City and County residents, along with fish and wildlife habitat. The majority of the 36,000 acre watershed is located within unincorporated Whatcom County. Therefore, both the City of Bellingham and Whatcom County have important interests in preserving Lake Whatcom water quality by managing land use in the watershed.

The City of Blaine is located on Drayton Harbor. The Drayton Harbor Watershed is over 36,000 acres. The watershed includes a relatively large area in the City of Blaine, a smaller area in the City of Ferndale, rural lands, and agricultural lands. The Whatcom County Comprehensive Plan states:

Both the County and the City of Blaine are concerned about water quality in Drayton Harbor. Drayton Harbor has a rich history as a shellfish resource. Studies have shown that fecal coliform levels in Drayton Harbor are high and have led to the closure of shellfish harvesting beds. Harvest has been restricted due to fecal pollution since 1952 with closures beginning in 1988. In 1995 the Drayton Harbor Shellfish Protection District was established. Drayton Harbor was entirely closed to commercial shellfish harvest in 1999. In 2004, 575 acres were upgraded to conditionally approved with closures occurring after heavy rainfall. Currently the conditionally approved portion is closed from November through February. Several waterbodies in the watershed are on the 303(d) list, including California and Dakota Creeks. In 2007, the County adopted an update to the Drayton Harbor Shellfish Protection District Recovery Plan. This plan reflects the success of reopening some areas for shellfish harvesting in 2004 and outlines future plans for Drayton Harbor restoration. In 2014, the City initiated a three-year project intended to identify point and nonpoint sources of pollution and take corrective action. . . Land uses throughout the watershed contribute to water quality in the Harbor and efforts by both the County and the City are necessary to manage water quality (p. 2-28).

Both the City and the County have important interests in preserving Drayton Harbor water quality by managing land use in the watershed.

City Planning / Urban Growth

The GMA states that the county must “. . . designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. . .” (RCW 36.70A.110(1)). Additionally, the Whatcom County Comprehensive Plan’s vision statement indicates:

Whatcom County is a place where urban growth is concentrated in urban areas, where there is a distinct boundary between urban and rural uses, where agricultural use is encouraged, and where resource lands and water resources are protected. Rural areas are peaceful and quiet with less traffic and congestion than in urban areas. There is low-density development with open spaces allowing for privacy. A sense of community is retained and local input is considered in land use decisions (p. 2-1).

Whatcom County and the cities worked in close cooperation and coordination in the 2016 comprehensive plan updates. The County and cities jointly agreed on population growth allocations to the cities and the remainder of the County, which were incorporated into the Whatcom County Comprehensive Plan by Ordinance 2016-034. Finding 44 of this ordinance states:

The population growth allocations to the UGAs total 58,433 additional people over the planning period (which equates to approximately 84% of countywide population growth). The population growth allocation to the remainder of the county, outside UGAs, totals 11,217 additional people (which equates to approximately 16% of the countywide population growth).

Funneling urban growth into the cities is not only required by the GMA, but also helps preserve agricultural, rural, and environmental areas in unincorporated Whatcom County. Therefore, the cities and Whatcom County have an important shared interest in encouraging growth inside city limits and other urban growth areas (UGAs).

Existing TDR and PDR Programs

The County has an existing transfer of development rights (TDR) program and purchase of development rights (PDR) program. The TDR program is intended to move development rights from the Lake Whatcom Watershed and sensitive environmental areas in the Birch Bay area to urban locations that are more appropriate for growth. The PDR program purchases development rights from agricultural and rural lands and retires these rights in order to reduce development in these areas. The PDR program is funded by a combination of local dollars and grants. The main source of local funding for the PDR program is the Conservation Futures tax. However, Conservation Future funds are also used for park land and other conservation projects. The existing TDR and PDR programs are discussed in more detail later in this report.

Whatcom County Comprehensive Plan Policy 2A-14

The Whatcom County Council adopted the Comprehensive Plan update in August 2016 (Ordinance 2016-034). New Comprehensive Plan Policy 2A-14 includes convening a multi-stakeholder work group tasked with:

- Reviewing the current TDR and PDR programs.
- Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.
- Identifying opportunities and solutions for creating a workable TDR program.
- Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.
- Recommending policy and regulatory amendments necessary to implement the above policy.
- Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.
- Identifying receiving areas.
- Identifying other factors and/or growth management tools.
- Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.
- Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.

The Whatcom County Executive originally appointed the Whatcom County Transfer of Development Rights (TDR)/Purchase of Development Rights (PDR) Multi-Stakeholder Work Group in February 2017. Members of the Work Group are shown below:

Ralph Black	TDR User (Chair)
Jori Burnett	City of Ferndale (Vice-Chair)
Chris Behee	City of Bellingham
Michael Jones	City of Blaine
Rollin Harper	Cities of Everson, Nooksack, and Sumas
Dave Timmer	City of Lynden
Bill Henshaw	Building Industry
Betty Sanchez	Realtors
Myrle Foster	Rural Property owner
Phil Thompson	Economist
Steve Powers	Affordable housing
Rod Erickson	Agriculture
Karlee Deatherage	Environmental
Rud Browne	County Council Member

Former Members: Brad Rader and Steven Globerman

The Work Group met from March 2017 to October 2018. The primary recommendation of the Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other appropriate areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program. The Work Group's full recommendations are set forth in Section 12 of this report.

2. Current TDR Program

The Growth Management Act (GMA), originally adopted by the state legislature in 1990, states "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights" (RCW 36.70A.090). The Whatcom County Comprehensive Plan contains a number of policies relating to TDRs, including:

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as cluster density bonuses in urban growth areas, purchase of development rights, *transfer of development rights*, and tax deferrals.

Policy 8A-2: . . . Measures that can be taken to support working farms and maintain the agricultural land base should include . . . A workable *transfer of development rights program (TDR)* in which the development potential of a site could be transferred to another location where development is more favorable. . .

Whatcom County has adopted a series of ordinances relating to transfer of development rights over the last 35 years. These include:

- Ordinance 82-58 – The County adopted new Chapter 20.89, entitled "Density Transfer Procedure," in the Title 20 Zoning Ordinance in 1982. This code allowed increased multi-family densities when development rights were transferred from undeveloped single family lots or multi-family tracts. These provisions, which were adopted soon after approval of the Lake Whatcom Subarea Plan, were originally applied within Sudden Valley.
- Ordinance 97-046 – The County adopted a new Urban Residential - Mixed (URMX) zoning district in association with the Urban Fringe Subarea Plan update in 1997. The URMX zone was designated as a TDR receiving area in the Bellingham UGA. Development rights could be voluntarily transferred to increase the density allowed in the URMX zone.
- Ordinance 99-087 – Chapter 20.89 underwent a significant re-write and the Lake Whatcom Watershed was officially designated as a "sending area" in 1999.
- Ordinance 2004-044 - Several sections of the County Code were amended in 2004 to require TDRs for urban growth area expansions and rezones that increased residential density. However, there were several exceptions to these mandatory provisions, including requests initiated by a government agency.
- Ordinance 2005-002 - The Official Whatcom County Zoning Map was amended in 2005 to establish sending areas in the Birch Bay area.

At the current time, there are two main categories of TDR provisions in the Whatcom County Code (WCC): Optional provisions and mandatory provisions. These are addressed below.

Optional TDR Provisions

The County Zoning Code allows land owners to increase development in certain urban zones by transferring density from areas where County policy seeks to reduce development potential. These provisions are strictly voluntary. Developers may utilize these provisions, but are not required to use them.

Bellingham UGA - Urban Residential Mixed (URMX) Zoning District. The URMX zoning has a number of different densities including 6-10 dwellings/acre and 6-12 dwellings/acre. The lower density figure can be obtained if public water & sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and development rights are transferred from the Lake Whatcom Watershed. Each development right transferred from the Lake Whatcom watershed may be used to develop three additional dwelling units in the URMX zone (WCC 20.24.252). An example is provided below to illustrate how this could work in the URMX (6-12) zone. The example assumes a 20 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URMX (6-12)

Gross Acres	20
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	10
Units/Net Developable Acre (without using TDRs)	6
Total Units (without using TDRs)	60
Units/Gross Acre (using TDRs)	12
Total Units (using TDRs)	240

In the example above, 60 dwelling units could be constructed on the hypothetical 20 acre site in the URMX (6-12) zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 240. URMX zones only exist in the Bellingham UGA. However, Bellingham generally does not extend public water and sewer outside city limits. The maximum density in the UGA, outside city limits, is one dwelling/10 acres when public water and sewer are not available. Therefore, the URMX zone does not function well as a TDR receiving area.

Birch Bay UGA - Urban Residential Medium Density (URM-24) Zoning District. The URM-24 zoning allows 10 to 24 dwellings/acre. The lower density figure can be obtained if public water and sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and

development rights are transferred from the sending areas in the Birch Bay area or the Lake Whatcom Watershed. Each development right transferred may be used to develop three additional dwelling units in the URM-24 zone (WCC 20.22.252). An example is provided below to illustrate how this could work in the URM-24 zone. The example assumes a 40 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URM-24

Gross Acres	40
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	20
Units/Net Developable Acre (without using TDRs)	10
Total Units (without using TDRs)	200
Units/Gross Acre (using TDRs)	24
Total Units (using TDRs)	960

In the example above, 200 dwelling units could be constructed on the hypothetical 40 acre site in the URM-24 zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 960. This constitutes 760 additional dwelling units that could theoretically be added through the TDR program (at a 3:1 ratio, 254 development rights would have to be purchased to gain 760 more dwelling units). In this example, the gross density would be 24 units/acre (960 units/40 gross acres), but the net density would be 48 units/acre (960 units/20 net acres). It should be noted that the only URM-24 zone in the County is located in the Birch Bay UGA. Public water & sewer are generally available in the Birch Bay UGA and multi-family development is allowed in the URM-24 zone. However, an analysis of subdivisions and short plats conducted during the 2016 UGA review found that achieved net densities in the Birch Bay UGA averaged 5.9 dwellings/net acre (2004-2013). Additionally, wetlands will impact the extent to which future development can occur in the URM-24 zone. Given past development trends, and the critical areas present in the receiving zone, it may be unrealistic to expect the area to develop at the maximum density allowed by zoning with TDRs.

The Whatcom County Zoning Ordinance states:

A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Whatcom County planning and development services department. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel shall be certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. . . (WCC 20.89.061).

A total of 247 development rights have been certified for transfer in Whatcom County. Only 18 of these development rights have actually been transferred.

Mandatory TDR Provisions

The Whatcom County Code contains provisions that require utilization of TDRs under certain circumstances. If these conditions are met, then it is mandatory to transfer development rights.

Urban Growth Area Expansions - Proposed urban growth area expansions are required to acquire development rights from a designated TDR sending area at a ratio of one development right for every five acres added to the UGA (WCC 20.89.051(3)). These provisions, which were originally adopted in 2004 in Ordinance # 2004-044, contain several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Urban growth area expansions initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served are also exempt from the TDR requirement.

Rezones in Urban Growth Areas – Proposed rezones that would increase residential density in urban growth areas are required to acquire development rights from a designated TDR sending area (WCC 20.89.051(2)). These provisions, which were also adopted in 2004 in Ordinance # 2004-044, require one development right to be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. However, as with UGA expansions, there are several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Rezones initiated by a government agency, rezone correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that are intended to make a nonconforming use a conforming use or rezones where the public interest is served are also exempt from the TDR requirement.

Although these mandatory requirements were adopted in 2004, they have not resulted in transfer of any development rights to date. This is primarily due to the fact that cities requesting UGA expansions are exempt from the TDR requirements.

3. Current PDR Program

Whatcom County Comprehensive Plan Policy 8A-2 is to:

Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

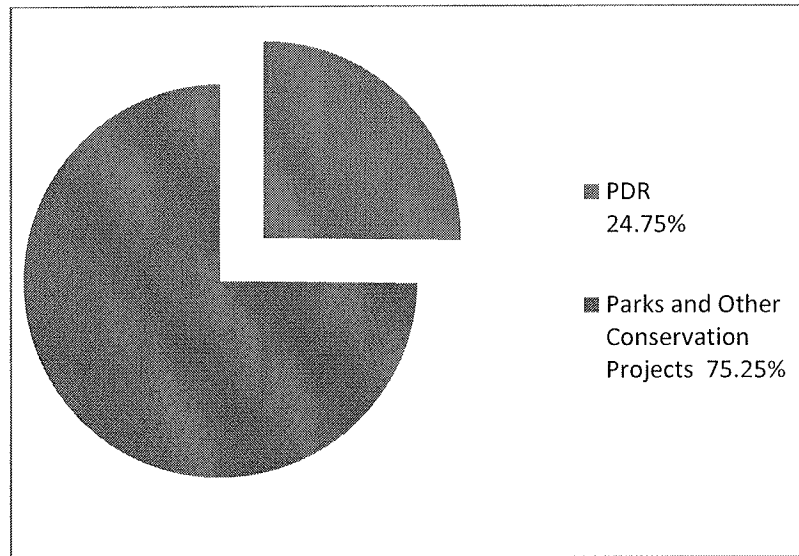
- . . . Maintaining a *Purchase of Development Rights (PDR)* program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

In 1992, the County established the Conservation Futures Property Tax Levy and Fund (Ordinance 92-002, now codified as WCC 3.25). This County Code states “. . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation” (WCC 3.25.010). As of 2018, the Conservation Futures tax rate is just under four cents per \$1,000 assessed valuation (*Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County*, Whatcom County Assessor). The revenue from the fund:

. . . shall be used solely to acquire rights and interests in open space land, farm and agricultural land, and timber land . . . so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use or enjoyment . . . (WCC 3.25.030).

Approximately \$1.1 million in Conservation Future taxes will be collected from County and city land owners in 2018. Additionally, as of the beginning of 2018, the Conservation Futures fund balance was about \$3.6 million. The fund is used for PDR easement purchases and acquisition/maintenance of parks and other conservation projects, as shown below.

Use of Conservation Futures Tax (2002-2017)



In 2001, the Whatcom County Council approved Resolution 2001-049 *In Support of Expenditures from Conservation Futures Fund to Acquire Property Interests in Agricultural Land for Strategic Conservation Purposes*. This Resolution recognized that productive farms have long served and still serve as a crucial component of the economic and cultural life of Whatcom County. The Resolution also stated:

. . . The Council commits itself to expend a fair and significant share of the Conservation Futures Funds for acquiring interests in agricultural lands;

. . . a Purchase of Development Rights Steering Committee be created by the Executive with the charge of developing a PDR program for Whatcom County in concert with the Whatcom County Agriculture Advisory Committee. . .

The Purchase of Development Rights Steering Committee issued its recommendations in May of 2002. The Whatcom County Council adopted the "Agricultural Purchase of Development Rights Program" (WCC 3.25A) in September 2002 under Ordinance No. 2002-054. This Ordinance stated that "Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens." The purpose of the PDR Program is:

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).

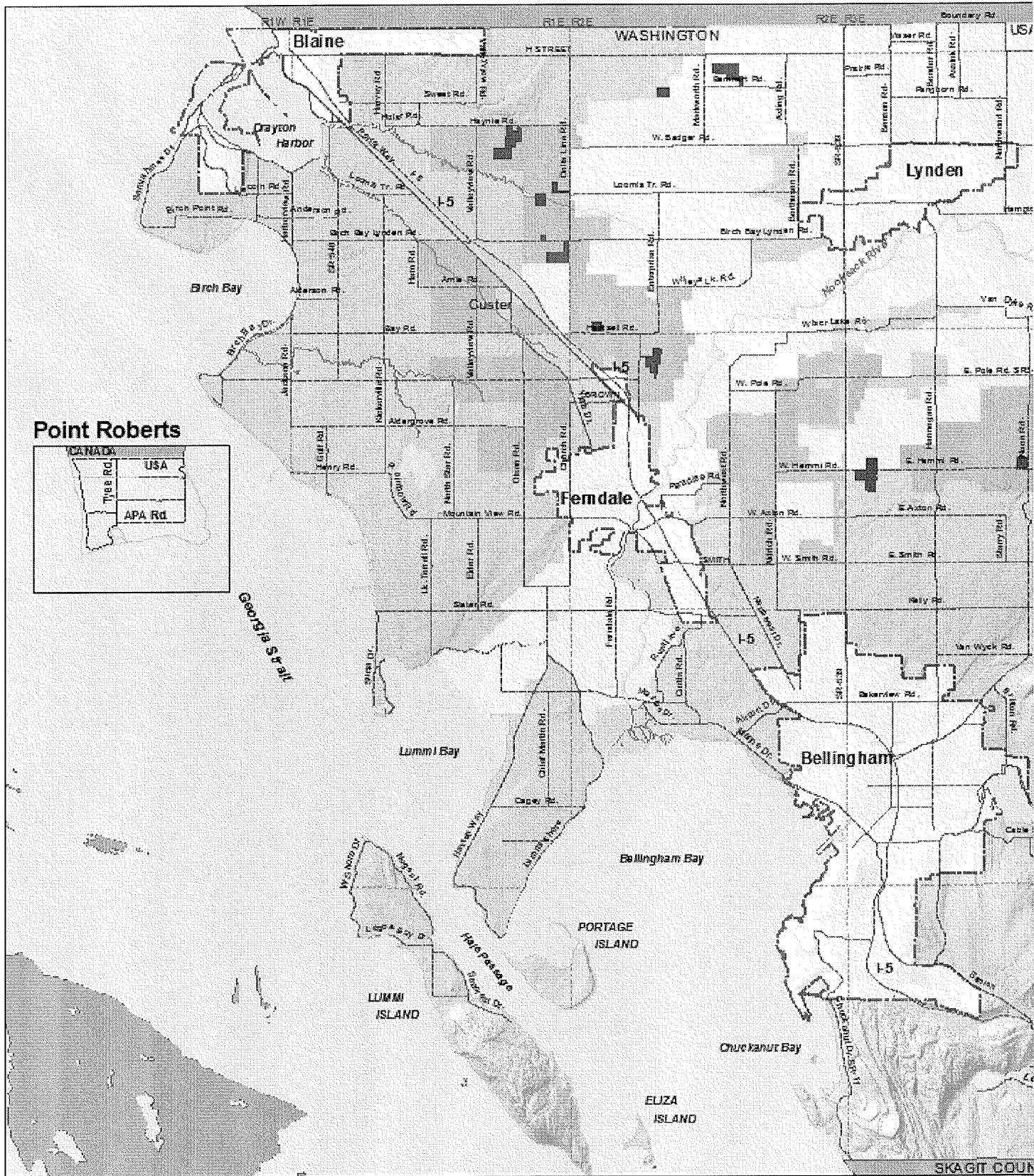
The *Whatcom County Agricultural Purchase of Development Rights Program Guidelines* (revised April 2013) provide the rules and procedures for operating the PDR Program. Properties must be in the Agriculture or Rural zoning districts to be

eligible for the PDR Program. The Guidelines provide five site selection criteria to guide the review of eligible properties:

- Land Evaluation (relating to soil characteristics);
- Site Evaluation (parcel size, # of development rights, % of parcel actively farmed, etc.);
- Special Considerations (historical significance, views, wetlands, wildlife habitat, etc.);
- Bargain Sale Opportunity (offer below market value);
- Bonus Points (sites in target or rural study areas).

Staff ranks the applications, with review and adjustments by the PDR Oversight Committee. If the County Council approves the application, the County pays the land owner fair market value for the development rights, a conservation easement is placed on the land restricting future development, and the farmer continues agricultural practices on the land.

Since creation of the PDR Program, the County has purchased 130 development rights on 919 acres in the R5A, R10A, and Agriculture zoning districts. The total price tag has been approximately \$6.1 million. The County has spent more than \$3.2 million from the Conservation Futures Fund to purchase these development rights. The other \$2.9 million has come primarily from the U.S. Department of Agriculture (with relatively small shares from the state and a local non-profit organization). Agricultural conservation easements that the County has already purchased, along with current PDR applications, are shown on the map below.



Whatcom County

- Purchase of Development Rights 2018

4. Current Sending and Receiving Areas

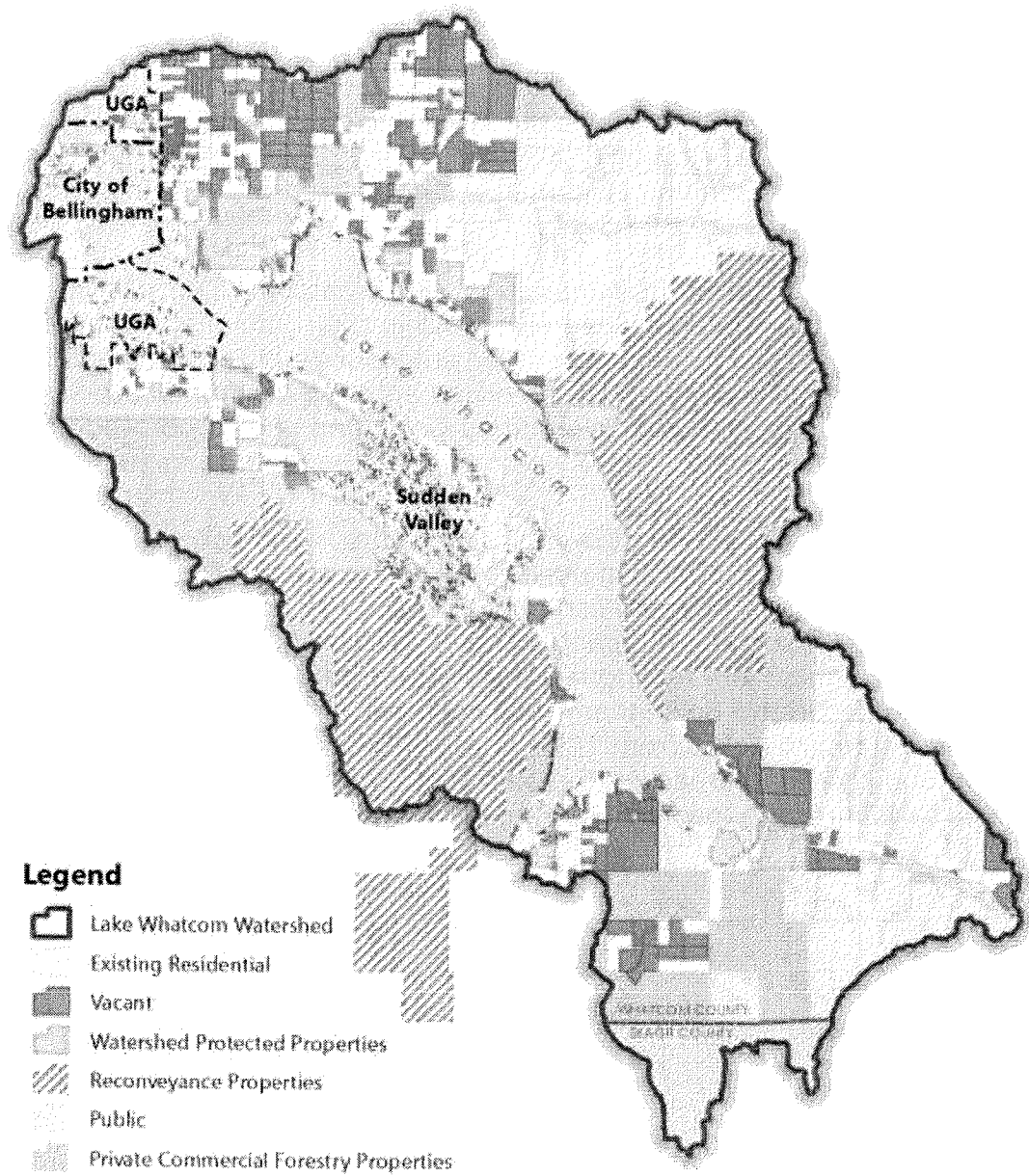
Lake Whatcom / Bellingham

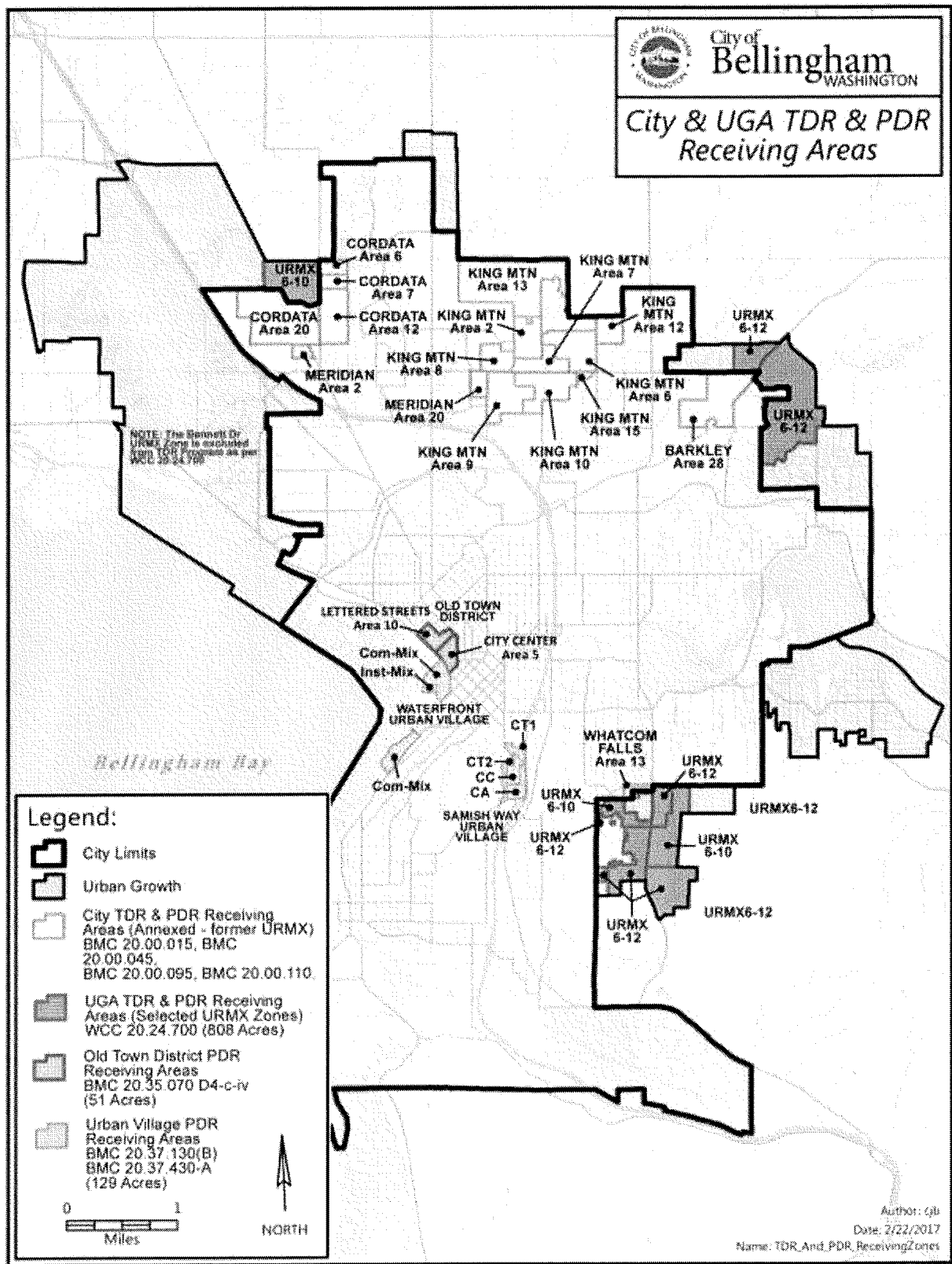
In 1997, the Whatcom County Council adopted a new Urban Residential - Mixed (URMX) zoning district, which served as a TDR receiving area in the Bellingham UGA (Ordinance 97-046). In 1999, the Lake Whatcom Watershed was designated as a TDR sending area (Ordinance 99-087). Only development rights from the Lake Whatcom Watershed sending area may be transferred to receiving areas within the Bellingham UGA (WCC 20.89.052(1)).

WCC 20.89.051(4) states "In cooperation with Whatcom County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purposes of receiving transferred densities pursuant to this chapter." The City of Bellingham has designated TDR receiving areas to accommodate development rights from the Lake Whatcom Watershed (including unincorporated portions of the Watershed).

There are an estimated 1,631 development rights in the Lake Whatcom Watershed that could, potentially, be transferred to receiving areas. The receiving areas within the City of Bellingham have an estimated capacity to accommodate up to 6,801 development rights from Whatcom County's TDR program or up to 7,378 development rights from Bellingham's PDR program. Additionally, once annexed, the URMX zones in the Bellingham UGA could accommodate an estimated additional 2,565 development rights from TDRs and/or PDRs. The capacity estimates for both sending and receiving areas were generated by City of Bellingham Planning staff utilizing 2017 property ownership, zoning, and permit system data.

Lake Whatcom Sending Area





Small Cities

The cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas have not adopted TDR receiving areas.

Birch Bay

In 2005, the Official Whatcom County Zoning Map was amended to establish sending areas in the Birch Bay area (Ordinance 2005-002). Development rights from any sending area (Birch Bay or the Lake Whatcom Watershed) may be transferred to the receiving area within the Birch Bay UGA (WCC 20.89.052(2)).

There are approximately 703 potential development rights that could be transferred out of Birch Bay sending areas. The Birch Bay receiving area could theoretically accommodate 1,858 additional dwelling units if TDRs are utilized. However, the site would have to be developed at 24 dwellings/gross acre and critical areas exist on portions of the receiving area. Therefore, it may be unrealistic to expect that the Birch Bay receiving area will develop at the maximum density allowed by the zoning. In other words, this receiving area may not accommodate the full 1,858 additional dwellings allowed through the TDR program.

5. **Barriers to Effective TDR and PDR Programs**

Transfer of Development Rights Program

There are a number of barriers to an effective TDR program in Whatcom County. Identified barriers are set forth and discussed briefly below.

TDR Barrier # 1 – Lack of Market Demand for Higher Densities

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* (January 2009) was prepared by Property Counselors for the City of Bellingham. This report states:

. . . new subdivisions are being developed at densities below the base densities under current zoning. Developers are forgoing development rights they are already entitled to; they are not likely to pay for additional rights. . . (p. 4).

. . . The demand for development at different densities determines the degree to which a TDR program will provide an incentive to developers. If higher densities create value, a developer will be willing to spend a portion of that value in return for the density. . . (p. 12).

. . . existing areas in the UGA are not being built out to their theoretical maximum densities, it does not seem that there will be any significant demand for TDRs in the annexation areas in the next decade . . . (p. 14).

The *Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis* indicates that, as of 2009, builders were not building to the maximum density allowed by the zoning and, therefore, had no need to purchase development rights to achieve higher densities (pp. 4, 5, 12, 19, and 24). Between 1999 and 2008, the URMX zone in the Bellingham UGA built out at 43% of maximum capacity allowed by zoning (p. 13). Lack of demand is an important factor explaining why the TDR program isn't working well (pp. 4 and 19).

Since 2008, cities have generally increased allowed residential densities, which is in accordance with the Whatcom County Comprehensive Plan (e.g. Goal 2P and Policy 2N-5). At the current time, development is generally at or below maximum densities allowed by city zoning. Therefore, there is minimal demand to increase densities above the base densities allowed by existing zoning.

There is also a sense that, in some areas, the easy to develop land has already been built upon and that site conditions in remaining areas may not lend themselves to higher densities.

TDR Barrier # 2 – Lack of Relevant Incentives

The primary incentive for a developer to use the TDR program in the Whatcom County Zoning Code is the assumed ability to meet market demand, and thereby earn additional returns, through increased residential density. However, in order to meet market demand, land is often developed at densities at or below those allowed by zoning. Therefore, increasing residential densities has not provided a large incentive to entice developers to utilize the TDR program.

There are other incentives for using TDRs in the Whatcom County Zoning Code:

- Fee reductions (WCC 20.89.072);
- Landscaping requirement reductions (WCC 20.89.073);
- Increased lot coverage (WCC 20.89.073); and
- Lot size, lot width, setback, and parking modifications in subdivisions (WCC 20.89.090).

The County Zoning Code does not allow for increased building height or increased floor/area ratios for commercial buildings as an incentive for using TDRs at the current time.

Neither increased residential densities nor the other existing incentives have provided developers with sufficient opportunities to derive adequate profits to undertake the added risks associated with using the TDR program. Therefore, additional new incentives should be considered.

TDR Barrier # 3 – Limited County TDR Receiving Areas

The following TDR receiving areas have been designated in unincorporated Whatcom County:

- Receiving areas in the Bellingham UGA (outside city limits); and
- A receiving area in the Birch Bay UGA.

Bellingham UGA - The URMX receiving areas in the Bellingham UGA, outside city limits, can only be developed with urban residential densities if public water and sewer are available. City of Bellingham Municipal Code 15.36.010 generally prohibits extension of water and sewer outside city limits (see Ordinance 2011-05-025). Therefore, the Bellingham UGA does not provide effective TDR receiving areas at the current time.

Birch Bay UGA – The Birch Bay UGA has a URM-24 zone that is designated as a receiving area. Birch Bay generally has public water and sewer and this zoning district can accommodate both single family and multi-family dwellings. The URM-24 zone requires a minimum density of 10 dwelling units/net acre, which is above achieved densities for subdivisions in the Birch Bay UGA (2004-2013). Additionally, this receiving area would have to be developed at 24 dwellings/gross acre to accommodate the entire 1,858 dwelling units potentially available through the TDR

program. In light of recent achieved densities and critical area constraints, it may be unlikely that such a density would be developed.

TDR Barrier # 4 – City Participation

At the current time, the City of Bellingham has designated receiving areas for TDRs from the Lake Whatcom Watershed sending area. The City of Bellingham, with a 2018 population of 88,500, has a significant incentive to participate in this program because Lake Whatcom is the City's drinking water source. There are also several water districts that receive water from the City and/or draw water from the Lake.

The receiving areas within the City of Bellingham can accommodate an estimated 6,801 development rights from the Lake Whatcom Watershed TDR sending area and/or the City's PDR Program. Once annexed, the URMX zones in the Bellingham UGA could accommodate an additional 2,565 development rights. However, the receiving areas generally develop at densities allowed by the underlying zoning without the need for TDRs.

The six small cities have not designated receiving areas for TDRs from County sending areas. While preservation of agricultural lands, creek corridors, and rural areas may be desirable from a city perspective, stronger incentives may be needed to attract city participation in a TDR program. King County has provided "amenity funds" to cities participating in the TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from rural areas. However, in Whatcom County, no such amenity funds have been identified to encourage cities to participate in the TDR program.

TDR Barrier # 5 – Uncertainty / Complexity for Developers

The Whatcom County Zoning Code has a discretionary permitting process for increasing density at receiving areas through TDRs (WCC 20.89.065(2)). This means that a developer has to design a project, pay fees, and submit the application for County approval before finding out whether they can actually increase density through the TDR program.

The Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis (2009) indicates that:

. . . Most developers are skeptical about the value of TDRs primarily because of uncertainty about exactly how it would work and whether higher density projects could ultimately be approved. . . (p. 4).

. . . Several individuals representing the development community stated the TDR program had limited appeal due primarily to uncertainty associated with the program. Such uncertainty is manifested in a scenario whereby a developer purchases TDRs to obtain higher density, then encounters neighborhood opposition when they attempt to proceed with their proposed

project. In essence, they felt that TDRs had no value today due to such uncertainty, and this is evident by the program's lack of use. . . (p. 18).

The administrative requirements of the program may discourage its use. . . (p. 19).

TDR Barrier # 6 – Lack of In Lieu Fee

The Whatcom County Zoning Code allows "in lieu payments" if a development rights bank has been established. Specifically, WCC 20.89.034 states:

Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. In lieu payments shall be utilized by the development rights bank for purchase, sale or transfer of development rights. The development rights bank oversight committee shall establish procedures for the acceptance and utilization of in lieu payments.

At the current time, Whatcom County does not have a development rights bank. Therefore, in lieu payments are not authorized.

TDR Barrier # 7 – Additional Costs Act as Disincentive

Cities create a vision for their communities through the comprehensive planning process and enact zoning to fulfill that vision. Increasing density via TDRs may not be consistent with a city's vision or may change the character of the area. Additionally, TDR programs may create a disincentive for higher densities and affordable housing by increasing development costs when compared to simply re-zoning property for higher densities.

The main goal of the County's existing TDR program is to extinguish development rights in the Lake Whatcom Watershed and other areas (rather than to achieve higher densities). At the current time, if cities want to encourage higher densities they simply modify the zoning to allow increased development. They do not have to provide benefits (i.e., extinguishment of development rights) in the unincorporated portion of the County to allow higher densities in cities.

Requiring TDRs for city upzones would provide a benefit in unincorporated areas of the County, but may also create a disincentive for higher densities and affordable housing projects inside the cities than would otherwise be the case. In some instances, reduced density in unincorporated areas may provide a significant benefit to city residents (such as Lake Whatcom water quality protection, which is advantageous to Bellingham residents who drink the water). However, in other cases the benefit of reduced densities in unincorporated areas may not be readily apparent to city residents.

TDR Barrier # 8 – State Law (RCW 82.02.020)

In 2016, the cities of Blaine and Ferndale submitted letters to the County Council regarding Policy 2A-14. These cities indicated that requiring TDRs for UGA expansions would essentially be a tax. Staff asked the Prosecuting Attorney's Office to review this issue.

Royce Buckingham, Civil Deputy with the Whatcom County Prosecuting Attorney's Office, discussed RCW 82.02.020 (state preempts certain tax fields) with the Work Group on June 7, 2017. RCW 82.02.020 states:

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

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

The Civil Deputy stated that requiring TDRs for UGA expansions would constitute a fee or charge on a re-classification of land. Therefore, under the statute, a jurisdiction can't require TDRs for UGA expansions.

The Civil Deputy indicated that there is an exception for "voluntary agreements." However, land re-classifications such as UGA expansions are not covered by the exception and such re-classifications do not create a direct, identifiable impact. The direct impact would occur later, if and when the land is developed.

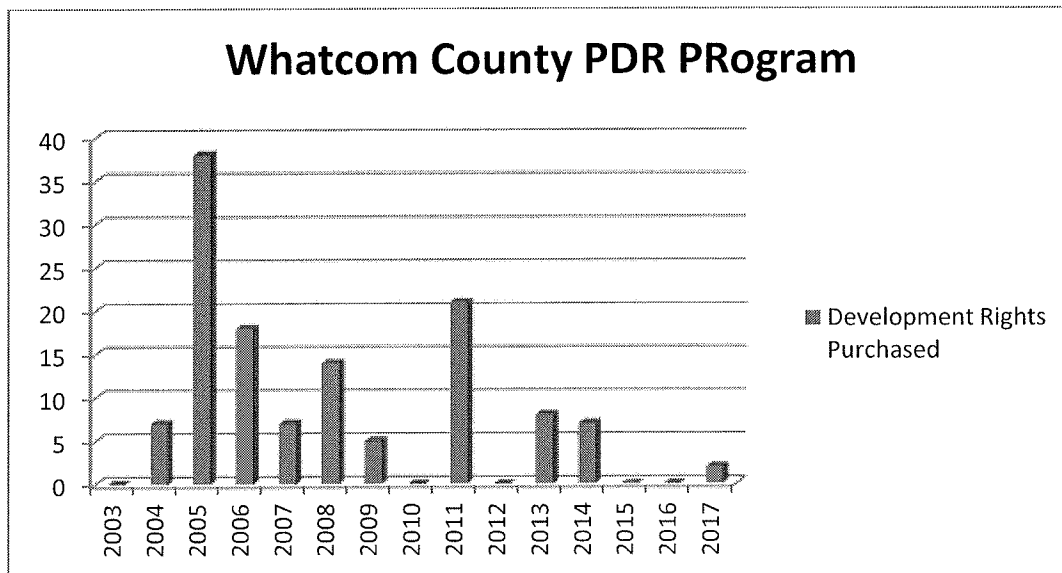
In summary, it's the opinion of the Civil Deputy from the Whatcom County Prosecuting Attorney's Office that the County can't require TDRs for UGA expansions under RCW 82.02.020. This opinion relates to a mandatory TDR program (a government *requirement* to purchase TDRs when expanding a UGA). However, there are no legal issues associated with a voluntary TDR program where developers may choose to purchase TDRs in order to acquire increased density or other incentives offered by the program.

Purchase of Development Rights Program

The Whatcom County PDR program has been more successful than the TDR program. The PDR program's local funding source is the Conservation Futures tax. The program has also received matching funds over the years. In the first 16 years of the PDR program (from the time it came into existence in September 2002 to September 2018), approximately \$6.1 million (over \$3.2 million of local funds and \$2.9 million of matching funds) has been expended to retire 130 development rights on 919 acres. The annual average figures shown below:

Development Rights Retired:	8.13	per year
Acres Preserved	57.44	per year
County Funds Expended	\$201,587	per year
Matching Funds Expended	\$181,881	per year
Total Funds Expended	\$383,469	per year

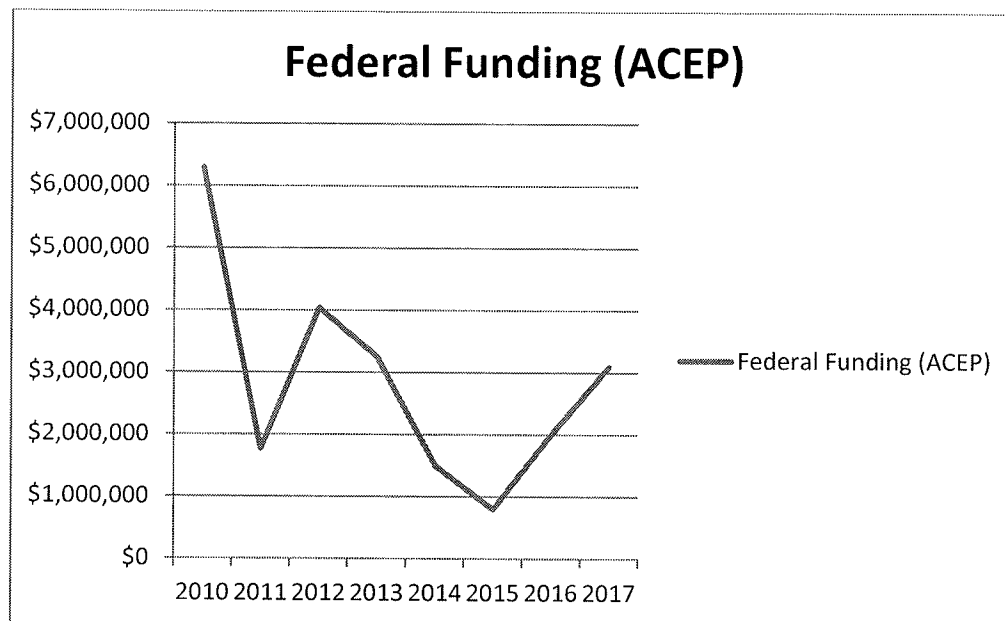
While the PDR program has enjoyed a measure of success, progress in purchasing agricultural development rights has slowed over the years as shown in the chart below.



There are several issues or barriers that may be hindering progress of the program, which are set forth and discussed briefly below.

PDR Barrier # 1 – Uncertainty / Variability in Federal Matching Funds

United States Department of Agriculture monies have accounted for over 91% of the matching funds received by the County (the remaining match has been received from the state and a local non-profit organization). Since 2010, federal funding allocated to Washington State has varied from a high of \$6.3 million in 2010 to a low of \$800,000 in 2015. The amount allocated to the state in 2017 is \$3.1 million (not including monies specifically earmarked for a certain area in eastern Washington). Federal monies, allocated to Washington State through the “Agricultural Conservation Easement Program” (ACEP) are shown below.



Federal funding available to the PDR program has been highly variable in the past and remains uncertain for the future. The County should continue to monitor this situation and explore alternative matching fund sources.

PDR Barrier # 2 – Uncertainty / Variability in Local Funds

The Conservation Futures tax provides the local funding source for the PDR program. The County Code, originally adopted in 1992, states that “. . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation. . . .” (WCC 3.25.010) but it currently is collected at a rate of about four cents per \$1,000 assessed valuation. Additionally, between 2002 and 2017, the PDR program has received about 25% of the Conservation Futures revenue, with the remainder going to parks and other conservation projects.

PDR Barrier # 3 – Federal Staffing

At times, it takes the federal government long periods to review local applications for match funding. The United States Department of Agriculture staff in Washington State assigned to reviewing local government applications for federal funding has been reduced in the last few years. It is also unclear to what extent federal government bureaucratic procedures slow down the processing of match funding applications submitted by local governments. In any event, the federal review process can make it difficult on PDR applicants waiting to hear if the County will, in fact, purchase their agricultural development rights.

6. Opportunities/Alternatives to a Workable TDR Program

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying opportunities and solutions for creating a workable TDR program. Potential opportunities, solutions, and alternatives include:

- Density Credit Program: General Information and Price
- Density Credit Program: Incentives
- Density Credit Program: Density Bonus Areas in Cities
- Density Credit Program: Density Bonus Areas in UGAs
- Density Credit Program: Accessory Dwelling Units (ADU)
- Density Credit Program: Rural Areas
- Simplifying the TDR Program
- Establishing a TDR Bank

Opportunity # 1 - Density Credit Program: General Information and Price

The *Draft EIS Whatcom County Comprehensive Plan and Development Regulations Update and Urban Growth Area Review* (March 2015) states:

A TDR program relocates development potential from one property to another . . .

A Density Transfer Credit program uses the same principle, but allows the developer to obtain density through a purchase of density credits as opposed to actual development rights. The money generated through density credits can be used for the Purchase of Development Rights (PDR) program (p. 2-21).

The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs by Nelson, Pruetz, and Woodruff (2012) defines density transfer charges (DTCs – also known as density transfer credits) as a program in which “. . . developers gain bonus development potential at receiving sites using a cash payment instead of TDRs. The jurisdiction uses the revenue from these payments to preserve land . . .” (p. 45). A related concept is in lieu fees, where the developer can either pay cash or utilize TDRs. *The TDR Handbook* lists advantages of DTCs, which are summarized as follows:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);

- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios (pp. 45 and 47).

The TDR Handbook states “. . . DTCs can accomplish many of the same objectives as TDR programs but with far fewer complications. . .” (p. 45). *The TDR Handbook* provides a case study for Berthoud, Colorado, which charged DTC fees of \$3,000 for a single family residence and \$1,500 per multi-family dwelling unit from 2000-2009. Berthoud's DTC fees were discontinued in 2009 because of the recession (pp. 46-47). The Whatcom County PDR Oversight Committee looked at this issue on August 25, 2017, and recommended that the County consider a density credit charge of \$4,000. The City of Bellingham has a voluntary PDR program that charges \$5,000 for each bonus unit in the city. The money raised from the city's program goes towards Lake Whatcom Watershed preservation. Bellingham had their first significant private use of this program in 2017 for a development on Telegraph Rd. The TDR-PDR Work Group recommends the following density credit prices for each bonus dwelling unit acquired:

- Birch Bay UGA: \$ 4,000
- Rural Areas: Grand total average development right cost over the most recent five year period (this figure for 2013-2017 was \$58,945)

The Whatcom County Council adopted a new chapter in the Zoning Code entitled “Density Credits” (WCC 20.91) on November 21, 2017 (Ordinance 2017-062). The purposes of the new chapter are to incentivize increased land use intensity in urban growth areas and decrease residential density in agricultural and rural areas by authorizing density credits. The density credit program allows increased density in exchange for a voluntary contribution towards preserving agricultural lands and open space. This would be accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a density bonus as set forth in the Whatcom County Zoning Code. At the current time, the density bonus provisions allow higher density single family residential development in the Resort Commercial zone in the Birch Bay UGA. The County Council also adopted a \$4,000 density credit fee on December 5, 2017 (Ordinance 2017-072).

A density credit program is an attractive alternative to a traditional TDR program, as it would simplify the process and avoid several of the pitfalls associated with TDR programs. Therefore, the County and cities should give serious consideration to joint density credit programs. Additionally, the County should consider expanding

its existing density credit program to a variety of zoning districts. New or expanded programs could include utilizing density credits as an alternative to traditional upzones in areas deemed appropriate by the local jurisdiction. Additionally, the County and cities should primarily focus on the density credit model in the future and new incentives should be tied to a density credit program rather than the TDR program.

Opportunity # 2 – Density Credit Program: Incentives

The TDR Handbook indicates that there must be value in using TDRs in receiving areas – otherwise “the market has no incentive to acquire those rights” (p. 39). Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that if a developer can profit from the incentives offered by the TDR program, they will use the program. If they can’t profit from the TDR program, they simply will not use it.

At the current time, the Whatcom County density credit program provides the following incentive for developers using the program: Increased single family residential densities in the Birch Bay Resort Commercial zone (WCC 20.85.108(4) and WCC 20.91.020).

A report entitled *Regional Transfer of Development Rights in Puget Sound* by the State Department of Commerce, Puget Sound Regional Council, and Forterra (2013) states:

In most TDR programs that seek to protect open space or natural resource land in sending areas, the sending-area development right available for sale is the right to build a residential unit. In some TDR programs, however, the development right for sale from the sending area can be converted into another type of commodity in the receiving area. For example, a TDR created by extinguishing the right to build a residential unit in a residential area could be converted into the right to build additional commercial floor area or additional building height in the receiving area (p. 5).

The *Regional Transfer of Development Rights in Puget Sound* report indicates that, in addition to increased residential densities, other incentives offered by a TDR program that may be more attractive to developers and the community include but are not limited to:

- Increased commercial floor area;
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- Reduced open space requirements; and
- Reduced setbacks (p. 5).

Whatcom County should incorporate such additional incentives into the Zoning Code to provide a wide array of options for developers utilizing the density credit program. In addition to the above incentives, the County and cities may want to consider the following methods or other methods appropriate to the jurisdiction:

- Allowing developers to reduce minimum urban densities in cities (should not allow suburban densities though);
- Providing city water and/or sewer outside city limits; and
- Reducing critical area buffers.

Reducing minimum urban densities and providing city water and sewer would require agreement by the cities.

The Work Group recommends that the County establish a technical group to explore a density credit proposal that may allow a land owner to impact lower quality wetlands if they contribute funds to the Purchase of Development Rights Program used to protect higher quality wetlands. The Work Group recommends that the technical group consider the following, when developing this proposal:

- The geographic area where the program would apply, including whether cities could participate.
- The categories of wetlands and associated buffers that could be impacted under this program.
- Whether the program should only address wetland buffer impacts or should also address direct wetland alterations. State Department of Ecology is involved when the wetland is filled or altered. Ecology is not involved when wetland buffer encroachments are proposed.
- The categories of wetlands that would be preserved through this program.
- The method of protecting wetlands under this program. It is recommended that the developer contribute funds to the County's Purchase of Development Rights Program. The PDR Administrator would use these funds to retire development rights and/or acquire easements on properties that contain wetlands designated for preservation under the program consistent with the Critical Areas Ordinance's "Wetland Mitigation" regulations (WCC 16.16.680).
- The density credit fees that should be charged for wetland buffer impacts and/or direct wetland alterations.
- Any code changes necessary to implement the proposal.

Opportunity # 3 - Density Credit Program: Density Bonus Areas in Cities

If the cities and County partner together on a density credit program, it would be necessary to designate density bonus areas (where development incentives can be utilized) within City limits where public water and sewer infrastructure can be provided to serve urban development. As previously mentioned, the City of Bellingham has designated TDR receiving areas to accommodate TDRs from unincorporated Whatcom County (the Lake Whatcom Watershed). Bellingham also has designated areas that can utilize the city's PDR program to increase density. None of the small cities have designated bonus density areas for a density credit program at this time. There are several issues associated with small city participation:

- How would the city benefit?
- What city incentives would attract developers to use the density credit program?

Cities have raised the issue that a density credit program should be meaningful to city residents and decision makers. For example, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

However, cities have also expressed concern that extinguishing development rights adjacent to a city or UGA would limit future options for expansion. In any event, if there is no clear benefit to the city (i.e. development rights are purchased on the other side of the County), then the concept of providing "amenity funds" to cities should be explored.

King County has provided "amenity funds" to cities participating in their TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from unincorporated areas. Michael Murphy, King County TDR Program Manager, gave a presentation to the TDR/PDR Work Group via conference call on June 7, 2017. Mr. Murphy stated that King County provides amenity funds to cities in several forms. For example:

- Lump Sum – King County provided Bellevue with a lump sum up front, when they signed the interlocal agreement to participate in the TDR program. They used the money to purchase open space, but it could be used for street lights, sidewalks, parks, etc.

- Portion of TDR Sale Money – King County provides Sammamish with a percentage of the revenue from TDR sales by the TDR bank.
- Tax Revenue Sharing – King County shares property tax money with Seattle through the Landscape Conservation and Local Infrastructure Program (LCLIP), which is applicable to King, Pierce, and Snohomish Counties.

Identifying a benefit to city residents (or providing amenity funds) would be an important component of partnering with cities to develop a density credit program. In a density credit program, revenue generated from purchases of development incentives could be shared by the County and city, providing a simple method for cities to also benefit from the program.

If the cities were to participate in the density credit program, they would have to formulate incentives to make it attractive for developers to utilize the program. Cities have indicated that residential development is generally occurring at or below current zoned densities, so other incentives may be needed to entice developers to use a density credit program. City zoning code changes would be needed to implement such a program.

Opportunity # 4 - Density Credit Program: Density Bonus Areas in UGAs

As previously discussed, Whatcom County has designated TDR receiving areas in the Bellingham UGA and the Birch Bay UGA. The Bellingham UGA essentially does not function as a TDR receiving area because the City generally does not extend public water and sewer to the UGA anymore. Therefore, urban development does not occur until annexation. The Birch Bay UGA has one TDR receiving area, but no development rights have been transferred to this area yet.

The TDR/PDR Work Group recommends focusing on a density credit program, rather than on a traditional TDR program. This simplified approach would provide additional developer incentives for areas in the UGA when density credits are purchased. In November 2017, the County Council adopted a density credit program for the Resort Commercial zone in the Birch Bay UGA and should consider expanding this program to other areas in the UGA. Specifically, the lower density Urban Residential four dwellings/acre (and possibly Urban Residential Medium Density six dwellings/acre) zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program.

The Columbia Valley UGA, in the eastern part of the County, could also be designated as a receiving area. In fact, the Foothills Subarea Plan contains an implementation task to:

Revise the Official Whatcom County Zoning Ordinance to designate Rural and Rural Forestry areas in the Foothills Subarea as transfer of development rights (TDR) sending areas and the Columbia Valley UGA or other urban growth areas as TDR receiving areas in order to preserve open space in rural and forestry areas (p. 15-7).

However, increasing densities in the Columbia Valley UGA should be carefully considered in light of the long drive to major employment centers, medical facilities, social services, and shopping areas.

Opportunity # 5 – Density Credit Program: Accessory Dwelling Units (ADU)

King County allows TDRs from sending areas to rural receiving areas to increase the size of accessory dwelling units from 1,000 to 1,500 square feet (King County Code 21A.08.030).

The King County TDR Program Manager indicated that they have had some TDR transfers to rural areas, but that the majority of transfers have been into urban areas such as Seattle.

The Whatcom County Zoning Code currently allows accessory dwelling units, subject to a variety of conditions, in the following zones:

- Urban Residential (WCC 20.20.132);
- Urban Residential Medium Density (WCC 20.22.132);
- Urban Residential Mixed (WCC 20.24.133);
- Residential Rural (WCC 20.32.132);
- Rural Residential – Island, which is applicable to Lummi Island (WCC 20.34.132);
- Rural (WCC 20.36.132);
- Point Roberts Transitional District (WCC 20.37.132);
- Small Town Commercial (WCC 20.61.153); and
- Resort Commercial (WCC 20.64.132);

ADU Incentive 1 - Accessory dwelling units are currently limited to 1,248 square feet in these zoning districts. The TDR/PDR Work Group recommends increasing the size limit by 500 square feet to a maximum of 1,748 square feet if density credits are purchased. It is recommended that the price should be \$8/square foot up to the 500 square foot maximum. The Work Group recommends that this rural incentive should be available anywhere that accessory dwelling units are allowed in the County.

ADU Incentive 2 - Additionally, the TDR/PDR Work Group recommends allowing an investor to pay to retire one full development right in a rural or agricultural area in exchange for eliminating the following requirement, which is normally imposed on accessory dwelling units:

The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot.

This would allow an investor (who retires one full development right) to rent out both the main house and the accessory dwelling unit on the property, as the owner would not have to live on the site.

ADU Incentive 2 can be utilized, anywhere accessory dwelling units are allowed, in the areas shown below:

Rural Areas - In rural areas (outside UGAs) the parcel would have to be:

- a. Outside of Rural Study Areas (areas zoned R5A and R10A that are valuable for agriculture);
- b. Covered by less than 50% Agriculture Protection Overlay Soils;
- c. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- d. Outside the 100 year floodplain;
- e. Outside shoreline jurisdiction;
- f. Outside an alluvial fan;
- g. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- h. More than 1 mile from the runway of the Bellingham International Airport;
- i. Outside UGA Reserves;
- j. More than 1 mile from the boundary of a city;
- k. More than 1 mile from the boundary of a UGA;
- l. Within a Group A or Group B Public Water System Service Area, excluding:
 - o Group A Systems currently exceeding Water Right Limits;
 - o Group A Systems projected to exceed water right limits at full build-out; and
 - o Group A Systems with no data on system water rights or use.

UGA - In UGAs, the parcel would have to be:

- a. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- b. Outside the 100 year floodplain;
- c. Outside shoreline jurisdiction;

- d. Outside an alluvial fan;
- e. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- f. More than 1 mile from the runway of the Bellingham International Airport;
- g. Within a Group A or Group B Public Water System Service Area, excluding:
 - o Group A Systems currently exceeding Water Right Limits;
 - o Group A Systems projected to exceed water right limits at full build-out; and
 - o Group A Systems with no data on system water rights or use.

The Work Group recommends that more than one incentive may be used per parcel.

Opportunity # 6 - Density Credit Program: Rural Areas

King County allows TDRs from sending areas to rural receiving areas to increase the density in the "RA-2.5" zone from 0.2 dwellings/acre to 0.4 dwellings/acre (King County Code 21A.12.030). This is equivalent to going from one dwelling/five acres to one dwelling/2.5 acres.

Rural Incentive 1 - The TDR/PDR Work Group recommends allowing a density of one dwelling/2.5 acres in the Rural one dwelling/five acre (R5A) zone if the proposed density credit program is used. This proposal targets density bonus areas, which could be developed at a density of one dwelling/2.5 acres, that have access to an existing public water system. In return for the extra density, cash would be contributed to the County's PDR program through the purchase of density credits. One development right would have to be retired in a rural or agriculture area for every new lot allowed so that there would be no net increase in development potential. Additionally, this concept should be considered with a degree of caution, as it may come as a surprise to rural land owners who purchased property in the R5A zone expecting surrounding land uses to develop at a maximum density of one dwelling/five acres. Critical area regulations could also make development at a density of one dwelling/2.5 acres more challenging in some areas. To utilize Rural Incentive 1, the parcel would have to be in the R5A zone and meet the same criteria as ADU Incentive 2 for Rural areas (be outside of Rural Study Areas, covered by less than 50% Agriculture Protection Overlay Soils, etc.).

Opportunity # 7 – Simplifying the TDR Program

The existing TDR program is cumbersome and not used very often. Additionally, the density credit model provides an attractive alternative to a traditional TDR program. Therefore, the existing TDR program should be refined, but the County should not put major effort into reforming the program.

The existing TDR provisions (WCC 20.89 and other sections of the County Zoning Code) contain language that could be simplified or clarified. Examples are provided below:

- Definition of Development Rights – WCC 20.89.021 provides the following definition:

“Development rights” means the residential building rights permitted to a lot, parcel or area of land based on the gross density, established pursuant to the official Whatcom County zoning map and this title, and measured in maximum dwelling units per developable acre. Where land is impacted by critical areas, as defined in WCC Title 16, development potential shall be demonstrated by the owner with consideration given to opportunities for cluster development.

The first part of the definition indicates that development rights are based upon gross density (as defined in WCC 20.97.170). Gross density is computed based upon the total area of the parcel. For example, the R5A zone allows a gross density of one dwelling/five acres. On a 20 acre parcel, four homes would be allowed. This is a straightforward concept. However, the definition goes on to state that development rights are measured in maximum units per “developable acre” and that development potential must be demonstrated by the owner on lands impacted by critical areas. Developable land is land available after deductions for wetlands, roads, stormwater management facilities, etc. It adds a degree of complexity to require a rural sending property owner to “demonstrate” development potential when critical areas are present. Does this mean that the rural property owner must hire a consultant to perform a wetland delineation or other critical areas analysis? A less complex method would simply base development rights upon the gross density allowed on the sending area parcel.

- In Lieu Payments - WCC 20.89.025 defines in lieu payments as “. . . payment of funds to the development rights bank in lieu of the transfer of development rights from a sending area. . .” Additionally, WCC 20.89.034 states “Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. . .” Because the County adopted a density credit program (which is a similar concept), the in lieu payment language in WCC 20.89 could be deleted. This would eliminate the possibility for overlap/confusion between in lieu fees and the density credit program. Additionally, the density credit program can be accomplished without a development rights bank.
- Incentives – WCC 20.89.090 provides various incentives for long plats (such as modifying minimum lot size, lot width, setbacks, and building coverage) when TDRs are used. These incentives could be simplified and/or clarified. For example, WCC 20.89.090(1) allows the modification of lot width if TDRs are used. However, WCC 20.89.090(4) imposes additional criteria for

reducing lot width. These provisions should be harmonized so there is no confusion about the qualifications for using the incentives.

Opportunity # 8 – Establishing a TDR Bank (Development Rights Bank)

WCC 20.89.081 states:

Whatcom County may create a development rights (DR) bank to facilitate the exchange of development rights. Establishment of a DR bank does not preclude private party transactions.

- (1) The DR bank may purchase or sell development rights.
- (2) The DR bank may hold TDRs for any length of time.
- (3) The DR bank may accept in lieu payments for transfer of development rights.
- (4) The DR bank may accept donations of development rights.

The TDR Handbook – Designing and Implementing Transfer of Development Rights Programs (2012) outlines some of the advantages of a TDR bank:

- The sending site owners are assured of having a buyer whenever they want to sell.
- The price of development rights is more likely to stabilize when institutions operate in the market. Conversely, TDR prices can be more volatile and unpredictable when private parties make all sales and purchases.
- Developers have some assurance that they will be able to buy TDRs when needed, without having to negotiate individually with numerous sending site property owners.
- With the right procedures, TDR transactions can become fast, certain, and easy, comparable to banking transactions (p. 121).

Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that a TDR bank is an entity that buys and sells development rights. TDR banks have several advantages. There is greater convenience for developers. For example, a developer can get a number of TDRs from a single bank – they don't need to search for multiple land owners to put together enough TDRs. Additionally, TDR banks have discretion to spend the proceeds on higher priority conservation properties (as opposed to a developer potentially purchasing TDRs from lower priority conservation areas). However, when a bank is a public entity (like a county), an appraisal is needed because they cannot pay more than fair market value for development rights. Appraisals may cost \$3,000 to \$7,000. There needs to be enough transactions to justify a TDR bank. Nick did not recommend forming a TDR bank for an emerging TDR program, as it may be an inefficient use of public resources.

A TDR bank would provide a method to simplify the TDR process for people who sell or buy TDRs. However, a bank would require staffing, financial expertise, appraisals, an oversight committee, and funding to start the program. Additionally, it may not be needed at all because the County is transitioning to a "density credit" system, where developers simply contribute monies to the County PDR program in order to acquire higher densities or other incentives.

7. PDR Fund to Protect Agricultural and Rural Lands

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands."

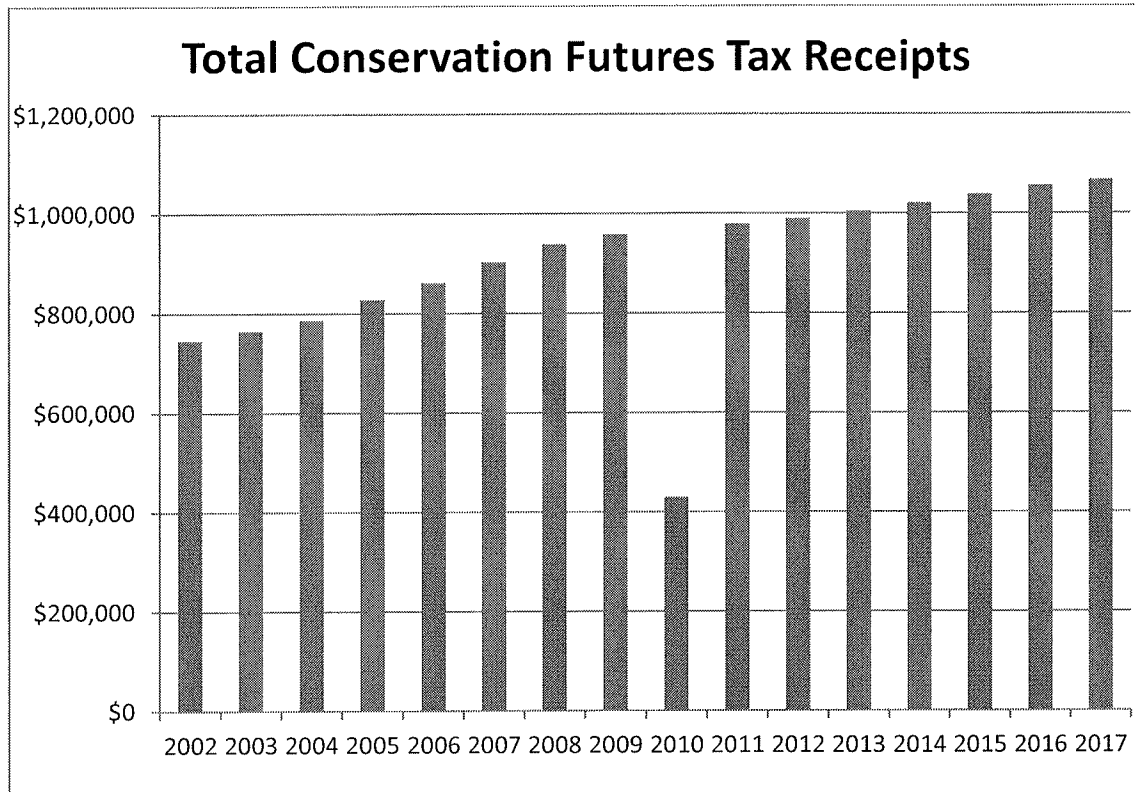
The Whatcom County 2017-2018 Budget states that the Conservation Futures fund is used for:

"Activities related to acquisition of parks land and development rights with the goal of conserving property for public use and enjoyment. Funded by a property tax collected in accordance with RCW 84.34.230" (Volume 2 – Page 65).

The Conservations Futures tax is the primary source of local funding for the Purchase of Development Rights Program. However, Conservation Futures funds are also used for parks and other conservation projects. The County also receives federal and state matching funds and seeks donations from other funding partners. The County Council determines allocation of Conservation Futures revenues.

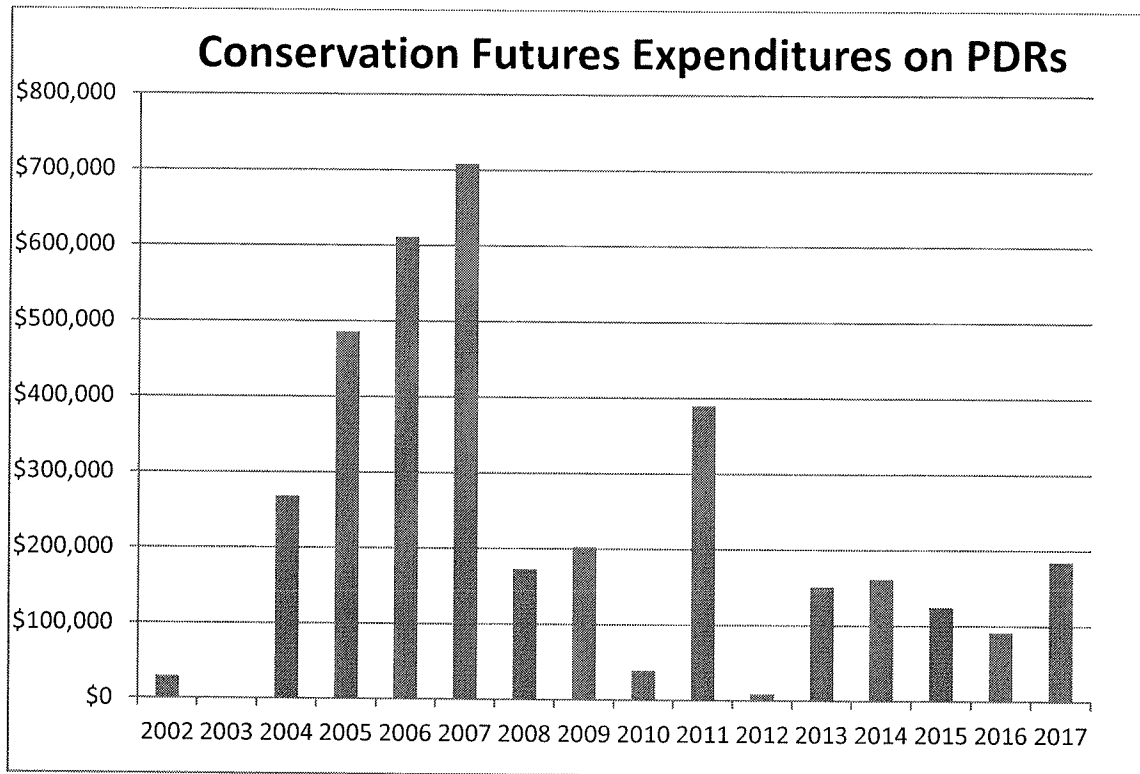
The following charts are shown below:

- Total Conservation Futures Tax Receipts – Shows the total Conservation Futures tax revenue collected each year.
- Conservation Futures Expenditures on PDRs – Shows the total spent on PDRs each year.
- % of Total Receipts Expended on PDRs – Shows the percentage of Conservation Futures tax revenue collected each year that is spent on the PDR program that same year.
- Conservation Futures Year-End Fund Balance – Shows the total amount in the Conservation Futures Fund at the end of each year.

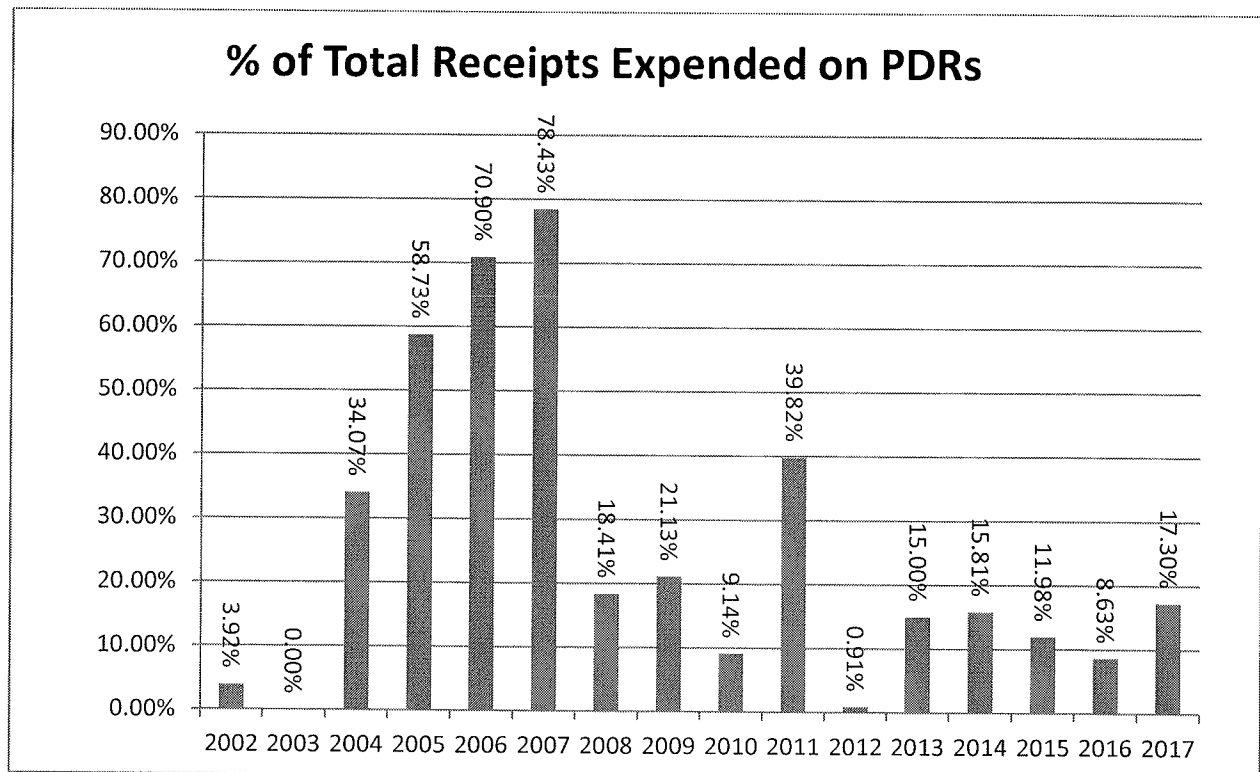


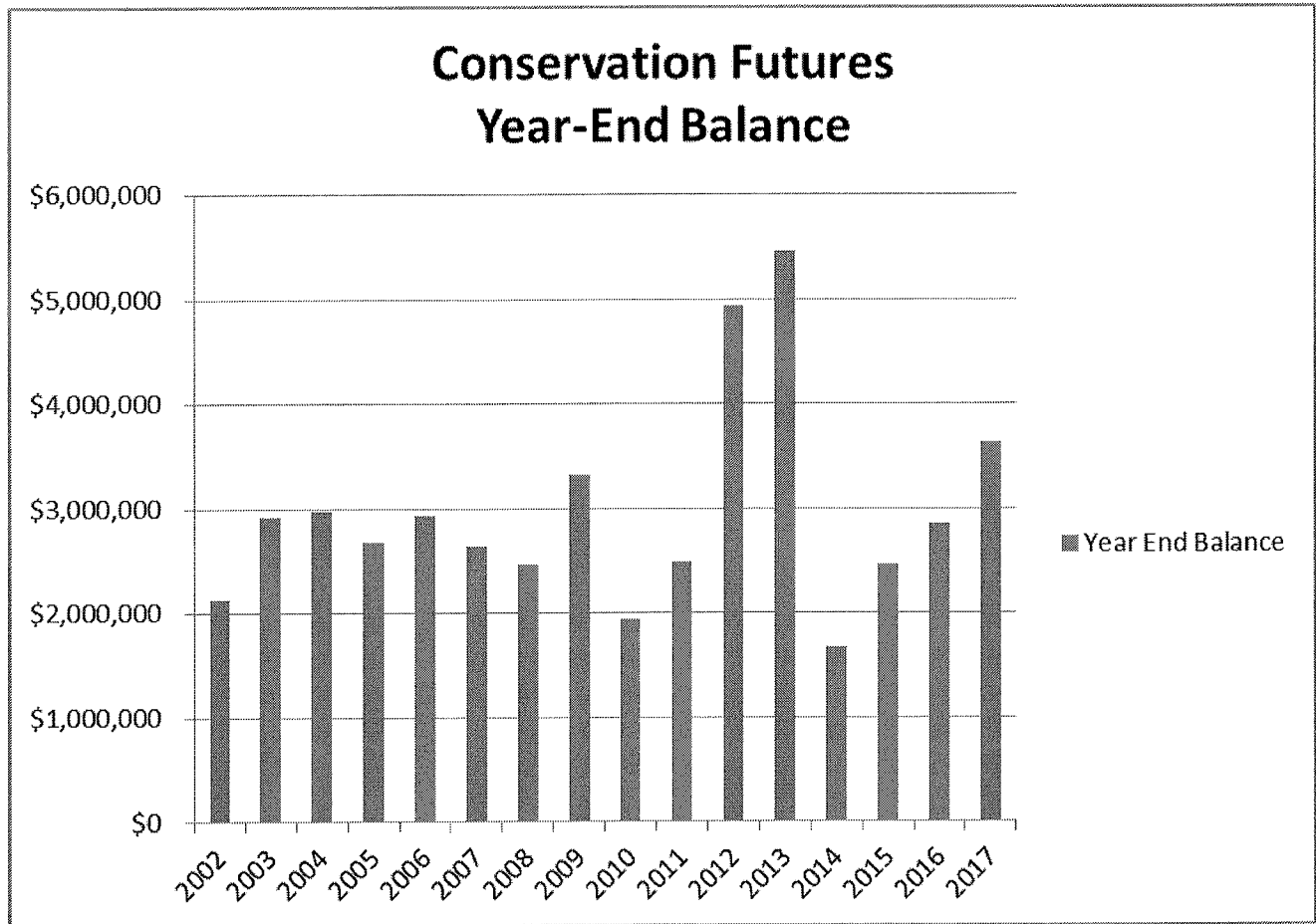
Source: Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).

NOTE: Whatcom County Ordinance 2009-080, which was adopted in the economic downturn, states ". . . the County Council has determined it is necessary to decrease the Conservation Futures tax levy by \$543,000 for 2010 and increase the General Fund property tax levy by an offsetting \$543,000 for 2010 to fund essential county services. . ."



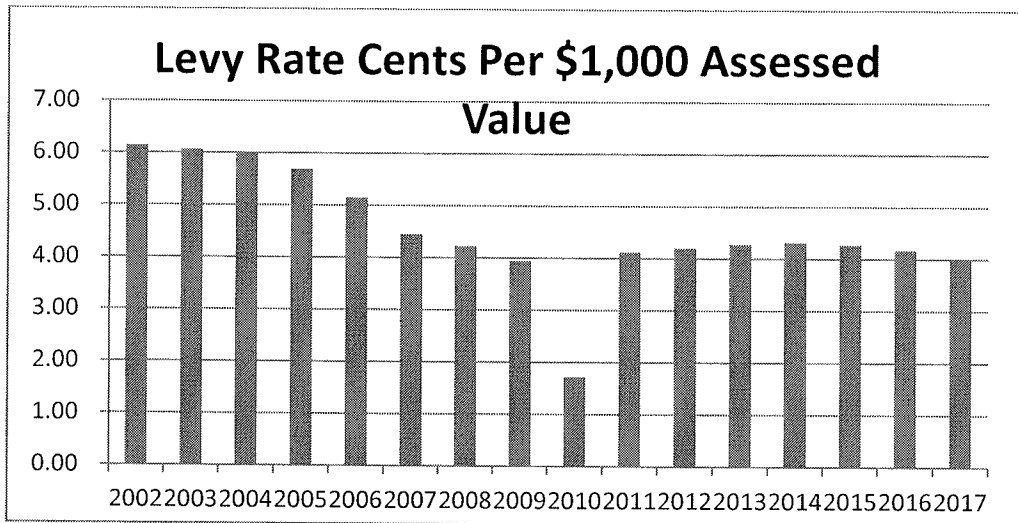
Source: Whatcom County Finance Department 1/31/2018. Chart shows net expenditures, because some expenditures were reimbursed by federal grants or other sources.





As previously mentioned, the County established the Conservation Futures Property Tax Levy and Fund in 1992. The County Code states “. . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation” (WCC 3.25.010). As of 2017, the Conservation Futures tax rate is approximately four cents per \$1,000 assessed.

The levy rate has declined over the last 15 years as assessed valuations of existing properties have increased, new construction has added assessed valuation to the tax rolls, and the County has chosen not to increase the amount of Conservation Futures tax collected (except for the increased property tax levy that is the result of new construction). It should be noted that the increase in taxes collected is limited by state law to a maximum of 1% per year or the rate of inflation, whichever is lower. The County has banked unused capacity and retains the ability to increase the taxes levied at a future date.



Source: *Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).*

The Conservation Futures tax is an existing local funding source and the County Council could modify the levy rate to collect additional revenue. The County has secured limited funding for the PDR program from the Whatcom Community Foundation. The Whatcom County Council adopted a new "Density Credit" Chapter in the Zoning Code (WCC 20.91) in November 2017 that could potentially raise revenue through developer incentives. While revenue from the Community Foundation and/or density credits may provide supplemental funding to the PDR program, it is not anticipated that they will provide funding at the level generated by the Conservation Futures tax.

At the current time, the County collects a real estate excise tax, which is a tax upon sales of real estate, under WCC 3.20.024 and 3.20.025. The tax on real estate sales is currently ½ of 1% of the selling price. An additional real estate excise tax is authorized for conservation areas by state law (RCW 82.46.070). The Municipal Research and Services Center (MRSC) website describes this option as follows:

A county legislative authority may submit a ballot proposition to the voters for an additional real estate excise tax on each sale of real property in the county at a rate not to exceed 1% of the selling price. The revenue from this tax is restricted to the acquisition and maintenance of conservation areas. Conservation areas are defined in RCW 36.32.570 as:

land and water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value for existing and future generations, and includes, but is not limited to, open spaces, wetlands, marshes, aquifer recharge areas, shoreline areas, natural areas, and other lands and waters that are important to preserve flora and fauna.

The property buyer, rather than the seller, pays this tax as outlined in RCW 82.46.070. Only San Juan County has levied this tax to date.

The County could also issue bonds for the PDR Program and repay the bondholders with future tax revenues.

The Whatcom County Budget (2017-2018) discusses the "Whatcom County Fund Structure." The County has six different fund types: General Fund, Special Revenue Funds, Debt Service Funds, Capital Projects Funds, Enterprise Funds, and Internal Service Funds. The County Budget describes the Conservation Futures Fund, which is under the Special Revenue Funds category, as:

A fund created to collect a real property tax levy applied to all taxable real property within Whatcom County. This fund may be used to acquire rights and interests in open space land, farm and agriculture land, and timberland with the goal of conserving property for public use or enjoyment" (Volume 1 – Page 23).

Planning & Development Services Department staff met with the County's Finance Manager and Senior Budget Analyst on August 16, 2017 to discuss the possibility of creating a new PDR fund. They indicated that the County Council could adopt an ordinance establishing a new PDR fund. However, the existing Conservation Futures fund, which can be used to hold other dedicated monies allocated to the PDR program, is functioning adequately at present. Additionally, there are administrative and reporting tasks associated with creating a new fund. Therefore, they recommended establishing a new fund only if significant new monetary resources become available that would be placed in the fund.

8. Proposed Sending and Receiving Areas

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying:

- Proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas; and
- Proposed receiving areas.

Density Credit Model Preferred Over Traditional TDR Model

The Work Group finds that the density credit model, where a developer pays to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could allow increased development potential in cities, UGAs, and other appropriate areas while also providing supplemental funding for reducing development in agricultural and rural areas and, potentially for city amenities. Therefore, the Work Group recommends that the County and cities should primarily focus on the density credit model in the future and that new incentives should be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program.

This shift in emphasis means that the County may direct PDR investments that utilize density credit funds to areas that also benefit the cities (rather than focusing on additional TDR sending areas). Additionally, areas may be designated in cities and UGAs for bonus densities under the density credit system (rather than focusing on additional TDR receiving areas).

Density Credit Program: Directed PDR Investments

It is anticipated that the majority of funding for the County's PDR program will continue to come from the Conservation Futures tax and funds from the federal government. The regular PDR site selection process will continue to apply to the development rights purchased with these funds.

However, if cities create density credit programs, and some of the money from these programs goes to the County's PDR program, investment of these funds may be directed to properties that benefit both the County and the applicable city. As previously mentioned, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

Comprehensive Plan Policy 2A-14 indicates that areas that are candidates for future sending areas are critical areas, the Agriculture zone, and Rural Study Areas. The PDR Oversight Committee recommended an update to the PDR Program Guidelines on January 26, 2018. This update includes identification of priority areas in three distinct categories: Agricultural, forestry, and ecological areas. It is anticipated that the PDR Program Guidelines will be presented to County Council for consideration and approval in fall 2018.

If city density credit programs are enacted, the County and the applicable city would need to work together to select PDR priority areas, identified in the PDR Program Guidelines, where funds from the city's density credit program would be invested.

Density Credit Program: Bonus Density Areas

The cities and County should designate areas that can accommodate increased land use intensity utilizing a density credit program.

The areas with the greatest potential for high intensity urban development are in the cities. While Whatcom County may negotiate with cities on density credit program provisions, it does not have direct control over land use regulations inside city limits. The City of Bellingham has already designated TDR receiving areas and has a PDR program intended to reduce development potential in the Lake Whatcom watershed. It is recommended that the six small cities designate areas within their respective cities and UGAs that could be developed at increased urban intensities in association with a density credit program. The cities would have to develop incentives that developers want to utilize (i.e. purchase density credits to obtain), such as:

- Increased residential densities;
- Reduced minimum lot sizes;
- Increased heights;
- Increased floor area ratios;
- Increased lot coverage; and/or
- Increased size of accessory dwelling units.

Additionally, cities would have to consider where the development incentives should be offered, such as:

- In specific zoning districts;
- In specified portions of a zoning district;
- In a specified section of the city; and/or
- In UGAs, outside of current city limits, once the area has been annexed.

Any funds acquired through such a program could be divided between the County and City (or used by the County to purchase development rights that benefit both the County and the city).

Whatcom County has direct control over land use regulation, including densities, in unincorporated areas such as the Birch Bay UGA and rural lands. The County should consider expanding the density credit program in the Birch Bay UGA and, in limited circumstances, utilizing the density credit program in rural areas (See *Section 6 Opportunities/Alternatives to a Workable TDR Program*).

TDR Program: Sending and Receiving Areas

As mentioned, the Work Group recommends focusing on the density credit model, rather than traditional TDR sending and receiving areas. However, using the traditional TDR program, an opportunity may exist to allow the owners of separate non-contiguous parcels to transfer density from one parcel to the other. This would encourage protection of higher quality agricultural soils and critical areas without an overall increase in the number of dwellings allowed in the rural area.

For example, if a land owner has two separate 20 acre parcels both zoned R5A, the owners would typically be allowed to divide the land and build four homes on each parcel under standard zoning rules. Under this approach, the density could be transferred from one of the parcels (e.g. that has development constraints or high quality agricultural soils) to the other parcel (which does not have as many constraints). The end result would be zero development capacity on one of the 20 acre parcels and eight dwellings on the other 20 acre parcel.

This concept could be utilized to transfer density from one part of the rural area to another part of the rural area. The receiving parcel would be developed as a cluster subdivision.

This concept should not be allowed to increase density in any of the following:

- Lake Whatcom Watershed;
- UGAs and UGA Reserves;
- Lummi Island;
- Agriculture zone;
- Rural Forestry zone;
- Commercial Forestry zone;
- Mineral Resource Lands Overlay.

The Work Group is not formally recommending that this concept be implemented, but has included it in the report to allow the concept to receive further consideration prior to a formal proposal. Any such proposal in rural areas would have to be carefully reviewed under the Growth Management Act and Whatcom County Comprehensive Plan to ensure that rural character is preserved in these areas.

9. Other Factors and/or Growth Management Tools

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying other factors and/or growth management tools" relating to UGA expansions and mitigating impacts of residential development in rural lands, agricultural areas, and sensitive watersheds.

Other Factors

The Whatcom County Code contains criteria for approving Comprehensive Plan amendments, which include UGA expansions. Additionally, the Whatcom County Comprehensive Plan includes the following policies:

- Policy 2GG-3 – Criteria for rezoning land in the Rural one dwelling/ten acre (R10A) district. In summary, these criteria address residential density in the area, not allowing rezones in UGA Reserves (which may be considered for inclusion in the UGA at a later date), and not allowing rezones in Rural Study Areas (that are valuable for agriculture).
- Policy 8A-3 – Criteria for de-designating lands from the Agriculture designation. In summary, these criteria address whether the land is already characterized by urban growth, whether the land is used or capable of being used for agricultural production, and whether the land has long term commercial significance for agriculture. The criteria are based upon the Growth Management Act (GMA), Washington Administrative Code, and applicable court cases.
- Policy 2N-5 -"Protect resource lands by controlling or buffering adjacent uses and encouraging increased densities within existing city boundaries before expanding into county resource lands." Resource lands include the Agriculture designation.
- Policy 10J-14 – "Existing Urban Growth Areas shall not be designated or expanded nor new Urban Growth Areas designated within the Lake Whatcom Watershed, and rezones that allow greater residential densities will not be allowed."
- Policy 2K-3 "Prohibit expansion of urban growth areas into floodplains, except where allowed under the GMA, and consider danger to individuals related to flooding when designating land use in other areas."
- Goal 2P – Encourages cities to approve new residential developments within a range of urban densities. Policy 2P-1 states "Encourage cities to adopt and implement policies and development regulations that promote urban densities."

The County has a process for evaluating UGA amendments. Additionally, existing policies require consideration of Agricultural lands and protection of the Lake Whatcom Watershed when UGA expansions are proposed.

In accordance with the GMA, Whatcom County completed the eight-year update of the Comprehensive Plan in August 2016 (Ordinance 2016-034). This update was conducted in close coordination with the cities, as required by the GMA. Finding 62 of the Ordinance states:

The County's population is projected to grow by 33.8% over the 23-year planning period. Prior to the 2016 UGA review, there were a total 51,684 acres in UGAs (including within cities). A total of 345 acres are added to UGAs in the 2016 UGA review. This constitutes a 0.7% increase in the land in UGAs on a county-wide basis. . .

The County worked together with the cities to judiciously size UGAs in the 2016 Comprehensive Plan update. Maintaining a high level of County/city coordination will help achieve the common goals of facilitating urban densities in cities, conserving Agricultural lands, and protecting sensitive watersheds.

Whatcom County Comprehensive Plan Policy 2A-14 was adopted in the 2016 update. This policy states:

. . . Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.

However, RCW 82.02.020 (relating to state preemption of certain tax fields) indicates:

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

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

The Civil Deputy from the Whatcom County Prosecuting Attorney's Office has expressed the opinion that requiring TDRs for UGA expansions or rezones would constitute a tax, fee, or charge on a re-classification of land, would not qualify for the "voluntary agreement" exception, and is not allowed under RCW 82.02.020. Therefore, TDRs should not be required in "exchange for UGA expansions and other

upzones” as suggested by existing Whatcom County Comprehensive Plan Policy 2A-14.

Additionally, WCC 20.89.051 (2) and (3) state that certain rezone requests and UGA expansions are required to transfer development rights from a designated TDR sending area. The County should also consider deleting this language from the Zoning Code.

Growth Management Tools

The County and Cities’ Planners Group issued a “Growth Management Tools Report” (March 2015). This report addresses both non-urban tools and urban tools designed to ensure that the majority of countywide growth takes place in UGAs, as planned. The tools identified in the report are:

Non-Urban Tools

- Decreased Non-Urban Densities
- Rural Lot Consolidation
- Transfer of Development Rights/Density Transfer Credits
- Purchase of Development Rights
- Rezone of Rural Land Study Areas to Agricultural Lands
- Require Agriculture as a Primary Use and Limited Accessory Uses
- Agricultural Mitigation
- Tools to Reduce Impacts on Agricultural and Rural Lands But Not Reduce Overall Density
- Permit Metering
- Water Well Limitations
- Impact Fees

Urban Tools

- Increased Urban Densities
- Minimum Urban Densities
- Urban Mixed Use
- Utility Extension Policy
- Annexation Policy
- Mix of Single- and Multi-family Capacity
- Lot Size Averaging
- Land Value Taxation
- Fee Reduction Incentives

The Work Group recognizes this report and refers the reader to it for further information on these potential tools.

10. Economic Value of Development Rights

Whatcom County Comprehensive Plan Policy 2A-14 includes examining "Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value."

As previously mentioned, the TDR/PDR Work Group recommends a shift in emphasis from a traditional TDR program to density credit programs. In this context, primary questions relating to economic value include:

- Are the incentives offered by the density credit programs desirable to developers?
- Does the price tag associated with the incentives provide developers the opportunity to increase profit?

If the answer to either of these questions is "no," then developers will not utilize the density credit programs.

Other jurisdictions in Western Washington have commissioned TDR market studies, with the average cost in the \$40,000 range. Whatcom County could hire a consultant to conduct a market study to recommend incentives that would be attractive to developers in the current economic environment along with associated price tags.

Alternatively, the cities and County could adopt incentives and adjust those incentives over time to provide developers with the opportunity to profit from increased land use intensities. Additionally, with the density transfer credit system, the local government could modify the density credit price in response to changing economic conditions. This approach is recommended as the lower cost alternative.

Density credit programs may be used to essentially transfer residential density from rural and agricultural areas to urban areas, where growth is targeted. However, as previously mentioned, there are also other incentives that may be employed in a density credit program. For example, if a developer voluntarily contributes to reduce development in rural or agricultural areas, a variety of urban incentives could be offered including but not limited to:

- Increased commercial floor area;
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- Reduced open space requirements; and
- Reduced setbacks (p. 5).

A variety of incentives should be explored that align with city and County goals and may be attractive to developers. The corresponding cost to developers to access these incentives will need to be developed and adjusted over time to meet market demands.

11. Interlocal Agreements

Comprehensive Plan Policy 2A-14 addresses interlocal agreements that “grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.”

Whatcom County has an interlocal agreement with each city concerning “Planning, Annexation and Development” within the UGA. These interlocal agreements, which were approved in 2012, address a number of topics including TDRs. The existing interlocal agreements include the following language:

Bellingham Interlocal - The City agrees to participate in a County initiated effort to further develop a TDR/PDR program for the Lake Whatcom Watershed (Section 11.B).

Blaine Interlocal - The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from the rural areas within the Drayton Harbor Watershed to the City and/or annexation areas (Section 11).

The Everson, Ferndale, Lynden, Nooksack, and Sumas interlocal agreements with the County each state:

The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from designated Agricultural resource lands or rural areas to the City and/or annexation areas (Section 11.B of each interlocal).

In order to facilitate cooperative efforts between the cities and County, it is recommended that new interlocal agreements be developed or that existing interlocal agreements be revised to address a density credit program. These interlocal agreements should generally include the following:

- Framework for inter-jurisdictional density credit program;
- Generalized statement of incentives that could be offered by the city;
- Generalized statement of where the development incentives could be offered within the City (and/or in the UGA following annexation);
- How any density credit fees collected by the City would be divided between the City and the County;
- Generalized statement of how the City would utilize any funds from developer participation in the City’s density credit program; and
- Agreement on how the County PDR Program would utilize any funds from developer participation in the City’s density credit program.

It is acknowledged that the City of Bellingham has an existing Lake Whatcom Watershed PDR program.

12. Recommended Policy and Regulatory Changes

TDR/PDR Work Group recommendations are shown below:

A. Voluntary Density Credit Program

The Work Group finds that the density credit model, where a developer pays cash to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could potentially provide supplemental funding to reduce development in agricultural and rural areas through the County's existing PDR program. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives should generally be tied to a density credit program (rather than existing TDR programs).

The City of Bellingham has an existing Purchase of Development Rights program aimed at reducing development in the Lake Whatcom Watershed. Whatcom County adopted a density credit program in 2017, but it only applies to Resort Commercial zones in the Birch Bay UGA at the current time. These existing programs allow developers to increase land use intensity by making a payment that would be utilized to purchase and retire development rights in the Lake Whatcom Watershed or the County's agricultural areas.

Expanding the density credit program is the highest priority change that has been identified. This is because it would help preserve agricultural and rural lands while providing a simple procedure for developers who want to access the incentives offered by the program. The density credit program should be expanded for the following, as discussed earlier in this report:

- Small cities;
- Additional areas in the Birch Bay UGA;
- Certain rural areas; and
- Accessory dwelling units.

B. Whatcom County Comprehensive Plan Amendments

The Work Group recommends amendments to the Whatcom County Comprehensive Plan as shown in Appendix A. These amendments reflect the proposed shift from a traditional TDR program to the new density credit model.

C. Voluntary TDR Program

The existing TDR program is cumbersome and not used very often. However, there are 247 certified TDRs in the County (some of which have been transferred). Therefore, the Work Group recommends keeping the existing TDR program. The existing TDR program should be refined, but the County should not put major effort into reforming the program. Specifically, the

existing TDR program should be simplified as much as possible. However, new incentives should generally be reserved for the density credit program.

D. Mandatory TDR Program

A Civil Deputy from the County Prosecuting Attorney's Office stated that, in his opinion, the County cannot require TDRs for UGA expansions or rezones under RCW 82.02.020.

The TDR/PDR Work Group recommends that the County consider deleting WCC 20.89.051 (2) and (3), which state that certain rezone requests and UGA expansions are required to transfer development rights from designated TDR sending areas.

E. TDR Bank

Establishing a TDR bank is not recommended at the current time. Staffing, financial expertise, appraisals, an oversight committee, and funding would be needed to start the bank (for a TDR program that has not been widely used in the past).

F. New PDR Fund

The TDR/PDR Work Group recommends that the County create a PDR fund, in consultation with the Whatcom County Finance Department, if significant new funding sources become available. The Conservation Futures fund is adequate at the existing time to serve the needs of the PDR program. If a separate County PDR fund is not created, the County Finance Department should track funds that are raised through the density credit program to ensure that these funds are used for their intended purpose.

Appendix A – Comprehensive Plan Amendments

Chapter 2 (Land Use)

Policy 2A-14: Maintain a density credit program to incentivize increased land use intensity in designated areas and decrease residential density in agricultural and rural areas by authorizing density credits. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a higher density as specifically set forth in the Whatcom County Zoning Code.

~~Strive to establish by December 2017 a clear, predictable, and fair process for allowing expansion of urban growth areas that considers reasonable measures to mitigate the impacts of residential development in rural lands, agricultural areas (broadly defined), and sensitive watersheds. This process should include:~~

- ~~1. Consultation with a focus group of potential TDR/PDR users in the building industry.~~
- ~~2. Convening a multi-stakeholder work group, including the Cities, tasked with:~~
 - ~~• Reviewing the current TDR and PDR programs.~~
 - ~~• Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.~~
 - ~~• Identifying opportunities and solutions for creating a workable TDR program.~~
 - ~~• Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.~~
 - ~~• Recommending policy and regulatory amendments necessary to implement the above policy.~~
 - ~~• Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.~~
 - ~~• Identifying receiving areas.~~

- ~~Identifying other factors and/or growth management tools.~~
 - ~~Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.~~
 - ~~Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.~~
3. ~~Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.~~

Rationale: In November 2017, the Whatcom County Council adopted a density credit program applicable to portions of the Birch Bay UGA (Ordinance 2017-062). The proposed Comprehensive Plan amendments would shift the emphasis in County Policy from a traditional TDR program, which has not worked well over the years, to the density credit program. Advantages of a density credit program, compared to a traditional TDR program, include:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);
- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios.

Summarized from *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* by Nelson, Pruetz, and Woodruff, 2012, pp. 45 and 47).

Additionally, the TDR/PDR Multi-Stakeholder Work Group will issue recommendations in 2018. It is anticipated that the County Council will make a final decision on these Comprehensive Plan amendments in 2019, after the Work Group completes its work.

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as ~~cluster density bonuses in urban growth areas in association with the density credit program,~~ purchase of development rights, transfer of development rights, and tax deferrals.

Rationale: This change incorporates a reference to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2H-2: Establish incentive programs such as ~~cluster density bonuses in urban growth areas in association with the density credit program,~~ and purchase of development rights, ~~and voluntary, workable transfer of development rights,~~ where appropriate, to compensate property owners if rights are unduly infringed.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2N-3: Consider development incentives, such as density bonuses, in cities and UGAs in association with the density credit program, ~~as receiving areas for development rights transferred from sending areas.~~ Encourage cities to consider development incentives in association with a cooperative City-County density credit program.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to a density credit program. It also encourages cities to establish density credit programs in conjunction with the County.

Policy 2U-5: Review and update the interlocal agreement with Bellingham, prior to expiration of the current interlocal agreement, to provide for:

- Coordinated growth management and capital facility planning;
- timing and provision of utility services and other urban services;
- timing and procedures to be used for review of adequate land supply;
- timing of annexations;
- revenue sharing formulas prior to and after annexation;
- development standards and regulations;

- joint City/County review of development proposals in the UGA;
- affordable housing; and
- a density credit program and/or transfer of development rights within the City of Bellingham.

Rationale: The existing interlocal agreement between Whatcom County and the City of Bellingham is valid through the year 2022. When the interlocal is updated in 2022, it should reference a density credit program. The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been utilized/extinguished.

Policy 2U-7: Whatcom County and Bellingham should designate areas that can accommodate density bonuses in association with a density credit program and/or receiving areas within the City of Bellingham and its UGA for Transfer of Development Rights from the Lake Whatcom Watershed.

Rationale: The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been extinguished.

Policy 2DD-10: Adopt and maintain incentive programs, such as purchase of development rights, the density credit program,~~transfer of development rights,~~ and tax deferrals, to achieve desired land use policies in rural areas and in areas where there are compelling reasons to do so.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2UU-4: Support the retention of open space and open space corridors through the use of education and incentives, such as purchase ~~or transfer of development rights,~~ density bonuses within UGAs in association with the density credit program, cluster development, and acquisition of easements.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2UU-6: Improve public access to shorelines and other lands using such mechanisms as purchase ~~or transfer of~~ development rights, density bonuses within UGAs in association with the density credit program, and open space tax status.

Rationale: Same as rationale for Policy 2UU-4 above.

Chapter 3 (Housing)

Policy 3F-1: Include incentives in land use regulations, in UGAs and in Planned Unit Developments (PUDs), to offset the reduced profit inherent in more affordable types of housing. Incentives might include ~~transfer of development rights,~~ density bonuses, fee waivers, expedited permit review, and/or infrastructure concessions to protect developers wherever special needs populations are specifically served.

Rationale: This change reflects the shift away from a traditional TDR.

Chapter 8 (Resource Lands)

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

- Maintenance of 100,000 acres of agricultural land to support a healthy agricultural industry.
- A density credit program where development incentives are offered in cities and/or UGAs if density credits are purchased by the developer. Funds from the density credit program would supplement the existing Purchase of Development Rights (PDR) program funding. ~~workable transfer of development rights program (TDR) in which the development potential of a site could be transferred to another location where development is more favorable.~~
- ~~The workable TDR program shall give priority to the creation of economically viable receiving areas.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It recognizes that monies taken in through the density credit program would go towards reducing development potential in areas suitable for agriculture.

- Developing a marketplace approach to strengthening agricultural practices while enhancing larger-scale watershed processes and functions by identifying feasible opportunities on agricultural land to improve both watershed health and agricultural viability and developing incentives and tools to compensate farmers for actions that exceed minimum regulatory standards.
- Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms.
- Incentives and cooperation between landowners and public agencies such as the use of the current use tax assessment provisions.
- Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.
- Discouraging conversion of designated agricultural lands to non-agricultural uses.
- Track acres lost due to conversion, development, or policy implementation such as critical areas ordinance, so mitigation strategies can be implemented to offset the acres lost.
- Education and marketing of programs that emphasize recognition of the local and regional significance of agricultural land as a natural resource and the economic, social and ecological benefits it provides.
- Working cooperatively with local farmers and coordinating with local and state agencies to address water quality impacts of agricultural activities on local streams and groundwater.
- Securing an adequate, sustainable, and legal supply of irrigation water sufficient to support the long-term viability of the local agricultural industry.
- Identify and evaluate any new or changed zoning or comprehensive plan agricultural lands of long term commercial significance designations as needed or warranted for the Rural Study Areas.
- Economic development assistance to agricultural-related enterprises.
- Recognize regulatory impacts and encourage farm friendly regulations.

Chapter 10 (Environment)

Policy 10C-3: Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase/voluntary, workable transfer of development rights, the density credit program, and other mechanisms that assist affected property owners.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 10E-6: Maintain a comprehensive program of regulatory and non-regulatory mechanisms to achieve Natural Hazard goals and policies. This program should include such mechanisms as education, tax incentives, zoning, land use regulations, conservation easements, purchase of development rights, ~~transfer of development rights~~, and public acquisition.

Rationale: This change reflects the shift away from a traditional TDR. It does not reference the density credit program, because funds from density credits will go towards preserving rural and agricultural lands and are not specifically targeted towards naturally hazardous areas.

Policy 10L-16: Consider ~~establishing important habitat areas (as set forth in best available science and Wildlife Advisory Committee recommendations) in the Purchase of Development Rights Program Guidelines site evaluation criteria. as sending areas after creating a voluntary, workable transfer of development rights (TDR) program.~~

Rationale: This change reflects the shift away from a traditional TDR. It also recognizes that the existing PDR Program Guidelines "site evaluation" criteria include conservation values such as wildlife habitat.

Policy 10P-17: Consider establishing the Drayton Harbor Watershed as an area for directed PDR investments and encourage the cities of Blaine and Ferndale to establish density credit programs that provide funding to the County PDR program.~~sending area when considering a transfer of development rights (TDR) program.~~

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It also encourages a cooperative effort between the County and cities that would provide developer incentives in the cities while reducing development potential in the rural and/or agricultural areas of the Drayton Harbor Watershed.

Jennifer Schneider

From: Henry Bierlink <henry@agwaterboard.com>
Sent: Wednesday, October 17, 2018 3:48 PM
To: Rud Browne; Barbara Brenner; Barry Buchanan; Council; Satpal Sidhu; Timothy Ballew; Todd Donovan; Tyler Byrd
Cc: George Boggs; Marty Maberry; Brad Rader; Randy Honcoop; Debbie Vander Veen; Chris Elder; Mark Personius; Tyler Schroeder
Subject: RE: Water rights and the PDR program
Attachments: CC 101718_10-17-2018-155501.pdf

Attached is the AWB's statement on proposed changes to the PDR rating system.

Henry Bierlink, Director
Ag Water Board
204 Hawley Street
Lynden, WA 98264
360-354-1337
henry@agwaterboard.com
www.agwaterboard.com

From: Rud Browne [mailto:RBrowne@co.whatcom.wa.us]
Sent: Thursday, September 27, 2018 10:29 AM
To: Henry Bierlink <henry@agwaterboard.com>
Cc: George Boggs <GBoggs@whatcomcd.org>; Marty Maberry <marty@maberrys.com>; Brad Rader <Bradrader2@gmail.com>; Randy Honcoop <ranhonfarm@gmail.com>; Debbie Vander Veen <veenteam@gmail.com>; Chris Elder <CElder@co.whatcom.wa.us>; Mark Personius <MPersoni@co.whatcom.wa.us>; Tyler Schroeder <Tschroed@co.whatcom.wa.us>
Subject: Re: Water rights and the PDR program

Henry
I appreciate that we need a comprehensive solution to water rights for farmers and to the degree I can advocate for this from the County Council I will, but as you know much of this is controlled by the State government.

In this instance however I am just trying to ensure our County PDR program is as well designed as it can be. Would the WID's consider providing a official recommendation in response to my question regarding how we should rank water rights when we evaluate land we are considering using public monies to purchase development rights from.

Rud

Rud Browne
Council Chair &
Councilmember for District One
Whatcom County Council
[311 Grand Ave. Suite 105](https://www.whatcomcountycouncil.org/311-Grand-Ave-Suite-105)
[Bellingham, WA 98225](https://www.whatcomcountycouncil.org/311-Grand-Ave-Suite-105)

Phone: [360-820-9494](tel:360-820-9494)
Email: RBrowne@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)

On Sep 26, 2018, at 1:19 PM, Henry Bierlink <henry@agwaterboard.com> wrote:

I would come at this issue from a different perspective Rud. I believe the PDR program should be about protecting the best agricultural land in the county whether it has water at this point or not. In fact, the land with water rights is the least vulnerable as farmers are paying a premium for it. The good land that does not have adequate water rights should be our priority target as it is the most vulnerable to conversion. The owner or buyer is able to place a domestic exempt well(s) on that parcel and not have to worry about water rights. We cannot afford to lose quality land from our ag base because our water laws have not yet caught up to present realities.

My perspective is based on my firm belief that we will develop and implement the tools we need to ensure anyone who wants to irrigate farmland or water stock will have opportunity to get water. This is most likely in the ag zone and areas covered by the WIDs. Maybe a little more shaky in areas outside that nucleus but I'm optimistic we will have tools for good land outside the WIDs as well.

Thanks for your interest in building a quality PDR and Farmland Protection program.

Henry Bierlink, Director
Ag Water Board
204 Hawley Street
Lynden, WA 98264
360-354-1337
henry@agwaterboard.com
www.agwaterboard.com

From: Rud Browne [mailto:RBrowne@co.whatcom.wa.us]

Sent: Tuesday, September 25, 2018 9:21 PM

To: Henry Bierlink <henry@agwaterboard.com>; George Boggs <GBoggs@whatcomcd.org>; Marty Maberry <marty@maberrys.com>; Brad Rader (Bradrad2@gmail.com) <Bradrad2@gmail.com>; Randy Honcoop <ranhonfarm@gmail.com>; Debbie Vander Veen <veenteam@gmail.com>

Cc: Chris Elder <CElder@co.whatcom.wa.us>; Mark Personius <MPersoni@co.whatcom.wa.us>; Tyler Schroeder <Tschroed@co.whatcom.wa.us>

Subject: Water rights and the PDR program

Hi,

I need you input to arrive at the right decision. Over the course of the last few years I have frequently raised the question of what is the right "weighting" that we should give to the value of water rights when the County is trying to determine how we should compare parcels and allocate funds as part of our Purchase of Development Rights program.

My position has been that if want to protect our AG land base that we should place a greater emphasis on purchasing the development rights on good AG land that has a water Certificate or Claim that is adequate enough to support intensive farming. Most of the PDR evaluation topics offer between 0-100 points based on measurement of certain criteria.

Most recently I have suggested that we should give up to 300 points to land which has a Certificate, 200 points to land with a documented Claim and zero for land without water rights.

In addition we have been having discussions about whether we should give more points for land that is close to major roads (as Skagit does) or less.

I would appreciate you sharing your thoughts with Chris Elder and myself. I will ask Chris to provide us with a copy of most recent proposed version of the evaluation criteria.

Feel free to share this with people who understand the impact of water rights on AG sustainability and invite them to respond as well.

Thanks

Rud

Rud Browne

Council Chair &

Councilmember – District One

Whatcom County Council

311 Grand Ave. Suite 105

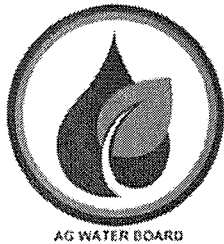
Bellingham, WA 98225

Phone: 360-820-9494

Email: RBrowne@co.whatcom.wa.us

Profile: <http://www.co.whatcom.wa.us/1974/Rud-Browne>

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)



AWB Board

Scott Bedlington, Bertrand WID
Kevin Te Velde, North Lynden WID
Jeff De Jong, South Lynden WID
Mike Boxx, Laurel WID
Marty Maberry, Drayton WID
Andy Enfield, Sumas WID

October 17, 2018

Whatcom County Council
council@co.whatcom.wa.us

Dear County Council members:

We've been asked to provide a response to a question you have concerning the prioritization process when evaluating potential Purchase of Development Rights in ag lands. Your concern is how to "weight" the presence or absence of water rights on these lands.

The position of the Ag Water Board is that water rights should be a minor consideration in the site evaluation if a factor at all. The overriding factor for this program should be the quality of the land. We believe the revised PDR Program Guidelines reflect that concern. Good ag land, with or without water rights, should be a high priority for protection through this program.

We have been working for decades to resolve our legal water supply issues. Progress has been slow but it has been moving in a positive direction. We have always maintained that we need to protect our ag land base and ensure that farmers have the infrastructure they need to be successful. This includes water supply and drainage. We are working with the State to develop and implement "tools" that will provide all farmers the opportunity to access the water they need.

Reducing the rating that good ag land without water rights has on the PDR rating would work against our goals rather than further them. Farmland without water rights is vulnerable to conversion out of ag. Rural sprawl becomes the likely result. Rather than lowering the rating for these parcels we should both: 1) work to preserve them in ag, and 2) develop the ability to provide them water.

Thank you for asking our opinion on this matter and for your commitment to the PDR program and farmland protection.

Sincerely,

Scott Bedlington, President
Ag Water Board

cc: Chris Elder
George Boggs

CElder@co.whatcom.wa.us
gboggs@whatcomcd.org



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-381

File ID:	AB2021-381	Version:	1	Status:	Agenda Ready
File Created:	06/21/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	06/29/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance adopting Whatcom County Comprehensive Plan amendments concerning the Lummi Island Ferry, modifying Policy 6A-1 relating to ferry level of service and deleting Policy 6C-9 relating to a ferry feasibility study

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance would amend the Whatcom County Comprehensive Plan concerning the Lummi Island Ferry. The proposal would modify Policy 6A-1 relating to ferry level of service and delete Policy 6C-9 relating to a ferry feasibility study.

This proposal was forwarded by Council on May 7, 2019, to be considered with other proposed Comprehensive Plan amendments (see AB2019-223). Per Whatcom County Code 2.02.115, because the ordinance was not adopted within 120 days of its original introduction date, it must be reintroduced, notice of introduction republished, and at least 13 days elapsed before the ordinance can come up for final consideration by the Council.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Ordinance, Proposed Exhibit A, 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

April 8, 2019

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

FROM: Matt Aamot, Senior Planner *MA*

THROUGH: Mark Personius, Director *MP*

RE: Lummi Island Ferry – Comp Plan Amendments (PLN2019-00004)

The subject proposal is to modify the Whatcom County Comprehensive Plan as follows:

- Amending Policy 6A-1 relating to Lummi Island ferry level of service.
- Deleting Policy 6C-9 relating to a ferry feasibility study.

The Lummi Island Ferry Advisory Committee was established by WCC 2.145 (adopted in 2012). This Advisory Committee proposed modifications to Comprehensive Plan Policy 6A-1 relating to ferry level of service. Additionally, the *Lummi Island Ferry System Level of Service Alternatives Analysis Final Report* was issued on July 5, 2018. Therefore, Comprehensive Plan Policy 6C-9, relating to a ferry feasibility study, should be deleted because the study is complete. The Whatcom County Council endorsed the Lummi Island Ferry Advisory Committee recommendations by approval of Resolution 2018-026 on July 24, 2018.

The Whatcom County Planning Commission held a public hearing and recommended approval of these Comprehensive Plan amendments on January 24, 2019.

We are now requesting Council review of the amendments and anticipate that the County Council would make a final decision when all comprehensive plan amendments are reviewed concurrently.

Thank you for your consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: April 23, 2019

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
WHATCOM COUNTY COMPREHENSIVE PLAN
RELATING TO THE LUMMI ISLAND FERRY**

WHEREAS, The Lummi Island Ferry Advisory Committee proposed modifications to the Whatcom County Comprehensive Plan relating to the Lummi Island ferry; and

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

WHEREAS, The County Council considered the Lummi Island Ferry Advisory Committee and Planning Commission recommendations; and

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

FINDINGS OF FACT

Background Information

1. The subject amendments to the Whatcom County Comprehensive Plan (Chapter 6, Transportation) are summarized as follows:
 - a. Amending Policy 6A-1 relating to Lummi Island ferry level of service.
 - b. Deleting Policy 6C-9 relating to a ferry feasibility study.
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on December 12, 2018.
3. Notice of the Planning Commission hearing was sent to citizen, media, and other groups on the County's e-mail list on January 9, 2019.
4. Notice of the Planning Commission hearing was posted on the County website on January 10, 2019.
5. Notice of the Planning Commission hearing was published in the Bellingham Herald on January 11, 2019.

6. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 11, 2019.
7. The Planning Commission held a public hearing on the subject amendments on January 24, 2019.
8. Pursuant to WCC 22.10.060(1), in order to approve 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 # 3 is to "Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans" (RCW 36.70A.020(3)).

11. 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)).
12. The GMA, at RCW 36.70A.070(3), requires that a comprehensive plan must include, among other things, a forecast of the future needs for such capital facilities. The level of service provides a basis to project future needs.

County-Wide Planning Policies

13. County-Wide Planning Policy A-2 states that the County ". . . shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees. . ."

Interlocal Agreements

14. There are no interlocal agreements that would prevent the subject amendments.

Further Studies/Changed Conditions

15. The Lummi Island Ferry Advisory Committee was established by WCC 2.145 (adopted in 2012) to advise the County on a number of issues:
 - a. Review and provide recommendations on proposed changes to ferry operations and fares; and
 - b. Review at least annually ferry revenue and expenditures, ferry fund balance, and actual versus targeted fare return; and
 - c. Assist the county in collecting information from ferry riders on actual and desired ferry services, concerns, and ideas for improved service; and
 - d. Analyze and develop recommendations to continue and improve the cost effective operation of ferry service to Lummi Island; and
 - e. Research, review, and make recommendations regarding ferry replacement, long-term planning, parking, transportation to and from ferry docks, alternative docking locations, alternative funding sources, and other major capital and operational issues regarding ferry service to Lummi Island.
16. The Lummi Island Ferry Advisory Committee proposed modifications to Comprehensive Plan Policy 6A-1 relating to ferry level of service.

17. The *Lummi Island Ferry System Level of Service Alternatives Analysis Final Report* (July 5, 2018) was prepared by KPFF Consulting Engineers, Steer Davies Gleave, Elliott Bay Design Group, and Progressions. Therefore, Comprehensive Plan Policy 6C-9, relating to a ferry feasibility study, will be deleted because the study is complete.
18. The Whatcom County Council endorsed the Lummi Island Ferry Advisory Committee recommendations by approval of Resolution 2018-026 on July 24, 2018.

Public Interest

19. The subject Comprehensive Plan amendments relating to level of service standards are intended to facilitate ferry service that meets future community needs. These amendments were developed with the advice of the Lummi Island Ferry Advisory Committee, which considered public input at meetings and through surveys.
20. The subject Comprehensive Plan amendments address the provision of adequate ferry service in the future. Planning for such service is in the public interest.

Spot Zoning

21. 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 Whatcom County Comprehensive Plan (Chapter 6, Transportation) is hereby amended as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2019.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chairperson

APPROVED as to form:

() Approved () Denied

Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

Exhibit A

Whatcom County Comprehensive Plan Amendments

Chapter 6 (Transportation)

Ferry service to Lummi Island does not comprise an arterial or transit route; therefore it is not subject to concurrency under GMA. It is, however, the only point of access for Lummi Island. For the purposes of future infrastructure planning, a LOS standard ~~for the Lummi Island ferry based on an estimate of the available passenger trips per capita Lummi Island population~~ is established in Policy 6A-12. ~~(See Lummi Island Ferry LOS methodology in Appendix J).~~

Policy 6A-1: Establish the following levels of service (LOS) for purposes of maintaining transportation concurrency:

- The Level of Service (LOS) standard for county arterials and major collectors located outside of urban growth areas during weekday p.m.-peak hours is C or better, except for specified primary routes as shown on Map 6-3, which shall have a LOS of D or better.
- The LOS standard for county arterials and major collectors within urban growth areas not associated with cities during weekday p.m. peak hours is D or better, which may be reduced for concurrency evaluation purposes in accordance with Policy 6A-4.
- The LOS standard for county arterials and major collectors within city urban growth areas weekday during p.m. peak hours is D or better, which may be reduced for concurrency evaluation purposes in accordance with Policy 6A-4.
- Coordinate with Whatcom Transportation Authority to ensure adequate transit service, in accordance with the level of service standards established in its current strategic plan.
- Public Works shall establish a performance metric to monitor service performance of the Lummi Island ferry system. This will include a week long count at least every quarter in both sailing directions. This count will include percent capacity, on-time performance, and the number of vehicles left in the queue. The count shall be compared to the desired level of service of no more than two sailing waits during average weekday peak periods.

~~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 unit 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 population figure from OFM for Lummi Island.)~~

~~Policy 6C-9: Conduct a ferry feasibility study to inform the next annual Comprehensive Plan update so that sufficient planning, engineering, design and cost detail is available to use in competing for grants and other sources of funding for a replacement ferry. LIFAC should provide input on the scope of work and any consultants or vendors retained, as well as reviewing and providing input on key milestones.~~

NOTE: Re-number existing Policy 6C-10 to 6C-9

**WHATCOM COUNTY
PLANNING COMMISISON**

**Lummi Island Ferry
Comprehensive Plan Amendments**

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject amendments to the Whatcom County Comprehensive Plan (Chapter 6, Transportation) are summarized as follows:
 - a. Amending Policy 6A-1 relating to Lummi Island ferry level of service.
 - b. Deleting Policy 6C-9 relating to a ferry feasibility study.
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on December 12, 2018.
3. Notice of the Planning Commission hearing was sent to citizen, media, and other groups on the County's e-mail list on January 9, 2019.
4. Notice of the Planning Commission hearing was posted on the County website on January 10, 2019.
5. Notice of the Planning Commission hearing was published in the Bellingham Herald on January 11, 2019.
6. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 11, 2019.
7. The Planning Commission held a public hearing on the subject amendments on January 24, 2019.
8. Pursuant to WCC 22.10.060(1), in order to approve 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 # 3 is to “Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans” (RCW 36.70A.020(3)).
- 11. 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)).
- 12. The GMA, at RCW 36.70A.070(3), requires that a comprehensive plan must include, among other things, a forecast of the future needs for such capital facilities. The level of service provides a basis to project future needs.

County-Wide Planning Policies

- 13. County-Wide Planning Policy A-2 states that the County “. . . shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees. . .”

Interlocal Agreements

14. There are no interlocal agreements that would prevent the subject amendments.

Further Studies/Changed Conditions

15. The Lummi Island Ferry Advisory Committee was established by WCC 2.145 (adopted in 2012) to advise the County on a number of issues:
 - a. Review and provide recommendations on proposed changes to ferry operations and fares; and
 - b. Review at least annually ferry revenue and expenditures, ferry fund balance, and actual versus targeted fare return; and
 - c. Assist the county in collecting information from ferry riders on actual and desired ferry services, concerns, and ideas for improved service; and
 - d. Analyze and develop recommendations to continue and improve the cost effective operation of ferry service to Lummi Island; and
 - e. Research, review, and make recommendations regarding ferry replacement, long-term planning, parking, transportation to and from ferry docks, alternative docking locations, alternative funding sources, and other major capital and operational issues regarding ferry service to Lummi Island.
16. The Lummi Island Ferry Advisory Committee proposed modifications to Comprehensive Plan Policy 6A-1 relating to ferry level of service.
17. The *Lummi Island Ferry System Level of Service Alternatives Analysis Final Report* (July 5, 2018) was prepared by KPFF Consulting Engineers, Steer Davies Gleave, Elliott Bay Design Group, and Progressions. Therefore, Comprehensive Plan Policy 6C-9, relating to a ferry feasibility study, will be deleted because the study is complete.
18. The Whatcom County Council endorsed the Lummi Island Ferry Advisory Committee recommendations by approval of Resolution 2018-026 on July 24, 2018.

Public Interest

19. The subject Comprehensive Plan amendments relating to level of service standards are intended to facilitate ferry service that meets future community needs. These amendments were developed with the advice of the Lummi Island Ferry Advisory Committee, which considered public input at meetings and through surveys.

20. The subject Comprehensive Plan amendments address the provision of adequate ferry service in the future. Planning for such service is in the public interest.

Spot Zoning

21. The subject proposal does not involve rezoning property.

CONCLUSIONS

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, Whatcom County Comprehensive Plan amendments (Chapter 6, Transportation).

WHATCOM COUNTY PLANNING COMMISSION



Nicole Oliver, Chair



Ashley Ubil, Secretary

1-25-19

Date

01-25-2019

Date

Commissioners present at the January 24, 2019 meeting when the vote was taken: Kelvin Barton, Atul Deshmane, Gary Honcoop, Stephen Jackson, Kimberly Lund, Natalie McClendon, Dominic Mocerri, and Nicole Oliver.

Vote: Ayes: 8, Nays: 0, Abstain: 0, Absent: 1. Motion carried to adopt the above amendments.

Planning Commission Exhibit A
is attached to the proposed Ordinance.