

**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  
JULY 13, 2021**

**INCLUDES INFORMATION  
FOR THE FOLLOWING MEETINGS:**

**10:15 A.M. – COMMITTEE OF THE WHOLE - EXECUTIVE SESSION  
(ENDS NOT LATER THAN 10:55 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 2:15 P.M.)**

**2:25 P.M. - COMMITTEE OF THE WHOLE  
(ENDS NO LATER THAN 5 P.M.)**

**6 P.M. - COUNCIL**

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**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.whatcomlegistar.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 COMMITTEE OF THE WHOLE – EXECUTIVE SESSION**  
**10:15 A.M. TUESDAY, July 13, 2021 (ENDS NO LATER THAN 10:55 A.M.)**  
**Virtual Meeting**

## **Call To Order**

## **Roll Call**

## **Announcements**

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

## **Committee Discussion**

1. AB2021-386 Discussion of pending litigation with Civil Deputy Prosecutor, George Roche, re: Fred A. Pulphus, Plaintiff, v. Compass Health, a Washington corporation, Whatcom County, Whatcom County Sheriff’s Office, and Wendy Jones, Defendants, Snohomish County Superior Court Cause No. 21-2-01395-31. [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)]

**Page 1**

## **Items Added by Revision**

## **Other Business**

## **Adjournment**

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**COUNCIL FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE**  
**11:00 A.M. TUESDAY, July 13, 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 meeting are asked to contact the Council Office at 360-778-5010 at least 96 hours in advance**

## **Special Presentation**

1. AB2021-357 Report from Information Technology (IT) Division  
**Page 2**
2. AB2021-388 Report from Washington State University (WSU) Extension  
**Page 3**



### **Committee Discussion and Recommendation to Council**

1. AB2021-346 Ordinance amending the project budget for the Silver Lake Park Improvement Fund, request no. 3  
**Pages 4 - 8**
2. AB2021-365 Ordinance amending the Whatcom County Budget, request no. 11, in the amount of \$5,728,416  
**Pages 9 - 23**
3. AB2021-375 Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership  
**Pages 24 - 26**
4. AB2021-393 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Commerce for resources to assist people who are experiencing homelessness obtain and maintain housing stability, in the amount of \$6,335,182  
**Pages 27 - 42**
5. AB2021-397 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Lynden for Economic Development Investment (EDI) loan and grant funding to support the West Front Street Arterial Improvement Project, in the amount of \$2,000,000  
**Pages 43 - 74**
6. AB2021-398 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services for the administration of developmental disabilities services, in the amount of \$4,125,535  
**Pages 75 - 76**
7. AB2021-401 Request authorization for the County Executive to enter into a purchase and sale agreement for the acquisition of 5.9 acres of undeveloped property adjoining Squires Lake Park in the amount of \$90,000  
**Pages 77 - 82**

### **Council "Consent Agenda" Items**

1. AB2021-383 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Island County for Mini-Chain Services in the amount of \$5,359.00  
**Pages 83 - 90**
2. AB2021-385 Request authorization for the County Executive to award Bid #21-31 and enter into a subsequent contract between Whatcom County and Foss Maritime for the annual drydocking, repair and maintenance of the Whatcom Chief ferry, in the amount of \$773,839  
**Pages 91 - 93**
3. AB2021-387 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Washington Association of Sheriffs and Police Chiefs for Registered Sex Offender Address and Residency Verification Program, in the amount of \$139,688.00  
**Pages 94 - 100**
4. AB2021-391 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology for litter cleanup activities, in the amount of \$71,100  
**Pages 101 - 125**

5. AB2021-399 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Snohomish Health District for participation in the North Sound Regional Youth Marijuana Prevention and Education Program, in the amount of \$27,000  
**Pages 126 - 135**
6. AB2021-400 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Skagit County for participation in the North Sound Regional Youth Marijuana Prevention and Education Program, in the amount of \$27,000  
**Pages 136 - 146**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE  
1:45 P.M. TUESDAY, July 13, 2021 (ENDS NO LATER THAN 2:15 P.M.)  
Virtual Meeting**

**Call To Order**

**Roll Call**

**Announcements**

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

**Special Presentation**

1. AB2021-394 Report from District Court Probation Department  
**Page 147**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL COMMITTEE OF THE WHOLE  
2:25 P.M. TUESDAY, July 13, 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 meeting are asked to contact the Council Office at 360-778-5010 at least 96 hours in advance**

**Committee Discussion**

1. AB2021-395 Discussion and periodic update of the Shoreline Management Program  
**Pages 148 - 863**
2. AB2021-339 Discussion to establish a process for filling district court judicial vacancy  
**Pages 864 - 1055**
3. AB2021-345 Discussion regarding reopening Council operations to the public  
**Pages 1056 - 1059**

**Committee Discussion and Recommendation to Council**

1. AB2021-360 Ordinance to establish an independent review of the community response to the COVID-19 Pandemic  
**Pages 1060 - 1063**

**Items Added by Revision**

**Other Business**

**Adjournment**

# **COUNCIL AGENDA**

**REGULAR COUNCIL MEETING  
6:00 P.M. TUESDAY, July 13, 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](http://www.whatcom.legistar.com). For instructions on how to watch or participate in this meeting, please visit us at [www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) or contact the Council Office at 360.778.5010.

Individuals who require special assistance to participate in the Council's meeting 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 vacancy webpage on the County website at [www.co.whatcom.wa.us](http://www.co.whatcom.wa.us), or call the County Council office or County Executive's Office.

## **COUNTY EXECUTIVE'S REPORT**

## **MINUTES CONSENT**

- |    |                    |  |                                 |
|----|--------------------|--|---------------------------------|
| 1. | <u>MIN2021-053</u> | Committee of the Whole for June 29, 2021 | <b><u>Pages 1064 - 1069</u></b> |
| 2. | <u>MIN2021-054</u> | Regular County Council for June 29, 2021 | <b><u>Pages 1070 - 1087</u></b> |

## **PUBLIC HEARINGS**

To participate, please see instructions at [www.whatcomcounty.us/joinvirtualcouncil](http://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 reached their three minute limit.

- |    |                   |   |
|----|-------------------|---|
| 1. | <u>AB2021-363</u> | 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<br><b><u>Pages 1088 - 1109</u></b> |
| 2. | <u>AB2021-370</u> | Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County<br><b><u>Pages 1110 - 1186</u></b>  |

## **OPEN SESSION (20 MINUTES)**

During open session, audience members may speak to the council on issues not scheduled for public hearing. To participate, please see instructions at [www.whatcomcounty.us/joinvirtualcouncil](http://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 and inform speakers when they have reached their three minute limit.

## **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. AB2021-383 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Island County for Mini-Chain Services in the amount of \$5,359.00  
**Pages 83 - 90**
2. AB2021-385 Request authorization for the County Executive to award Bid #21-31 and enter into a subsequent contract between Whatcom County and Foss Maritime for the annual drydocking, repair and maintenance of the Whatcom Chief ferry, in the amount of \$773,839  
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**Pages 136 - 146**

## **OTHER ITEMS**

### **(From Council Finance and Administrative Services Committee)**

1. AB2021-346 Ordinance amending the project budget for the Silver Lake Park Improvement Fund, request no. 3  
**Pages 4 - 8**
2. AB2021-365 Ordinance amending the Whatcom County Budget, request no. 11, in the amount of \$5,728,416  
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**Pages 77 - 82**

### **(From Council Committee of the Whole)**

8. AB2021-360 Ordinance to establish an independent review of the community response to the COVID-19 Pandemic  
**Pages 1060 - 1063**

### **(No Committee Assignment)**

9. AB2021-392 Request approval of a motion to authorize Chief Civil Deputy Prosecutor Karen Frakes to vote on behalf of Whatcom County in favor of the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors in re: Purdue Pharma, et al. Case No. 19-23649 (RDD), United States Bankruptcy Court of the Southern District of New York  
**Pages 1187 - 1215**

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

1. AB2021-384 Request confirmation of the County Executive's reappointments of David Warren and Daniel Larner to the Bellingham-Whatcom Public Facilities District  
**Pages 1216 - 1218**

## **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. AB2021-403 Ordinance adopting amendments to the Whatcom County Comprehensive Plan and Whatcom County Code relating to the Cherry Point UGA fossil fuel facilities, renewable fuel facilities, piers, SEPA, greenhouse gas emissions, and other matters  
**Pages 1219 - 1276**
2. AB2021-405 Ordinance requesting that the Whatcom County Auditor include the question of establishing a Birch Bay Library Capital Facility Area to finance a new library facility in Birch Bay on the ballot at the November general election  
**Page 1277 - 1294**

## **COMMITTEE REPORTS**

## **OTHER ITEMS**

## **COUNCIL MEMBER UPDATES**

## **ADJOURN**



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-386

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<b>File ID:</b>	AB2021-386	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/24/2021	<b>Entered by:</b>	AWebb@co.whatcom.wa.us		
<b>Department:</b>	Prosecuting Attorney's Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole-Executive Session			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### **TITLE FOR AGENDA ITEM:**

Discussion of pending litigation with Civil Deputy Prosecutor, George Roche, re: Fred A. Pulphus, Plaintiff, v. Compass Health, a Washington corporation, Whatcom County, Whatcom County Sheriff's Office, and Wendy Jones, Defendants, Snohomish County Superior Court Cause No. 21-2-01395-31.  
[Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)]

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Discussion of pending litigation with Civil Deputy Prosecutor, George Roche, re: Fred A. Pulphus, Plaintiff, v. Compass Health, a Washington corporation, Whatcom County, Whatcom County Sheriff's Office, and Wendy Jones, Defendants, Snohomish County Superior Court Cause No. 21-2-01395-31.  
[Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)].

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:**





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-357

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<b>File ID:</b>	AB2021-357	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/14/2021	<b>Entered by:</b>	AHaines@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Report		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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Primary Contact Email: price@whatcomcounty.us

### TITLE FOR AGENDA ITEM:

Report from Information Technology (IT) Division

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-388

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<b>File ID:</b>	AB2021-388	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/25/2021	<b>Entered by:</b>	AReynold@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Report		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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Primary Contact Email: ckahle@wsu.edu

### TITLE FOR AGENDA ITEM:

Report from Washington State University (WSU) Extension

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

WSU Extension will provide their annual report to Council

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### HISTORY OF LEGISLATIVE FILE

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



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-346

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<b>File ID:</b>	AB2021-346	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	06/11/2021	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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Primary Contact Email: [mcaldwel@co.whatcom.wa.us](mailto: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.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
06/29/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

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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>
<b>Expenditures</b>				
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
		<b>\$6,138,300</b>	<b>\$249,800</b>	<b>\$6,388,100</b>
<b>Revenues</b>				
8301.324	Operating Transfer In - REET II	\$6,138,300	\$249,800	\$6,388,100
		<b>\$6,138,300</b>	<b>\$249,800</b>	<b>\$6,388,100</b>

# 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)
	<b>Request Total</b>		<b>\$0</b>

### 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

# 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: AB2021-365

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<b>File ID:</b>	AB2021-365	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	06/16/2021	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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Primary Contact Email: [mcaldwel@co.whatcom.wa.us](mailto: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.

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## **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
06/29/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

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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
<b>General Fund</b>			
Health	52,616	(52,616)	-
<b>Total General Fund</b>	<b>52,616</b>	<b>(52,616)</b>	<b>-</b>
<b>Whatcom County Jail Fund</b>	<b>435,000</b>	<b>(435,000)</b>	<b>-</b>
<b>Affordable &amp; Supportive Housing Fund</b>	<b>525,000</b>	-	<b>525,000</b>
<b>American Rescue Plan Act Fund</b>	<b>435,000</b>	-	<b>435,000</b>
<b>Conservation Futures Fund</b>	<b>106,000</b>	-	<b>106,000</b>
<b>Real Estate Excise Tax I Fund</b>	<b>1,200,000</b>	-	<b>1,200,000</b>
<b>Real Estate Excise Tax II Fund</b>	<b>249,800</b>	-	<b>249,800</b>
<b>Public Utilities Improvement Fund</b>	<b>2,725,000</b>	-	<b>2,725,000</b>
<b>Total Supplemental</b>	<b>5,728,416</b>	<b>(487,616)</b>	<b>5,240,800</b>

**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
	<b>Request Total</b>		<b>\$0</b>

## 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:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	6635	Health Care Services	\$435,000
	8301	Operating Transfer In	(\$435,000)
	<b>Request Total</b>		<b>\$0</b>

## 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 Jantzen*

6/14/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7350	Buildings & Structures	\$525,000
	<b>Request Total</b>		<b>\$525,000</b>

**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:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	7320	Land	\$1,200,000
	<b>Request Total</b>		<b>\$1,200,000</b>

### 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:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	8351	Operating Transfer Out	\$249,800
	<b>Request Total</b>		<b>\$249,800</b>

### 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
	<b>Request Total</b>		<b>\$2,000,000</b>

### 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: AB2021-375

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<b>File ID:</b>	AB2021-375	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	06/18/2021	<b>Entered by:</b>	SMildner@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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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.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
06/29/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

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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

\_\_\_\_\_  
Approved via e-mail by Karen Frakes / JL

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: AB2021-393

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<b>File ID:</b>	AB2021-393	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/30/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Commerce for resources to assist people who are experiencing homelessness obtain and maintain housing stability, in the amount of \$6,335,182

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed Agreement



## MEMORANDUM

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Washington State Department of Commerce – Consolidated Homeless Grant

**DATE:** June 30, 2021

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Attached is an Interlocal Agreement between Whatcom County and Washington State Department of Commerce for your review and signature.

- **Background and Purpose**

The Consolidated Homeless Grant (CHG) provides resources to obtain and maintain housing stability to people who are experiencing homelessness. This grant supports the priorities outlined in the Whatcom County Plan to End Homelessness. Funding provided by this grant is passed through to partner agencies of the Whatcom Homeless Service Center for distribution to eligible people.

- **Funding Amount and Source**

This Agreement includes \$6,335,182 in funding for the 2021-2023 biennium. These funds will be included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

- **Funding Amount and Source**

This Agreement provides funding for both the CHG and the Housing and Essential Needs (HEN) Program. While Commerce has allocated a reduced amount in CHG compared to the Agreement that ends on 6/30/21 (WC Contract #201907017), Commerce has indicated that there is likely an additional allocation later in 2021, due to legislative changes. The HEN Program, however, has received a substantial increase in funding which accounts for an additional \$1,466,719 to serve more people in Whatcom County.

Please contact Anne Deacon, Human Services Manager at 360-778-6054 ([ADeacon@co.whatcom.wa.us](mailto:ADeacon@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007 ([KRoy@co.whatcom.wa.us](mailto: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:		Anne Deacon	
Contractor's / Agency Name:		WA State Department of Commerce	
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 checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, grantor agency contract number(s):		22-46108-35
Is this contract grant funded? Yes <input type="checkbox"/> No <input type="checkbox"/>	If yes, Whatcom County grant contract number(s):		CFDA#:
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: 122300
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" 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 checked="" 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): \$ 6,335,182		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 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: \$			
Total Amended Amount: \$			
Summary of Scope: This grant provides resources to assist people who are experiencing homelessness, obtain and maintain housing stability.			
Term of Contract:	2 Years	Expiration Date:	06/30/2023
Contract Routing:	1. Prepared by:	JT	Date: 06/28/2021
	2. Attorney signoff:	RB	Date: 06/29/2021
	3. AS Finance reviewed:	M Caldwell	Date: 6/30/2021
	4. IT reviewed (if IT related):		Date:
	5. Contractor approved:		Date:
	6. Submitted to Exec.:		Date:
	7. Council approved (if necessary):	AB2021-393	Date:
	8. Executive signed:		Date:
	9. Original to Council:		Date:



## **Interagency Agreement with**

Whatcom County Health Department

through

Community Services and Housing Division  
Housing Assistance Unit

## **Consolidated Homeless Grant (CHG)**

**Start date:** July 1, 2021

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**Attachment A, Scope of Work**

**Attachment B, Budget**

# FACE SHEET

Contract Number: 22-46108-35

Washington State Department of Commerce  
Community Services and Housing Division  
Housing Assistance Unit  
Consolidated Homeless Grant

<b>1. Contractor</b> Whatcom County Health Department 509 Girard St. Bellingham, WA 98225		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> Barbara Johnson-Vinna Housing Specialist (360) 778-9046 bjvinna@co.whatcom.wa.us		<b>4. COMMERCE Representative</b> Sarah Harrison Grant Manager (360) 463-0216 sarah.harrison@commerce.wa.gov	
<b>5. Contract Amount</b> \$6,335,182.00	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input checked="" type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> July 1, 2021	<b>8. End Date</b> June 30, 2023
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency:</b> N/A	
		<b>CFDA Number</b> N/A	
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV0002425-01	<b>12. UBI #</b> 371010246	<b>13. DUNS #</b> N/A
<b>14. Contract Purpose</b> This grant provides resources to assist people who are experiencing homelessness obtain and maintain housing stability. Grantees and subgrantees must prioritize unsheltered homeless households for assistance and services			
<b>15. Signing Statement</b> COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: 2022-2023 CHG Information and Budget workbook, CHG Guidelines (as they may be revised from time to time), and Contract Terms and Conditions including Attachment "A" – Scope of Work and Attachment "B" – Budget.			
<b>FOR CONTRACTOR</b>  _____ Signature  _____ Print Name and Title  _____ Date		<b>FOR COMMERCE</b>  _____ Diane Klontz, Assistant Director Community Services and Housing Division  _____ Date  <b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 08/22/2019.</b> <b>APPROVAL ON FILE.</b>	

PROGRAM APPROVAL

\_\_\_\_\_  
Anne Deacon, Human Services Manager

\_\_\_\_\_  
Date

WHATCOM COUNTY

\_\_\_\_\_  
SATPAL SIDHU  
County Executive

STATE OF WASHINGTON     )  
  )  
COUNTY OF WHATCOM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before  
me personally appeared Satpal Sidhu, to me known to be the Executive of Whatcom  
County and who executed the above instrument and who acknowledged to me the act  
of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at Bellingham.

My Commission expires: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Royce Buckingham, Prosecuting Attorney

\_\_\_\_\_  
Date



**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

**1. AUTHORITY**

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

**2. CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

**3. COMPENSATION**

COMMERCE shall pay an amount not to exceed the Contract amount listed on the Face Sheet for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work. Grantee's compensation for services rendered shall be in accordance with Attachment B – Budget.

**4. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly. Exceptions to the single billing per month (or quarterly) can be made by COMMERCE on a case-by-case basis.

When requesting reimbursement for expenditures made, Contractor shall submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Grants Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

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

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

**5. ELIGIBLE USE OF FUNDS**

Funding awarded under this Grant may only be used for eligible activities and expenses described in the CHG Program Guidelines. These Guidelines are incorporated by reference.

**6. INSURANCE**

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable. Contractor shall provide upon requested to COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under Contractor's self-insured/liability pool or self-insured risk management program.

**7. SUBCONTRACTOR DATA COLLECTION**

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Agreement performed by subcontractors and the portion of funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

**8. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- CHG Guidelines, incorporated by reference on the Face Sheet

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

**1. DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

**2. ALL WRITINGS CONTAINED HEREIN**

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

**3. AMENDMENTS**

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

**4. ASSIGNMENT**

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

**5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
  - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
  - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
  - iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality.

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**6. COPYRIGHT**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

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

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

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

**7. DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

**8. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

**9. INDEMNIFICATION**

Each party shall be solely responsible for the acts of its employees, officers, and agents.

**10. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**11. RECAPTURE**

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

**12. RECORDS MAINTENANCE**

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

**13. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

**14. SEVERABILITY**

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

**15. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

**16. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

**17. TERMINATION FOR CAUSE**

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

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

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

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

**18. TERMINATION FOR CONVENIENCE**

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

**19. TERMINATION PROCEDURES**

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

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

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

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Authorized Representative has or may acquire an interest.

**20. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

**21. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

### Scope of Work

- A. Grantees shall commit to operating a high-performing crisis response system in their county by:
  - a. Prioritizing unsheltered homeless households and households fleeing violence for services and programs.
  - b. Assessing each household's housing needs and facilitating housing stability with the goal of obtaining or maintaining permanent housing.
  - c. Employing a progressive engagement service model.
  - d. Prioritizing households most likely to become homeless when using prevention rent assistance.
- B. Grantees shall submit the following monthly deliverables on time with truthful, accurate information:
  - a. Invoice and Voucher Detail Worksheet for reimbursement
  - b. Required report(s) from HMIS included with the Invoice
- C. Grantees shall submit the following deliverables on time with truthful, accurate information:
  - a. Local Homeless Housing Plan Updates.
  - b. Annual County Report/Homeless Housing Inventory including Point-In-Time Count information.
  - c. Essential Needs Report.
  - d. Grantees shall commit to reporting complete quality data that is timely, truthful and accurate.
- D. Grantees shall comply with all of the requirements, policies and procedures in the Consolidated Homeless Grant Guidelines, including the Coordinated Entry Guidelines.
- E. Grantees shall commit to participating in developing new performance measures that will be finalized by January 2022.



## Budget

<b>Budget</b>	<b>Total</b>
<b>Admin</b>	\$188,062.00
<b>Rent/Fac Support Lease</b>	\$471,406.00
<b>Other Rent/Fac Support Lease and Housing Costs</b>	\$-
<b>Operations</b>	\$439,646.00
<b>PSH CHF Rent/Fac Support Lease</b>	\$134,680
<b>PSH CHF Other Rent/Fac Support Lease and Housing Costs</b>	\$-
<b>PSH CHF Operations</b>	\$20,000
<b>HEN Admin 2022</b>	\$177,848.50
<b>HEN Rent/Fac Support and Housing Costs 2022</b>	\$1,530,337.38
<b>HEN Operations 2022</b>	\$832,508.12
<b>HEN Admin 2023</b>	\$177,848.50
<b>HEN Rent/Fac Support and Housing Costs 2023</b>	\$1,530,337.38
<b>HEN Operations 2023</b>	\$832,508.12
<b>Total</b>	\$6,335,182.00



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-397

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<b>File ID:</b>	AB2021-397	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/01/2021	<b>Entered by:</b>	SMildner@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Lynden for Economic Development Investment (EDI) loan and grant funding to support the West Front Street Arterial Improvement Project, in the amount of \$2,000,000

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See Memorandum

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed agreement



*Satpal Singh Sidhu*  
*Whatcom County Executive*



**MEMORANDUM**

**TO:** Whatcom County Council members

**FROM:** Satpal Sidhu, County Executive *Satpal*

**RE:** EDI Program - Interlocal Loan and Grant Agreement with  
The City of Lynden

**DATE:** July 1, 2021

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Enclosed is an Interlocal Loan and Grant Agreement between Whatcom County and the City of Lynden for your review and approval.

▪ **Background and Purpose**

On June 15, 2021, the Council adopted the EDI Board's recommendation to provide funding through the EDI Program for the City of Lynden's West Front Street Improvement project.

This loan and grant agreement is being presented to you now for approval. Once approved, we respectfully request your authorization for the County Executive to execute this agreement. The Ordinance with budget authority for this expenditure is simultaneously scheduled for action at the July 13th meeting of the Council.

▪ **Funding Amount and Source**

\$2,000,000.00 will be drawn from the EDI Program's loan and grant program (\$1,333,333 loan and \$666,667 grant), which funding is derived from the Public Utilities Improvement Fund.

Please contact me with any questions or concerns regarding the terms of this agreement.

Enclosure

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

**202106036**

Originating Department:	Executive Office
Division/Program: (i.e. Dept. Division and Program)	Non Departmental
Contract or Grant Administrator:	Suzanne Mildner
Contractor's / Agency Name:	City of Lynden
<p>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/></p> <p>Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____</p> <p>Is this contract the result of a RFP or Bid process? Contract _____</p> <p>Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: 332251</p> <p>Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <p><input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency</p> <p><input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</p> <p><input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.</p> <p><input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</p>	
<p>Contract Amount:(sum of original contract amount and any prior amendments):</p> <p>\$ 2,000,000</p> <p>This Amendment Amount:</p> <p>\$ _____</p> <p>Total Amended Amount:</p> <p>\$ _____</p>	<p>Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b>, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b></p> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>
<p>Summary of Scope:</p>	
<p>This Interlocal Loan and Grant agreement is to provide funding support for the West Front Street Improvement Project in Lynden.</p>	
Term of Contract: 20 Years	Expiration Date: 12/31/2041

Contract Routing:	1. Prepared by: sm	Date: 06/29/21
	2. Attorney signoff: Christopher Quinn	Date: 6/30/2021
	3. AS Finance reviewed: M Caldwell	Date: 6/30/2021
	4. IT reviewed (if IT related):	Date: _____
	5. Contractor signed:	Date: _____
	6. Submitted to Exec.: _____	Date: 6-30-21
	7. Council approved (if necessary):	Date: _____
	8. Executive signed:	Date: _____
	9. Original to Council:	Date: _____

**Economic Development Investment Program  
Interlocal Loan & Grant Agreement**

**I PARTIES**

This Agreement is made by and between **Whatcom County** (hereinafter referred to as **the County**), and the City of Lynden (hereinafter referred to as **the City**).

**II TERM**

This Agreement takes effect upon execution hereof by the authorized representatives of both parties and continues in effect until all payments required under Section V, MUTUAL CONSIDERATION, Subsection C, REPAYMENT OF COUNTY LOAN, have been made or until terminated as provided for in Section VIII, TERMINATION.

**III PURPOSE**

The purpose of this Agreement is to provide funding support for the West Front Street Arterial Improvement Project (hereinafter referred to as **the Project**) using certain County funds designated for such infrastructure development. These funds will be used to complete the Project as outlined in the Economic Development Investment (EDI) Program Application as attached (Attachment C).

**IV RECITALS**

The Parties make this Agreement based on and in recognition of certain relevant facts and circumstances including:

- A. Sales and use taxes are collected in and for the County under authority of RCW 82.14.370 and Whatcom County Code 2.130 for the purpose of financing public facilities in the County, and the proceeds are deposited in the Whatcom County Public Utilities Improvement Fund.
- B. The **City** will construct the Project. The Project will be partially funded by a **\$1,333,333 loan from the Whatcom County Public Utilities Improvement Fund, a \$666,667 grant from the Whatcom County Public Utilities Improvement Fund**, and the balance of the Project will be funded by the City and other sources as outlined in Attachment C. The Project improvements, when complete, will be owned and maintained by the City.
- C. RCW 82.14.370 was adopted to serve the goals of promoting the ongoing operation of business in rural distressed areas, promoting the expansion of existing businesses in rural

distressed areas, attracting and developing new businesses, and providing family wage jobs and the development of communities of excellence in such areas. The parties expect the Project to further these goals.

D. RCW 82.14.370 defines public facilities to include bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and City facilities in the state of Washington.

E. The County has created the EDI Board to review applications for loans and grants from the Public Utilities Improvement Fund and to make recommendations for Public Utilities Improvement Fund investments based on commitment of other funds, potential for resulting job creation, and other factors.

F. The EDI Board has reviewed the City's application for Public Utilities Improvement Funds and has recommended approval to the Whatcom County Council.

G. The County EDI Board has reviewed and recommended this project application be approved with a recommendation of a loan in the amount of \$1,333,333 and a grant in the amount of \$666,667, for a total of \$2,000,000. A copy of the EDI application for this project is attached by reference to this Agreement.

H. The Whatcom County Council reviewed the recommendation and approved a loan to the City from the Public Utilities Improvement Fund in the amount of \$1,333,333, and a grant to the City from the Public Utilities Improvement Fund in the amount of \$666,667.

I. The Public Utilities Improvement Fund balance is sufficient to make the requested loan and grant to the Project.

J. RCW 39.34 authorizes interlocal agreements whereby municipal governments may jointly exercise the powers granted to each.

## **V MUTUAL CONSIDERATION**

The parties do not intend to create any new or separate legal or administrative entity by this Agreement but intend for this mutual Agreement to govern the County's financial support for the Project. The terms and conditions contained herein reflect the voluntary participation of the parties.

### **A. CITY OF LYNDEN RESPONSIBILITIES:** The City hereby agrees as follows:

(i) If after the award of the construction contract, the scope of the Project or the Project budget has changed, the City shall provide the County the following updated documents: 1) a detailed description of the project; 2) a project budget itemizing major improvements together with the estimated cost of the improvements; and 3) a schedule showing sources and uses of funding for the project, if any of the aforementioned documents varies from those that were submitted with the City's application for EDI funding.



(ii) The City shall be responsible for all aspects of the design and construction of the project.

(iii) The City shall be responsible for all aspects of the public works construction contract administration, which shall include, but not be limited to, advertising, bidding, and awarding the contract. The City will comply with all applicable laws, rules and regulations relating to bidding the project. The County shall have no responsibility for the Project other than the funding set forth herein.

(iv) The City shall provide the County with a final report showing the actual cost of the project and the actual sources and uses of funding for the project.

(v) The City shall repay the loan in full in accordance with the terms of Section V.C below and the amortization schedule set forth in Attachment A, attached hereto.

**B. WHATCOM COUNTY'S RESPONSIBILITIES:** The County hereby agrees as follows:

(i) **COUNTY LOAN**—The County shall *loan* One Million Three Hundred Thirty-three Thousand Three Hundred and Thirty-three dollars and Zero Cents (\$1,333,333) for the Project described herein (the "Loan"). This Loan shall be by County warrant drawn on the Public Utilities Improvement Fund and payable to the City, available upon written request after approval and execution of this agreement by the Whatcom County Council and the City, and pursuant to the terms contained in (iii) Payout of Loan and Grant Funding.

(ii) **COUNTY GRANT**—The County shall issue a *grant* to the The City for up to Six Hundred Sixty-Six Thousand Six Hundred Sixty-seven Dollars and Zero Cents (\$666,667) for the Project described herein. This grant shall be by County warrant drawn on the Public Utilities Improvement Fund and payable to the City upon approval of this agreement by the Whatcom County Council and the City, and pursuant to the terms contained in (iii), Payout of Loan and Grant Funding, below.

(iii) **PAYOUT OF LOAN AND GRANT FUNDING**—The County shall pay out the loan and grant funding to the City up to a maximum of Two Million Dollars and Zero Cents (\$2,000,000) of the total project costs. This amount shall be paid in accordance with Attachment B, attached hereto. Disbursements of grant and loan funding shall be made contingent upon and subject to the continued commitment of the other project funding sources.

(iv) Unless the parties to this agreement mutually agree in writing to modify the consideration, the funding identified herein is all the County is obligated to pay towards this project. The City agrees to protect the County from, hold it harmless from, and indemnify it for, any charges that may be levied in excess of the agreed amount.

**C. REPAYMENT OF COUNTY LOAN**—The City shall repay the Loan as follows:

(i) The term of the Loan shall be **twenty (20)** years, commencing from the date that the County disburses the Loan proceeds to the City. Interest shall accrue on the unpaid principal at a rate of 1% per annum. Interest shall begin accruing from the date of disbursement of loan funds.

(ii) The City will make loan payments to the County annually on or before the anniversary date of receiving loan proceeds in accordance with the attached amortization

schedule (Attachment A). Loan payments must be delivered to the Whatcom County Executive Department, Suite 108, 311 Grand Avenue, Bellingham, WA 98225.

(iii) Failure to make the payment in the required amount by the date it is due according to the amortization schedule hereto attached shall constitute an event of default by the City. In the event that the City fails timely to make a Loan payment hereunder, the County shall notify the City of the failure and the City shall have fourteen (14) days to cure its failure. At the option of the County, such an event of default and the City's failure to cure within the stated time period is a sufficient basis upon which the County may take action to collect the amount that is delinquent, and if the County takes action to collect pursuant to this provision, the City shall pay to the County not only the amount owing, but also any collection of reasonable costs incurred by the County. Furthermore, if the City fails to make a payment on the Loan within thirty (30) days of the date it is due, and if the County has provided the City with the notice provided for in this section, then the County may choose to declare the remaining balance of the loan due and owing.

(iv) There is no prepayment penalty should the City desire to retire this debt early, either in whole or in part.

## **VI RECORDS, REPORTS AND AUDITS**

The City agrees to maintain such records, make such reports and follow such procedures pertaining to this Agreement as may be reasonably required by the County and as are typically maintained and made by the City in the undertaking of a project of this nature. All City records pertaining to this Agreement and the Project work shall be retained by the City for a period of three (3) years after final audit unless a longer period is required to resolve audit findings or litigation. The County and other authorized representatives of the State government shall have access to any books, documents, papers, and records of the City which pertain to this Agreement or the Project work for the purpose of making audit, examination, excerpts, and transcriptions.

## **VII RELATIONSHIP OF PARTIES AND AGENTS**

Neither the City nor the County shall have authority to execute contracts or to make commitments on behalf of the other, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the City. This agreement does not create, either implicitly or explicitly, any right, duty or obligation that is not expressly provided for herein.

The City represents that it has or will secure at its own expense all personnel, contractors, and/or subcontractors required in order to perform the Project work. Such personnel shall not be employees of, or contractors with the County for purposes of the project described herein. All such personnel, contractors, and/or subcontractors shall be fully qualified (as determined by the City in its sole discretion) and authorized/permitted under State and/or local law to perform such services.



## **VIII     TERMINATION**

If the City fails to comply with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including, but not limited to, the termination or closeout of this Agreement in the manner specified herein:

A.     **TERMINATION FOR CAUSE**— If the City fails to comply with the terms and conditions of this Agreement, the County will give notice to the City in writing of its failure to comply. The City will be given thirty (30) days from date of notice to comply with the terms of the Agreement or submit a plan acceptable to the County to bring the City into compliance with the Agreement within a time period reasonably acceptable to the County. Failure to comply with the terms and conditions of this Agreement by either party shall constitute an event of default. the event of default by the City and a failure by the City to cure as provided for herein, the County may take such remedial actions under the law as are available to cure the default, including the imposition of the reasonable costs of collection. In the event of default by the County, the City may take such remedial actions under the law as are available to cure the default, including specific performance.

B.     **TERMINATION FOR OTHER GROUNDS**—This Agreement may be terminated in whole or in part by mutual consent and written agreement between the parties, duly authorized and executed, setting forth the conditions of termination, including effective date and, in case of termination in part, that Portion to be terminated.

## **IX       COMPLIANCE WITH LAWS**

The County and the City shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments with regard to the performance of this Agreement.

## **X        INTEREST OF MEMBERS OF THE COUNTY AND THE CITY OF LYNDEN**

No member of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in this Agreement.

## **XI      HOLD HARMLESS AND INDEMNITY**

To the extent permitted by law, the City shall indemnify and hold harmless the County, its officers, agents, and employees, from all liability, loss or damage, including costs of defense they may suffer as a result of claims, demands, actions, costs, or judgments which result from the activities to be performed by the City, its agents, employees, or subcontractors pursuant to this Agreement.

## **XII     ASSIGNABILITY**

The City shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the City from the County under this

Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the City.

### **XIII NON-WAIVER**

The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

### **XIV CONTRACT MODIFICATIONS**

No modification or waiver of any clause or condition of this Agreement shall be binding upon either party unless such modification or waiver is in writing and duly authorized and executed by the County and the City.

### **XV SEVERABILITY**

If any Portion of this Agreement is changed per mutual agreement or any Portion is held invalid, the remainder of this Agreement shall remain in full force and effect.

### **XVI NOTICES**

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

**TO THE CITY:** Steve Banham, Public Works Director  
The City of Lynden  
300 4<sup>th</sup> Street  
Lynden, WA 98284

**TO COUNTY:** Brad Bennett, Finance Manager  
c/o Whatcom County Executive's Office  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

### **XVII INTEGRATION**

This Agreement contains all terms and conditions to which the County and the City agreed, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this loan and grant transaction. There are no other oral or written agreements between the City and County as to the loan and grant terms contained herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, duly authorized and executed by both parties.

**XVIII GOVERNING LAW AND VENUE**

All questions of the validity, construction, and application of this Agreement shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Agreement shall be the Superior Court of the State of Washington in and for Skagit County, Washington.

**XIX RECORDING**

Upon execution of this agreement by the parties hereto, the County shall cause it to be posted on the county web site, or otherwise published pursuant to the requirement contained within RCW 39.34.040.

\* \* \* \* \*

IN WITNESS WHEREOF, the County and the City have executed this Agreement as of the date and year last written below.

EXECUTED, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, for the **CITY OF LYNDEN**:

\_\_\_\_\_  
Scott Korthuis, Mayor

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF Whatcom                 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared **Scott Korthuis**, to me known to be the **Mayor** of the **City of Lynden** 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 \_\_\_\_\_.



Attachment A						
	WHATCOM COUNTY					
	EDI Loan City of Lynden					
	West Front Street					
		Principal	\$1,333,333			
		Interest Rate	1.00%			
		Term (20 years)	20			
#	Year	Beginning	Payment	Interest	Principal	Ending
1	2022	\$1,333,333	(\$73,887)	13,333	(\$60,554)	\$1,272,779
2	2023	\$1,272,779	(\$73,887)	12,728	(\$61,159)	\$1,211,620
3	2024	\$1,211,620	(\$73,887)	12,116	(\$61,771)	\$1,149,849
4	2025	\$1,149,849	(\$73,887)	11,498	(\$62,389)	\$1,087,460
5	2026	\$1,087,460	(\$73,887)	10,875	(\$63,012)	\$1,024,448
6	2027	\$1,024,448	(\$73,887)	10,244	(\$63,643)	\$960,805
7	2028	\$960,805	(\$73,887)	9,608	(\$64,279)	\$896,526
8	2029	\$896,526	(\$73,887)	8,965	(\$64,922)	\$831,603
9	2030	\$831,603	(\$73,887)	8,316	(\$65,571)	\$766,032
10	2031	\$766,032	(\$73,887)	7,660	(\$66,227)	\$699,805
11	2032	\$699,805	(\$73,887)	6,998	(\$66,889)	\$632,916
12	2033	\$632,916	(\$73,887)	6,329	(\$67,558)	\$565,358
13	2034	\$565,358	(\$73,887)	5,654	(\$68,233)	\$497,125
14	2035	\$497,125	(\$73,887)	4,971	(\$68,916)	\$428,209
15	2036	\$428,209	(\$73,887)	4,282	(\$69,605)	\$358,604
16	2037	\$358,604	(\$73,887)	3,586	(\$70,301)	\$288,303
17	2038	\$288,303	(\$73,887)	2,883	(\$71,004)	\$217,299
18	2039	\$217,299	(\$73,887)	2,173	(\$71,714)	\$145,585
19	2040	\$145,585	(\$73,887)	1,456	(\$72,431)	\$73,154
20	2041	\$73,154	(\$73,886)	732	(\$73,154)	\$0

## Attachment B

### **The City of Lynden – West Front Street Arterial Improvement Project Loan and Grant Draw Down Requirements**

The \$666,667 grant funding will be disbursed prior to any loan funding, as follows:

The **City** of Lynden will send invoices for project expenses to Whatcom County Executive's Office, 311 Grand Avenue, Suite 108, Bellingham, WA 98225. Invoices will include copies of receipts. Funds will be made available by warrant within 30 days following receipt of invoice and are for reimbursement of project expenses only. The request for grant funds should reference the Whatcom County assigned interlocal agreement number.

The \$1,333,333.00 loan will be disbursed as follows:

Following the disbursement of all grant funds, the loan funds will be made available for application to the project by warrant within 30 days of receipt of written request from Steve Banham, Public Works Director of the City of Lynden, and sent to the Whatcom County Executive's office, 311 Grand Avenue, Suite 108, Bellingham, WA 98225. The request will include the full loan amount (\$1,333,333.00), and a reference to the contract number assigned to this Interlocal Agreement. Repayment of the loan will begin one year from the disbursement date and follow the schedule noted in Attachment A.



RECEIVED

MAY 14 2021

Whatcom County  
Economic Development  
Investments Program

WHATCOM COUNTY  
EXECUTIVE'S OFFICE

Application for Funding



Satpal Sidhu, Whatcom County Executive

**Whatcom County Economic Development Investment (EDI) Program**  
*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

**Preliminary Information and Application**

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

1. **Who is eligible to apply:** Local general or special-purpose governments and higher education.
2. **What projects are covered:** Construction of publicly-owned infrastructure, facilities, and related improvements, which enable or encourage the creation or retention of private sector businesses and jobs in Whatcom County consistent with EDI Program Policy Objectives.
3. **What activities are fundable:** New construction, refurbishment, replacement, rehabilitation, renovation or repair. Demolition is allowable if tied to construction. Soft costs allowed within scope of construction budget. No land acquisition except right-of-way included in a construction project.
4. **What can you use the funds for:** Transportation (roads, bridges, rail), utility services (water, sewer, storm, energy, telecom) and public buildings or structures.
5. **Other Limitations:** Planning/feasibility only projects are not eligible. Minimum local match is 10% of EDI request. EDI Board will make recommendations to the County Council which makes the final decision.

**Preferential Project Types**

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

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

**Third Preference – COMMUNITY ENHANCEMENT PROJECTS”** – These types of projects generally improve the physical appearance or create community assets to enhance the business climate. Examples would be boardwalk, streetscaping, downtown structures, and other publicly-owned facilities that make a community or region more attractive to existing or future businesses.



**Whatcom County Economic Development Investment (EDI) Program**  
*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

**Preferential Project Terms**

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

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

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

**Preferential\* Project Amounts (Guidelines)**

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

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

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

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

**Past Performance**

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

If yes, provide project name and EDI grant/loan awarded:   Lynden Water Treatment Plant (2012)  

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

Has your jurisdiction received any audit findings from the Washington State Auditor in the past 10 years?  
  X   Yes;            No. If yes, provide details:   Documentation of review of Suspended and Debarred Contractor. The contractor in question was past vendor and not actually suspended or debarred but the required document was not in the project file.

**Whatcom County Economic Development Investment (EDI) Program**  
*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

**THRESHOLD PROJECT CRITERIA**

*Evidence of Planning*

YES NO  
X \_\_\_\_\_  
X \_\_\_\_\_  
X \_\_\_\_\_

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

COMMENTS: This project was recommended for funding by the EDI board in 2020 and was pending revision for approval by the County Council when COVID-19 hit.

**THRESHOLD PROJECT SCORING**

POINTS

*Preferential Project Type*

10

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

5

*Preferential Project Terms*

\_\_\_\_\_ Loan Only 10 points  
X Loan/Grant 5 points  
\_\_\_\_\_ Grant Only 2 points

5

*Preferential Project Amounts*

X Within Dollar Limits 5 points  
\_\_\_\_\_ Outside Preferred Dollar Limits 0 points

20

**TOTAL POINTS To proceed to other parts of the application and to receive EDI Board review, a proposed project must score 10 or more points on the above section.**

## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

### PROJECT APPLICANT

Applicant Name: City of Lynden

Applicant Address: 300 4<sup>th</sup> Street, Lynden, WA

Applicant Contact Person: Steve Banham, Public Works Director

Applicant Email and Phone Number: banhams@lyndenwa.org (360) 354-3446

### PROJECT TITLE

Lynden West Front Street Arterial Improvement

### PROJECT AMOUNT REQUESTED

\$ 2,000,000 EDI TOTAL - (Loan \$ 1,333,333; Grant \$ 666,667)

\$ 424,439 (17.5%) Local Match (10% of EDI request minimum)

### PROJECT TYPE

☒ Jobs In Hand ☐ Build It And Jobs Will Come ☐ Community Enhancement

### PROJECT TERMS

☐ Loan Only ☒ Grant/Loan ☐ Grant Only If a loan, term requested: 20 (years)

PROJECT LOCATION: Front Street, from Duffner Creek to Tromp Road

### PROJECT DESCRIPTION

(one-page limit)

Lynden is submitting this follow-up revised project request to replace 1,900-feet of sub-standard existing street section by constructing an all-weather commercial arterial street section including sewer and storm drainage utilities. The City was in the process of responding to County Council comments on the 2020 application when the COVID-19 pandemic started in March 2020. Lynden has utilized the time since then to reevaluate ("value engineer") the project's design and focus on the essential immediate public improvements at a reduced cost. The need for this project remains very high and this project will "jump-start" a 124,000 square foot business park which was put on hold during the COVID restrictions.

This project will revitalize/re-establish economic vitality and growth in this area. West Front Street needs to be improved to City all-weather arterial street section standards. This will include 32 feet of paved surface including two 12-foot travel lanes, and 4-foot striped urban shoulders. Utilities are needed to

## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

provide for this growth and this project will install sanitary sewer and storm drainage . Water is currently present.

The project will ultimately provide commercial transportation access to about 100 acres of Lynden's growing commercial services regional (CSR) and industrial (IBZ) zoned land and ultimately provide future access to another 140 acres of the City's adjacent western Urban Growth Area (UGA). In the near term it will serve 46 acres of CSR zoned properties including a new 124,000 square foot business park (Front Street Station) which was finalizing permits and financing when the COVID pandemic arrived This facility was on schedule to be completed in late 2020 – but was stopped. A new U.S. Postal Mail Distribution Center recently opened just east of the project which will benefit from all-weather access on West Front. Also in this zone are existing industries that can grow and benefit including: Lynden Door, Scholten Equipment, Oxbo International, and Brim Tractor.

### BASIC PROJECT INFORMATION

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

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<u>Funding Source</u>	<u>Amount</u>	<u>Planned/Applied For</u>		<u>Secured</u>	
Federal Dollars	\$ <u>N/A</u>	Yes ___	No ___	Yes ___	No ___
State Dollars	\$ <u>N/A</u>	Yes ___	No ___	Yes ___	No ___
Local Dollars	\$ <u>424,439</u>	Yes ___	No ___	Yes <u>X</u>	No ___
EDI Funding	\$ <u>2,000,000</u>	Yes <u>X</u>	No ___	Yes ___	No ___
TOTAL	\$ <u>2,424,439</u>				

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

The "Front Street Station" business park will be constructed in three phases and will provide an incubator location for new small businesses and industries looking to start in the north County or move in from outside of the County. The first phase of private construction is estimated to cost \$4.5M and the total for all three phases is \$14.5M. The owner has dedicated the necessary right-of-way for the improvements to West Front. They have been able to secure full building financing for phase 1 and are now ready to proceed, unfortunately they cannot financially bear the full responsibility of the all-weather street improvements costs. There is a strong need for this type of space in the north County and the business park will include five separate buildings with as many 48 spaces for businesses. All of these, including Front Street Station, will pay traffic impact fees and contribute sales taxes to the City of Lynden, which will be used to repay the EDI loan.

## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

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

This project will construct and/or provide all necessary public facilities while also providing private utilities needed to service the area. These improvements include:

**Transportation:** Reconstruct West Front Street to a 24-foot-wide all-weather arterial street section with 4 foot paved shoulders for a total of 32 feet. The all-weather street is essential for any form of industrial or commercial truck use in the area. Currently, West Front is improved to County rural standards with two 10-foot-wide chip seal driving lanes and no pedestrian or multi-modal facilities. Because of inadequate road base it regularly sustains frost-heave damage after cold weather.

**Storm Drainage:** Storm piping will be installed to convey all storm water from both the street and adjacent properties to the West Lynden Regional Stormwater Facility. This facility was constructed in the early 2000's by forward thinking local businesspeople planning for future growth.

**Sewer:** Installs sanitary sewer along the West Front Street corridor allowing future development of the adjoining commercially zoned properties to their highest and best uses.

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

West Front Street acts as the immediate primary access to about 46 acres of Lynden's prime commercial/industrial zoned properties located to the west of the Guide Meridian. The route links Birch Bay Lynden Road (Federal Route 8152) to SR-539 (Guide Meridian). Birch Bay Lynden Road is a primary route to I-5 to the west. SR-539 is the primary freight connection to the Lynden/Aldergrove border crossing into Canada. This area is a growing commercial and industrial area of Lynden. West Front Street will, in the future, provide an arterial access point for the City's western Urban Growth Area (UGA). intended to accommodate regional industrial and commercial demands.

The regional and State-wide importance of West Front Street was recognized in the classifying of West Front Street as a **Federally Functional Classified** street by FHWA, based on the recommendations of the Whatcom Council of Governments and WSDOT. WSDOT's reasoning for this and FHWA's concurrence is that the route "**will provide safe and efficient passenger, and commercial vehicle access to the growing West Lynden Commercial/Industrial area**". The corridor serves existing major industries of Lynden, it would benefit a pending business park project, and additionally enhance another 29 acres of vacant / underdeveloped property.

However, to properly provide adequate services, West Front Street needs to be improved to all-weather arterial standards, which is not feasible without outside funding assistance.

- 
5. List all permits and environmental reviews required for the public project and detail their status (completed, in-process, etc.)

	In Process	Date Completed
Preliminary Engineering	_____	<u>June 2019</u>
Environmental Review	_____	<u>May 2020</u>



## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

Design Engineering	90%	
Right-of-Way		NA
Construction Permits	X	
Environmental Permits	X	May 2020
Bid Documents	X	
Award Construction Contract	X	
Begin Construction	X	
Project Operational	X	

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

**Yes.**

The Port of Bellingham provided funding for preliminary engineering work through their small City economic program.

FHWA, WSDOT and Whatcom Council of Governments all participated in classification of this street as a Federally Functional route.

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

The City of Lynden will continue to maintain this public street and utilities. The project will have no impact on utility rates.

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

**Yes, to both questions.** The Post-Covid Economic boost this project will provide is critical to the north County region. Front Street Station, a 124,000 square foot business Park with 5 buildings submitted construction plans in December 2019 with a scheduled start of Phase 1 construction in spring 2020 allowing operation in late summer/fall of 2020. This was planned to contribute construction sales tax, impact fees payment, retail sales taxes, increased property taxes, and utility fees and property taxes. Proceeding now with this project will rejuvenate these funding sources.

New commercial industrial development will contribute traffic impact fees which will be used to service this loan. New construction, increased retail sales, and increased property values would all be sources of revenue to the City general fund, which funds street expenses including debt. Existing local businesses in the area include Lynden Door, Scholten Equipment, Oxbo International, Brim Tractor and Lineage Logistics.

**Lynden Door:** Is a primary producer and distributor of residential, commercial, institutional, and industrial hardware in the western States and Canadian Provinces. Lynden Door currently employs 550 people with plans for an additional 100 employees within the next two years. This growth will result in collection of additional traffic impact fees.

## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

**Scholten Equipment** is one of the four major suppliers of Kubota Tractor west of the Mississippi River. This includes agricultural, heavy construction and residential tractors.

**Oxbo International** is a world-wide manufacturer and supplier of automated agricultural harvesting equipment. Their equipment is used to harvest a large percentage of the raspberries and blueberries harvested in Whatcom County.

- 
9. What other revenue sources are available for this project and have they been considered. This includes forming a Local Improvement District (LID or ULID), issuing Councilmanic Bonds, Revenue Bonds, or other source(s).

The City has used a Port of Bellingham Small City Economic funding program to complete preliminary engineering design. The City used the Stormwater Utility funds to acquire both stormwater treatment and quantity in the West Lynden Regional Stormwater facility. The City formed a Transportation Benefit District in 2012. Lynden also collects transportation impact fees for street improvement like this one in an Arterial Street Fund (302). Both of these local transportation funding sources will be used for match and to repay the loan portion of this request. The water and sewer utility improvements associated with this project will be funded by the City water and sewer enterprise funds as match for the EDI Funding used to construct the street.

- 
10. Describe the private development project that will be supported by this public facility project. If there is a committed private sector partner include Contingency Agreement (Attachment C).

**Front Street Station:** A 124,000 square foot business park which includes five separate buildings has gone through technical review and submitted construction plans in December 2019 with a planned approval in spring 2020. Covid has delayed this schedule. A Covid Economic boost will allow West Front Street construction to occur. A City and EDI funding package will allow phase 1 to start upon completion of civil plans. These plans are currently at the 90% level.

Front Street Station will provide opportunities for a diverse mix of business and industry including light manufacturing and warehousing together with professional offices and a retail frontage. As spaces will be available for lease it will provide valuable incubator spaces for local industries, research and development firms, or as a point of service for Canadian companies looking to locate within the United States.

While Front Street Station is the private development most immediately supported by the public facility project, nearby industries are also beneficiary of a more robust transportation network. These include:

**Scholten Equipment:** One of the four major suppliers of Kubota Tractor supplier west of the Mississippi River. This includes agricultural, heavy construction and residential tractors.

**Brim Tractor:** A regional supplier of tractors and heavy farm equipment, Brim also provides service and repairs of heavy equipment.

**Oxbo International:** A world leader in specialty harvesters, Oxbo International continues to provide innovative solutions to agri-business from their location in West Lynden. In addition to their

# Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

international influence, their equipment is used to harvest a large percentage of the raspberries and blueberries in Whatcom County.

**Vacant Property:** Additional development within the regional commercial and industrial zoning categories will be encouraged on vacant parcels of land currently located on this corridor which are not represented in the list above. Approximately 29 acres of vacant or underdeveloped property, represented by 6 different ownership groups, are located on the corridor between SR-539 and Tromp Road.

Explain why the private development requires the proposed public improvement(s).

- a. This substandard street provides the only access to Front Street Station, and the street and utilities need to be completed for this private development to stay on schedule for opening in 2022. Without the funding assistance provided through the EDI program, this necessary, important, and financially viable project may not occur.
- b. Lynden Door is expanding to meet current demands along with future growth. Without these transportation and utility improvements to West Front Street this "Regionally Significant" business could be impacted.
- c. Provides access to the City's western UGA to accommodate future commercial and industrial growth.
- d. Stimulates economic development/redevelopment (regional commercial and industrial uses) on other underdeveloped or vacant parcels also located on the West Front Street corridor.

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

<b>Front St Station Business Park</b>	In Process	Date Completed
Environmental Review	<u>X</u>	<u>December 2020</u>
Construction Permits	<u>X</u>	<u>February 2020</u>
Environmental Permits	<u>X</u>	<u>                    </u>
Development Agreement	<u>X</u>	<u>December 2019</u>
 <b>Lynden Door</b>	 In Process	 Date Completed
Environmental Review (future campus expansion)		<u>2019</u>
Construction Permits (additional 100,000 sf on existing campus)		<u>April 1, 2021</u>
Environmental Permits	<u>X</u>	<u>                    </u>
<u>                                    </u>	<u>                    </u>	<u>                    </u>
 <b>US Postal Sorting Facility</b>	 In Process	 Date Completed
Environmental Review		<u>Facility Completed</u>
Construction Permits	<u>X</u>	<u>Facility completed</u>
Environmental Permits	<u>                    </u>	<u>Facility completed</u>
<u>                                    </u>	<u>                    </u>	<u>                    </u>



## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

12. Describe the type of industry or economic activity the public development will attract. What is the strategy to attract industry to the project site?

The West Lynden area is zoned to accommodate a wide variety of business and industry in a location that is easily accessible to the general public and close to the Guide Meridian and Birch Bay Lynden Road (I-5 corridor) for commercial access. Once improved, the road will be able to support the traffic needs for these types of uses. Large land parcels close to the U.S. Canadian border make the area more attractive to business and industry development, particularly those related to agricultural products and services.

With all-weather street improvements, the area will be poised to attract regional commercial establishments which provide retail service to the public, professional offices, research and development, business incubator spaces, storage and warehousing, or light manufacturing. The area also has access to property which is zoned to accommodate a variety of industrial

With infrastructure and zoning in place, the City will continue to emphasize public/private cooperation and expedited permit review to quickly respond to market demands.

13. List the number of projected jobs, by type, to be retained and/or created by the private entity. (for consistency with previous application these numbers have remained the same)

Occupation	Current Jobs Retained** (In FTEs)	# Of Jobs Created Year 1 (In FTEs)	# Of Jobs Created by Year 5 (In FTEs)	Hourly Wage of current or new position	Local Occupational Hourly Wages***
Mgmt./Admin*	40	49	73	\$50.00	N/A
Technical/Prof	71	93	157	\$45.00	
Office/Clerical	66	81	110	\$30.00	
Production	386	451	634	\$30.00	
Sales	0	18	48	\$25.00	
Skilled Crafts	88	121	208	\$40.00	
Others	33	51	107	\$18.00	
Totals	<b>684</b>	<b>864</b>	<b>1337</b>	N/A	N/A

\* Indicate Management positions in annual salary.

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

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

- a. Projected annual gross payroll for all job classifications **\$50,000,000**
- b. Describe fringe benefits the company offers to regular full-time employees?

## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

(health insurance, retirement plans, etc.) **fringe benefits estimated at 32% of gross**

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

This project, listed in the County's Comprehensive Economic Development Strategy (CEDS), seeks to resuscitate the north County from COVID-19 providing support to local small businesses and the jobs they can bring to the north County. This project will foster a stable and diversified regional economy, all intended to maintain, and ultimately improve the quality of life in Whatcom County. The West Lynden area plays a key role in the economic development of Lynden and the County's regional strategy.

Diversification: One of the most compelling elements of development within the West Lynden area is the diversification of industry. Lynden Door employs numerous manufacturing positions, and their move toward automation has increased demand for skilled technicians. This automation has enhanced production making them an industry leader. Although known ubiquitously as Lynden Door, the entity actually includes six different industries (LLCs) that focus on a variety of functions, including engineering, production, and distribution. The manufacturing occurring in West Lynden has spread to diversified job creation at other locations in Whatcom County. Beyond the manufacturing occurring at Lynden Door, the area boasts on-going research and development in the harvester industry at Oxbo, agricultural and construction equipment sales and service at Scholten Equipment and Brim tractor, and government sector positions at the U.S. Postal Service sorting facility.

Development of Front Street Station offers additional diversification of living-wage jobs by providing an excellent location for incubator businesses, skilled trades, research and development, and wholesale distribution. With the Canadian border three miles away, Front Street Station provides a prime location for Canadian companies to gain a foothold in the United States and introduce new products and services to Whatcom County.

Access and Quality of Life: West Front Street will be built with an all-weather arterial street section that connects to the infrastructure backbone of the City of Lynden. The infrastructure will not only serve and be visible to the industrial users, like a remote frontage road, but it will be an extension of the City's thriving downtown and Historic Business District to the east on Front Street. As an all-weather street it will provide better (lower speed) access to Birch-Bay-Lynden Road and ultimately I-5 for international commerce.

Agriculture: Lynden is uniquely positioned to provide the industrial and commercial needs directly related to agriculture. Local businesses such as Lineage Logistics, Oxbo International, Brim Tractor and Scholten Equipment have clear ties to the local agriculture industry. Whatcom County growers benefit from having dealers and services locally. Front Street Station will be a re-purposing (reclaimed) gravel pit instead of sprawling into the vital agricultural industry of Whatcom County.

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15. What will the effect of this project be on the natural environment – does the project address any issues related to public health, pollution, or quality of life?

## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

This project will construct new stormwater facilities that comply with the current water quality standard. This project will include City sanitary sewer service to help protect the Nooksack River basin from fecal contamination that might occur with poorly maintained onsite septic systems. The project will include water quality protection for the Duffner Creek critical area at the east end.

---

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

The current West Front Street is not all-weather and it has sustained repeated damaged during harsh winters, leading to road damage. This project will construct an all-weather arterial street section with street lighting designed for safe movement of commercial traffic. The widened shoulders create safe bike and pedestrian facilities. Finally, by creating a safe and efficient secondary route to West Lynden this project will enhance life safety response.

---

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

- ☒ Increased Vehicle Use (traffic counts)
- ☒ New Business Start-ups (business licenses)
- ☒ Canadian Businesses establishing a U.S. presence (business licenses)
- ☒ New Construction Sales Tax Revenue (sales tax revenue)
- ☒ Increased assessed valuation (property tax revenue)
- ☒ 1,900-feet of new all-weather, illuminated, Arterial Street section and multi-modal facilities added to inventory


## Whatcom County Economic Development Investment (EDI) Program

*Revolving Loan and Grant Program to Encourage Creation or Retention of Private Sector Jobs*

### Application for Funding – Certification

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

Signature of Responsible Public Official:

  
Mayor Pro-Tem

Date 5/13/2021



423 Front Street  
Lynden, WA 98264  
Phone: (360) 354-3687



Called By: City of Lynden					
For: WEST FRONT STREET PRELIMINARY DESIGN					
300 4th Street					
Lynden, WA 98264					
By: PRELIMINARY ENGINEER'S ESTIMATE					
Luis Ponce, P.E.					
Date: 30-Apr-21					
Item No.	Item Description	Quantity	Unit	Unit Price	Amount
<b>Schedule A - Roadway and Storm</b>					
1	Mobilization	1	LS	\$ 170,000.00	\$ 170,000.00
2	SPCC Plan	1	LS	\$ 1,000.00	\$ 1,000.00
3	Project Temporary Traffic Control	1	LS	\$ 10,000.00	\$ 10,000.00
4	Flaggers	2,250	HR	\$ 65.00	\$ 146,250.00
5	Other Traffic Control Labor	225	HR	\$ 60.00	\$ 13,500.00
6	Clearing and Grubbing	1	LS	\$ 14,000.00	\$ 14,000.00
7	Removal of Structures and Obstructions	1	LS	\$ 6,000.00	\$ 6,000.00
8	Roadway Excavation Incl. Haul	11,000	CY	\$ 15.00	\$ 165,000.00
9	Water	100	M GAL.	\$ 100.00	\$ 10,000.00
10	Shoring or Extra Excavation Class B	8,400	SF	\$ 1.00	\$ 8,400.00
11	Dewatering	1	LS	\$ 140,000.00	\$ 140,000.00
12	Gravel Base	7,400	TON	\$ 12.00	\$ 88,800.00
13	Crushed Surfacing Top Course	2,100	TON	\$ 50.00	\$ 105,000.00
14	HMA Cl. 1/2" PG 64-22	3,200	TON	\$ 95.00	\$ 304,000.00
15	Planing Bituminous Pavement	250	SY	\$ 25.00	\$ 6,250.00
16	Corrugated Polyethylene Storm Sewer Pipe 8 In. Diam.	300	LF	\$ 60.00	\$ 18,000.00
17	Corrugated Polyethylene Storm Sewer Pipe 24 In. Diam.	300	LF	\$ 85.00	\$ 25,500.00
18	Corrugated Polyethylene Storm Sewer Pipe 36 In. Diam.	850	LF	\$ 120.00	\$ 102,000.00
19	Catch Basin Type 2 48 In. Diam.	9	EA	\$ 3,500.00	\$ 31,500.00
20	Catch Basin Type 2 60 In. Diam.	5	EA	\$ 5,000.00	\$ 25,000.00
21	Adjustments to Finished Grade	1	LS	\$ 5,000.00	\$ 5,000.00
22	ESC Lead	10	DAY	\$ 100.00	\$ 1,000.00
23	Street Cleaning	75	HR	\$ 150.00	\$ 11,250.00
24	High Visibility Silt Fence	1,800	LF	\$ 5.00	\$ 9,000.00
25	Erosion/Water Pollution Control	1	EST	\$ 5,000.00	\$ 5,000.00
26	Seeded Lawn Installation Incl. Topsoil	3,200	SY	\$ 10.00	\$ 32,000.00
27	Landscape Restoration	1	EST	\$ 10,000.00	\$ 10,000.00
28	Mailbox Support, Type 1	5	EA	\$ 400.00	\$ 2,000.00
29	Permanent Signing	1	LS	\$ 5,000.00	\$ 5,000.00
30	Paint Line	11,200	LF	\$ 0.50	\$ 5,600.00
31	Plastic Stop Line	90	LF	\$ 25.00	\$ 2,250.00
32	Plastic Crosswalk Line	325	SF	\$ 25.00	\$ 8,125.00
33	Plastic Traffic Arrow	14	EA	\$ 200.00	\$ 2,800.00
34	Pothole Existing Underground Utility	10	EA	\$ 500.00	\$ 5,000.00
35	Repair Existing Public and Private Facilities	1	EST	\$ 10,000.00	\$ 10,000.00
<b>Total Schedule A</b>					<b>\$ 1,504,225.00</b>

<b>Schedule B - Sewer</b>					
45	Shoring or Extra Excavation Class B	17,000	SF	\$ 0.50	\$ 8,500.00
46	Gravel Base	250	TON	\$ 12.00	\$ 3,000.00
47	Manhole 48 In. Diam. Type 1	5	EA	\$ 4,000.00	\$ 20,000.00
48	Manhole Additional Height 48 In. Diam. Type 1	19	LF	\$ 300.00	\$ 5,700.00
49	PVC Sanitary Sewer Pipe 6 In. Diam.	460	LF	\$ 90.00	\$ 41,400.00
50	PVC Sanitary Sewer Pipe 8 In. Diam.	1,550	LF	\$ 95.00	\$ 147,250.00
Subtotal					\$ 225,850.00
Sales Tax Schedule C (8.7%)					\$ 19,648.95
<b>Total Schedule B</b>					<b>\$ 245,498.95</b>

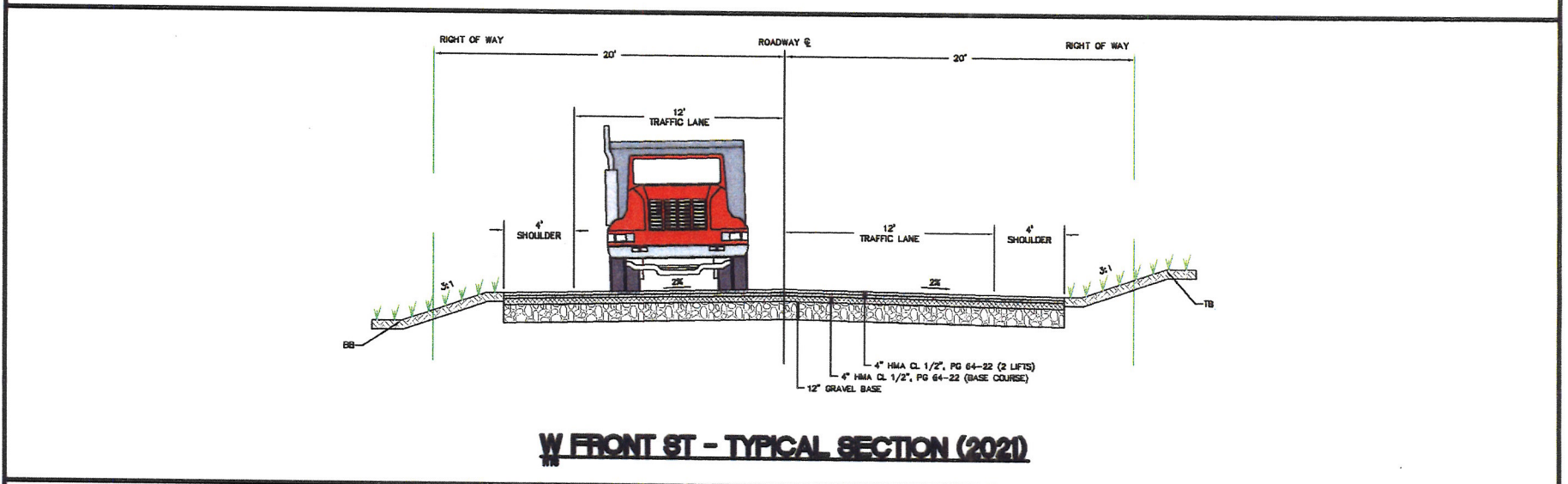
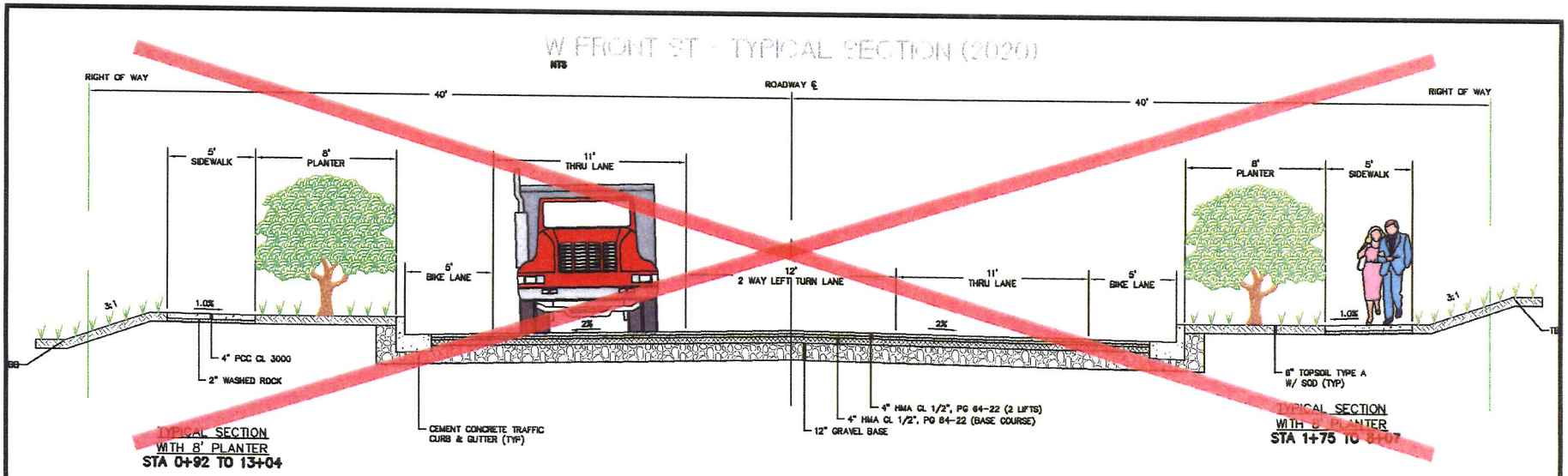
<b>Schedule C - Lighting</b>					
51	Luminaire with Base	13	EA	\$ 2,500.00	\$ 32,500.00
52	2" Conduit	1,700	LF	\$ 30.00	\$ 51,000.00
<b>Total Schedule C</b>					<b>\$ 83,500.00</b>

Subtotal Schedules A, B, & C		\$ 1,833,224
Contingency to Construction Estimate	15%	\$ 274,984
<b>Total, Including Contingency</b>		<b>\$ 2,108,208</b>

The lighting estimate does not include any contract the City may need to acquire with Intolight.

This estimate was prepared without a complete design and shall therefore be considered preliminary and subject to change due to actual quantities of work incorporated into the project and changes in unit prices over time.





**R&E** Reichhardt & Ebe  
ENGINEERING INC

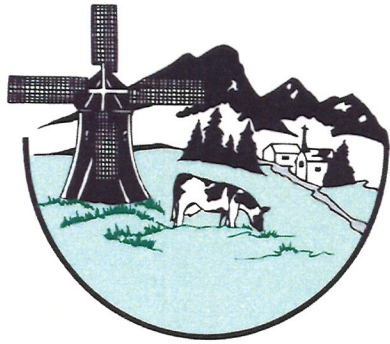
P.O. Box 978 | 423 Front Street  
Lynden, WA 98264 (360) 354-3687

CITY OF LYNDEN - 2021 EDI APPLICATION  
W FRONT STREET IMPROVEMENTS  
TYPICAL SECTION

05/12/21

NTS

00065.3



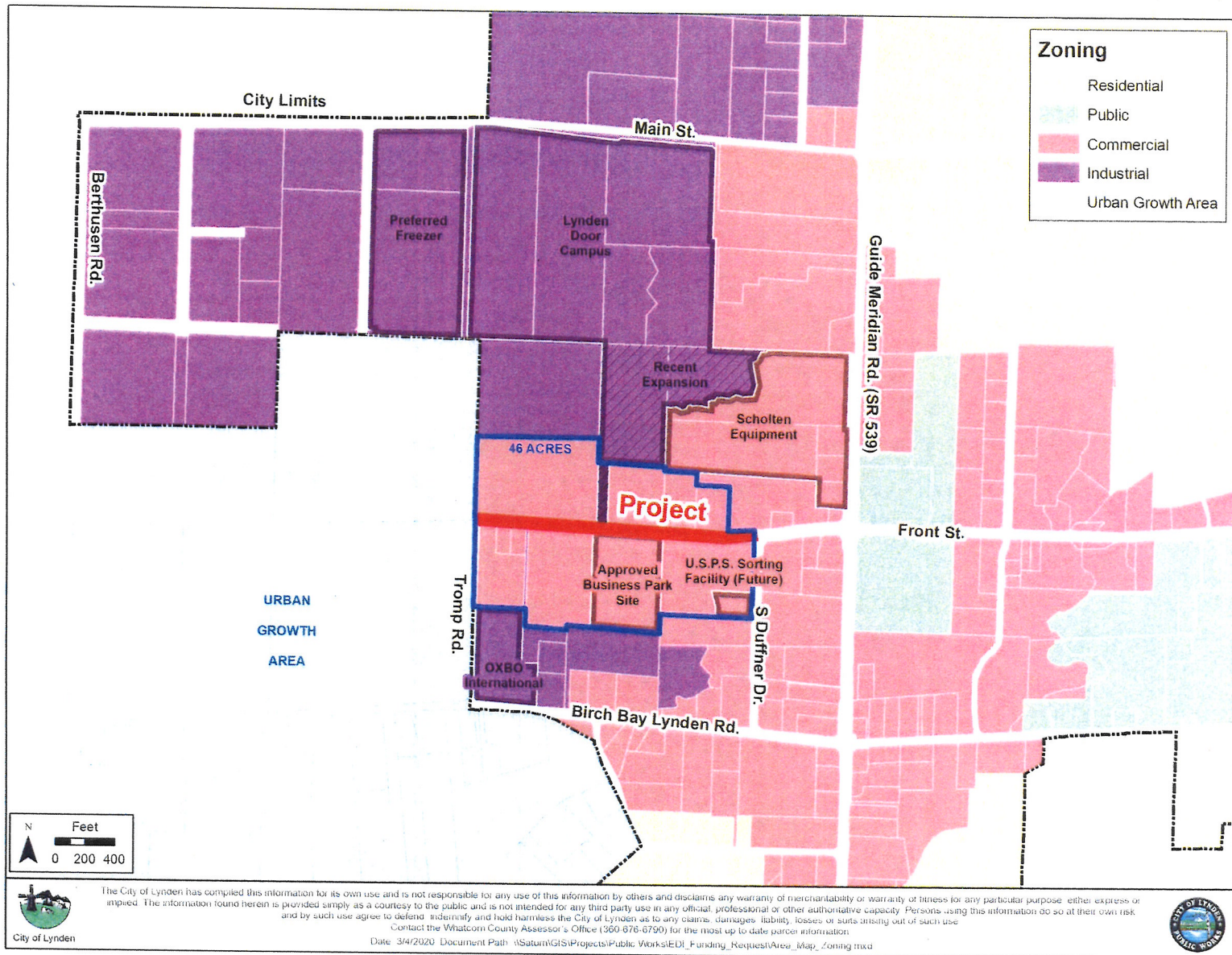
## City of Lynden Revised EDI 2021 Request

- *Project Type:* Jobs in Hand
- *Project Terms:* Grant/Loan
- *Loan:* ~~\$2,000,000~~ → \$1,333,333
  - 20-year term
  - 1% interest rate
  - Will use Traffic Impact Fees
- *Grant:* ~~\$1,000,000~~ → \$666,667
- *City Match\*:* ~~\$330,000~~ → \$424,439
  - \*Sewer Utility Funds

Based on new Engineer's Estimate (90% design)



## Attachment B



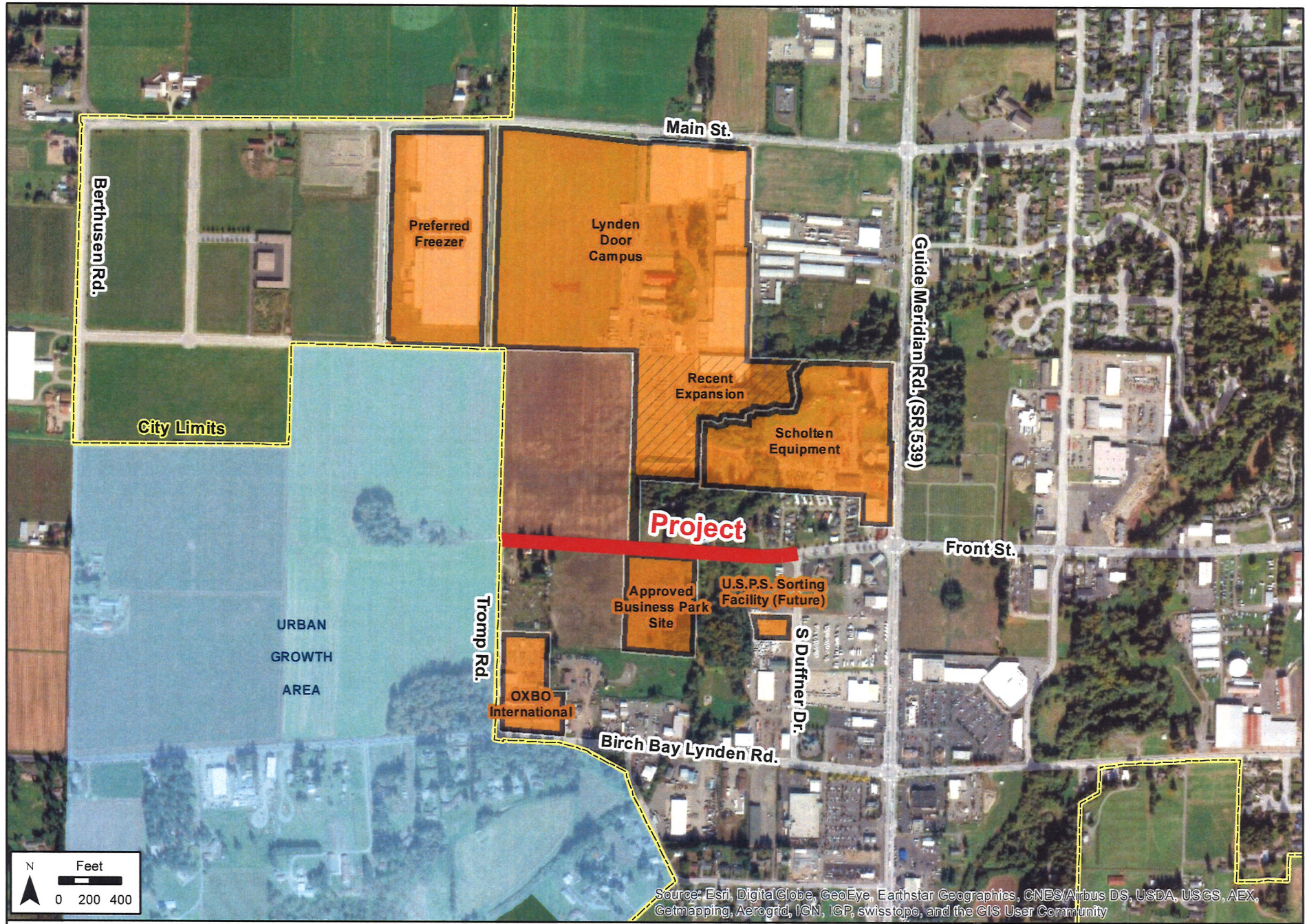
### W. Front Street Arterial Improvement

- Serves over **46** acres of Commercially Zoned property - not just one development.
- About **2000** feet to be improved to all weather road

### Approved Business Park

- About **7** acres (*15% of serviced acreage*)
- About **475** feet of frontage (*less than 1/4*)
- Identified in application because it represents "jobs in hand"





City of Lynden

The City of Lynden has compiled this information for its own use and is not responsible for any use of this information by others and disclaims any warranty of merchantability or warranty of fitness for any particular purpose, either express or implied. The information found herein is provided simply as a courtesy to the public and is not intended for any third party use in any official, professional or other authoritative capacity. Persons using this information do so at their own risk and by such use agree to defend, indemnify and hold harmless the City of Lynden as to any claims, damages, liability, losses or suits arising out of such use.

Contact the Whatcom County Assessor's Office (360-676-6790) for the most up to date parcel information.

Date: 10/22/2019 Document Path: \\Saturn\GIS\Projects\Public Works\EDL\_Funding\_Request\Area\_Map.mxd







# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-398

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<b>File ID:</b>	AB2021-398	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/01/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services for the administration of developmental disabilities services, in the amount of \$4,125,535

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed Agreement



## MEMORANDUM

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Washington State Department of Social and Health Services (DSHS) – Developmental Disabilities Administration (DDA) Interlocal Agreement

**DATE:** July 1, 2021

---

Attached is an Interlocal Agreement between Whatcom County and Washington State DSHS for your review and signature.

- **Background and Purpose**

This Agreement provides funding for employment and community access services for adults with developmental disabilities, child development services for children ages birth to three years, and community information and training. An estimated 366 children and 384 adults are authorized to receive services.

- **Funding Amount and Source**

This contract provides \$4,125,535 in funding for the services mentioned above. These funds will be included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

- **Funding Amount and Source**

As the number of clients authorized for services has decreased, this Agreement includes a \$48,897 reduction from the Agreement expiring on 6/30/2021 (WC Contract #201906024).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 ([ADeacon@co.whatcom.wa.us](mailto:ADeacon@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007 ([KRoy@co.whatcom.wa.us](mailto:KRoy@co.whatcom.wa.us)) if you have any questions or concerns regarding this request.





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-401

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<b>File ID:</b>	AB2021-401	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/01/2021	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee				<b>Final Action:</b>
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a purchase and sale agreement for the acquisition of 5.9 acres of undeveloped property adjoining Squires Lake Park in the amount of \$90,000

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Request authorization for the County Executive to enter into a purchase and sale agreement in the amount of \$90,000 for the acquisition of 5.9 acres of undeveloped property adjoining Squires Lake Park.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Property Information, Property Map


**WHATCOM COUNTY  
Parks & Recreation**

3373 Mount Baker Highway  
Bellingham, WA 98226-9097



**Michael G. McFarlane**, Director  
**Christ Thomsen**, Operations Manager

## **MEMORANDUM**

**TO:** Whatcom County Council Members and Executive Sidhu  
**FROM:** Michael McFarlane, Director   
**DATE:** July 1<sup>st</sup>, 2021  
**RE:** Acquisition Request at Squires Lake Park

---

I am requesting authorization for the County Executive to enter into a purchase and sale agreement in the amount of \$90,000 for the acquisition of 5.9 acres of undeveloped property adjoining Squires Lake Park. Funding is proposed to come from the Conservation Futures Fund and a requested budget supplemental has been submitted.

This property adjoins Squires Lake Park's trailhead and main access to the Lake. The Department attempted unsuccessfully to acquire this property when the park was purchased in 1995. Due to steep terrain and the lake's outfall, access is limited and the main trail leading to the lake is situated on the property line between this property and the park. The acquisition will maintain the forested buffer for the trailhead and trail, allow a small overlook to a seasonal waterfall, and secure the area below the lake's outfall and dam. In 2020, Squires Lake Park had over 35,000 visitations.

Please contact me at 5855 should you have any questions or require additional information.

**PROPERTY INFORMATION- SQUIRES LAKE ACQUISITION PROPOSAL  
JULY 13, 2021**

Location: Adjoining Squires Lake Park- Intersection of Nulle Road and Pacific Highway

Size: 5.9 Acres

Appraisal: 4/14/21 Gustafson & Associates

Appraised Value: \$90,000

Purchase Price: \$90,000

Zoning: Whatcom County R-5

Property Description: Steeply sloped undeveloped fully forested with unnamed seasonal stream (outfall from Squires Lake)

Proposed Use: Public park, buffer and overlook

**Miscellaneous Information**

Squires Lake Park: Acquired in 1995. The park is comprised of 84-acres focused around the 10-acre Squires Lake and an adjoining beaver flowage. Development consists of a small dam on the lake, 2.2 miles of hiking trails, fishing access to the lake and trailhead with parking. Park is owned by Whatcom County and jointly managed by Whatcom and Skagit County Parks & Recreation Departments.

Squires Lake Park Visitation: 2020 (35,455), 2019 (24,512), 2018 (23,281)

## Summary of Important Facts and Conclusions

### GENERAL

**Subject:** The property is unimproved; and therefore, has no established address.

**Owner:** Brian and Gail Estes

**Date of Value:** April 14, 2021

**Intended Use:** The intended use is for potential acquisition purposes.

**Intended User(s):** Michael McFarlane

**Assessment:** **Real Estate Assessment & Taxes**

Tax ID	Land	Impr.	Total	Taxes
370431-020057	\$11,000	\$0	\$11,000	\$117.47
370431-010045	\$5,000	\$0	\$5,000	\$47.64
370336-516113	\$35,000	\$0	\$35,000	\$373.78

**Sale History:** The subject has not sold in the last three years, according to public records.

**Current Listing/Contract(s):** The subject is not currently under contract or advertised for sale on the open market.

**Land:****Land Summary**

<b>Parcel ID</b>	<b>Gross Land Area (Acres)</b>	<b>Gross Land Area (SF)</b>	<b>Usable Land Area (Acres)</b>	<b>Usable Land Area (SF)</b>	<b>Topography</b>
370431-020057	1.35	58,806	Minimal	Minimal	Severely Sloping
370431-010045	.55	23,958	Minimal	Minimal	Severely Sloping
370336-516113	4.0	174,240	Minimal	Minimal	Severely Sloping

**Improvements:**

The subject property is unimproved.

**Zoning:**

Rural 5 Acre – Whatcom County

**Highest and Best Use of the Site:**

The property has severely sloping, and gully type topography. It is potentially possible to build on the site. It appears that there are only 2 areas that have a potential for construction of a dwelling on the site. The remainder of the land area is unusable from a physical standpoint. Still, the highest and best use is for rural residential homesite.

**VALUE INDICATIONS**

<b>Land Value</b>	\$90,000
<b>Final Correlated Value</b>	\$90,000







# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-383

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<b>File ID:</b>	AB2021-383	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/22/2021	<b>Entered by:</b>	LReid@co.whatcom.wa.us		
<b>Department:</b>	Sheriff's Office	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

---

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Island County for Mini-Chain Services in the amount of \$5,359.00

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachment

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed Contract

**WHATCOM COUNTY  
SHERIFF'S OFFICE**

**BILL ELFO  
SHERIFF**



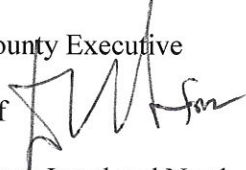
PUBLIC SAFETY BUILDING  
311 Grand Avenue  
Bellingham, WA 98225-4078  
(360) 778-6600

**RECEIVED**

**JUN 17 2021**

**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**

**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive  
**FROM:** Bill Elfo, Sheriff   
**RE:** 2021 Island County Interlocal Northwest Minichain Agreement  
**DATE:** December 3, 2020

Enclosed are two (2) originals of the 2021 Interlocal Cooperative Agreement for Mini-Chain Services between Whatcom County and Island County for your review and signature.

▪ **Background and Purpose**

Whatcom County runs the northern leg of the Northwest Shuttle Transport System down the I-5 corridor. This system, part of an informal statewide relay system that began in 1970 to move offenders who were wanted in one county but who had been arrested in another, allows us to generate revenues to help off-set the costs of moving these offenders. Prior to the creation of the Shuttle system, the individual Counties were responsible for retrieving offenders throughout the State who were wanted in their County. This meant that deputies from multiple agencies were traveling to other jurisdictions, sometimes on a daily basis.

As part of the overall shuttle, approximately 15 years ago Whatcom County began contracting with the Counties north of Seattle, and some smaller cities, to move their offenders to and from a central hub. In 2011, Snohomish County decided to discontinue contracting with us, leading us to some changes in the way the northern leg was operated. We continue to contract with Oak Harbor, Skagit County, Island County, and Marysville and receive in-kind support from Snohomish County. This agreement allows for Island County to pay for inmates being transported for their agency.

▪ **Funding Amount and Source**

This revenue is paid to Whatcom County for services rendered. It is based on Island County's estimated percentage of the total County cost of running this system. This year's contract with Island County will be a total of \$5,359.00.

▪ **Differences from Previous Contract**

This is an increase of \$733.00 from last year.

Please contact Wendy Jones at extension 6505, if you have any questions or concerns regarding the terms of this agreement.



**INTERLOCAL COOPERATIVE AGREEMENT  
NORTHWEST MINICHAIN WITH ISLAND COUNTY**

**THIS AGREEMENT** is made and entered into by and between Island County, Washington ("Island County") and Whatcom County, Washington ("Whatcom County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**1. PURPOSE:**

The purpose of this Agreement is to provide for transportation services for prisoners for Island County for a period beginning on the First day of January, 2021 and ending on the Thirty-first day of December, 2021. Island County and Whatcom County agree to the terms and conditions incorporated herein.

**2. RESPONSIBILITIES:**

Prior to signing this Agreement, Island County has determined that there exists a public need for the services to be provided hereunder, and that it is appropriate that public funds be expended to meet this need.

Island County acknowledges Whatcom County's operational control of its jail facilities and agrees that prisoners transported on the Northwest Mini-Chain bus by Whatcom County will be subject to Whatcom County Jail policies and procedures.

Whatcom County covenants to perform the following transportation services:

- a) To pickup inmates from any Northwest Mini-Chain contracted city or county jail along the I-5 corridor, with King County Jail being the southernmost point.
- b) Occasional trips as necessary and requested by Island County Sheriff's Office to Western State Hospital.
- c) Island County will be invoiced for all Western State Hospital transports from Island County by the Northwest Mini-Chain Transport System. The invoice will cover the hourly rate cost of two transport officers driving from Skagit County to Western State Hospital. The normal time expended on this trip is 4 hours each for two officers. The rate is based on the hourly overtime rate for the transport officers working.
- d) Island County will ensure that its inmates are transported to Skagit County at their own cost and will be responsible to insure that the inmates are at Skagit County prior to Whatcom County's arrival for pickup. Whatcom County will transport Island County inmates south to King County.
- e) Provide driver and vehicle to accomplish above transportation services. Schedules will be set up in advance by telephone.

**3. TERM OF AGREEMENT:**

The term of this Agreement shall be from January 1, 2021 through December 31, 2021, regardless of date of signature.

The terms of this Agreement shall be subject to review and revision in November of 2021 for renewal in January 2022.

**4. MANNER OF FINANCING:**

Funds for the payment of services to be rendered under this Agreement have been budgeted, allocated and are available for this purpose. This Agreement shall not obligate Island County in excess of the balance of funds available for this purpose, nor shall it obligate Whatcom County to perform services which are not budgeted. The source of funds is the Island County budget.

Whatcom County shall provide Island County with an invoice for services rendered on a quarterly basis. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

This compensation is calculated on the actual percentage of usage by Island County of the total cost of the Northwest Mini-Chain Transport System, and as such will not require a quarterly breakdown of actual transports.

Annual Compensation:      \$5,359.00

Quarterly Invoices:

March 31, 2021	\$1,339.75
June 30, 2021	\$1,339.75
September 30, 2021	\$1,339.75
December 31, 2021	\$1,339.75

**5. ADMINISTRATION:** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under or greater than this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

- 5.1 Whatcom County's representatives shall be the County Executive Satpal Sidhu and Sheriff Bill Elfo.
- 5.2 Island County's representative shall be Sheriff Rick Felici.

**6. TREATMENT OF ASSETS AND PROPERTY:** No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

**7. MUTUAL INDEMNITY:** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its 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 are alleged or



proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

**SURVIVAL OF INDEMNITY OBLIGATIONS:** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

8. **TERMINATION:** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. The Sheriff, or his designee, in their sole discretion, may provide immediate notice to terminate this Agreement or amend the scope of services in this Agreement for reasons including, but not limited to, public safety, safety or health concerns by continuing to provide the service, inability to provide services, necessity, or public convenience, and said notice will be without any consequence or liability against the County or WCSO, employees, officials, agents, or volunteers. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

9. **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:** The Agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach. 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. **SEVERABILITY:** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

11. **ENTIRE AGREEMENT:** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other

understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

12. **ARBITRATION:** This Agreement shall be governed by Laws of the State of Washington. Unless otherwise agreed by the parties hereto, any controversy or claim arising out of or relating to this Agreement that remains unresolved after negotiation shall be settled by binding arbitration before an agreed upon arbitrator in accordance with the applicable American Arbitration Association (AAA) rules in effect on the date hereof. Each Party shall pay all their own costs, fees and expenses of arbitration but share equally in the Arbitrator's fees and costs.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**WHATCOM COUNTY:**

**Recommended for Approval:**

Bill Elfo 12/4/20  
Bill Elfo, Sheriff Date

**Approved as to form:**

Approved via email BW/UR 12.7.20  
Brandon Waldron,  
Prosecuting Attorney Date

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Satpal Sidhu, Whatcom County Executive

STATE OF WASHINGTON     )  
  ) Ss  
COUNTY OF WHATCOM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared Satpal 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 \_\_\_\_\_.



ISLAND COUNTY:

Recommended for Approval:

*Rick Felici*  
Rick Felici, Sheriff

4/8/21  
Date

Approved:

*[Signature]*  
Chair  
Board of Island County Commissioners

4/13/2021  
Date

Reviewed by Risk Management:

Approved:

*Kynthia A. Goodall*  
Risk Manager

04/12/2021  
Date

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF ISLAND     )

On this 13 day of April, 2021, before me personally appeared Jill Johnson, to me known to be the Chair of the Board of Island County Commissioners, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

*[Signature]*  
NOTARY PUBLIC in and for the State of Washington, residing at  
Island County. My commission expires 6/29/24

CONTRACTOR INFORMATION:

Island County  
Address:  
PO Box 5000  
Coupeville, WA 98239  
Contact Name: Jose Briones, Chief  
Contact Phone: 360.679-7324  
Contact FAX: 360.240.5559  
Contact Email: j.briones@co.island.wa.us





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-385

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<b>File ID:</b>	AB2021-385	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/24/2021	<b>Entered by:</b>	Tliddings@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Bid Award		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to award Bid #21-31 and enter into a subsequent contract between Whatcom County and Foss Maritime for the annual drydocking, repair and maintenance of the Whatcom Chief ferry, in the amount of \$773,839

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

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### HISTORY OF LEGISLATIVE FILE

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

Jon Hutchings  
Director



901 West Smith Road  
Bellingham, WA 98226-9610  
Phone (360) 778-6400  
Fax (360) 778-6401

Eric L. Schlehuber, Division Manager

## MEMORANDUM

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

**Through:** Jon Hutchings, Public Works Director

**From:** Eric L. Schlehuber, PW Equipment Services Manager

**Date:** June 22, 2021

**Re:** Bid #21-31, Drydocking, Repair & Maintenance of the Whatcom Chief (2021)

- **Requested Action**

Approval requested to award the bid and authorization for the County Executive to enter into a subsequent contract for the 2021 Annual Drydocking, Repair and Maintenance of the Whatcom Chief to the lowest responsive bidder, Foss Maritime in Seattle, Washington in the total amount of \$773,839.00.

- **Background and Purpose**

Bids were duly advertised and submitted for the annual drydocking, repair and maintenance of the Whatcom Chief Ferry. This work is contracted out annually by the Public Works Equipment Services Division. Three shipyards (Foss Maritime Co., Lake Union Drydock Co., and Nichols Boat Builders) attended the mandatory virtual pre-bid meeting held onboard the Whatcom Chief ferry Wednesday, May 26, 2021. Three bid responses were received Tuesday, June 22, 2021. This year's drydock is anticipated to take up to three weeks, from Saturday, September 11, 2021 through Friday, October 1, 2021. Listed below is the bid tabulation for the three responsive and responsible bids received. The Engineer's Estimates was \$773,600, with a return to service anticipated to be no later than Monday, October 4, 2021.

### DRYDOCKING, REPAIRS, & MAINTENANCE OF THE WHATCOM CHIEF (2021)

VENDOR	TOTAL
Foss Maritime Co	\$773,839*
Lake Union Drydock Company	\$928,968
Nichols Boat Builders	\$797,592

\*Total changed from submission of \$773,838 due to rounding up

- **Funding Amount and Source**

Adequate funds exist within the 2021-2022 ER&R fund budget for repairs and maintenance as approved during the 2021-2022 budget process. I am requesting Executive and the Whatcom County Council approval to award this bid and subsequent contract to Foss Maritime (Seattle, Washington) for a total of \$773,839.00.

- **Recommended Action**

Please approve this purchase and forward to the Executive and the Whatcom County Council for approval at the July 13, 2021 Whatcom County Council Meeting. Please contact Eric L. Schlehuber at extension 6405 if you have any questions or concerns.

In Accordance with WCC 3.08.030, I concur with this recommendation.

Sara Winger

Digitally signed by Sara Winger  
DN: cn=Sara Winger, o=Whatcom County  
AS Finance, ou=Purchasing Coordinator,  
email=swinger@co.whatcom.wa.us, c=US  
Date: 2021.06.23 14:58:54 -07'00'

---

Sara Winger, Purchasing Coordinator

---

Date



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-387

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<b>File ID:</b>	AB2021-387	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/24/2021	<b>Entered by:</b>	DDuling@co.whatcom.wa.us		
<b>Department:</b>	Sheriff's Office	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Washington Association of Sheriffs and Police Chiefs for Registered Sex Offender Address and Residency Verification Program, in the amount of \$139,688.00

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attachment

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed agreement

**WHATCOM COUNTY  
SHERIFF'S OFFICE**

**BILL ELFO**  
SHERIFF



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

**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Bill Elfo, Sheriff *[Signature]*

**DATE:** June 9, 2021

**RE:** Registered Sex Offender Address and Residency Verification Program  
July 1, 2021 – June 30, 2022

Enclosed for your review and signature are two (2) original agreements between Whatcom County and Washington Association of Sheriffs and Police Chiefs for Registered Sex Offender Verification Program funding.

- **Background and Purpose**  
Interagency agreement provides state funding for personnel to staff the registration program which tracks the addresses and residencies of all registered sex offenders and kidnapping offenders in Whatcom County in accordance with RCW 9A.44.130.
- **Funding Amount and Source**  
State funding of \$139,688.00 from Washington Association of Sheriffs and Police Chiefs.
- **Differences from Previous Contract**  
An increase in funding of \$425.00 from previous year.

Please contact Undersheriff Doug Chadwick at extension 6618 if you have any questions.

Enclosures



# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	35 Sheriff's Office								
Division/Program: (i.e. Dept. Division and Program)	3540 Bureau of Support Services/ 354078 Sex Offender Registration								
Contract or Grant Administrator:	Doug Chadwick, Undersheriff								
Contractor's / Agency Name:	Washington Association of sheriffs and Police Chiefs								
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>									
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____									
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> 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 checked="" type="radio"/> No <input type="radio"/> If yes, grantor agency contract number(s): RSO 2021-22 Whatcom CFDA#: N/A									
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): _____									
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 2978									
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.									
If YES, indicate exclusion(s) below: <table border="0"> <tr> <td><input type="checkbox"/> Professional services agreement for certified/licensed professional.</td> <td><input type="checkbox"/> Goods and services provided due to an emergency</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than \$100,000.</td> <td><input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than 120 days.</td> <td><input type="checkbox"/> Work related subcontract less than \$25,000.</td> </tr> <tr> <td><input checked="" type="checkbox"/> Interlocal Agreement (between Governments).</td> <td><input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</td> </tr> </table>		<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency	<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 checked="" type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency								
<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 checked="" 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): \$ 139,688.00 This Amendment Amount: \$ _____ Total Amended Amount: \$ 139,688.00 Summary of Scope:	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>								
State funding is allocated to local law enforcement to verify the address and residency of all registered sex offenders and kidnapping offenders under RCW 9A.44.130.									
Term of Contract: 07/01/2021	Expiration Date: 06/30/2022								

Contract Routing:	1. Prepared by: D. Pierce	Date: 06/09/21
	2. Attorney signoff: <u>approved email BGD/DS</u>	Date: 6/16/21
	3. AS Finance reviewed: <u>approved email BGD/DS</u>	Date: 6/24/21
	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: _____



Washington Association of  
**SHERIFFS &  
POLICE CHIEFS**

3060 Willamette Drive NE  
Lacey, WA 98516  
360-486-2380 (Phone)  
360-486-2381 (Fax)  
[www.waspc.org](http://www.waspc.org)

**President**  
Sheriff Rick Scott  
Grays Harbor County

**President-Elect**  
Chief Steve Crown  
City of Wenatchee

**Vice President**  
Sheriff Tom Jones  
Grant County

**Past President**  
Chief Craig Meidl  
City of Spokane

**Treasurer**  
Chief Brett Vance  
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Chief John Batiste  
Washington State Patrol

Chief Gary Jenkins  
City of Pullman

Sheriff Mitzi Johanknecht  
King County

Sheriff  
VACANT

Chief Darrell Lowe  
City of Redmond

Chief Rafael Padilla  
City of Kent

Sheriff James Raymond  
Franklin County

Don Voiret, SAC  
FBI—Seattle

Chief Sam White  
Lower Elwha Police  
Department

Steven D. Strachan  
Executive Director

June 9, 2021

SHERIFF BILL ELFO  
WHATCOM COUNTY SHERIFF'S OFFICE  
311 GRAND AVENUE  
BELLINGHAM, WA 98225

Dear Sheriff Bill Elfo:

Subject: Registered Sex Offender Address Verification Grant Program.

The Washington State Legislature allocated \$9.9 million dollars over the 2021-2023 biennium for the Registered Sex Offender Address Verification Grant Program. This year, local agencies will receive \$4.81 million dollars to conduct face-to-face address verifications for registered sex and kidnapping offenders as directed by RCW 9A.44.130. In 2010, this grant program was established with the intent that all sex offenders and kidnapping offenders would be verified at their registered address by the Sheriff's Office. This face-to-face address verification is important to maintain accuracy of the Sex Offender Registry and to enforce the sex offender registration laws of Washington State. It is important that this money continue to be used for its intended purpose.

I am pleased to inform you that the **Whatcom County Sheriff's Office** will receive **\$139,688.00** for the Registered Sex Offender Address Verification Program. The grant cycle will follow the state fiscal year, starting July 1, 2021 and ending June 30, 2022. Quarterly grant reports are due on October 10, 2021, January 10, 2022, April 10, 2022, and July 10, 2022. Quarterly grant reports are to be completed electronically and will be emailed to RSO Coordinators. Reports must be received by WASPC prior to quarterly grant payments being issued to your agency.

Address verification funds are designed to support all aspects of Registered Sex Offender Address Verification. Most importantly, funds are required to be used for face-to-face verification of a sex offender's address at the place of residency.

- For Level I Offenders—Face-to-Face Address Verification will occur once every twelve months.
- For Level II Offenders—Face-to-Face Address Verification will occur once every six months.
- For Level III Offenders—Face-to-Face Address Verification will occur once every three months.
- For the purposes of this grant, unclassified offenders and kidnapping offenders are considered level I offenders, unless the local jurisdiction sets a higher classification in the interest of public safety.



Funding from this program will be used to send at least one staff person to at least one WASPC OffenderWatch User Group and SONAR Committee Meeting. Meeting dates are July 13, 2021, October 12, 2021, January 11, 2022 and April 12, 2022.

Address verification data must be entered into the statewide sex offender database, OffenderWatch. WASPC will conduct audits of the OffenderWatch records to confirm verification entries and completeness of records.

Registration, community notification and verification of offenders must follow the applicable state statutes (RCWs 4.24.550, 9A.44.130, 9A.44.135, 36.28A.230, etc.). Any delegation to cities should have signed Memorandums of Understanding (MOUs) clearly defining agreed upon responsibilities.

Please note the following terms will be adhered to for the 2021-2022 Registered Sex Offender Address Verification Program:

- Any agency not meeting at least 90% of required verifications will not receive that quarter's grant payment.
- Any agency not using OffenderWatch to track verifications will not receive that quarter's grant payment.
- Agencies that do not participate in at least one OffenderWatch User Group and SONAR Committee meeting in person will be penalized 10% of the final quarter's grant payment.
- Quarterly grant reports must be received by WASPC prior to quarterly grant payments being issued to your agency.

Please review the attached interagency agreement and return to the WASPC Office ASAP. If you have any questions please contact Terrina Peterson at (360) 486-2386 or [tpeterson@waspc.org](mailto:tpeterson@waspc.org).

Sincerely,



Steven D. Strachan  
Executive Director

**WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS  
INTERAGENCY AGREEMENT—SPECIFIC TERMS AND CONDITIONS**

**Registered Sex Offender Address Verification Program**

This AGREEMENT is entered into by and between the **WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS** (hereinafter referred to as WASPC) and the **WHATCOM COUNTY SHERIFF'S OFFICE** (hereinafter referred to as the RECIPIENT).

**Award Recipient Name and Address:**

Whatcom County Sheriff's Office  
311 Grand Avenue  
Bellingham, WA 98225

**Agency Contact:** Bill Elfo

**Title:** Sheriff

**Project Title**

Registered Sex Offender Address Verification

**Funding Cycle**

July 1, 2021-June 30, 2022

**Agreement No:**

RSO 2021-22 Whatcom

**Funding Authority:**

WA Association of Sheriffs and Police Chiefs

**Grant Award:**

\$139,688.00

**Service Area:**

Whatcom County

**FUNDING SOURCE**

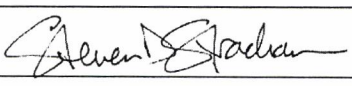
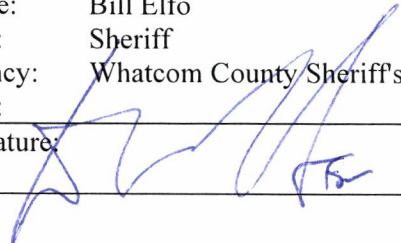
Funding for this AGREEMENT is provided to WASPC through the Criminal Justice Training Commission from the State of Washington. Funding awarded the RECIPIENT shall not exceed the amount shown on the award letter.

**SCOPE OF SERVICES**

The RECIPIENT shall use the funds awarded to meet the following requirements:

- Face-to-face verifications of all registered offenders based on the schedule outlined in the award letter and RCWs 36.28A.230 and 9A.44.135. Any agency not meeting at least 90% of required verifications will not receive that quarter's grant payment.
- Quarterly report will be submitted electronically by October 10, 2021, January 10, 2022, April 10, 2022, and July 10, 2022. Funds will be disbursed in equal allotments each quarter. Quarterly grant reports must be received by WASPC prior to quarterly grant payments being issued to your agency.
- In-person attendance at least one OffenderWatch User Group and SONAR Committee Meeting. Meeting dates are July 13, 2021, October 12, 2021, January 11, 2022 and April 12, 2022. Agencies that do not participate in at least one OffenderWatch User Group and SONAR Committee meeting in person will be penalized 10% of the final quarter's grant payment.
- Up to date and accurate record entries into OffenderWatch. Any agency not using OffenderWatch to track verifications will not receive that quarter's grant payment.

IN WITNESS WHEREOF, WASPC and RECIPIENT acknowledge and accept the terms of this AGREEMENT and attachments hereto, and in witness whereof have executed this AGREEMENT as of the date and year written below. The rights and obligations of both parties to this AGREEMENT are governed by the information on this Award Sheet and Letter and other documents incorporated herein.

<b>For WASPC</b>	<b>For RECIPIENT</b>
Name: Steven D. Strachan	Name: Bill Elfo
Title: Executive Director	Title: Sheriff
Agency: WA Assn. of Sheriffs & Police Chiefs	Agency: Whatcom County Sheriff's Office
Date:	Date:
Signature: 	Signature: 

WHATCOM COUNTY:

Approved as to form:

Approved via email BOP/D 6/16/21  
Prosecuting Attorney \_\_\_\_\_ Date \_\_\_\_\_

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Satpal Sidhu, Whatcom County Executive \_\_\_\_\_ Date \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF WHATCOM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me personally appeared Satpal 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: AB2021-391

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<b>File ID:</b>	AB2021-391	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/29/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology for litter cleanup activities, in the amount of \$71,100

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attachments

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed Agreement



## MEMORANDUM

**TO:** Satpal Sidhu, Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** Washington State Department of Ecology –  
2021-2023 Community Litter Cleanup Program Grant  
**DATE:** June 29, 2021

---

Attached is an agreement between Whatcom County and Washington State Department of Ecology for your review and signature.

- **Background and Purpose**

The Community Litter Cleanup Program Grant funds the County's activities related to the removal of litter and illegally discarded materials from public lands. Whatcom County has participated in this program since 1998. These funds support the County Public Works Department's Adopt-a-Road Program and correctional work crew response to illegal dumping and litter clean-up along County roads, parks and beaches.

- **Funding Amount and Source**

The 2021-2023 grant provides \$71,100 from the Department of Ecology. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

- **Differences from Previous Contracts**

This agreement increases funding by \$4,100 and otherwise includes no significant changes to the scope of work from the agreement that ends on 6/30/2021 (WC Contract #201907031).

Please contact John Wolpers, Environmental Health Manager at 360-778-6026 ([JWolpers@co.whatcom.wa.us](mailto:JWolpers@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007 ([KRoy@co.whatcom.wa.us](mailto:KRoy@co.whatcom.wa.us)), if you have any questions or concerns regarding this request.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No. _____	
Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8540 Environmental Health / 854080 Solid Waste Infrastructure	
Contract or Grant Administrator:		Jennifer Hayden	
Contractor's / Agency Name:		Washington Department of Ecology	
<div style="display: flex; justify-content: space-between;"> <div> <p>Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Is this a grant agreement? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Is this contract grant funded? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/></p> </div> <div> <p>If not, is this an Amendment or Renewal to an Existing Contract? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>If No, include WCC: _____</p> <p>If yes, grantor agency contract number(s): SWMCLCP -2123 - WhCoHD - 00055 CFDA#: _____</p> <p>If yes, Whatcom County grant contract number(s): _____</p> <p>If yes, RFP and Bid number(s): _____</p> <p>If no, include Attachment D Contractor Declaration form.</p> </div> <div> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Contract Cost Center: 140205</p> </div> </div> <p>If YES, indicate exclusion(s) below:</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <p><input type="checkbox"/> Professional services agreement for certified/licensed professional.</p> <p><input type="checkbox"/> Contract work is for less than \$100,000.</p> <p><input type="checkbox"/> Contract work is for less than 120 days.</p> <p><input checked="" type="checkbox"/> Interlocal Agreement (between Governments).</p> </div> <div style="width: 50%;"> <p><input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</p> <p><input type="checkbox"/> Work related subcontract less than \$25,000.</p> <p><input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</p> </div> </div>			
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for: all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : <ol style="list-style-type: none"> <li>Exercising an option contained in a contract previously approved by the council.</li> <li>Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.</li> <li>Bid or award is for supplies.</li> <li>Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>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.</li> </ol>	
\$ 71,100			
This Amendment Amount:			
\$			
Total Amended Amount:			
\$			
Summary of Scope: This grant funds the activities related to removing litter and illegally discarded material from public lands.			
Term of Contract:		2 Years	
		Expiration Date: 06/30/2023	
Contract Routing:			
1. Prepared by:		JT	
2. Attorney signoff:		RB	
3. AS Finance reviewed:		M Caldwell	
4. IT reviewed (if IT related):			
5. Contractor signed:			
6. Submitted to Exec.:			
7. Council approved (if necessary):		AB2021-391	
8. Executive signed:			
9. Original to Council:			





## **Agreement No. SWMCLCP-2123-WhCoHD-00055**

### **SOLID WASTE MANAGEMENT COMMUNITY LITTER CLEANUP PROGRAM AGREEMENT**

#### **BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

#### **AND**

**WHATCOM COUNTY HEALTH DISTRICT**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and WHATCOM COUNTY HEALTH DISTRICT, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

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#### **GENERAL INFORMATION**

Project Title:	Whatcom Co HD
Total Cost:	\$121,100.00
Total Eligible Cost:	\$71,100.00
Ecology Share:	\$71,100.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	CLCP Grant

#### Project Short Description:

Litter and Illegal Dump Cleanup and Prevention Project

#### Project Long Description:

To remove litter and illegally dumped material from public lands and/or provide litter and illegal dump prevention education to citizens and other organizations. The recipient shall furnish the necessary personnel, equipment, material and/or services, and/or otherwise do all things necessary for or incidental to the performance of the scope of work set forth herein.

#### Overall Goal:

The RECIPIENT will remove and properly dispose of solid waste from Whatcom County roads, illegal dump sites, trails, beaches, and other public areas. The RECIPIENT will also increase community participation in litter pickup and



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prevention through education and outreach efforts.

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## RECIPIENT INFORMATION

Organization Name: WHATCOM COUNTY HEALTH DISTRICT

Federal Tax ID: 91-6001383

DUNS Number: 600446410

Mailing Address: 509 Girard St.  
Bellingham, WA 98225

Physical Address: 509 Girard St.  
Bellingham, Washington 98225

Organization Email: jhayden@co.whatcom.wa.us

Organization Fax: (360) 778-6001

## Contacts

Agreement No: SWMCLCP-2123-WhCoHD-00055

Project Title: Whatcom Co HD

Recipient Name: WHATCOM COUNTY HEALTH DISTRICT

<b>Project Manager</b>	Jennifer Hayden Environmental Health Specialist  509 Girard St. Bellingham, Washington 98225 Email: jhayden@whatcomcounty.us Phone: (360)778-6044
<b>Billing Contact</b>	Jennifer Hawes Accounting Technician  509 Girard St. Bellingham, Washington 98225 Email: jhawes@whatcomcounty.us Phone: (360) 778-6027
<b>Authorized Signatory</b>	Erika Lee Lautenbach Director  509 Girard St. Bellingham, Washington 98225 Email: elautenb@co.whatcom.wa.us Phone: (360) 778-6000

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**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Solid Waste Management  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Solid Waste Management  
300 Desmond Drive SE  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	Dan Skillman  PO Box 330316 Shoreline, Washington 98133-9716 Email: dski461@ecy.wa.gov Phone: (425) 213-3561
<b>Financial Manager</b>	Dan Skillman  PO Box 330316 Shoreline, Washington 98133-9716 Email: dski461@ecy.wa.gov Phone: (425) 213-3561

## AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State  
Department of Ecology

WHATCOM COUNTY HEALTH DISTRICT

By: \_\_\_\_\_

By: Erika Lee Lautenbach 6/23/21

Laurie Davies  
Solid Waste Management  
Program Manager

Date

Erika Lee Lautenbach  
Director

Date

Template Approved to Form by  
Attorney General's Office

PROGRAM APPROVAL

Approved by email JW/JT  
John Wolpers, Environmental Health Manager

06/23/2021  
Date

WHATCOM COUNTY

\_\_\_\_\_  
SATPAL SIDHU  
County Executive

STATE OF WASHINGTON     )  
  )  
COUNTY OF WHATCOM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared Satpal Sidhu, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at Bellingham.

My Commission expires: \_\_\_\_\_

APPROVED AS TO FORM:

Approved by email RB/JT  
Royce Buckingham, Prosecuting Attorney

06/29/2021  
Date

Agreement No: SWMCLCP-2123-WhCoHD-00055  
 Project Title: Whatcom Co HD  
 Recipient Name: WHATCOM COUNTY HEALTH DISTRICT

## SCOPE OF WORK

Task Number: 1 **Task Cost: \$67,000.00**

Task Title: Litter and Illegal Dump Cleanup

### Task Description:

The RECIPIENT will provide litter cleanup in neighborhoods, on trails, beaches, and other public areas through their Adopt-a-highway program. The RECIPIENT will also coordinate with correctional litter crews to respond to illegal dumping and litter cleanup from county roads, beaches, parks, and DNR properties. The RECIPIENT will work with volunteers, Public Works maintenance crews, and community organizations such as the Birch Bay Chamber of Commerce to conduct litter pickup in public areas throughout Whatcom County.

RECIPIENT or a designee is responsible for providing all required safety training, personal safety gear, signs, and cones in compliance with WSDOT and county road safety guidelines to ensure the safety of crewmembers and volunteers. RECIPIENT is responsible for accurate data collection and timely reporting.

### Task Goal Statement:

The RECIPIENT will remove and properly dispose of solid waste from Whatcom County roads, illegal dump sites, trails, beaches, and other public areas. The RECIPIENT will also increase community participation in litter pickup through education and outreach efforts.

### Task Expected Outcome:

- 550 miles of road, 20 acres, and 20 illegal dumpsites cleaned.
- 60,000 pounds of litter, 7,700 pounds of illegal dump material, and 1,000 pounds of recyclables collected.
- 5,000 total hours worked.

Recipient Task Coordinator: Jennifer Hayden

### **Litter and Illegal Dump Cleanup**

#### **Deliverables**

Number	Description	Due Date
1.1	Task Expected Outcomes are the deliverables and achieved incrementally throughout the biennium.	



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**SCOPE OF WORK**

Task Number: 2 **Task Cost:** \$4,100.00

Task Title: Education and Outreach: Litter Prevention

Task Description:

The RECIPIENT will conduct education and outreach efforts to prevent roadside litter and unsecured loads. The RECIPIENT will utilize resources in Ecology's new litter prevention campaign toolkit to implement an education and outreach program focusing on unsecured vehicle loads and litter prevention. The RECIPIENT may conduct education and outreach to target audiences through solid waste facilities, community events, advertising (TV, radio, internet, social media, signage, billboards, etc.), in store displays, presentations, workshops, or creative partnerships.

Task Goal Statement:

The RECIPIENT'S goal is to implement an education and outreach campaign targeting unsecured vehicle loads and litter prevention.

Task Expected Outcome:

The RECIPIENT expects to observe a 10% decrease in the number of unsecured vehicle loads in their jurisdiction.

Recipient Task Coordinator: Jennifer Hayden

**Education and Outreach: Litter Prevention****Deliverables**

Number	Description	Due Date
2.1	Task Expected Outcomes are the deliverables and achieved incrementally throughout the biennium.	

## BUDGET

**NOTE:** The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Description: Community Litter Cleanup Program

<b>Whatcom Co HD</b>	<b>Task Total</b>
Litter and Illegal Dump Cleanup	\$ 67,000.00
Education and Outreach: Litter Prevention	\$ 4,100.00

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Agreement No: SWMCLCP-2123-WhCoHD-00055  
 Project Title: Whatcom Co HD  
 Recipient Name: WHATCOM COUNTY HEALTH DISTRICT

### **Funding Distribution Summary**

#### **Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
Whatcom Co HD	0.00 %	\$ 0.00	\$ 71,100.00	\$ 71,100.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 71,100.00</b>	<b>\$ 71,100.00</b>

### **AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

### **SPECIAL TERMS AND CONDITIONS**

Grant administrative costs are limited to 10 percent of grant approved expenditures, excluding Tools and Trucks. Administrative costs for Tools and Trucks are not allowed under this grant program.

RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial (including payment requests), performance, and other reports required by this Agreement. ECOLOGY shall have the right to deny reimbursement of payment requests received after this date.

Ecology will conduct a risk assessment of all Community Litter Cleanup Program recipients. The level of risk determines the level of oversight required by Ecology throughout the biennium. If the recipient's performance or project circumstances change, Ecology may reassess risk and notify the recipient of any changes to administrative requirements.

### **GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

#### **A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY**

##### **EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a

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person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

#### B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsrs.gov](http://www.fsrs.gov) <http://www.fsrs.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.fsrs.gov](http://www.fsrs.gov) <http://www.fsrs.gov>.

#### C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component

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of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#) [\(<https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>\)](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](#) [\(<https://sam.gov/SAM/>\)](https://sam.gov/SAM) exclusion list.

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

##### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.



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- Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff and contractors working at the project site.
  - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## 5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

## 6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

## 7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

## 8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of

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Washington which affect wages and job safety.

- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## 9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

## 10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

## 11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in

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accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

## 12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 15. INDEPENDENT STATUS

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

## 16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

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RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

## 18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

## 19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

## 20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through

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September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

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d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

### 23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

### 24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

### 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

### 26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

### 27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

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imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 28. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Failure to Commence Work.** ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

**Non-Performance.** The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

### b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Non-Allocation of Funds.** ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

### c) By Mutual Agreement



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ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-399

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<b>File ID:</b>	AB2021-399	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/01/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Snohomish Health District for participation in the North Sound Regional Youth Marijuana Prevention and Education Program, in the amount of \$27,000

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed Agreement



## **MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Snohomish Health District – Youth Marijuana Prevention and Education Program  
Interlocal Agreement

**DATE:** July 1, 2021

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Enclosed is an interlocal agreement between Whatcom County and Snohomish Health District for your review and signature.

- **Background and Purpose**

Whatcom County Health Department is the lead agency for the North Sound Regional Youth Marijuana Prevention and Education Program (YMPEP) serving Whatcom, Island, San Juan, Skagit, and Snohomish Counties. Whatcom County receives funding from Washington State Department of Health (DOH) to coordinate implementation of strategies aimed at reducing initiation and use of marijuana by youth (ages 12-20) in the North Sound Region. The purpose of this agreement is to support Snohomish Health District's participation in planning and implementing youth marijuana prevention strategies and activities.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$27,000, is provided by the Washington State Department of Health YMPEP. These funds are included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

- **Differences from Previous Agreements**

This is a new Interlocal Agreement, however, funding for this work has been allocated to Snohomish Health District through previous contracts since 2017. This Agreement includes no significant changes from the 2017-2021 Agreement (WC Contract #201711028).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 ([ADeacon@co.whatcom.wa.us](mailto:ADeacon@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007, if you have any questions or concerns, regarding this request.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855060 Substance Abuse		
Contract or Grant Administrator:			Alyssa Pavitt		
Contractor's / Agency Name:			Snohomish Health District		
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):		201801023	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		Contract Cost Center:		677350	
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 type="checkbox"/>	Yes <input checked="" type="checkbox"/>	If no, include Attachment D Contractor Declaration form.	
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 checked="" 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 <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>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.</li> </ol>			
\$	27,000				
This Amendment Amount:					
\$					
Total Amended Amount:					
\$					
Summary of Scope: The purpose of this agreement is to fund implementation of youth marijuana prevention activities in Snohomish County.					
Term of Contract:		1 Year		Expiration Date: 06/30/2022	
Contract Routing:	1. Prepared by:		JT		Date: 03/17/2021
	2. Health Budget Approval:		KR/JG		Date: 06/29/2021
	3. Attorney signoff:		RB		Date: 07/01/2021
	4. AS Finance reviewed:		M Caldwell		Date: 6/30/21
	5. IT reviewed (if IT related):				Date:
	6. Contractor approved:				Date:
	7. Submitted to Exec.:				Date:
	8. Council approved (if necessary):		AB2021-399		Date:
	9. Executive signed:				Date:
	10. Original to Council:				Date:

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN  
WHATCOM COUNTY  
AND  
SNOHOMISH HEALTH DISTRICT

THIS AGREEMENT is made and entered into by and between Whatcom County ("Whatcom") and Snohomish Health District, a public entity organized pursuant to the provisions of chapters 70.05 and 70.45 RCW ("Snohomish"); both local health jurisdictions in the State of Washington pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The purpose of this agreement is to implement youth marijuana prevention activities outlined in the Snohomish Health District Workplan.
2. RESPONSIBILITIES:

Whatcom will:

- A. Lead and facilitate the North Sound Region Youth Marijuana Prevention Network and implementation of our 5-Year Youth Marijuana Prevention and Education Program (YMPEP) Strategic Plan.
- B. Provide technical assistance and support to Snohomish in carrying out their YMPEP work.
- C. Include Snohomish staff in regional YMPEP communication, trainings, and meetings.
- D. Share State and regional YMPEP resources with designated Snohomish staff.
- E. Provide Snohomish with templates for submitting work plan, budget, and reporting.

Snohomish will:

- A. Actively engage in Regional Marijuana Prevention Program & Network:
  1. Attend bi-monthly Regional Network meetings;
  2. Participate in bi-monthly YMPEP subcontractor meetings;
  3. Participate in regional YMPEP planning efforts;
  4. Participate in regional workgroup to assess new Healthy Youth Survey youth marijuana prevention related data, and create positive community norms messaging;
  5. Attend each CPWI/DFC coalition in Snohomish County at least once during the year to share about YMPEP strategies and promote the Regional Network;
  6. Promote joining the Regional Network to partners in Snohomish County through: coalitions, meetings, and program emails/newsletters;
  7. Participate in statewide Practice Collaborative and statewide YMPEP workgroups, as relevant.
- B. Serve as a leader and advocate for marijuana prevention in Snohomish County:

1. Promote YMPEP training opportunities to partners in Snohomish County;
  2. Promote YMPEP Youth Empowerment opportunities to youth prevention clubs and school partners in Snohomish County in collaboration with United General;
  3. Share education resources on marijuana and vaping to schools and community partners in Snohomish County in collaboration with Northwest Educational Service District 189;
  4. Support promotion and outreach for Cascadia Youth Mental Health's School Substance Use Discipline Policy YMPEP Project with School Partners in Snohomish County;
  5. Monitor state and local policies and legislation in relation to marijuana prevention;
  6. Advocate for state and/or local legislation, LCB Rulemaking and/or policies that support youth marijuana prevention. This can occur locally and/or in partnership with WA Prevention Voices.
- C. Locally implement statewide youth marijuana prevention campaigns:
1. Create and submit to Whatcom, an annual local media implementation plan to include implementation of the below:
    - i. You Can Youth Prevention Campaign
    - ii. Under the Influence of...You Parent Campaign
    - iii. WA Teen Link Resources
    - iv. Additional marijuana prevention campaigns developed by WA DOH, as relevant
  2. Implement approved local media campaign in Snohomish County.
- D. Attend or support adult and/or youth prevention partners in Snohomish County to attend relevant local, state, and national trainings related to marijuana prevention:
1. Create and submit an annual training plan to Whatcom for approval;
  2. Attend approved meetings.
- E. Other efforts, as approved, that align with the North Sound Region Youth Marijuana Prevention Strategic Plan.
- F. Maintain accurate records of staff time dedicated to YMPEP activities.
- G. Provide monthly reports of program activities and staff effort to Lead Regional Coordinator for inclusion in DOH reporting. Contractor will use reporting form provided by Whatcom. Due dates will be no later than 10<sup>th</sup> day of the month, following the month activities occurred.
- H. Perform all work necessary within the limits of the available resources from this agreement to implement the strategies, action steps and deliverables agreed to with regional partners and approved by DOH.
- I. Request approval for budget adjustments that total 10% or more – approval required at least 15 days prior to expanding adjusted budget items.
- J. Use no more than 20% of YMPEP allocation for indirect/overhead costs.

- K. Comply with all applicable Federal and State requirements that govern this agreement and will cooperate with Whatcom on at least one annual site visit at a mutually agreeable time to discuss Snohomish Health District program process and contract oversight.
3. TERM OF AGREEMENT: The start date of this grant funded project is July 1, 2021 therefore the start date of this agreement has been established as of that date, and shall be in effect through June 30, 2022.
4. EXTENSION: The duration of this Agreement may be extended by mutual written consent of the parties.
5. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for the administration of this agreement and for coordinating and monitoring performance under this agreement. In the event such representatives are changed, the party making the change shall notify the other party:

Whatcom's representative shall be:

Alyssa Pavitt – [apavitt@co.whatcom.wa.us](mailto:apavitt@co.whatcom.wa.us)  
Program Specialist  
Whatcom County Health Department  
509 Girard Street  
Bellingham WA 98225  
(360) 778-6061

Snohomish's representative shall be:

Katie Curtis – [kcurtis@snohd.org](mailto:kcurtis@snohd.org)  
Prevention Services Director  
Snohomish Health District  
3020 Rucker Avenue, Suite #203  
Everett, WA 98201  
(425) 339-711

6. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this agreement.
7. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agree to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to Whatcom or Snohomish by reason of entering into this agreement as expressly provided herein.
8. TERMINATION: Any party hereto may terminate this agreement upon (30) days notice in writing either personally delivered or mailed to the party's last known address for the purposes of giving notice under this paragraph. If this agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
9. CHANGES, MODIFICATIONS, AMENDMENTS, OR WAIVERS: The agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this agreement shall not be considered a waiver of any prior or subsequent breach.



10. SEVERABILITY: In the event of any term or condition of this agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this agreement are declared severable.
11. ENTIRE AGREEMENT: This agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.
12. OTHER PROVISIONS: Snohomish and Whatcom will comply with all applicable Federal and State requirements that govern this agreement.
13. This Agreement has been approved and authorized by the governing bodies of Snohomish and Whatcom and each party represents that the persons executing this Agreement have been authorized to do so on or behalf of the public entity referenced below.
14. This Agreement shall be posted or recorded by Whatcom required by RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SNOHOMISH HEALTH DISTRICT:**

\_\_\_\_\_  
Shawn Frederick, Administrative Services 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:**

**Snohomish Health District**  
3020 Rucker Avenue, Suite #306  
Everett, WA 98201  
[Sfrederick@snohd.org](mailto:Sfrederick@snohd.org)

**EXHIBIT "A"**  
(COMPENSATION)

- I. **Budget & Source of Funding:** The source of funding for this contract, in an amount not to exceed \$27,000, is the Youth Marijuana Prevention and Education Contract with the Washington State Department of Health. The budget for this work is as follows:

<b>Contract Budget 07/01/2021 – 06/30/2022</b>		
<b>*Item</b>	<b>Documentation required with invoice</b>	<b>**Budget</b>
Personnel	Expanded GL Report	\$20,000
Advertising		\$1,500
Travel & Training	For travel, training and conference expenditures, mileage will be reimbursed at the current Federal rate. Ground transportation, coach airfare and ferries will be reimbursed at cost when accompanied by receipts. Lodging and meal costs are not to exceed the U.S. General Services Administration Domestic Per Diem Rates ( <a href="http://www.gsa.gov">www.gsa.gov</a> ), specific to location. Reimbursement requests for allowable travel, training and membership expenses (including conference/training registration fees) must be accompanied by receipts or vendor invoices. Receipts for meals are not required. Mileage records, including the name of the staff member, date of travel, starting point and destination of travel, the number of miles traveled, the per mile reimbursement rate, and a brief description of the purpose of travel, are required for mileage reimbursement.	\$1,000
<b>Subtotal</b>		<b>\$22,500</b>
Administration	20% - Copy of approved indirect cost plan required for 20%; if not received, 10% will be the maximum allowed.	\$4,500
<b>TOTAL</b>		<b>\$27,000</b>

1. \*Contractor may transfer funds between line items with prior County approval.
2. \*\*Budget adjustments that total ten percent (10%) or more - need approval at least 15 days prior to expending adjusted budget items.
3. Contractor may be required to submit a spend-down plan to the County if the following budget spending guidelines are not met: 50% by January 1, 2022, 75% by April 1, 2022 and 90% by June 1, 2022. If a spend-down plan is submitted and not carried through, it will be considered in future funding decisions.

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 20<sup>th</sup> day of the month following the month of service. Invoices submitted for payment must include sufficient documentation to prove the validity of all costs claimed. A general ledger report of costs claimed toward this project will be sufficient for invoicing this agreement. Whatcom County reserves the right to request further back-up documentation for any costs claimed for reimbursement. Equipment purchases are not an allowable expense. Food and incentive purchases must follow DOH YMPEP guidelines.

2. The Contractor shall submit invoices to (include contract/PO #) [HL-BusinessOffice@co.whatcom.wa.us](mailto: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: AB2021-400

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<b>File ID:</b>	AB2021-400	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/01/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Skagit County for participation in the North Sound Regional Youth Marijuana Prevention and Education Program, in the amount of \$27,000

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attachments

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed Agreement



## **MEMORANDUM**

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** Skagit County – Youth Marijuana Prevention and Education Program Interlocal Agreement  
**DATE:** July 1, 2021

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Enclosed is an interlocal agreement between Whatcom County and Skagit County for your review and signature.

- **Background and Purpose**

Whatcom County Health Department is the lead agency for the North Sound Regional Youth Marijuana Prevention and Education Program (YMPEP) serving Whatcom, Island, San Juan, Skagit, and Snohomish Counties. Whatcom County receives funding from Washington State Department of Health (DOH) to coordinate implementation of strategies aimed at reducing initiation and use of marijuana by youth (ages 12-20) in the North Sound Region. The purpose of this agreement is to support Skagit County's participation in planning and implementing youth marijuana prevention strategies and activities.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$27,000, is provided by the Washington State Department of Health YMPEP. These funds are included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

- **Differences from Previous Agreements**

This is a new Interlocal Agreement, however, funding for this work has been allocated to Skagit County through previous contracts since 2017. This Agreement includes no significant changes from the Agreement ending on 6/30/2021 (WC Contract #202006016).

Please contact Anne Deacon, Human Services Manager at 360-778-6054 ([ADeacon@co.whatcom.wa.us](mailto:ADeacon@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007 ([KRoy@co.whatcom.wa.us](mailto:KRoy@co.whatcom.wa.us)), if you have any questions or concerns regarding this request.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No. _____	
Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855060 Substance Abuse	
Contract or Grant Administrator:		Alyssa Pavitt	
Contractor's / Agency Name:		Skagit County	
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): _____		CFDA#: _____
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: 677350
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:			
<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 checked="" 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): \$ 27,000		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 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: \$ _____			
Total Amended Amount: \$ _____			
Summary of Scope: The purpose of this agreement is to fund implementation of youth marijuana prevention activities in Skagit County.			
Term of Contract:	1 Year	Expiration Date:	06/30/2022
Contract Routing:	1. Prepared by:	JT	Date: 03/17/2021
	2. Health Budget Approval:	KR/JG	Date: 06/29/2021
	3. Attorney signoff:	RB	Date: 07/01/2021
	4. AS Finance reviewed:	M Caldwell	Date: 6/30/2021
	5. IT reviewed (if IT related):	_____	Date: _____
	6. Contractor approved:	_____	Date: _____
	7. Submitted to Exec.:	_____	Date: _____
	8. Council approved (if necessary):	AB2021-400	Date: _____
	9. Executive signed:	_____	Date: _____
	10. Original to Council:	_____	Date: _____



INTERLOCAL COOPERATIVE AGREEMENT BETWEEN  
WHATCOM COUNTY  
AND  
SKAGIT COUNTY

THIS AGREEMENT is made and entered into by and between Whatcom County ("Whatcom") and Skagit County ("Skagit"); both Counties in the State of Washington pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The purpose of this agreement is to implement youth marijuana prevention activities outlined in the Skagit County Workplan.

2. RESPONSIBILITIES:

Whatcom will:

- A. Lead and facilitate the North Sound Region Youth Marijuana Prevention Network and implementation of our 5-Year Youth Marijuana Prevention and Education Program (YMPEP) Strategic Plan.
- B. Provide technical assistance and support to Skagit in carrying out their YMPEP work.
- C. Include Skagit staff in regional YMPEP communication, trainings, and meetings.
- D. Share State and regional YMPEP resources with designated Skagit staff.
- E. Provide Skagit with templates for submitting work plan, budget, and reporting.

Skagit will:

- A. Actively engage in Regional Marijuana Prevention Program & Network:
  1. Attend bi-monthly Regional Network meetings;
  2. Participate in bi-monthly YMPEP subcontractor meetings;
  3. Participate in regional YMPEP planning efforts;
  4. Participate in regional workgroup to assess new Healthy Youth Survey youth marijuana prevention related data, and create positive community norms messaging;
  5. Attend each CPWI/DFC Coalition in Skagit County at least once during the year to share about YMPEP strategies and promote the Regional Network;
  6. Promote joining the Regional Network to partners in Snohomish County through coalitions, meetings, and program emails/newsletters;
  7. Participate in statewide Practice Collaborative and statewide YMPEP workgroups, as relevant.

- B. Serve as a leader and advocate for marijuana prevention in Skagit County:
  - 1. Promote YMPEP training opportunities to partners in Skagit County;
  - 2. Promote YMPEP Youth Empowerment opportunities to youth prevention clubs and school partners in Skagit County in collaboration with United General;
  - 3. Share education resources on marijuana and vaping to schools and community partners in Skagit County, in collaboration with Northwest Educational Service District 189;
  - 4. Support promotion and outreach for Cascadia Youth Mental Health's School Substance Use Discipline Policy YMPEP Project with School Partners in Snohomish County;
  - 5. Monitor state and local policies and legislation in relation to marijuana prevention;
  - 6. Advocate for state and/or local legislation, LCB Rulemaking and/or policies that support youth marijuana prevention. This can occur locally and/or in partnership with WA Prevention Voices.
- C. Locally implement statewide youth marijuana prevention campaigns:
  - 1. Create and submit to Whatcom, an annual local media implementation plan to include implementation of the below:
    - i. You Can Youth Prevention Campaign
    - ii. Under the Influence of...You Parent Campaign
    - iii. WA Teen Link Resources
    - iv. Additional marijuana prevention campaigns developed by WA DOH, as relevant
  - 2. Implement approved local media campaign in Skagit County.
- D. Attend or support adult and/or youth prevention partners in Skagit County to attend relevant local, state, and national trainings related to marijuana prevention.
  - 1. Create and submit an annual training plan to Whatcom for approval;
  - 2. Attend approved meetings.
- E. Other efforts, as approved, that align with the North Sound Region Youth Marijuana Prevention Strategic Plan.
- F. Maintain accurate records of staff time dedicated to YMPEP activities.
- G. Provide monthly reports of program activities and staff effort to Lead Regional Coordinator for inclusion in DOH reporting. Contractor will use reporting form provided by Whatcom. Due dates will be no later than 10<sup>th</sup> day of the month, following the month activities occurred.
- H. Perform all work necessary within the limits of the available resources from this agreement to implement the strategies, action steps and deliverables agreed to with regional partners and approved by DOH.
- I. Request approval for budget adjustments that total 10% or more – approval required at least 15 days prior to expanding adjusted budget items.
- J. Use no more than 20% of YMPEP allocation for indirect/overhead costs.

- K. Comply with all applicable Federal and State requirements that govern this agreement and will cooperate with Whatcom on at least one annual site visit at a mutually agreeable time to discuss Skagit County program process and contract oversight.
3. TERM OF AGREEMENT: The start date of this grant funded project is July 1, 2021 therefore the start date of this agreement has been established as of that date, and shall be in effect through June 30, 2022.
4. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for the administration of this agreement and for coordinating and monitoring performance under this agreement. In the event such representatives are changed, the party making the change shall notify the other party:

Whatcom's representative shall be:

Alyssa Pavitt, Program Specialist – [apavitt@co.whatcom.wa.us](mailto:apavitt@co.whatcom.wa.us)  
Whatcom County Health Department  
509 Girard Street  
Bellingham WA 98225  
(360) 778-6061

Skagit's representative shall be:

Danica Sessions, Community Health Coordinator – [danicas@co.skagit.wa.us](mailto:danicas@co.skagit.wa.us)  
Skagit County Public Health  
700 S Second Street, Room 301  
Mt Vernon, WA 98273  
(360) 416-1521

5. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this agreement.
6. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agree to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to Whatcom County by reason of entering into this agreement as expressly provided herein.
7. TERMINATION: Any party hereto may terminate this agreement upon (30) days notice in writing either personally delivered or mailed to the party's last known address for the purposes of giving notice under this paragraph. If this agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
8. CHANGES, MODIFICATIONS, AMENDMENTS, OR WAIVERS: The agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this agreement shall not be considered a waiver of any prior or subsequent breach.
9. SEVERABILITY: In the event of any term or condition of this agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this agreement are declared severable.

10. ENTIRE AGREEMENT: This agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.
11. OTHER PROVISIONS: Skagit County will comply with all applicable Federal and State requirements that govern this agreement.
12. This agreement has been approved and authorized by the governing bodies of Skagit and Whatcom and each party represents that the persons executing this Agreement have been authorized to do so on or behalf of the public entity referenced below.
13. This Agreement shall be posted or recorded by Whatcom required by RCW 39.34.040.

**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

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2021, before me personally appeared Satpal 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  
Bellingham. My commission expires \_\_\_\_\_.

**CONTRACTOR INFORMATION:**

Skagit County Public Health  
700 S Second Street, Room 301  
Mount Vernon, WA 98273

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

\_\_\_\_\_  
Ron Wesen, Chair

\_\_\_\_\_  
Kenneth A. Dahlstedt, Commissioner

Attest:

\_\_\_\_\_  
Lisa Janicki, Commissioner

\_\_\_\_\_  
Clerk of the Board

For contracts under \$5,000:  
Authorization per Resolution R20030146

Recommended:

\_\_\_\_\_  
County Administrator

\_\_\_\_\_  
Department Head

Approved as to form:

\_\_\_\_\_  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

\_\_\_\_\_  
Risk Manager

Approved as to budget:

\_\_\_\_\_  
Budget & Finance Director

**EXHIBIT "A"**  
(COMPENSATION)

- I. **Budget & Source of Funding:** The source of funding for this contract, in an amount not to exceed \$27,000, is the Youth Marijuana Prevention and Education Contract with the Washington State Department of Health. The budget for this work is as follows:

<b>Contract Budget 07/01/2021 – 06/30/2022</b>		
<b>*Item</b>	<b>Documentation required with invoice</b>	<b>**Budget</b>
Personnel	Expanded GL Report	\$10,500
Advertising		\$7,500
Travel & Training	For travel, training and conference expenditures, mileage will be reimbursed at the current Federal rate. Ground transportation, coach airfare and ferries will be reimbursed at cost when accompanied by receipts. Lodging and meal costs are not to exceed the U.S. General Services Administration Domestic Per Diem Rates ( <a href="http://www.gsa.gov">www.gsa.gov</a> ), specific to location. Reimbursement requests for allowable travel, training and membership expenses (including conference/training registration fees) must be accompanied by receipts or vendor invoices. Receipts for meals are not required. Mileage records, including the name of the staff member, date of travel, starting point and destination of travel, the number of miles traveled, the per mile reimbursement rate, and a brief description of the purpose of travel, are required for mileage reimbursement.	\$2,000
Supplies & Materials	Expanded GL Report	\$500
Subcontracted Services	Copy of sub-contracts, invoices and payments.	\$2,000
<b>Subtotal</b>		<b>\$22,500</b>
Administration	20% - Copy of approved indirect cost plan required for 20%; if not received, 10% will be the maximum allowed.	\$4,500
<b>TOTAL</b>		<b>\$27,000</b>

1. \*Contractor may transfer funds between line items with prior County approval.
2. \*\*Budget adjustments that total ten percent (10%) or more - need approval at least 15 days prior to expending adjusted budget items.
3. Contractor may be required to submit a spend-down plan to the County if the following budget spending guidelines are not met: 50% by January 1, 2022, 75% by April 1, 2022 and 90% by June 1, 2022. If a spend-down plan is submitted and not carried through, it will be considered in future funding decisions.

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 20<sup>th</sup> day of the month following the month of service. Invoices submitted for payment must include sufficient documentation to prove the validity of all costs



claimed. A general ledger report of costs claimed toward this project will be sufficient for invoicing this agreement. Whatcom County reserves the right to request further back-up documentation for any costs claimed for reimbursement. Equipment purchases are not an allowable expense. Food and incentive purchases must follow DOH YMPEP guidelines.

2. The Contractor shall submit invoices to *(include contract/PO #)* [HL-BusinessOffice@co.whatcom.wa.us](mailto: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: AB2021-394

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<b>File ID:</b>	AB2021-394	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/30/2021	<b>Entered by:</b>	AReynold@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Report		
<b>Assigned to:</b>	Council Criminal Justice and Public Safety Committee				<b>Final Action:</b>
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Report from District Court Probation Department

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Annual Report from District Court Probation

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### HISTORY OF LEGISLATIVE FILE

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



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-395

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<b>File ID:</b>	AB2021-395	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/01/2021	<b>Entered by:</b>	CStrong@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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

### **TITLE FOR AGENDA ITEM:**

Discussion and periodic update of the Shoreline Management Program

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Periodic update of Whatcom County's Shoreline Management Program, which includes amendments to the Whatcom County Comprehensive Plan (shoreline and other policies), WCC Titles 23 (shoreline regulations) and 22 (permitting procedures), WCC Chapter 16.16 (critical areas regulations), and the official Shoreline Map. Additionally, the project addresses Council's docketed items 1) PLN2019-00011, a directive to amend the Comp Plan and codes to allow the seasonal extraction of sand and gravel from dry upland areas under certain conditions (but has been found to be unnecessary); and 2) PLN2018-00010, the addition of a Sustainable Salmon Harvest Goal policy to the Comp Plan.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Staff Report to Planning Commission, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit H, Exhibit I, Exhibit J

**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

DATE: June 29, 2021  
TO: The Honorable County Council  
FROM: Cliff Strong, Senior Planner  
THROUGH: Mark Personius, Director  
RE: Review of Shoreline Management Program Periodic Update 2020

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### Meeting Goal

On July 13<sup>th</sup> staff will present to the Committee of the Whole an overview of the SMP Periodic Update. We know your packet contains a lot of material and do not expect you to have read everything by then, nor even formulated questions or discussion points. Our aim for this meeting is to orient you to the materials so that you can be as productive in your review as possible.

### What to Expect in the Next Few Months

Though the Planning Commission has concluded its review (see Planning Commission Review, below), the Department of Ecology is currently performing its formal review of the draft documents and we've been told that we cannot start the Council's formal review until we receive their comments. We expect those within the next few weeks (maybe even before 7/13), but will need to address any comments prior to bringing it to you. We expect that we can start Council workshops in August to discuss the amendments in more detail. We are supposed to have the update finalized by June 30, 2021<sup>1</sup>. However, Ecology understands that we lost time due to the pandemic and there will be no penalty for adopting after that date as long as we are diligently progressing.

In the meantime, we recommend that the Council start reading the documents in preparation for your workshops. We would suggest starting with the staff report to the Planning Commission, as it outlines the proposed policy changes.

### Purpose of the Periodic Update

Whatcom County (County) is undertaking a periodic review of its Shoreline Management Plan (SMP), as required by the Washington State Shoreline Management Act, RCW 90.58.080(4). The Shoreline Management Act (SMA) requires each SMP be reviewed, and revised if needed, on an eight-year schedule established by the state Legislature. The review ensures the SMP stays current with changes in laws and rules, remains consistent with other County plans and regulations, and is responsive to changed circumstances, new information and improved data.

This periodic update will focus on reviewing relevant legislative updates since 2007 and incorporating any applicable amendments; ensuring consistency with regulations for critical areas and flood hazard areas; and improving the overall functionality of the SMP for use by applicants and staff.

### Update Parameters

This periodic update is not required to: re-evaluate the ecological baseline that was established as part of the 2007 comprehensive update; extensively assess no net loss criteria other than to ensure that proposed amendments do not result in degradation of the baseline condition; or change shoreline jurisdiction or environment designations, unless deemed appropriate and necessary by the County.

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<sup>1</sup> June 30, 2020 by law, but obtaining the grant from DOE provided us an additional year.

The primary requirement of the periodic update process is to ensure that the SMP remains consistent with updates to the legislative requirements of the SMA. The Washington State Department of Ecology (Ecology) provides a list of legislative amendments which have taken effect between 2007 and 2017 as a Periodic Review Checklist. In general, mandatory changes to the draft SMP are minor in nature. The majority of them address revised rules with regard to SMP applicability, including updated exemption thresholds and definitions.

The periodic update process also provides an opportunity to review the SMP for consistency with the County's Comprehensive Plan and development regulations, including critical areas regulations. The County's current SMP regulates critical areas in the shoreline jurisdiction by adopting by reference as part of the SMP the County's CAO as adopted in 2017 (Ordinance No. 2017-077) and codified in Chapter 16.16 of the WCC.

The periodic review process also represents an opportunity to revise and improve the overall functionality, clarity, and usability of the SMP, for both the public and County staff. This includes clarifying permit processes and requirements, improving the overall organization and clarity of the document, and ensuring consistency with Title 20 (zoning) and Title 21 (Land Use & Development).

### **Project Scope**

In starting out this project, staff compiled ideas for amendments from various sources (see Public Outreach, below) and compiled them into a list that the Planning Commission and Council reviewed and adopted as the "Scoping Document." This set the "bookends" for what staff would work on (and by corollary, what we would not work on). It contains a list of 22 topic areas, with 68 specific issues to address. A link to that document can be found below under "Documents." Staff understands that through the review process other ideas may arise, but if they are big issues that need a lot of work to accomplish, we will not be able to take them on and meet our update deadline.

### **Public Outreach**

The County has and will continue to provide multiple opportunities for public participation throughout the process using a variety of communication tools to inform the public and encourage participation. This includes our SMP Update website (<http://www.co.whatcom.wa.us/3097/Shoreline-Master-Program-Periodic-Update>), a list-serve, news releases, public notices, and open houses.

The early months of the project were used to gather input and outline the extent of the review; three public open houses were held in different parts of the County to illicit amendment ideas<sup>2</sup>. The County Council then reviewed and adopted a final scope of potential amendments based on input from the public, local jurisdictions, tribes, other stakeholders, and staff.

Based on the scope, County staff and consultants drafted amendments to the County's SMP. These draft amendments were issued for two 30-day public review periods: the first from August 18 to September 18, 2020, and the second from March 12 to April 12, 2021.

### **Planning Commission Review**

The County used the optional joint-review process for SMP amendments, which allows for a joint state-local comment period and public hearing (WAC 173-26-104). County staff coordinated with the Washington State Department of Ecology on public notification of the comment periods and hearing. Their staff also participated in the Planning Commission's hearing.

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<sup>2</sup> Note: Though we had planned on holding three additional open houses to present the draft to the public, due to the COVID-19 pandemic we had to cancel those and rely on electronic review.

On March 13<sup>th</sup>, the Commission voted unanimously to recommend to the Council approval of the draft documents with the motion:

“After holding 11 work sessions and a joint public hearing with the Department of Ecology wherein the Planning Commission reviewed and amended the draft documents based on public comment, and based on the draft Finding of Facts and Conclusions included in the staff report, the Planning Commission recommends that the Council adopt the 2020 Shoreline Management Program Periodic Update, including exhibits:

- A – CompPlan Ch. 10 Environment
- B – CompPlan Ch. 11 Shorelines
- C – CompPlan Ch. 8 Marine Resource Lands
- D – WCC Title 23 Shoreline Regulations
- E – WCC Title 22 Shoreline Permitting
- F – WCC 16.16 Critical Areas Regulations
- G – Shoreline Map
- I – No Net Loss Addendum
- J – Shoreline Restoration Addendum

This also includes Council’s docketed items:

- 1) PLN2019-00011, a directive to amend the CompPlan and codes to allow the seasonal extraction of sand and gravel from dry upland areas under certain conditions, which both the Mineral Resources Advisory Board and the Commission have been found to be unnecessary as such use is already allowed under current code; and,
- 2) PLN2018-00010, the addition of Policy 10L-19 supporting the establishment of a Sustainable Salmon Harvest Goal to CompPlan Ch. 10.”

## **Documents**

**To Review** (provided in your packet):

- Staff Report to the Planning Commission
- Exhibit A – CompPlan Ch. 10 Environment
- Exhibit B – CompPlan Ch. 11 Shorelines
- Exhibit C – CompPlan Ch. 8 Marine Resource Lands
- Exhibit D – WCC Title 23 Shoreline Regulations
- Exhibit E – WCC Title 22 Shoreline Permitting
- Exhibit F – WCC 16.16 Critical Areas Regulations
- Exhibit G – Shoreline Map
- Exhibit H – Table of public comments on the 1<sup>st</sup> draft, with staff responses
- Exhibit I – No Net Loss Addendum
- Exhibit J – Shoreline Restoration Addendum

**Background Documents** (online at <http://www.co.whatcom.wa.us/3119/SMP-Update-2020-Documents>):

It’s not necessary to read these, but if you’re interested,

- 2020 SMP Update Scoping Document
- Materials from the 2007 Comprehensive Update:
  - Vol. 1 - Inventory and Characterization Report
  - Vol. II - Scientific Literature Review
  - Vol. III - Restoration Plan

- Vol. IV - Cumulative Effects Analysis

All documents are available on PDS's SMP Update webpage

(<http://www.co.whatcom.wa.us/3097/Shoreline-Master-Program-Periodic-Update>) and at our office.

## How to Review the Documents

Before reading the edited documents, please note the following:

- This is a very complicated set of amendments. Staff has been tracking at least three other code amendment proposals, some of which have been decided on by Council prior to your review of this update but some have not been (e.g., the Cherry Point Fossil Fuel amendments). Each has the potential to change what needs to be shown as existing language in this set of amendments and staff will continue to merge upcoming actions into these documents as they occur.
- At first glance it sure looks like we're proposing to change a lot. And we are; however, as explained in more detail below, the majority of the strikeout/underlining is due to reorganizing, moving, or streamlining the text.
- The Department of Ecology is currently performing their "formal" review of the draft documents, after which they will send comments. Some of these comments may be recommendations, but others may be required. We anticipate that they will send us these comments sometime in July, after which we may need to make additional changes.
- We have tried to flag all bigger policy changes with "Policy Change" shown in the comment bubbles, with an explanation for the change or a reference to the item number from the Scoping Document.
- In some instances where text was moved from one section to another, Word's review function marked the text with double strikeout/underline. However, in other instances it marked it with single strikeout/underline, usually indicating deleted/new text. Unfortunately this is an automatic function in Word and we have no control over how it operates. However, we've tried to flag where text was only moved.
- There are some comment bubbles that start "To do:" These have to do with checking cross-references or text that may change due to other code amendments in the process of being acted upon by the Council. These "to do" comments can be ignored for now, as these are reminders to us staff regarding items that may still need to be changed once (and if) the other amendments are adopted.
- If you have comments, please provide the section and subsection number so we know which section you're commenting on. Page and line numbers will change as the documents are amended by Council, so citing them doesn't always work.

## Overview of Proposed Amendments

The various amendments are found in different parts of the Whatcom County Comprehensive Plan and Code. These include:

### Whatcom County Comprehensive Plan (Shoreline Policies) (Exhibits A & B)

One of the biggest changes was to reorganize the SMP to shorten it and make it easier to use. One of the ways we're doing this is to move the SMP policies into the Comprehensive Plan. The SMP was already adopted by reference as part of the CompPlan; it just wasn't contained in it. However, in modern code construction, code normally doesn't contain policies (or appendices) as our current Title 23 does. Staff has now created a new Chapter 11 of the CompPlan entitled "Shorelines." We have



moved all the SMP policies from Title 23 as well as related policies from Chapter 10, Environment, to this chapter, putting all the shoreline policies into one place.

Thus, the amendments to Chapter 10 are mostly showing the deletion of policies that are moving to Chapter 11. However, there is one additional policy proposed to be added to Chapter 10, Policy 10L-19. Adding this policy is not a part of the SMP Update per se. Rather, it is a policy the Council expressed in interest in adding in support of the fisheries co-manager's Sustainable Salmon Harvest Goal. Adding such a policy was placed on the docket by Council in 2018 (#PLN2018-00010). Rather than process its addition as a separate CompPlan amendment (which is a lengthy process), staff is proposing to add it while we're already amending the CompPlan for the SMP Update.

### **Whatcom County Comprehensive Plan (Marine Resource Lands) (Exhibit C)**

A few years ago there was a proposal by the Marine Resources Committee to add to the CompPlan a section addressing marine resource lands. The Planning Commission actually held an earlier public hearing on the matter and recommended that Council adopt the amendments. However, when it got to Council, they chose not adopt it at that time; rather, they directed staff to include consideration of the proposal in the SMP update. Thus, we are again including for its consideration.

### **WCC Title 23, Shoreline Management Program (Shoreline Regulations) (Exhibit D)**

This Title contains the bulk of the regulations pertaining to use, development, and modification of the shoreline. In general:

1. *Shoreline Policies* – We removed the shoreline policies and moved them to the Comprehensive Plan.
2. *Permitting Procedures* – We moved the permitting procedures from Title 23 to Title 22. Over the past few years numerous code amendments have done the same with other parts of the Whatcom County Code, and this is a continuation of that practice. Our goal is to have all the permitting requirements in one title, rather than spread throughout various titles and chapters. Additionally, the permitting procedures are not part of what the Department of Ecology has jurisdiction over, and having them in Title 22 makes that clearer. Additionally, our standard permitting procedures cover much of the shoreline permitting procedures, so we were able to reduce redundancies by referring to existing procedures. Some shoreline permitting procedures, however, are unique to those types of permits, so we've also created a new chapter of Title 22, Chapter 22.07, Additional Requirements for Shoreline Permits and Exemptions.
3. *Reorganization* – We reorganized the remaining regulations, removing redundant text, simplifying and consolidating language, removing appendices and incorporating any regulations contained therein, and replacing outdated staff titles with the official ones. And similar to other code amendments in the past few years we are also trying to consolidate all of our definitions, with the eventual goal of having all definitions in one chapter or title of the WCC and making sure they're consistent throughout.
4. *Regulatory Changes* – While there are some proposed substantive changes in the regulations, there are not as many as it would appear based on the amount of strikeout/underlining shown; most of that is due to the above actions. Where substantive regulatory changes are proposed, we have included "comment bubbles" indicating such, and why. In future staff memos we will map out where the potential amendments from the Council-approved scoping report can be found.

**WCC Title 22, Land Use and Development (Permitting Requirements) (Exhibit E)**

As mentioned above, we are proposing to move all the permitting requirements to WCC Title 22 (Land Use & Development). Where the permitting regulations are the same as for our non-shoreline project permit procedures, we have relied on and refer to existing language in Chapter 22.05 (Project Permits). However, there are some differences in some of the requirements, and have thus created a new chapter 22.07 (Additional Requirements for Shoreline Permits and Exemptions) to address those differences.

**WCC Chapter 16.16, Critical Areas Regulations (Exhibit F)**

Chapter 16.16 is considered part of the SMP, as it is adopted by reference therein. As such, it too must be consistent with the Shoreline Management Act in regards to regulating critical areas within the shoreline jurisdiction. Thus, we have reviewed it for consistency and are proposing some policy changes to ensure continued consistency. However, while we're amending it for this reason, staff is also taking the opportunity to propose other, non-SMP related amendments to address issues that have arisen since it was last updated. A list of these will be presented in a future staff memo.

# **Whatcom County Planning & Development Services Staff Report**

## **Shoreline Management Program Periodic Update 2020**

### **I. File Information**

**File #:** PLN2020-00006, PLN2019-00011, & PLN2018-00010

**File Name:** Shoreline Management Program Periodic Update 2020

**Applicant:** Whatcom County Planning and Development Services (PDS)

**Project Summary:** Periodic update of Whatcom County's Shoreline Management Program, which includes amendments to the Whatcom County Comprehensive Plan (shoreline and other policies), WCC Titles 23 (shoreline regulations) and 22 (permitting procedures), WCC Chapter 16.16 (critical areas regulations), and the official Shoreline Map. A list of proposed amendments, and how the draft addresses them, is attached. Additionally, the project addresses Council's docketed items 1) PLN2019-00011, a directive to amend the CompPlan and codes to allow the seasonal extraction of sand and gravel from dry upland areas under certain conditions (but has been found to be unnecessary); and 2) PLN2018-00010, the addition of a Sustainable Salmon Harvest Goal policy to the CompPlan.

**Location:** Countywide.

**Staff Recommendation:** Approve, though it should be noted that staff still recommends that the maximum impact area allowed through a Reasonable Use Exception be 2,500 sq. ft., rather than the 4,000 allowed in the existing code (Exhibit F, §16.16.270(C)(12)).

### **II. Background**

Whatcom County (County) is undertaking a periodic review of its Shoreline Management Program (SMP), as required by the Washington State Shoreline Management Act, RCW 90.58.080(4). The Shoreline Management Act (SMA) requires each SMP be reviewed, and revised if needed, on an eight-year schedule established by the state Legislature. The review ensures the SMP stays current with changes in laws and rules, remains consistent with other County plans and regulations, and is responsive to changed circumstances, new information and improved data.

The County adopted its current SMP in 2007 (Ordinance No. 2007-017; approved by Ecology in 2008) through a comprehensive update process, which included an inventory and characterization of shoreline land use and ecological conditions (otherwise known as the "baseline condition"), a shoreline restoration plan, and an evaluation of cumulative impacts to ensure implementation of the SMP would result in no net loss of shoreline ecological functions.

Since then, the Council has amended the SMP numerous times, though those amendments were fairly minor in nature, addressing specific issues. The SMP was most recently amended in 2019 to adopt by reference the 2017 Critical Areas Ordinance (CAO).

## Periodic Update Requirements

The primary requirement of the periodic update process is to ensure that the SMP remains consistent with updates to the legislative requirements of the SMA. The Washington State Department of Ecology (DOE) provides a list of legislative amendments which have taken effect between 2007 and 2017 as a Periodic Review Checklist.

The periodic update also provides an opportunity to review the SMP for consistency with the County's Comprehensive Plan and development regulations, including critical areas regulations. The County's SMP regulates critical areas in the shoreline jurisdiction by adopting by reference as part of the SMP the County's CAO as adopted in 2017 (Ordinance No. 2017-077) and codified in Chapter 16.16 of the WCC.

The County's Comprehensive Plan and other development regulations were also reviewed for consistency with the SMP, and amendments are being proposed to maintain consistency.

The periodic review process also represents an opportunity to revise and improve the overall functionality, clarity, and usability of the SMP for both the public and County staff. This includes clarifying permit processes and requirements and improving the overall organization and clarity of the documents. The majority of amendments shown in the documents are to achieve this goal.

Note that this periodic update is not required to: re-evaluate the ecological baseline that was established as part of the 2007 comprehensive update; extensively assess no net loss criteria other than to ensure that proposed amendments do not result in degradation of the baseline condition; or change shoreline jurisdiction or environment designations, unless deemed appropriate and necessary. And doing so was not included in the scope or budget for this update, so staff has not undertaken any amendments that would require such actions. A link to those 2007 documents can be found below under "Attachments."

## Project Scope

In starting this project, staff compiled ideas for amendments from various sources (see Public Outreach, below) and compiled them into a list that the Planning Commission and Council reviewed and adopted as the "Scoping Document." This set the "bookends" for what staff would work on (and by corollary, what we would not work on). It contains a list of 22 topic areas, with 68 specific issues to address. A link to that document can be found below under "Attachments."

Staff understands that through the review process other ideas may arise, but if they are big issues that need a lot of work to accomplish, we will not be able to take them on and meet our update deadline of June 30<sup>th</sup> or stay within budget.

## Public Outreach

The County has provided multiple opportunities for public participation throughout the process using a variety of communication tools to inform the public and encourage participation. This included our SMP Update website (<http://www.co.whatcom.wa.us/3097/Shoreline-Master-Program-Periodic-Update>), a list-serve, news releases, public notices, open houses, and public work sessions with the Planning Commission and County Council.

The early months of the project were used to gather input and outline the extent of the review; three public open houses were held in different parts of the County to illicit amendment ideas<sup>1</sup>. Both the

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<sup>1</sup> Note: Though we had planned on holding three additional open houses to present the draft to the public, due to the COVID-19 pandemic we had to cancel those and rely on electronic review.

Planning Commission and the County Council then reviewed and adopted a final scope of potential amendments based on input from staff, the public, local jurisdictions, tribes, and other stakeholders.

Based on that scope, County staff and consultants drafted amendments. These draft amendments were issued for a 30-day public review period from August 18 – September 18, 2020, before the Planning Commission’s work sessions. Prior to the Planning Commission’s hearing the revised amendments were reissued for another 30-day public review period, from March 12 – April 12, 2021.

### **Planning Commission Review**

Between October 2020 and April 2021 the Planning Commission held nine public work sessions to review the draft amendments. After a second 30-day public review period they then held a joint Planning Commission/Department of Ecology public hearing on April 22, 2021.

### **County Council/Department of Ecology Review**

Staff expects that the Council will hold multiple work sessions and an additional public hearing prior to adoption. By state law, the SMP update was supposed to be adopted by June 30, 2020; however, as a DOE grant recipient (and in part due to the pandemic) our official deadline is now June 30, 2021. Staff anticipates that Council will provisionally adopt the update via resolution forwarding it to DOE for their final review and approval. After we receive DOE’s approval, Council will then need to adopt an ordinance adopting and effecting the update. If the anticipated schedule is kept, the revised SMP should become effective sometime this Fall.

### **Attachments**

*To Review (provided in your packet):*

- Exhibit A – CompPlan Ch. 10 Environment
- Exhibit B – CompPlan Ch. 11 Shorelines
- Exhibit C – CompPlan Ch. 8 Marine Resource Lands
- Exhibit D – WCC Title 23 Shoreline Regulations
- Exhibit E – WCC Title 22 Land Use & Development
- Exhibit F – WCC 16.16 Critical Areas Regulations
- Exhibit G – Shoreline Map
- Exhibit H – Table of public comments, with staff responses
- Exhibit I – No Net Loss Addendum
- Exhibit J – Shoreline Restoration Addendum

*Background Documents:*

- 2020 SMP Update Scoping Document
- Materials from the 2007 Comprehensive Update:
  - Vol. 1 - Inventory and Characterization Report
  - Vol. II - Scientific Literature Review
  - Vol. III - Restoration Plan
  - Vol. IV - Cumulative Effects Analysis

All documents are available on PDS’s SMP Update webpage at <http://www.co.whatcom.wa.us/3119/SMP-Update-2020-Documents>.

### III. Amendments

The proposed amendments are found in Exhibits A through G. Please refer to those attachments; explanations are provided therein. Following, however, is a list of proposed policy changes.

#### Scoped Amendments

This is the list of items Council directed staff to address, and how we did. Topic #s refer to the topic number assigned in the Scoping Report.

#### Topic #1, Consistency with State law (required amendments)

- a) **Revise language to cite updated substantial development cost threshold or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

Every five years the Office of Financial Management (OFM) recalculates the dollar threshold for projects qualifying as exempt from having to obtain a substantial development permit. Thus, in §22.07.020(B)(1) (Exhibit E), we have updated the dollar amount to the most recent (2017) OFM calculation of \$7,047. Additionally, we have revised the definition of “substantial development” in §23.60.190 to better meet the state definition (Exhibit D).

- b) **Revise the definition of “development” to clarify that development does not include dismantling or removing structures.**

The definition of “development” has been updated to meet DOE guidelines (Exhibit D, §23.60.040(6)).

- c) **Add reference to statutory exceptions to local review to the SMP. Revise or remove existing references to remedial actions and projects certified pursuant to RCW 80.50 to clarify their status as exceptions to local review under the SMA.**

The requisite language has been added (and revised) to §22.07.010(G) (Exhibit E) to clarify the referenced project types’ status as exceptions to local review under the SMA, and deleted from (old) §23.50.060 (Exhibit D).

- d) **Revise language to include a shoreline permit exemption for retrofitting existing structures to comply with the ADA or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

The requisite language has been added as §22.07.020(B)(17) (Exhibit E).

- e) **Revise language in the SMP to cite the updated cost thresholds for dock construction or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

§22.07.020(B)(8) has been revised to meet the statutory requirements (Exhibit E) and the cost threshold has been deleted from the definition of “substantial development” in §23.60.190 (Exhibit D).

- f) **Revise the SMP aquaculture provisions for consistency with WAC 173-26-241(3)(b).**

§23.40.050, in particular subsections (D)(1) and (G), has been revised to be consistent with WAC 173-26-241(3)(b) regarding commercial geoduck farming. (Exhibit D)

- g) Revise the SMP to clarify that the effective date of SMP amendments is 14 days from notice of final approval by Ecology.**

Both §23.05.090 (Effective Date) and §23.10.030(C)(2) (Administrative Duties) have been updated to clarify that the effective date of SMP amendments is 14 days from notice of final approval by Ecology (Exhibit D).

- h) Review the SMP for consistency with 2003 SMP Guidelines and make any necessary changes.**

Numerous amendments are proposed to make our SMP consistent with the SMP Guidelines; too many to list here. However, prior to submitting to DOE for approval, staff will complete the SMP checklist for their use.

## **Topic #2, Consistency with State law**

- a) Revise the SMP for consistency with Ecology's updated permit filing procedures.**

The requirements for filing permits with DOE have been updated in §22.07.060 (Filing Shoreline Permits with the Department of Ecology) (Exhibit E).

- b) Revise language to clarify that forest practices that involve only timber cutting are not SMA "developments" and do not require Shoreline Substantial Development Permits.**

§23.40.110 (Forest Practices), subsection (A)(3) has been added to clarify that forest practices that involve only timber cutting are not SMA "developments" and do not require Shoreline Substantial Development Permits. (Exhibit D)

- c) Revise language in §23.50.040 to clarify that the SMA does not apply to lands under exclusive federal jurisdiction.**

Subsection (E)(1) has been added to §23.10.020 (Applicability, which used to be §23.50.040) to clarify that the SMA does not apply to lands under exclusive federal jurisdiction. (Exhibit D)

- d) Update definitions to include distinct definitions for "nonconforming use," "nonconforming structure," and "nonconforming development" in accordance with WAC 173-27-080.**

The definitions of "nonconforming lot" (§23.60.140(5)) and "nonconforming use" (§23.60.140(7)) have been amended, and a new definition of "nonconforming structure" (§23.60.140(6)) has been added, to conform to WAC 173-27-080. (Exhibit D)

- e) Define special procedures for WSDOT projects per WAC 173-27-125.**

Subsection (1)(c) has been added to §22.05.130 (Permit Review Time Frames) to define special procedures for WSDOT projects. (Exhibit E)

- f) Incorporate a reference to WAC 173-27-215 for criteria and procedures for instances in which a shoreline restoration project creates a shift in OHWM.**

A reference to WAC 173-27-215 for criteria and procedures for instances in which a shoreline restoration project creates a shift in OHWM has been added as §23.40.180(A)(3) (Restoration and Enhancement) (Exhibit D).

- g) Revise definition of "Floodway" for complete consistency with Ecology's recommended language.**

The definition of "floodway" has been amended to be consistent with DOE's recommended language. (§23.60.060(21), (Exhibit D))



**h) Update the list and maps of streams and lakes that are in shoreline jurisdiction as necessary.**

The list of waters that are in the shoreline jurisdiction has been revised in §23.20.010(B) (Shoreline Jurisdiction), using the language from the WAC 90.58.030 (2)(d). (Exhibit D)

**i) Revise the SMP to include the required provisions in WAC 90.58.140(12).**

§23.40.080 (Dredging and Dredge Material Disposal), subsection (B)(4)(b) has been added to clarify that dredge material disposal at an open water disposal site approved through the Dredged Material Management Program (RCW 79.105.500) is allowed and shall not require a shoreline permit. (Exhibit D)

**Topic #3, Consistency with WCC Ch. 16.16 (Critical Areas)**

**a) Ensure Council changes in Ch. 16.16 regarding standards for view preservation are reflected in the SMP.**

§16.16.235(5) (Activities Allowed with Notification) of the critical areas regulations (Exhibit F) allows for view corridors to be created and maintained (though certain restrictions apply). Subsection (L) has been added to §23.30.030 (Views and Aesthetics) (Exhibit D) that acknowledges and cross-references this allowance (except for in the Natural shoreline environment).

**Topic #4, Consistency with Land Use procedures (Title 22)**

**a) Update SMP to align with recently adopted Title 22 permit procedures.**

In keeping with placing all land use permitting procedures in one place (Title 22) started a couple of years ago, all shoreline permitting procedures in Title 23 (Exhibit D) are being moved to Title 22 (Exhibit E). Where processes overlap with PDS's other project permit types, we refer to and rely on (slightly modified) existing language (Ch. 22.05). However, shoreline permits also have requirements unique to them, so have supplemented the processing rules with a new Ch. 22.07 (Additional Requirements for Shoreline Permits and Exemptions).

**Topic #5, Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173-26)**

**a) Clarify permit review no net loss analysis**

The primary regulations ensuring no net loss are:

- §23.10.040(A) (Code Interpretation) requires that the regulations be interpreted to allow development only when a proposal is "designed, constructed, and/or mitigated to provide no net loss of or a net lift to ecological functions and ecosystem wide processes." (Exhibit D)
- §23.30.010(B) (Ecological Protection) requires that "any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes." (Exhibit D)
- §23.60.140(4) (Definition) defines what no net loss means. (Exhibit D)
- §16.16.250(2) (Critical Areas Review Process) requires that applicants demonstrate no net loss to the Director's satisfaction in order to approve a critical areas review (and thus, a project permit). (Exhibit F)
- §16.16.260(C) General Mitigation Requirements allows for alternative mitigation options in order to provide the greatest ecological benefit... to achieve no net loss of ecological functions. (Exhibit F)
- §16.16.260(G) requires that mitigation plans demonstrate no net loss. (Exhibit F)

However, the term is also used in numerous other sections as a reminder of this requirement.

**b) Clarify development mitigation requirements.**

The mitigation standards have been clarified in the following sections as described:

- §16.16.260 (General Mitigation Requirements):
  - Subsection (B) now contains text describing what information the Director may use in determining the extent and type of mitigation required. This text had been found repeated in various Articles of Ch. 16.16, so we've moved it to the overall mitigation section.
  - Subsection (C) is a new policy that will allow for off-site mitigation when it's better for the environment. In the past several years of processing permits, staff has found that the best overall solution is not necessarily "on-site and in-kind" mitigation, since sometimes there's not enough room, or that the mitigation is in a place that can't be guaranteed to remain after the initial 5-year monitoring period. Under this new policy, though the preference is still for "on-site and in-kind" (subsection (1)), off-site and in-kind mitigation may be allowed when the applicant demonstrates that greater biological and/or hydrological functions and values will be achieved (subsection (2), or on-site and out-of-kind mitigation may be allowed when the applicant demonstrates an ecological uplift of biological and/or hydrological functions and values will be achieved (subsection (3). Subsections (4) and (5) also point to our already existing use of Alternative Mitigation Plans and Mitigation Banking.
  - Like subsection (B), subsections (D) and (E) have been moved from the more specific critical areas rules (habitat conservation areas) to the more general so as to apply more broadly.
  - Subsection (G)(3) has been moved from §23.30.010 (Ecological Protection). This text puts the burden on the applicant "demonstrate that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts and results in no net loss of shoreline and critical area ecological functions." Since WCC Ch. 16.16 (Critical Areas) is considered a part of the Shoreline Management Program, staff thought it more fitting that all the rules for mitigation plans be in one place.
- §16.16.680 (Wetlands – Mitigation Standards)
  - Certain sections that we moved to §16.16.260 (General Mitigation Requirements) have been deleted, since the general now covers the specific.
  - To account for temporal loss of functions, in subsection (C) staff is proposing to amend the wetland buffer<sup>2</sup> mitigation ratio from a standard 1:1 (subsection (C)(1)) to a range of ratios depending on when the mitigation is implemented (subsection (4)) (including at a double ratio for those who don't initially get permits (subsection (c)) and the mitigation is provided long after the impact. This section now mimics the HCA mitigation standards (§16.16.760(E)(3)).
- §16.16.740 (Habitat Conservation Area Buffers). Apart from the clarifying amendments, staff is proposing to modify:
  - Subsection (B) (Habitat Conservation Areas Buffer Widths), which includes Table 4. The mitigation schema in Table 4 moves us from an older system of classifying water types and

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<sup>2</sup> Note that the ratios for *wetland* mitigation (Table 2, which are from DOE guidance) are not proposed for amendment.

buffer widths to the newer WDFW water-typing system. Though we had already adopted this newer system in identifying surface waters of the state (16.16.710(C)((1)(a)), we had not followed through on using that nomenclature for the various types' buffer widths (the table didn't match the text). Table 4 corrects this. The buffer widths themselves are the same except for Type S – Freshwater. It is currently 150 feet, but staff is proposing to increase it to 200 feet, which is the federal court's recommended width based on *National Wildlife Federation v. FEMA* (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472).

- §16.16.760 (Habitat Conservation Areas – Mitigation Standards)
  - Certain sections that we moved to §16.16.260 (General Mitigation Requirements) have been deleted, since the general now covers the specific.
  - We have added subsection (D) as a reminder to applications that the Army Corps of Engineer Regional General Permit 6 for inland marine waters may apply to their project(s). RGP-6 is a permit issued by the Corps that authorizes the construction of new residential in- and overwater structures in inland marine waters of Washington State while meeting the Endangered Species Act, though it has conditions on the construction.
  - Like with wetland buffer mitigation, we have added subsection (E)(3), doubling the mitigation ratio for those who don't initially get permits (subsection (c)) and the mitigation is provided long after the impact.
- §16.16.640 (Wetland Buffer Modification) and §16.16.745 (Habitat Conservation Area Buffer Modification). In Articles 6 (Wetlands) and 7 (Habitat Conservation Areas) staff is proposing to combine their respective buffer modification rules into one section for each Article, each covering the types of buffer modifications allowed (increase, averaging, reduction, and variance). For wetlands, we have also modified some of the text to be consistent with DOE guidance (Wetlands in Washington State, Volume 2, Appendix 8C, updated 2018).

**c) Align appeal procedures with State statutes.**

Subsection (3) has been added to §22.05.160 (Appeals) to align the County's shoreline permit appeals process with the state statutes. (Exhibit E)

**d) Shoreline permit review (Exemption, Substantial, Conditional Use, or Variance) should reflect State statutes and level of review required.**

The rules for shoreline permit review have been updated to meet state standards in Ch. 22.07. (Exhibit E)

**e) Align Use standards with State statutes.**

Staff is proposing numerous amendments throughout Ch. 23.40 (Shoreline Use and Modification Regulations) that we believe better aligns them with State statutes, in most cases using the language from the WAC. Furthermore, in the existing code Table 23.100.010 is fairly meager and many uses allowed or prohibited are included only in the text of the various use and modification categories, making it difficult to find them all. We have updated that table as Table 1 Shoreline Use by Environment Designation and moved all allowances and prohibitions from the text to the table, hopefully making it easier to see what one can or can't do in the various environment designations.

**f) Incorporate improved permit streamlining for priority salmon recovery projects**

§22.07.020 (Exemptions from Shoreline Substantial Development Permits) subsection (B)(16) already exempts projects whose primary purpose is to improve fish or wildlife habitat or fish passage. (Exhibit E)

**Topic #6, Climate Change/Sea Level Rise**

**a) Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations.**

Chapter 10 of the CompPlan (Exhibit A) already contains a section on Climate Change (starting on page 10-8), including Goal 10D and Policies 10D-1 through 10D-10. However, these are aimed at how the County should respond overall and are not specific to the shoreline itself.

Council's direction through the Scoping Document, recommended for approval by the Planning Commission, was to "develop and/or strengthen policies...", not regulations. Thus, staff has developed seven new policies specific to our management of the shoreline in light of anticipated impacts due to climate change (Exhibit B, C/P Ch. 11, Policies 11AA-1 – 11AA-7), including proposed Policy 11AA-5, which reads:

"Whatcom County should periodically assess the best available sea level rise projections and incorporate them into future program updates, as relevant"

This policy specifically addresses *"the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations."*

We understand that some folks would like to see more directive policies<sup>3</sup>, as well as actual regulations<sup>4</sup>; however, before adopting (and then implementing) something along those lines, we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.). As we mentioned when the Commission and Council were scoping this project, staff anticipates the development of the CoSMoS model on which the City of Bellingham and Whatcom County Public Works are working, which should provide the Best Available Science to Whatcom County. The policies being introduced would set us up for developing regulations once this model is completed.

It should also be noted that in reviewing development proposals, Planning and Development Services already requires structures to be built above the anticipated flood/sea level rise stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.

Nonetheless, this is a policy decision and all comments are being forwarded to the Planning Commission and Council for their consideration.

**Topic #7, Definitions**

**a) Add definitions for common words with a specific meaning in the SMP.**

In Ch. 23.600 (Exhibit D) we added many definitions of words that were undefined, amended others to meet current standards and/or to be consistent amongst Titles, and deleted those words already defined elsewhere but added the sentence to §23.60.005, "Any words not defined herein shall be defined pursuant to WWC Chapter 16.16 (Critical Areas) or Titles 20 (Zoning) or 22 (Land Use and Development), or their common meanings when not defined in code."

<sup>3</sup> See Exhibit H, Public Comments FW/WEC01, FW/WEC02, WCPW07, WCPW08, & RES03

<sup>4</sup> See Exhibit H, Public Comments FW/WEC12, FW/WEC21, WCPW08, WCPW09, WCPW10, & RES03.

**b) Add definitions for regional, local, and accessory utilities. Ensure consistency with Zoning.**

Said definitions have been added to §23.60.210(6). (Exhibit D)

**c) Define a single use dock and joint use dock.**

“Shared moorage” was already defined in §23.60.190. Additionally, definitions of all moorage types have been added to §23.60.130(17) “Moorage Structure.” (Exhibit D)

**Topic #8, Habitat**

**a) Reference WDFW and DNR’s Shore Friendly Program**

Staff has amended C/P Policy 11I-2 (Exhibit B) to reference this program as an example of “voluntary and incentive-based public and private programs.”

**b) Consider strengthening ecological connectivity and wildlife corridor requirements.**

§23.40.030 (General Shoreline Use and Modification Regulations), subsection J (which is existing language moved from elsewhere), already requires that buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to or from important habitat areas.

Apart from all the existing rules about maintaining connectivity in WCC Ch. 16.16 (Critical Areas) (Exhibit F), new rules to strengthen ecological connectivity and wildlife corridor requirements in that document include:

- In §16.16.225 (General Regulations), new subsection (C) has been added, requiring development proposals to maintain ecological connectivity and habitat corridors;
- In §16.16.255 (Critical Areas Assessment Reports) new subsection( C)(3) has been added, strengthening the requirement that connectivity be addressed in assessment reports;
- In §16.16.640 (Wetland Buffer Modification), subsection (A) allows the Director to increase wetland buffers to protect wetland functions and provide connectivity to other wetland and habitat areas;
- In §16.16.745 (Habitat Conservation Area Buffer Modification) subsection (A)(2) allows the Director to increase wetland buffers to protect wetland functions and provide connectivity when a Type S or F waterbody is (among other things) located within 300 feet of another Type S or F water body, a fish and wildlife HCA, or A Category I, II or III wetland;

**c) Consider ways to improve protections for salmon and forage fish habitat.**

Policy 11LL-4 in C/P Ch. 11 (Exhibit B) is proposed to be amended in support of this task by adding additional critical saltwater habitats to the list of where moorage structures ought to be avoided.

And while the protection of fish and wildlife habitat is already required throughout various sections of Title 23 (Exhibit D), additional language has been added in:

- §23.30.040 (Vegetation Management) has been amended to strengthen and better tie the protection and/or revegetation of native shoreline vegetation to the protection of salmon and forage fish habitat.
- In §23.40.060 (Marinas and Launch Ramps) (Exhibit D), subsection (E)(8) has been added to the standards requiring that boat launches be designed to minimize impacts to critical saltwater habitats.
- In §23.40.140 (Mining):

- Subsection (A)(3) now states that “Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.”
- Subsection (A)(6) has been added to prohibit “motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout” pursuant to RCW 90.48.615.
- Subsection (B)(1) has been added for consistency with WAC 173-26-241(3)(h), prohibiting mining waterward of the ordinary high-water mark of a river if it would cause a net loss of ecological functions of the shoreline.
- In §23.40.150 (Moorage Structures):
  - Subsections (A)(6) and (7) ( moved from the existing Boating Facilities section) prohibits moorage structures in certain shoreline habitats.
  - Subsections (B) & (C), having to do with construction and locational standards for moorage structures have been amended and augmented to meet current state and federal habitat protection requirements and guidance.
- In §23.40.190 (Shoreline Stabilization), subsection (A)(10) has been amended to prohibit hard shoreline stabilization in jurisdictional shoreline streams on estuarine shores, in wetlands, and in salmon spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.
- In §23.40.220 (Utilities), subsection (B)(5)(a) has been added, require that hydropower facilities shall be located, designed, and operated to minimize impacts to fish and wildlife resources.

Similarly, while the protection of fish and wildlife habitat is already required throughout various sections of WCC 16.16 (Critical Areas) (Exhibit F), in §16.16.255 (Critical Areas Assessment Reports) new subsection (C)(3) has been added, strengthening the requirement that impacts to salmon and forage fish habitat be address in assessment reports to improve protections for salmon and forage fish.

**d) Clarify functional disconnect standards for protection of Fish & Wildlife Habitat Conservation Areas**

The term “functional disconnect,” which many people have interpreted differently and is not widely used anymore, has been eliminated in §16.16.630(B) (Wetland Buffers) and §16.16.740 (Habitat Conservation Area Buffers), which now say, “Buffers shall not include areas of an existing, legally established substantially developed surface.”

**Topic #9, Layout and Structure of the SMP**

**a) Reorganize the SMP, putting the background information, discussions, and goals and policies into the Comprehensive Plan as a chapter**

One of the biggest changes was to reorganize the SMP to shorten it and make it easier to use. One of the ways we’re doing this is to move the SMP policies into the Comprehensive Plan. The SMP was already adopted by reference as part of the CompPlan; it just wasn’t contained in it. However, in modern code construction, code normally doesn’t contain policies (or appendices) as our current Title 23 does. Staff is proposing to create a new Chapter 11 of the CompPlan entitled “Shorelines” (Exhibit B). We have moved all the SMP policies from Title 23 (Exhibit D) as well as related policies from Chapter 10, Environment (Exhibit A), to this chapter, putting all the shoreline policies into one place. Thus, the amendments to Chapter 10 are mostly showing the deletion of policies that are moving to Chapter 11.

Most of the changes shown in C/P Ch. 11 (Exhibit B) are also in support of this effort. We have moved everything from Title 23 that appeared to be policy (rather than regulation) into this chapter. We’ve also

put it in the same format as other chapters of the CompPlan, struck redundancies, and corrected grammar and tenses. There are, however a few proposed new policies and/or amendments that we discuss below.

Another major organizational change is to move all permitting regulations to WCC Title 22 (Exhibit E). Title 22 was created a few years ago to eventually contain all of the County's procedures for land use permitting and code administration. However, moving sections to this Title is continuing to occur as we progress through various code amendments (e.g., the annual code scrub, upcoming code enforcement amendments, this SMP update, etc.).

Similarly, since WCC Chapter 16.16 (Exhibit F, Critical Areas) is adopted as part of the SMP, they are to be read together, and where there are redundancies between Ch. 16.16 and Title 23, we are proposing to delete those redundancies in Title 23 (Exhibit D).

**b) Simplify the language as much as possible and remove redundancies**

See response to 18.a.

**Topic #10, Nonconforming**

**a) Ensure consistency with Zoning, CAO, and SMP regarding nonconforming uses and structures.**

Staff has rewritten Chapter 23.50 (Nonconforming Uses, Structures, and Lots) to conform to the latest DOE guidance addressing nonconforming uses, development, and lots as separate issues. Additionally, definitions for each term have been added to §23.60.140. (Exhibit D)

In §16.16.275 (Nonconforming Uses, Structures, and Lots) (Exhibit F) two amendments are proposed to align this chapter with Title 20 (Zoning) and Title 23 (SMP):

- In subsection (B), the time within which an intentionally abandoned *nonagricultural* nonconforming use or structure may maintain its nonconforming status is changed from 5 years to 12 months, the same timeframe in Title 20 (Zoning).
- In subsection (E), a new (1) is being added, stating that "intentional demolition or removal is not a casualty," as in Title 23 (SMP).

**b) Add standards for nonconforming structures to meet current construction standards.**

In §23.50.020 (Nonconforming Structures) (Exhibit D):

- (A)(4) now allows legal nonconforming non-overwater structures to be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased, *provided that a nonconforming structure that is moved any distance must be brought into conformance with this program and the Act.*
- (A)(5) allows overwater nonconforming structures to be maintained or repaired to the extent that nonconformance with the standards and regulations of this program is not increased; *provided that when replacement is the common method of repair, the replaced components shall meet the construction and materials standards of §23.40.150 (Moorage Structures).*

**c) Address nonconforming expansion dimensional standards.**

§23.50.010 (Nonconforming Uses), subsection (B) now clearly states that the expansion, alteration, and/or intensification of a nonconforming use is prohibited, and §23.50.020 (Nonconforming Structures), subsections (E) & (F) clearly address when and how expansion of nonconforming structures are handled. (Exhibit D)



**d) Clarify administratively approved single-family dimensional standards.**

To §23.50.020 (Nonconforming Structures), subsection (F), we have added clear standards as to how to address the enlargement or expansion of nonconforming single-family structures. (Exhibit D)

**Topic #11, Overwater Structures**

**a) Add dimensional standards for overall square footage.**

§23.40.150 (Moorage Structures) has been completely revamped to meet current state and federal standards. To meet this scoped recommendation, thorough design and dimensional standards, including for overall square footage, have been added to subsection (B) (Exhibit D).

**b) Add shared moorage standards.**

Dimensional standards for shared moorage have been added to §23.40.150 (Moorage Structures), subsection (B). Subsection (D) prioritizes shared moorage over individual use structures. And subsection (F) provides additional standards for shared moorage. (Exhibit D)

**Topic #12, Permitting**

**a) Consider simplifying utility repair and maintenance permitting.**

In §16.16.235 (Activities Allowed with Notification), though subsection (B)(2) already allows maintenance and repair of infrastructure (including utilities), it has been amended to be clearer by adding the term “utility corridors.” Additionally, a new subsection (B)(3) has been added regarding utility installation.

**b) Add a reference to the Swift Creek Sediment Management Action Plan so as to clarify permitting procedures for actions necessitated by this plan.**

To §23.10.020 (Applicability) we have added subsection (H), which lists what activities the SMP does not apply to. Subsection (H)(1) applies to “Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act (such as the Swift Creek Sediment Management Action Plan), or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.”

**c) Single-Family Residential Development on Constrained Lots**

Staff is proposing to redefine what and how **reasonable use exceptions and variances** are used and who decides them. Our Hearing Examiner has questioned our current schema, in particular why he isn’t the final decision maker, as the current code allows an administrative determination to be made *after* a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust any administrative remedies before seeking a quasi-judicial decision. Staff is proposing that reasonable use exceptions be the last method of altering standards to allow reasonable economic use of constrained property, and that they be decided upon by the Hearing Examiner (see 16.16.270 Reasonable Use Exceptions). Under the proposed schema we would use (in hierarchical order):

- **Administrative Reduction/Average** – Staff would have the ability to administratively reduce or average a buffer by 25% if the impacts can be fully mitigated, though avoidance and minimization criteria are applied. This allows for flexibility in project design and road alignments. If this doesn’t work, then...

- **Administrative Variance** – Staff would have the ability to administratively grant an administrative variance<sup>5</sup> to reduce a buffer by 25-50% if the impacts can be fully mitigated and the variance criteria are met. If this doesn't work, then...
- **Hearing Examiner Variance** – The Hearing Examiner would have the ability to grant a variance from *any* dimensional standard by any degree if the impacts can be fully mitigated and the variance criteria are met. If this doesn't work, then...
- **Hearing Examiner Reasonable Use Exception** – The Hearing Examiner would have the ability to grant a Reasonable Use Exception to allow up to 2,500 square feet of impacts, and the homeowner would only have to mitigate what can actually fit on the property (which conceivably could be none).

In this schema, the degree to which one can vary standards while providing the least amount of mitigation moves up a level at each step, with the Hearing Examiner making the tougher decisions through a quasi-judicial process. This would return the reasonable use exception to truly the last effort of avoiding a taking.

However, to counter the additional time and cost of this process, staff is also proposing to create a new category of variances, called minor variances (16.16.273 Variances). They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number of cases having to go to the Hearing Examiner and cost less to the citizens of Whatcom County overall.

Note, too, that under the reasonable use rules, staff had proposed to go back to the 2,500 sq. ft. maximum impact area we had prior to the 2017 Critical Areas update<sup>6</sup>, as under a reasonable use exception granted by the Hearing Examiner no mitigation would be required. The Planning Commission disagreed with this amendment and voted to retain the 4,000 sq. ft. impact area. This is the one policy difference on which staff and the Commission differs, and staff still recommends to Council that it be changed back to 2,500 sq. ft.

### Topic #13, Public Access

#### a) Clarify standards for construction in the aquatic designation (work occurring in the water).

This issue had to do with what materials are allowed for structures built in contact with water (e.g., moorage structures). The list of such materials (untreated wood, concrete, approved plastic composites, or steel) are already found in §23.30.020(D) (Water Quality and Quantity), §23.40.125(E)(1)(e) (Cherry Point Management Area), §23.40.150(C)(2) (Moorage Structures), §23.40.210(B)(8) (Transportation), & §23.50.020(D) (Nonconforming Structures), with no distinction between galvanized or non-galvanized steel, as had been scoped. However, state law and guidance makes no such distinction, so the list has been unaltered. (Exhibit D)

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<sup>5</sup> This mechanism was created by Council in 2020 and is found in WCC 22.05.024 (Variances).

<sup>6</sup> Note that the Planning Commission has provisionally voted to keep it at 4,000 sq. ft., though they have not yet made their final recommendation.

**b) Add ADA standards consistent with federal statutes.**

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks) (6), we have added language that allows stairs and walkways to exceed standard width requirements to meet ADA requirements. (Exhibit D)

In both §16.16.620 (Wetlands – Use and Modification) subsection (H) and §16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (G)(1), text has been added to allow trails to exceed standard width requirements to meet ADA requirements. (Exhibit F)

**c) Consider revising dimensions for stairs and walkways located within the shoreline or critical area buffers to accommodate public trails.**

In §23.40.160 (Recreation), subsection (A)(6) has been added, directing applicants to WCC Chapter 16.16 (Critical Areas), which contains the standards for trails in critical areas (including the shoreline setback (i.e., HCA buffer). (Exhibit D)

In §16.16.325 (Landslide Hazard Areas – Use and Modification), a new subsection (A)(3) has been added to allow trails (meeting certain conditions) in landslide hazard areas. (Exhibit F)

In §16.16.620 (Wetlands – Use and Modification), subsection (H) (Recreation) has been amended to allow public trails to include viewing platforms, and to be closer than the outer 25 percent of the buffer “when necessary to provide wetland educational opportunities or for public health and safety,” and to be wider than the standard widths when necessary to meet ADA requirements. Corresponding amendments have also been made to 16.16.720(G)(1) (Habitat Conservation Areas – Use and Modification) (Exhibit F).

**d) Consider amending trail location standards to allow trails to be located closer than in the outer 50% of a critical area buffer.**

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks), we have added subsection (11) that allows passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails in the shoreline buffer. (Exhibit D)

In §16.16.620 (Wetlands – Use and Modification), subsection (H) (Recreation) has been amended to allow public trails to include viewing platforms, and to be closer than the outer 25% of the buffer “when necessary to provide wetland educational opportunities or for public health and safety,” and to be wider than the standard widths when necessary to meet ADA requirements. Corresponding amendments have also been made to 16.16.720(G)(1) (Habitat Conservation Areas – Use and Modification) (Exhibit F).

## **Topic #14, Shoreline Designations**

**a) Consider changing the shoreline designation for certain, more urban parks to an urban designation.**

It turned out that changing shoreline (environment) designations on certain properties would have entailed updating the 2007 shoreline inventory and characterization reports, which was beyond the scope of this periodic update.

## Topic #15, Shoreline Jurisdiction and Environment Designation Map

### a) **Revise the Shoreline Jurisdiction and Environment Designation map to conform to the latest FEMA FIRM maps**

The Shoreline map has been updated to include all areas of the FEMA floodway and floodplain. This primarily widened the Resource designation on the Nooksack from Ferndale to Lynden and portions of the South Fork of the Nooksack though narrowed it in some areas. Floodway and Floodplain are differentiated in the database. It should be noted that the actual shoreline jurisdiction has not changed, as that is set by state law and our code (§23.20.010), but the map now more accurately displays the jurisdiction.

A few other changes have been made as well. These include:

- UGA and City boundaries have been updated.
- On the Lummi Nation, parcels that have been put under Tribal jurisdiction since the last update were updated with the “Tribal” shoreline designation.
- Designations were adjusted, where necessary, to match the updated and spatially corrected parcel boundaries. This was just a housekeeping task and no designations were changed.
- Shoreline designation breaks (thick black bars) have been removed from the map as they made it difficult to read.
- The complex of beaver ponds north and south of H Street Road between Sunrise and Markwork Roads (NE of Lynden) were added to the Conservancy designation. These ponds have grown in size and now surpass the 20-acre threshold for being a Water of the State. Since these ponds were identified and characterized in the 2007 Characterization report, we did not need to update that report; the data is still valid.
- At the request of the owners of APN 390302-428076-0000, 390302-485039-0000, and 390302-440200-0000 we have removed the Resource environment designation from a mining pond located to the NW of the intersection of E. Pole X Everson-Goshen Roads, just southeast of Everson. This designation was applied during the last SMP update, but has been determined to have been an error. Though it is a waterbody greater than 20 acres, it is a mineral extraction pond and DOE guidance is that such ponds do not qualify as a Water of the State until mineral extraction is complete and the restoration plan is realized. Once that happens, it automatically is designated as Conservancy under state law and our SMP. The County would then have 3 years to amend the map and finalize its designation.

## Topic #16, Shoreline Modifications

### a) **Review for consistency with the 2SHB 1579 regarding HPAs, and with State guidelines regarding prioritizing living shorelines over hardscape solutions.**

In §23.40.010 (Shoreline Use and Modification), Table 1 (Shoreline Use by Environment Designation), the various types of stabilization have been broken out into their respective types. Bioengineering Approaches & other Soft-Shore Measures are shown as permissible, while hardscape solutions are either prohibited or require a Conditional Use Permit, and then allowed only when necessary for shoreline restoration or to support a water-dependent use that cannot be located elsewhere. Then throughout §23.40.190 (Shoreline Stabilization) language has been added to prioritize soft- over

hardscape stabilization measures, in particular in subsection (A)(5), where an order of preference has been established. (Exhibit D)

**b) Consider allowing interpretive, wayfinding, safety, and park identification signs, based on park standards.**

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks) (10) (Signs) we have added language that allows interpretive, wayfinding, and park identification signs on publicly owned park properties. (Exhibit D)

### **Topic #17, Shoreline Uses**

**a) Revise as necessary any SMP policies or regulations pertaining to the Cherry Point area as directed by Council.**

In 2018 the Council started a process of amending the policies and regulations related to fossil fuel facilities in the Cherry Point Management Area. The Council hired consultants specifically for this task and it is principally being administered under a separate process. Their amendments affecting C/P Ch. 2 (Land Use), WCC Ch. 16.08 (SEPA), WCC Title 20 (Zoning), and WCC Title 22 (Land Use & Development) have already been reviewed by the Commission. None of the Council's amendments to C/P Ch. 2, WCC Ch. 16.08, or WCC Title 20 affects the documents the Planning Commission reviewed as part of this SMP Update.

Their amendments to Title 22, however, have been incorporated into Exhibit E, and are being show as new as they are not yet adopted. We have also incorporated the Commission's recommended changes to this specific language, also flagged by comments in the document.

Their amendments also affect WCC Title 23 (Exhibit D) and (by way of this update) C/P Ch. 11 (Exhibit B), and the Planning Commission has not yet reviewed these as they are being processed through this update. As we are proposing to do with the rest of the SMP policies, we're moving the Cherry Point Management Area policies from Title 23 to C/P Ch. 11 (Exhibit B). As such, they're not shown as new policies (i.e., no underline) in Exhibit B, but Council's proposed amendments to them are being show in strikeout/ underline. Other changes to Title 23 regarding this topic are flagged as Council-proposed language in §23.40.125 (Cherry Point Management Area). (Exhibit D)

**b) Revise as necessary any SMP policies or regulations pertaining to sand and gravel extraction as directed by Council.**

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.

To carry out this directive we have tried to mimic the language of the WAC, eliminating language that is not required but adding (or retaining) required language. (§23.40.140 (Mining), Exhibit D)

This matter was forwarded to the Surface Mining Advisory Committee (SMAC) for their advice. At their June 26, 2019, meeting the SMAC reviewed this matter and found 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.

At the federal level, the Endangered Species Act (ESA) is the primary law affecting this activity. It requires that any activities be done in such a manner as to not cause a “take” of any listed species, which also means protecting their habitat from impacts. At the state level, the Shoreline Management Act requires that there be no net loss of shoreline ecological functions and processes. As one can imagine, either of these requirements would make it difficult to make it easier to extract sand and gravel.

**c) Ensure internal consistency with allowed uses in the code and the Use Table.**

In the existing code, the allowances/permit type required for some uses are specified in Table 1 and others are sprinkled about the text, making it difficult to find whether something is allowed or not. So throughout Ch. 23.40 (Shoreline Use and Modification Regulations) we have removed any use allowances found in the text and expanded the table to include these (as well as other uses that hadn’t been specified). Thus, almost all rules about whether something’s allowed or not, and with what type of permit, are found in Table 1. There were also several footnotes that modified the table. We have replaced these footnotes with just one, telling the reader to look to the text for certain uses in certain environment designations, as there remain a few specific provisions in the text, typically stating that certain uses have caveats in certain environment designations. In short, we believe we have made things easier to find, and the text and the table should be internally consistent now.

**d) Modify the accessory structure height standards.**

In §23.40.020 Shoreline Bulk Provisions, subsection (E) (Height), two new subsections have been added. Subsection (4) would allow equipment necessary for the functions of water-dependent uses or the servicing of vessels to extend above the applicable maximum height limit provided in Table 1, provided that such structures shall be designed to minimize view obstruction. Subsection (5) would allow residential accessory structures that are not waterward of the primary structure to be built to the maximum height for the environment designation.

**e) Add standards for retaining walls.**

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks), we have added subsection (8) to allow retaining walls or similar slope stabilization structures, when associated with an approved shoreline use or development; and in (9) have clarified that retaining walls can exceed the standard 4-foot height limit for fences, walls, and hedges. (Exhibit D)

**f) Update Memorandum of Understanding with Department of Archaeology and Historic Preservation.**

Through this update process, staff was not able to actually update the MOU with DAHP, as that will take some time and involve many others. But based on the language in it, we are proposing some new policies to the cultural resources sections of both the Overall SMP Goals and Objectives (Exhibit B, page 11-9) and the General Policies (page 11-27) sections (see policies 11G-3, 11G-4, & 11X-9).

We are also proposing to revise the regulations in §23.30.050 (Cultural Resources) (Exhibit D). The existing regulations are full of rules about how reports are supposed to be done and what they need to contain. However, Department of Archaeologic and Historic Preservation (DAHP) now has standard practices outlined in their guidance, and we are proposing to remove all of our extraneous rules and just refer to DAHP's standards; this cuts down on the amount of text considerably and ensures that practices and reports follow state standards. The proposed text has been collaboratively developed with us, DAHP, and the Lummi Nation Tribal Historic Preservation Office (LNTHPO).

That said, there are three policy issues posed by the revised text:

- Subsection (A)(1) reads:

Upon receipt of an application for a permit, exemption, or other approval for a proposed project, the County shall determine whether the project lies within 500 feet of a site known to *or could* contain a cultural resource based on the Washington State Department of Archaeology & Historic Preservation's (DAHP) Inventory of Cultural Resources.

Currently, our regulations require applicants to prepare a cultural resources report (and adhere to any recommendations therein) if their project lies within 500 feet of a site known to contain a cultural resource based on the Washington State Department of Archaeology & Historic Preservation's (DAHP) Inventory of Cultural Resources. The LNTHPO has proposed that we insert the phrase "or could" in this sentence. They would like to be consulted on all projects within the shoreline, not just ones within 500 ft of a previously recorded site, as they believe they may have additional information regarding an area that is not included in the State's inventory. They would like an opportunity to review and comment on the report no matter what may be found. However, this would expand the scope beyond what we regulate now.

- Subsection (A)(4) reads:

Based upon consultation with DAHP and the affected Tribe(s), the Director may approve the report *with tribal concurrence* or reject or request revision of the conclusions reached and/or management recommendations when the assessment is inaccurate or does not fully address the cultural resource management concerns involved.

The LNTHPO recommends that we include the phrase "with tribal concurrence." This would mean that the Tribe would have to agree with a report before PDS could approve it.

Staff believes that requiring their concurrence runs contrary to the GMA's permitting requirements of expeditious review and issuance, as it could hold up projects while we're awaiting their concurrence. A simple fix may be to set a time limit for how long they have to respond.

- Subsection (A)(5) reads:

If the cultural resource report identifies the presence of a cultural resource, any permit issued shall be conditioned on meeting the approved report's management recommendations. *If no cultural resources are found, then the permit may be issued without conditions regarding cultural resources.*

The LNTHPO commented that an Inadvertent Discovery Plan (IDP) should be required regardless of whether cultural resources are found, as there are times when additional requirements are necessary (e.g., when there is a site documented just outside of the project area, monitoring



may be recommended). However, this does go beyond what we do now and so raise it as a policy issue.

**g) Clarify Forest Practice standards.**

§23.40.110 (Forest Practices) has been updated to reflect the WAC provisions for Forest Practices in shorelines. (Exhibit D)

Additionally, the current Ch. 16.16 (Critical Areas) does not have guidance for Conversion Option Harvest Plans as allowed by WAC 222. For other permits this would allow for a limited removal of trees, while retaining larger trees to help with managing a riparian buffer. When development alters a functioning forested system some level of continued forest management is required (see 16.16.720(V)). To alleviate this issue, staff is proposing to add to 16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (P). The section sets performance standards for removing timber in Habitat Conservation Areas (e.g., riparian areas) and would allow timber harvesting to occur within buffers while still retaining the HCA's functions. These standards vary by water type, and are tied to existing buffer conditions. This amendment is aimed at closing a loophole wherein applicants remove trees before applying for a development permit, which is when the CAO becomes applicable (except for Class IV Conversions, forest practices are not reviewable under the CAO).

**h) Add temporary use standards.**

This was a task staff had proposed, thinking we might be able to develop a temporary use permit for short-term uses. However, we could not find a good example from other jurisdictions, nor is there any guidance from Ecology. Thus, we determined it is probably best to review such uses at the time of a request for a temporary easement, temporary use permit, etc.

**i) Clarify utility standards for regional, local, and accessory.**

Under the existing code, the only categories for utilities are local or regional transmission lines, which has led some people to believe that utility installation, repair, or maintenance to single-family homes (accessory utilities) needs the same level of permitting and scrutiny as a power substation or regional transmission line.

In the proposed amendments to §23.40.010 (Shoreline Use and Modification), Table 1 (Shoreline Use by Environment Designation), utilities have been broken out into three categories: accessory, local, and regional. Each are now distinctly defined in §23.60.210(6), and have distinct permitting paths, depending on what environment designation they are located, making it clear that running an electrical line (or something similar) to a house is outright permitted.

Additionally, in §23.40.220 (Utilities) we have moved all the utility requirements that had been spread throughout in various sections into one, cohesive section.

**j) Add standards for live-aboard vessels in marinas.**

In §23.40.060 (Marinas and Launch Ramps) standards for live-aboard vessels have been added as subsection (F) (Exhibit (D)). Staff is also proposing to add Policy 11DD-13 to CompPlan Ch. 11 (Exhibit B) to support the proposed addition of standards to Title 23.

## **Topic #18, Shoreline Setbacks/ Riparian Management**

**a) Update vegetation conservation standards to prefer limbing over removal.**

§23.30.030 (Views and Aesthetics) (Exhibit D), subsection (M) now points to the regulations in §16.16.235(B)(5) (Activities Allowed with Notification) (Exhibit F).

§16.16.235(B)(5) (Activities Allowed with Notification) has been updated to stress limbing over removal of trees to provide view corridors (Exhibit F).

**b) Provide incentives to enhance Fish and Wildlife Habitat Conservation Areas (FWHCA).**

This was another task staff had scoped. We had hoped to create an incentive for new single-family residential development to maintain and/or improve shoreline vegetation by allowing those who do so to have a reduced shoreline buffer. Unfortunately, we could not figure out a way of doing this without impacting existing homeowners' views. Furthermore, it would have required an update to the inventory and characterization background documents, which was not included in the scope or budget of the project.

Additionally, given that the shoreline is defined and regulated as a Habitat Conservation Area, theoretically we should not allow uses (other than water-oriented uses and single-family residences which are SMA 'preferred uses') within the shoreline, as they would necessitate vegetation clearing. However, we know that folks that have waterfront property want and expect to have access (for swimming, boating, relaxation, etc.) and recreational amenities near the shore (e.g., fire pits, kayak sheds, etc.), so we have added to 16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (G)(4), which sets limits on how much of the shoreline can be cleared of vegetation for such uses and requires mitigation to offset the impacts so as to achieve No Net Loss.

**c) Clarify setback standards for protection of views to and from the water.**

To protect views of the shoreline from existing structures when new development is proposed, §23.30.030 (Views and Aesthetics) (Exhibit D), new subsection (B) now allows setbacks to be modified pursuant to WCC 23.400.020(D) (Shoreline Bulk Provisions, Setbacks, Common-Line Setback for Single-Family Residences). That section (incorporated from former Appendix F) allows for setbacks to be reduced or increased, depending on how existing homes are situated, to provide the greatest view opportunities for both the existing and new development (though when reduced, mitigation (i.e., planting of the shoreline setback) may be required).

To minimize impacts to views from the water, §23.30.030 (Views and Aesthetics) (Exhibit D), new subsection (C) also now allows the Director to require the planting of vegetation to mitigate the impacts.

Furthermore, §23.30.030 (Views and Aesthetics) (Exhibit D), new subsection (L) precludes new uses or development from substantially obscuring shoreline views within shoreline view areas or from existing residences on adjacent property.

## **Topic #19, Water Quality**

**a) Include language/policies about the importance of Lake Whatcom as the source of drinking water for most of the County and the water quality improvement plan (TMDL).**

After reviewing the existing CompPlan, staff believes that it already addresses this issue sufficiently. In Chapter 10, under *Water Resources* (Exhibit A, page 10-11), subsection *Lake Whatcom Watershed Management* (pages 10-22 – 10-25) there are four pages of text describing Lake Whatcom's importance as a source of drinking water and the efforts the County (and City of Bellingham) are under taking to protect it. Under Goal 10-J alone there are 14 specific policies (Policies 10J-1 - 10J-14) regarding protecting Lake Whatcom, and there are numerous other, more generic goals and policies that deal with water quality protection more generically.

## Topic #20, Wetland Buffers

- a) **PDS will conduct a parallel process, convening a group of local wetland consultants, to consider revisions to the CAO regulations regarding wetland habitat function score break points, buffer widths, reduction, averaging to meet DOE guidelines, and having buffers based on habitat performance instead of static/standard buffers. If they complete this work in time, it can be incorporated into this update; otherwise it can follow.**

In July 2018 the Washington Department of Ecology (DOE) modified the habitat score ranges and recommended buffer widths in their wetland buffer tables in the DOE guidance, with some minor text changes to ensure consistency. Some citizens, local environmental consulting firms, and the Building Industry Association of Whatcom County then requested that we amend our code to meet this new guidance, and it was docketed as PLN2019-00008.

The project was brought before the Planning Commission on March 14, 2019. But there was confusion as to what we actually *had* to do at that time and what impacts it would have on development. DOE had informed staff that, while we didn't need to amend our code at that point (having just updated Ch. 16.16 (Critical Areas) (Exhibit F) that they would review our code for consistency with their guidance when Ch. 16.16 was opened for amendment again, noting that that would occur during the 2020 SMP Periodic Update.

So at the Commission's request, staff worked with the local wetlands consultants to review the issue and try to determine what effects it might have. Three consulting firms<sup>7</sup> provided analyses based on data from projects they had worked on. From these analyses, it appears that many of Whatcom County's lower quality wetlands (e.g., small Category IV wetlands in agricultural fields) would end up with smaller buffers, but that our higher quality wetlands (Categories II and III) would end up with larger buffers. (But even this is speculation, as ATSI noted that the comparison results are not statistically significant.<sup>8</sup>) Thus, farmers may benefit but developers/ builders may suffer, as many of our lower quality wetlands are those found in agriculture fields, while our higher quality wetlands are typically found in non-agriculture rural areas.

Nonetheless, given the Department of Ecology's statements that they'll be monitoring the SMP Update to ensure that we meet their latest guidance (which is based on Best Available Science), and given that Comprehensive Plan Policy 10M-2 directs the County to "Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines," staff is proposing to amend §16.16.630 (Wetland Buffers) Table 1 (Standard Wetland Buffer Widths) to meet DOE guidance. As indicated, these changes would lessen buffers on lower quality wetlands, and increase them on higher quality ones.

## Topic #21, Marine Resource Lands

- a) **Consider adding a Marine Resource Lands policy section as developed by the Marine Resources Committee**

When the Council amended the CompPlan in 2016 they included a new section entitled "Marine Resource Lands" that contained one goal and one policy that directed staff to assist in developing the section more thoroughly:

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<sup>7</sup> NW Ecological Services, NW Wetlands Consulting, and Aqua-Terr Systems, Inc.

<sup>8</sup> Paired sample t-tests were conducted to compare the proposed buffer results with categories of the wetlands impacted.

**Goal 8T: Conserve and enhance Whatcom County's marine land base for the long-term and sustainable production of commercial and recreational economic activities.**

**Policy 8T-1:** Whatcom County will work with committees including but not limited to the Marine Resource Committee, the Shellfish Protection Advisory Committee, and other local marine land experts to create a new section of this chapter to support Goal 8T to be docketed and processed for consideration no later than 2017.

The project was docketed as (PLN2017-00005), and staff worked with these groups to help develop some language, goals, and policies for this section, which is shown as Exhibit C (C/P Ch. 8). However, there was mixed recommendations from the groups who reviewed the language.

- The **Marine Resources Committee** reviewed the proposal at their June 7, 2018, meeting, and after adding Policy 8V-4 (addressing educational efforts and programs) they recommended that the County Council adopt the proposed language.
- The **Birch Bay Watershed and Aquatic Resources Management Committee** (BBWARM) reviewed the proposal at their June 20, 2018, meeting. They recommended that the Council *not* adopt the proposed language. They felt that the new Marine Resource Lands section of the CompPlan was already covered by the existing Shoreline Management Program and that including it would add unnecessary complication/duplication. They recommended that the Council postpone any action on the Marine Resource Lands amendment until the SMP update commenced.
- The **Portage/Drayton Shellfish Protection Districts** reviewed the proposal at their July 25, 2018, meeting. However, they did not have a quorum and could not act.
- The **Planning Commission** held a workshop on June 14 and a public hearing on June 28, 2018. They recommended that the Council *not* adopt the Marine Resource Lands proposal. There was concern amongst some of the Commissioners that regulations adopted subsequent to these policies could affect farmers, even though staff explained that it was not our nor CM Weimer's intent to address agricultural runoff. They also thought it would be better to consider this during our SMP update, perhaps incorporating some of the goals and policies into that rather than having a separate section.

When staff brought the project forward to Council's Planning & Development Committee for review they decided to consider it with the (then) upcoming SMP update.

## **Topic #22, No Net Loss**

### **a) Prepare a No Net Loss technical memo**

On September 10, 2019, staff presented to the Council's Natural Resources Committee an overview of how No Net Loss is achieved.

No net loss incorporates the following concepts:

- The existing condition or baseline of shoreline ecological functions, documented in the 2007 documented in the shoreline inventory and characterization, should not deteriorate due to permitted development.
- Shoreline functions may improve through shoreline restoration.
- New adverse impacts to the shoreline environment that result from planned development should be avoided.

- When this is not possible, impacts should be minimized through mitigation sequencing.
- Mitigation for development projects alone cannot prevent all cumulative on-going impacts and shoreline violations, so restoration is also needed.

Based on past practice, current science tells us that most, if not all, shoreline development produces some impact to ecological functions. However, the recognition that future development will occur is basic to the no net loss standard. The challenge is in maintaining shoreline ecological functions while allowing appropriate new development and ensuring adequate land for preferred shoreline uses and public access. With due diligence, local governments can properly locate and design development projects and require conditions to avoid or minimize impacts.

In 2007 Whatcom County underwent a comprehensive update of its Shoreline Management Program (SMP). At that time the County prepared an Inventory and Characterization Report (Vol. I), a Scientific Literature Review (Vol. II), a Restoration Plan (Vol. III), and a Cumulative Effects Analysis (Vol. IV), all of which were approved by County Council and the Department of Ecology. These documents formed the basis for developing the County's Shoreline Management Program and determining that it would achieve no net loss of ecological functions when implemented.

Whatcom County is now undergoing a periodic update. For such an update the County is not required to re-do all these documents except to augment them if something changes that might negatively affect the shoreline's ecological functions. For the most part there are few significant policy changes in this update; most of the proposed amendments are an effort to reorganize the SMP so as to make it easier to use and understand.

There are a few policy changes, though, and the No Net Loss Statement, prepared by The Watershed Company as an addendum to the 2007 Cumulative Effects Analysis, addresses these (Exhibit I). The conclusion is that each of these amendments works to strengthen the shoreline ecological protections provided by the SMP.

#### **b) Shoreline Restoration Plan Addendum**

Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development by requiring mitigation. However, over all, protection, restoration, and mitigation are needed to achieve no net loss. Restoration is the only mechanism by which we can improve shoreline functions and ecosystem-wide processes over time. Local governments must achieve this standard through both the SMP planning process and by appropriately regulating individual developments as they are proposed in the future.

The concept of no net loss of shoreline ecological functions is rooted in the Act and in the goals, policies, and governing principles of the state's shoreline guidelines. These principles suggest that no net loss is achieved primarily through regulatory approaches and that restoration occurs mainly via goals, policies, and voluntary or incentive-based mechanisms. It is also important to note that more than simply preventing further loss of ecological functions, master program provisions must also "...achieve overall improvements in shoreline ecological functions over time when compared to the status upon adoption of the master program."

The mandate to improve functions over time provides the basis for restoration planning and creates a distinction between mitigation and restoration. As mentioned, applicants for shoreline permits must fully mitigate new impacts caused by their proposed development. However, applicants are not required to restore past permitted ecosystem damages as a condition of permit approval. Permit applicants will not be required to implement the restoration measures identified in the plan as mitigation for project

impacts, but they may elect to implement elements of this plan as mitigation for shoreline development if appropriate. And they may be required to mitigate for recurring impacts.

## SMP updates: Achieving no net loss of ecological function

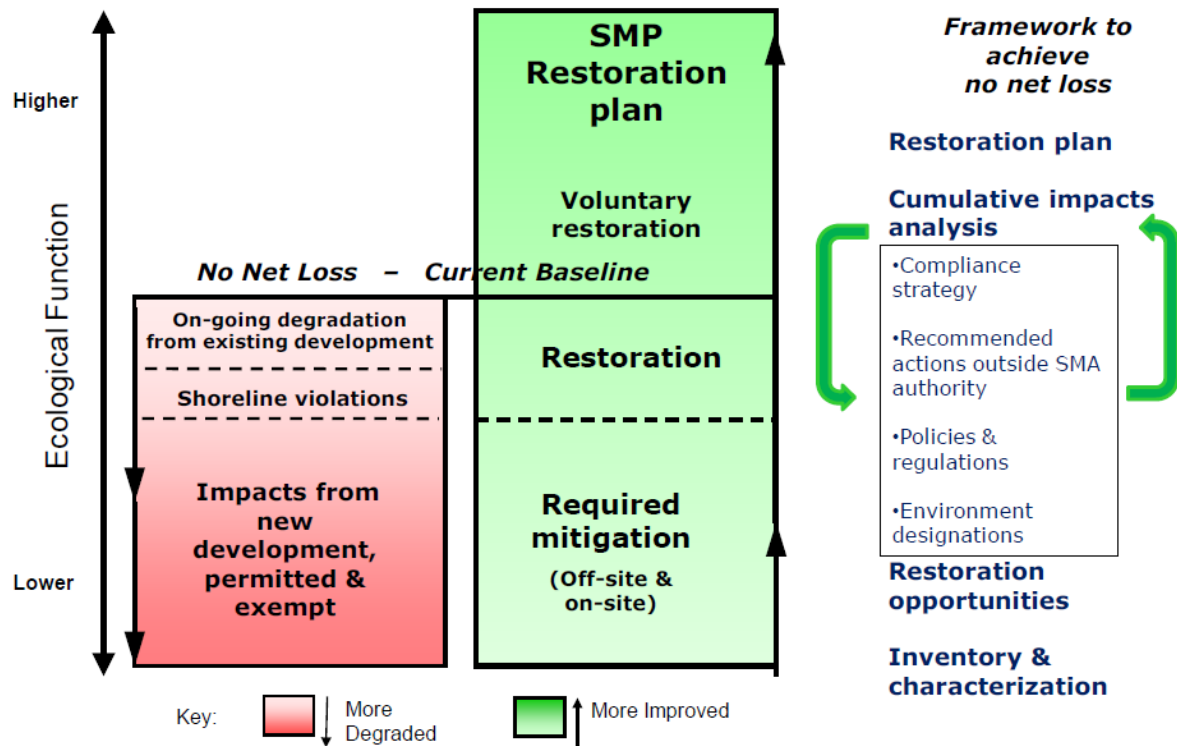


Figure 4-1: During the SMP update process, local governments should use existing shoreline conditions as the baseline for measuring no net loss of shoreline ecological functions.

Exhibit J is an addendum to the 2007 Shoreline Restoration Plan. It references projects listed in the Shoreline Restoration Plan containing enhancement and restoration project proposals and updates them based on information received by the County, agencies, tribes, and stakeholder organizations. It also lists several projects that were not included in that Plan, but nonetheless have been undertaken and completed, and that improve shoreline ecological functions.

It is important to note that to continue to achieve NNL over time the County should continue to fund and implement the projects listed in the restoration plan.

## Non-Scoped Amendments

### Sustainable Salmon Harvest Goal

There is a new Policy 10L-19 proposed to be added to Chapter 10 regarding a sustainable salmon harvest goal (Exhibit A, page 11-47). Adding this policy is not a part of the SMP Update per se, and in fact was not part of the scope. Rather, it is a policy the Council expressed in interest in adding in support of the fisheries co-manager's Sustainable Salmon Harvest Goal. Adding such a policy was placed on the docket by Council in 2018 (#PLN2018-00010). Rather than process its addition as a separate CompPlan amendment, staff is proposing to add it while we're already amending the CompPlan for the SMP

Update. We should note, however, that through the Salmon Recovery Staff Team the fisheries co-managers (WDFW, Lummi Nation, and Nooksack Tribe) are reviewing this draft language and may propose some additional amendment(s) to it. If so, we will inform the Planning Commission later in your review.

### **Short-Term Rentals**

Though already approved by Council via Resolution 2016-039 and by the Department of Ecology, Council's actions on short-term rentals has not been finalized by ordinance. Thus, staff has included in the draft Title 23 those amendments on short-term rentals already approved. Please note that there are similar amendments to Title 20 that Council has not acted on, and these would need to be followed up shortly after the SMP amendments are approved.

### **UGA Wetlands**

In 16.16.225 (General Regulations) staff is proposing to add subsection (B)(7), which would allow "alteration of Type III or IV wetlands that have a habitat area score of less than 6 when associated with an approved commercial development within an Urban Growth Area" when impacts are mitigated. This would allow the alteration of certain wetlands in Urban Growth Areas (UGAs) (in particular, Birch Bay) so as to encourage development of commercially zoned property. Commercial development in Birch Bay is challenging because so much of the remaining commercially zoned property contains small, isolated wetlands. Yet under the Growth Management Act we're supposed to encourage development within UGAs so that development doesn't sprawl to less developed areas of the County.

## **IV. Comprehensive Plan Evaluation**

The proposed amendments to the regulations (WCC Titles 22 and 23 and Ch. 16.16) have been developed using the guidance of the Comprehensive Plan so as to remain consistent. Generally, the specific guiding goals and policies would be listed here so as to inform the Council of consistency; however, that would just be a relisting of each, as every goal and policy of Comprehensive Plan Chapter 11 is relevant. Those goals and policies may be reviewed in Exhibit B. Suffice it to say that staff finds no inconsistencies.

## **V. Draft Findings of Fact and Reasons for Action**

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. Whatcom County is subject to the requirements of the Washington State Growth Management Act (GMA), RCW 36.70A.480 'Shorelines of the State.'
2. On February 27, 2007 (Ordinance # 2007-017), Whatcom County adopted a comprehensive update to the SMP as required by law. This comprehensive SMP update review included but was not limited to assessment of ecological functions, baseline conditions, and SMP environmental designations. This local adoption was approved by the Washington State Department of Ecology (Ecology).
3. The Washington State Shoreline Management Act (SMA), RCW 90.58.080 (4)(a)(ii), mandates Whatcom County shall periodically review its SMP every 8-years. This periodic update is due June 30, 2021. The purpose of this periodic review is to update the local SMP to reflect changes to state law and associated rules and guidance, ensure internal consistency with the Whatcom County Comprehensive Plan and associated development regulations, as well as provide an opportunity to improve usability and predictability of the SMP.



4. The GMA, RCW 36.70A.130(1), also mandates that Whatcom County's Comprehensive Plan and development regulations are subject to continuing review and evaluation.
5. RCW 36.32.120(7) provides that the county legislative authorities shall make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law.
6. Whatcom County Planning and Development Services (PDS) submitted an application (PLN2020-00006) to make various amendments to Whatcom County's Shoreline Management Program.
7. On May 21, 2019, the County Council reviewed and approved the Shoreline Master Program Periodic Review Public Participation Plan. The Public Participation Plan was submitted to Ecology. Public outreach regarding the proposed amendments was conducted through:
  - a. A dedicated project webpage;
  - b. Legal notices published in the official newspaper of record for Whatcom County;
  - c. Electronic announcements and notifications to:
    - Subscribers of relevant lists in the Kitsap County Electronic Notification System;
    - Relevant Kitsap County advisory groups; and
    - Relevant local, state and federal agencies, and community groups;
    - Federally recognized tribes with usual and accustomed areas in Whatcom County and relevant tribal organizations;
  - d. Three public open houses;
  - e. Meetings with citizen advisory groups and various interested parties;
  - f. Two 30-day public review periods of the amendments, one prior to the Planning Commission review workshops (August – September 2020) and a joint public comment period with the Department of Ecology prior to their joint public hearing (March – April 2021).
  - g. Ten public workshops and a public hearing with the Planning Commission; and
  - h.   X   public workshops and a public hearing with the County Council.
8. With the assistance of a consultant and development of a consistency analysis, Whatcom County PDS proposed amendments to the Whatcom County Comprehensive Plan (Chapters 8 (Resource Lands), 10 (Environment), and 11 (Shorelines)) and WCC Titles 22 (Land Use & Development) and 23 (Shoreline Management Regulations), and WCC Chapter 16.16 (Critical Areas).
9. Following review and approval by the Whatcom County Council, a public participation plan, consistency analysis, and scoping document was developed to aid in developing the draft amendments.
10. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on February 18, 2021.
11. Notice of the subject amendments was submitted to the Washington State Department of Commerce on March 12, 2021, for their 60-day review.
12. On April 22, 2021, the Planning Commission held a duly noticed joint public hearing with the Department of Ecology to consider testimony on the proposed draft amendments to the Shoreline Master Program and related codes.
13. The County Council held a duly noticed public hearing on the proposed amendments on   X  , 2021.
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.

15. The amendments are consistent with the Shoreline Management Act, Growth Management Act, Whatcom County Comprehensive Plan, and other applicable requirements.
16. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.

## **VI. Proposed Conclusions**

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VII. Recommendation**

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

**Chapter Ten  
Environment**

**Introduction**

Each person in Whatcom County has a fundamental right to a healthful and safe environment in which to live and grow. With this right comes a responsibility to contribute to the protection and enhancement of our natural environment. Consequently, an important goal of the Whatcom County Comprehensive Plan is to protect or enhance the county's environmental quality. This means that, individually and collectively, we have the obligation to protect these resources for our children and their children. Essential to this is the establishment of safe development practices and patterns that do not significantly disrupt ecosystems and that ensure the continuation of ample amounts of clean water, natural areas, farmlands, forest lands, and fish and wildlife habitat.

**Chapter Organization**

This chapter is composed of an introduction and four sections organized by topic heading. The first section, entitled "General Environmental Management," addresses general environmental goals and policies. The remaining three sections deal with Natural Hazards, Water Resources, and Ecosystems. Together, the sections of this chapter provide the direction necessary to ensure and promote long-term sustainability of the environment in Whatcom County.

**Purpose**

Whatcom County's natural environment, with its seasonally abundant supply of water, its beauty, and its other natural resources, has attracted people to our community for generations. This setting is important to our sense of well-being, to our health, to our economic well-being, and to our future. Sustaining these assets in the face of increasingly intense human activity becomes more difficult each year. The challenge of protecting this environment while accommodating growth requires maintaining guidelines for development so that growth does not ultimately overrun the very assets that brought most of us here. The purpose of this chapter is to create such guidelines.

**GMA Goals and Countywide Planning Policies**

GMA Planning Goal 10, "Environment" (RCW 36.70A.020(10)), provides the directive for much of this chapter. It requires Whatcom County to "protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water." In addition, some of the goals and policies of this chapter support Planning Goal 9, "Open Space and Recreation" (RCW 36.70A.020(9)), which directs the county to "conserve fish and wildlife habitat."

Relative to environmental protection, Whatcom County's Countywide Planning Policies (CWPP) give the most attention to water issues. They state, "The quality of life and economic health of Whatcom County communities depend on the maintenance of a safe and reliable water supply. All jurisdictions and water

purveyors should cooperate to ensure the protection and quality of the area's water resources." Specific policies address water, promoting inter-jurisdictional cooperation in conserving, protecting, and managing the water resource, and in reducing water pollution (CWPP Policies N.1 – 6). The CWPPs also support protecting wildlife habitat and corridors, natural drainage features, and "other environmental, cultural and scenic resources."

### **GMA Requirements**

The GMA requires Whatcom County to identify and manage critical areas in such a manner as to prevent destruction of the resource base and reduce potential losses to property and human life. The GMA has identified Critical Areas to include the following areas and ecosystems:

- Wetlands
- Critical Aquifer Recharge Areas
- Fish and wildlife habitat conservation areas
- Frequently flooded areas
- Geologically hazardous areas

### **Environmental Setting**

Whatcom County bedrock geology can be divided into five bedrock geologic provinces. From east to west these provinces are the Methow terrain, the Cascade Crystalline Core, the Northwest Cascades System, the Fraser Lowland, and the San Juan Island system. Tectonic activity over the past 15 million years has created the present North Cascades and the formation of Mount Baker, a 10,000-foot high composite volcano.

The mountains of Whatcom County, as well as the streams, lakes, valleys, hills, and shoreline features are the result of millions of years of geologic events. Over 2.5 million years ago, during the Ice Ages, glacial ice invaded the Puget Sound lowlands from the north at least four times, with the last major glacial event, the Fraser Glaciation, ending approximately 12,000 years ago. A minor advance of glacial ice, the Sumas Advance, ended approximately 10,000 years ago. The ice formed from the accumulation of snow in the British Columbia Coast Range and interior of British Columbia. Numerous glaciers are still present within the mountains of Whatcom County, and some of these mountain glaciers formerly extended far down the mountain valleys of the County. The underlying bedrock was deeply eroded during these glacial events creating very steep mountainsides, and in some areas, particularly in northwestern Whatcom County, a thick sequence of glacial related sediments was deposited. The glacial ice was approximately 6,000 feet thick in the vicinity of Bellingham.

Two main glacial advances are the most important to our area, the Salmon Springs glaciation and the later Vashon glaciation. Each time the massive glacier advanced, it dammed up the Puget lowlands to form a huge lake. As the floating ice melted, sand, gravel, clay and occasional boulders would melt out of the ice and fall to the sea floor. This deposit, the Bellingham Drift, covers the ground surface over a large area of western Whatcom County. Each time the Ice Age glacier advanced, it also compacted underlying sediments with its great weight. It created a concrete-like

## Exhibit A – Planning Commission Approved Draft

May 13, 2021

Chapter 10 - Environment

1 material called "till" (also known as "hardpan") beneath it. Because the Bellingham  
2 Drift consists primarily of clay and silt, it is relatively impermeable; water tends to  
3 accumulate on the ground surface. Wetlands are common on the Bellingham Drift.

4 On the bottom of the lake, "rock flour", the finely ground remains of rocks  
5 pulverized by glacial action, settled out. These deposits became the familiar "blue  
6 clays" of the Puget lowland. The milky color of the Nooksack River is due to the  
7 same kind of rock flour, created by glacial activity on the slopes of Mount Baker.

8 Additionally, each time the glacier retreated, water from the melting ice deposited  
9 thick layers of sand and gravel known as "outwash." The outwash areas are  
10 typically where we find our most productive aquifers, since these loose sands and  
11 gravel are porous and drain rapidly. While these areas absorb rainwater for our  
12 later use from wells, they are also vulnerable to contamination. An example of this  
13 phenomenon is found in the outwash sands and gravels resulting from the Sumas  
14 Advance. Large meltwater streams and rivers flowed from this glacier depositing  
15 the Sumas Outwash sands and gravels. The Sumas Outwash sands and gravels  
16 make up the best non-floodplain farmland in the County and some of the highest  
17 quality construction gravel deposits. Abandoned outwash channels were formerly  
18 used as sources of peat.

19 Each of these glacial sediments, lake bed deposits, till and outwash is present in  
20 various places and in varied combinations in Whatcom County. These sediments  
21 provide both the formations that hold the groundwater for many of the area's wells,  
22 and the parent material for most of the different soils.

23 Out of these long physical processes a complex natural ecology has emerged that  
24 supports a diversity of wildlife. Many of our lakes, rivers, and streams support fish  
25 including, but not limited to, native species such as the five pacific salmon  
26 (Chinook, Coho, Sockeye, Chum, Pink) as well as Steelhead, Rainbow Trout,  
27 Cutthroat (coastal and resident), Bull Trout, and Dolly Varden. Every year salmon  
28 return to spawn in the streams and rivers of Whatcom County. Whatcom County is  
29 located within the Pacific Migratory Flyway and serves as a stopover and critical  
30 habitat area for many migratory birds. Bufflehead and goldeneye ducks winter here.  
31 Additionally, numerous bird species including scoters, snow geese, trumpeter  
32 swans, canvasbacks, cormorants, grebes, loons, and other migrating waterfowl  
33 pass through every spring and fall as they travel between their breeding grounds in  
34 Alaska and Canada and their wintering grounds in California and Mexico. Mallards,  
35 Canada geese, great blue herons, and numerous songbirds live in the county  
36 year-round. Maintaining these unique resources is a high priority for both present  
37 and future county residents. Whatcom County is home to a distinct subspecies of  
38 the Great Blue Heron, which has the third largest colony in the Puget Sound area.  
39 The wetlands, fields, streams, and nearshore habitat in the county support many  
40 birds of special concern, such as the bald eagle (protected under the Bald and  
41 Golden Eagle Protection Act), the pileated woodpecker (candidate for State  
42 threatened list), and the peregrine falcon (ESA candidate species). The National  
43 Audubon Society has designated Semiahmoo, Drayton Harbor, and Birch Bay as  
44 "Important Bird Areas."

## **Environmental Management**

### **Introduction**

General environmental goals and policies are intended to provide guidance for environmental management that will promote environmental protection and good stewardship practices through a balance of public education and involvement; incentives, acquisition, and voluntary programs; land use planning and regulations; environmental monitoring; and intergovernmental cooperation. These goals and policies are also intended to provide guidance to County government as it assists its citizens in maintaining a balance between individual property rights, economic development, and environmental protection.

### **Background Summary**

Development in the last 100 years has had a significant impact on the natural environment in Whatcom County. At the turn of the 20<sup>th</sup> century, some areas surrounding Lynden, Sumas, and Ferndale were logged, drained, and converted to agricultural land and other types of development. In the intervening years, many of the remaining forests were logged, many streams re-routed and channelized, and much of the native vegetation removed and replaced with a wide variety of introduced vegetative types. Roads now crisscross most areas, with homes, farms, businesses, and industries scattered throughout the county.

### **Issue, Goals, and Policies**

There are designated lands in Whatcom County that can still accommodate development. Whatcom County also has areas that are sensitive to human activity, including wetlands, streams, lakes, and marine shorelines, and lands that can pose a hazard to the community, including floodplains and unstable slopes. In these areas development must be carefully planned or limited to maintain environmental quality and public safety. This can be done through the creation and implementation of goals and policies that seek to reduce hazards and prevent adverse environmental impacts.

### **Community and Environmental Protection**

The elements of the natural environment: water, air, soil, plants, and animals; are interconnected and interdependent, functioning as one dynamic ecosystem. Environmental resources within this ecosystem are extensive and, in some cases, irreplaceable. They provide important beneficial uses to the community such as: the supply of clean drinking water; management of stormwater run-off and flood hazard management; support for a wide variety of fish and wildlife; fresh air; and a sense of place in which residents invest, enjoy, and expect.

Some of these same resources result in serious environmental constraints or pose a hazard to development and a danger to the community. Flooding in the Nooksack River is frequent and impacts much of the valley floor. There are numerous wetlands and hydric soils throughout the lowlands that provide critical wetland functions and are generally unsuitable for development. The steep gradient and

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geologic structure of the mountain ranges in conjunction with heavy annual precipitation can contribute to slope instability and flood-prone drainage basins.

Much of the environmental degradation and destruction to property occurs as a result of a lack of information or understanding rather than willful action. Ecosystems are subtle and complex. Too often both their benefits and hazards are not readily apparent to the community. Additionally, baseline information is not always available to help identify the real costs or hazards of building in Whatcom County. There is a need for further research and education.

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

Policy 10A-1: Support good stewardship of Whatcom County lands, and apply this principle to the management of public lands.

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.

Policy 10A-3: Continue to identify, designate, and protect Critical Areas and other important environmental features.

Policy 10A-4: Manage designated Critical Areas as needed, to minimize or protect against environmental degradation and reduce the potential for losses to property and human life.

Policy 10A-5: Actively pursue voluntary, cooperative, and mutually beneficial efforts aimed at advancing county environmental goals.

Policy 10A-6: Aim to meet or exceed national, state, and regional air quality standards. Work with the Northwest Clean Air Agency to ensure compliance with applicable air quality standards.

Policy 10A-7: Using Best Available Science, support efforts to educate and inform the public as to the benefits of a healthy and viable environment, ecologically fragile areas, and their economic and social value.

Policy 10A-8: Lead and/or coordinate efforts with property owners, citizen groups, and governmental and non-governmental agencies in furthering Whatcom County's environmental goals and policies.

Policy 10A-9: Cooperate with state and federal agencies and neighboring jurisdictions to identify and protect threatened and endangered fish and wildlife species and their habitats.

Policy 10A-10: Support acquisition, conservation easements, open space, and other such programs to protect high-value natural areas as identified through the GMA planning process, the Natural Heritage Plan, the state Priority Habitats and Species (PHS) program, the Lake Whatcom Management Program, and other sources.



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Policy 10A-11: Designate high-value open space and natural areas for acquisition, conservation easements, open space, and other such programs to protect these natural areas upon request or consent of the property owner.

Policy 10A-12: Broadly inform the people of Whatcom County of the locations of potential development constraints associated with natural conditions. Information should include known natural hazards and an assessment of the potential danger to both the property owner and the public.

### Administration and Regulation

There are currently a multitude of regulations and administrative processes at the federal, state and local level that, together, have become excessive and difficult to understand. Conflicting regulations and complicated administrative processes can create undue hardship on community members and result in reduced levels of environmental protection.

**Goal 10B: Simplify and harmonize regulations relating to the identification, delineation, and protection of environmental features.**

Policy: 10B-1: Develop, as a significant component of a comprehensive environmental management program, non-regulatory measures that include voluntary activity, education, incentives, restoration, acquisition, advanced mitigation (i.e., mitigation done in advance of impacts), and intergovernmental coordination.

Policy 10B-2: Provide incentives for good stewardship of the land through the use of non-regulatory and innovative land use management techniques.

Policy 10B-3: Support education as an important tool in developing public appreciation for the value of ecosystems and provide the public with informational materials and presentations relating to natural system functions, regulations, and issues.

Policy 10B-4: Promote cooperation and coordination among involved government agencies when multiple agencies have jurisdiction over aspects of a single project.

Policy 10B-5: Process the environmental review of building and development permit applications within an established timeframe that is predictable and expeditious.

Policy 10B-6: Provide clear, timely, appropriate, and understandable direction to citizens, developers, and property owners.

Policy 10B-7: Ensure regulations are as simple and easy to understand as possible and maintain effective inspection, compliance, and enforcement measures as necessary.

~~Policy 10B-8: Recognize the policies of the Whatcom County Shoreline Management Program as constituting a "Shoreline Element" of this plan. The shoreline program regulations and policies shall be considered to be consistent with this plan.~~[CES1]

## The Environment and Property Rights

Prior to the 1970s, growth in Whatcom County was relatively slow and received little management. As a result, private property owners were left to their own resources as they determined how best to use their land. However, as increasing numbers of people moved to this area and settled, a greater demand was placed on Whatcom County's natural resources.

The problems that arise from this situation have caused many to realize what one person does with his/her property may have an impact on the larger environmental system that sustains us as a community and on the rights of other property owners.

Land use decisions can no longer be considered exclusively private matters. We are aware public actions impact every private citizen in Whatcom County and private actions may have public consequences as well. To that end, the law must protect the public good from detrimental private actions. Nevertheless, the right of the individual to use his or her property, within the bounds permitted by law, is a value supported by law and the community and must be recognized when making land use decisions in Whatcom County.

**Goal 10C: In implementing environmental policies, provide for protection of private property rights, economic opportunities, and plan appropriately for growth.**

Policy 10C-1: Actively pursue voluntary and cooperative efforts that advance Whatcom County's goals in a mutually beneficial manner.

Policy 10C-2: When adopting new environmental protection programs, consider multiple economic parameters including development objectives, impacts, and the economic benefits of the natural environment as both a resource and an amenity.

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, and other mechanisms that assist affected property owners.

Policy 10C-4: Avoid standards and procedures likely to require compensation to property owners or invalidation of such rules.

## Climate Change

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. In Washington State, the Climate Impacts Group (CIG), a consortium of scientists at the University of Washington, has done the

most extensive analysis of potential local climate change impacts in the Pacific Northwest. Based on a range of climate change model projections, as well as peer-reviewed scientific publications, the CIG concludes that during the next 20-40 years the Pacific Northwest climate may change significantly. See *Climate Change Impacts and Adaptation in Washington State: Technical Summaries for Decision Makers*, Climate Impacts Group, University of Washington, December 2013. The CIG confirms that global climate models project mid-21<sup>st</sup> century temperatures in the Pacific Northwest higher than the natural range of temperature observed in the 20<sup>th</sup> century. The CIG reports that as a result of likely climate change, causing slightly higher average annual temperature, impacts to the Pacific Northwest will likely affect a broad spectrum of the natural environment, but most notably changes to water resources, including:

- More precipitation falls as rain rather than snowfall in the Cascades due to an increased snow-line elevation;
- Decreased (winter) mountain snowpack and earlier (spring) snowmelt;
- Higher winter streamflow in rivers that depend on snowmelt;
- Higher winter streamflow in rain-fed river basins resulting in scouring floods that negatively affect salmon populations if winter precipitation and rain-on-snow events increases in the future as projected;
- Earlier peak (spring) streamflow in rivers that depend on snowmelt;
- Lower summer streamflow in rivers and streams; and,
- Decreased water in summer for irrigation, fish, human consumption and recreational use (more drought-like conditions).

Climate change impacts are likely to include longer-term shifts in forest types and species, potentially increasing wildfire risk and greater exposure to insects and disease. Nearshore and riverine fisheries may be subjected to increased stress due to even lower average summer stream flows (and higher summer stream temperatures) and increased acidity in Puget Sound. Agricultural sector concerns include the cost of climate adaptation, development of more climate-resilient technologies, and management and availability of adequate water supplies. Susceptibility to natural hazards is also expected to intensify due to climate change, including increased landslides, erosion, and coastal and riverine flooding due to more winter rainfall, and potential rising sea levels.

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.

In addition many insurance industry experts are now factoring in the costs of climate change into insurance premiums as the increase in the frequency and severity of extreme weather events around the world results in a corresponding increase in claims costs.

Local government, residents and businesses must anticipate that as the climate changes, more frequent and severe damage to private and public infrastructure will

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occur. Maintenance costs and insurance premiums can be expected to increase accordingly.

**Goal 10D: Strengthen the sustainability of Whatcom County's economy, natural environment, and built communities by responding and adapting to the impacts of climate change.**

Policy 10D-1: Whatcom County's natural resource-based economic sectors, ecosystems, water resources, infrastructure, emergency management, and public health all face climate change related risks in the future. The County should consider potential long-range climate change implications into its on-going functional planning and implementation actions. The County should:

1. Study the resilience of its natural and built environments to the potential impacts of climate change;
2. Identify the relative vulnerability of these sectors to climate change; and,
3. Examine the adaptive capacity of these sectors to cope with or mitigate climate change and take advantage of any beneficial opportunities.

Policy 10D-2: Develop strategies that encourage a diversified and sustainable economy that is resilient to the impacts of climate change.

Policy 10D-3: Promote the efficient use, conservation, and protection of water resources.

Policy 10D-4: Pursue strategies to reduce the vehicle miles traveled (VMT) in the county by encouraging expanded availability and use of public transportation, carpooling, and non-vehicular modes of transportation.

Policy 10D-5: Establish land use patterns that minimize transportation-related greenhouse gas emissions and encourage preservation of natural resource lands and the protection of water resources.

Policy 10D-6: Convene a climate impact advisory committee by 2017. The advisory committee should consist of (but not be limited to) experts in energy efficiency and carbon emission reduction, representatives from Whatcom County, and interested community members. The committee will be tasked with:

- Evaluating Whatcom County's compliance with meeting targets set forth in the 2007 Climate Plan;
- Establishing new targets that meet or exceed state and federal climate impact goals;
- Updating the Climate Plan, at minimum every five years, or as needed to meet targets;
- Recommending updates to the Whatcom County

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- Comprehensive Plan in accordance with meeting Whatcom County's emission reduction goals;
- Ensuring that Whatcom County government facilities and operations are designed to meet or exceed goals and standards resolved in the current Climate Protection and Energy Conservation Action Plan; and
  - Recommend updates to Whatcom County land use policies and development regulations to support renewable energy development goals.
- Policy 10D-7: Encourage sustainability by developing strategies and practices to increase the use of renewable, net-neutral carbon energy in Whatcom County facilities and County vehicles, with a goal of net zero man-made carbon emission by 2050.
- Policy 10D-8: Encourage sustainability by developing strategies and practices to reduce landfill waste from Whatcom County government facilities to near zero.
- Policy 10D-9: Identify responsible parties and agencies and encourage them to identify and properly seal and/or burn methane that is escaping into the atmosphere from wells.
- Policy 10D-10: Create updates to Whatcom County land use policies and development regulations to support renewable energy development goals.
- Policy 10D-11: [P/C2] Protect ecological functions and ecosystem-wide processes of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise.

### Natural Hazards

#### Introduction

The location, climate, and geology of Whatcom County combine to create many natural hazards to people and their developments. Earthquakes, volcanoes, landslides, and flooding are some of the major natural hazards found in our region. Additionally, old mines are scattered around the county that could be dangerous to the community. Natural Hazards goals and policies are intended to provide guidance to county government as it assists its citizens in effectively managing natural hazards in a manner that minimizes the danger to each member of this community, while continuing to provide for economic opportunities.

#### Background Summary

Natural Hazards include the following (**Map 10-4**):

**Landslide Hazards** – The geologically recent retreat of glaciers from the Whatcom County landscape, succeed by contemporaneous geomorphic processes of erosion, sediment transport, deposition, isostatic rebound and tectonic uplift, has left many

hillsides over-steepened and susceptible to naturally occurring and human-triggered slope failure and erosion. Several large, well-known landslides are presently active in Whatcom County, such as the Swift Creek Slide on Sumas Mountain. In addition, numerous large-scale, pre-historic slope failure deposits have been mapped by past workers and are readily identified in more recently available LiDar imagery. Various slope failure processes contribute to the mosaic of landslide hazards present in the county and the potential exists for a multitude of impacts ranging from periodic small- to large-scale rockfall and slides, massive debris slides and avalanches, destructive debris flows, and deep-seated earthflows, slumps and slides. These landslide processes act on large- and small-scale, and though much less catastrophic in nature, smaller landslides occur more frequently and pose a continual hazard to County residents and infrastructure. Certain types of geologic conditions and formations commonly cause landslides, namely the Chuckanut Formation and the Darrington Phyllite, but are also frequently observed in unconsolidated glacial sediments, in the presence of day-lighting groundwater seams and springs, on slopes in excess of 35 percent, along coastal bluffs, and in areas of fluvial erosion.

**Alluvial Fan Hazards** – Alluvial fan hazards areas exist where steep mountain streams flow onto floodplains or into lakes and deposit debris and sediment. Because these streams are steep and flow in confined canyons, they can carry more sediment and debris than a similar-sized stream flowing over flat land. During a large storm, streams on alluvial fans can create catastrophic flooding and debris floods, such as were experienced in 1983 in the Lake Whatcom area. During this storm event, the Sudden Valley development on Lake Whatcom incurred significant damage to property from flooding and debris flows on the Austin Creek alluvial fan.

**Flood Hazards** – Heavy winter rains and a transient snowpack combined with the steep and sometimes unstable slopes of Whatcom County's foothills create conditions ideal for flooding and debris flows along many of our rivers and streams. The Nooksack River floodplain alone covers 38,000 acres in Whatcom County. In 1989 and 1990, the Nooksack River overflowed and flooded lowland Whatcom County causing millions of dollars of damage. During some extreme floods, the Nooksack River overflows near Everson and adversely impacts residents along Johnson Creek in Sumas, and in the Abbotsford area of British Columbia. It is projected that climate change will increase flood risk, due to increased sea level and changes in rainfall patterns. Significant damage may result from such floods. In 1991, Whatcom County formed a countywide Flood Control Zone District to address the major flooding issues in the county.

**Volcanic Hazards** – The presence of Mt. Baker is an asset to our region. Its 10,778-foot peak is one of the dominant features of Whatcom County's landscape. However, Mt. Baker is also considered one of the most active volcanoes in the Cascade Range, and of the six major volcanoes in the range, Mt. Baker is considered by geologists to be very hazardous during and after an eruption. Pyroclastic flows, ash flows, and especially volcanic mudflows, also known as lahars, are believed to be the greatest dangers to human life and development in Whatcom County. Geologic evidence indicates that an eruption on Mt. Baker caused



1 a major lahar about 6,600 years ago that inundated the Middle Fork Nooksack  
2 Valley from its headwaters downstream past the confluence with the North Fork at  
3 Welcome. The same lahar is now known to have been over 300 feet deep in the  
4 upper reaches of the Middle Fork and extended as far west as Nugent's Corner. A  
5 major lahar along the Nooksack would divert the river from its channel and cause  
6 mass flooding. Fortunately, volcanic eruptions are infrequent with periods of  
7 hundreds and thousands of years between events, but this infrequency also makes  
8 forecasting a volcanic eruption extremely difficult. However, a major eruption of Mt.  
9 Baker would pose a serious threat to human life and property. The deeply  
10 weathered nature of the rocks forming Mt. Baker may also fail, triggering a  
11 mudflow that would travel rapidly down the stream channels ringing the volcano  
12 and result in damage similar to that from a volcanic eruption trigger. Mapping over  
13 the past decade of other Cascade volcanoes has demonstrated massive mudflows  
14 extending from the volcanoes to Puget Sound, and from Mount Rainier and Glacier  
15 Peak.

16 **Earthquake Hazards** – Whatcom County lies within the influence of the  
17 convergent plate margin between the Pacific and North American Plate termed the  
18 Cascadia Subduction Zone. Regionally-extensive and damaging earthquakes,  
19 termed mega-thrusts, are possible when stress generated between the subducting  
20 Pacific Plate and over-riding North American Plate is released. A mega-thrust  
21 earthquake is capable of generating an earthquake of magnitude 9, or greater, and  
22 research has indicated an approximate recurrence interval of 500-600 years.  
23 Associated with the stresses generated at the convergent plate margin are shallow,  
24 crustal faults that are mapped throughout Whatcom County. Earthquake activity on  
25 these fault systems is much more frequent than that observed at the Cascadia  
26 Subduction Zone, and the Deming area is considered one of the most seismically  
27 active areas in Washington. Recent research has shown these crustal faults are  
28 capable of generating a magnitude 7 earthquake with an average recurrence  
29 interval of 30 to 50 years. While all buildings are susceptible to damage from  
30 seismic-shaking, structures built on peat soils, large areas of non-structural fill, or  
31 liquefiable soils are prone to more severe shaking during an earthquake. If the  
32 shaking is strong enough, or of sufficient duration, structures may collapse or  
33 become damaged due to building fatigue, ground settlement/liquefaction, and/or  
34 lateral spreading. In addition to seismic hazards posed by the Cascadia Subduction  
35 Zone, a significant mega-thrust earthquake has the potential to generate a large  
36 and destructive tsunami that has the potential to affect most low-bank areas of the  
37 County.

38 **Mine Hazards** – Mine hazard areas are sites of abandoned underground mine  
39 shafts, adits, and mine tailings. Coal mining was a major industry in Whatcom  
40 County in the early part of the 20<sup>th</sup> century, and several major mines were  
41 developed in various parts of the county. All of the formerly active mines are now  
42 no longer worked and are abandoned. For the most part these mine locations are  
43 known and mapped, such as the extensive coal mines under the northern part of  
44 the City of Bellingham and in the Blue Canyon area of South Lake Whatcom.



**Issues, Goals, and Policies**

**Landslides** – Siting human development on or adjacent to known landslide hazard areas can create health and safety risks. The risks can be elevated due to extreme weather events and earthquakes, but may also occur with little or no warning. In the case of the Swift Creek Landslide, the release of asbestos-laden sediment poses an additional risk to public health. Development activity can de-stabilize naturally unstable slopes and impact ecosystems. However, predicting the exact timing, location, or extent of a damaging landslide is difficult, and in particular areas of the county landslide hazards are not possible to completely mitigate or avoid. In some circumstances, the development of upland properties may place downslope neighbors and ecosystems at risk from rockfall or landslides. A similar relationship holds true for development at the toe of a potentially unstable slope. In either event, development in proximity to landslide hazards must proceed in consideration of potential impacts in order to ensure life safety and preserve and protect public and private infrastructure.

**Alluvial Fans** – Because alluvial fan areas are associated with streams, are generally gently sloping and elevated above the adjacent floodplain, and are located at the base of mountains, they have historically been popular places to develop. However, once every 10-25 years, a large storm event occurs in our area and streams flood homes and developments, causing damage to property, ecosystems, and sometimes loss of lives.

**Flooding** – Floodwaters from the Nooksack River can damage homes, agricultural areas, businesses, and industries in the small cities situated along the river; fish and wildlife habitat and other ecosystems; and disrupt transportation and utility corridors. Storm tides can flood homes and roads along low, exposed marine shorelines in the Birch Bay, Sandy Point, Point Roberts, and Gooseberry Point areas. Homes along Lake Whatcom, Lake Samish, and Cain/Reed Lakes have also been impacted by flooding during extreme storm events. Property and public safety are also impacted by rapid channel morphology events.

**Volcanos** – A volcanic eruption or mudflow at Mount Baker could potentially severely affect river flow on the Nooksack River or Baker River and cause severe property damage near the volcanoes or along lahar routes. A lahar is an extremely rare and unpredictable occurrence. Evacuation routes should be planned and made public. Development should be regulated according to the Critical Areas Ordinance.

**Earthquakes** – A major earthquake may likely and significantly affect Whatcom County. If the shaking is strong enough, buildings may collapse, roads could be damaged, and/or communications, power, and utilities could be severely disrupted, mud and rock slides could occur on unstable slopes, and local sea levels may change as shorelines assume altered post-quake elevations.

**Mines** – Some abandoned mine areas may pose a risk of ground subsidence from the collapse of abandoned mine shafts. Air and water pollution may also be hazards associated with abandoned mine tailings and trapped toxic gases. Development on or near mine hazards could be adversely impacted.

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**Gas wells** – Several exploratory oil & gas wells have been drilled around the county over the last 70+years. Some of these present potential environmental hazards due to ongoing leakage of gas.

**Old Landfills** – There are known abandoned landfills in the County and possibly some that are unknown. There are also several sites around the County that contain large numbers of abandoned vehicles and other debris. As with most landfills these locations pose some degree of risk of hazardous substances leaking into local aquifers.

**Balanced Management** – A central issue common to all development in natural hazard areas is the need for Whatcom County to balance the responsibility of local government to protect the public interest and provide for a safe and healthy environment while safeguarding the rights of private property owners.

**Economic Impact** – Damage to private and public property resulting from the siting of human development in areas of natural hazards is significant to the people of Whatcom County. The 1990 Nooksack River floods caused over \$20 million dollars in damage to roads, bridges, buildings, and farmland. Disaster relief efforts are expensive and dangerous to conduct during an emergency. Public efforts to reduce hazards, such as the establishment of the Flood Control Zone District, are also expensive.

**Goal 10E:**            **Minimize potential loss of life, damage to property, the expenditure of public funds, and degradation of ecosystems resulting from development in hazardous areas such as floodplains, landslide-prone areas, seismic hazards areas, volcanic impact areas, abandoned mine and exploratory gas well locations, potentially dangerous alluvial fans, and other known natural hazards by advocating the use of land acquisition, open space taxation, conservation easements, growth planning, regulations, and other options to discourage or minimize development, or prohibit inappropriate development in such areas.**

Policy 10E-1:            Avoid or minimize public investments for future infrastructure development on known natural hazard areas.

Policy 10E-2:            Use Best Available Science and data to research and investigate the nature and extent of known natural hazards in the county and make this information available to the general public and policy makers in an accessible and understandable form.

Policy 10E-3:            Broadly inform the people of Whatcom County of the locations of known natural hazards, and the potential for adverse impacts of such natural hazards to the health, safety, and welfare of people and their properties.

Policy 10E-4:            Establish acceptable levels of public risk for development in known natural hazard areas based upon the nature of the natural hazard and levels of public risk, and maintain regulatory

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- 1 criteria for approving, disapproving, conditioning, or mitigating  
2 development activity.
- 3 Policy 10E-5: Prohibit the siting of critical public facilities in known natural  
4 hazard areas unless the siting of the facility can be shown to  
5 have a public benefit that outweighs the risk of siting in the  
6 particular hazard area.
- 7 Policy 10E-6: Maintain a comprehensive program of regulatory and non-  
8 regulatory mechanisms to achieve Natural Hazard goals and  
9 policies. This program should include such mechanisms as  
10 education, tax incentives, zoning, land use regulations,  
11 conservation easements, purchase of development rights,  
12 transfer of development rights, and public acquisition.
- 13 Policy 10E-7: Be consistent with the Natural Hazard goals and policies and  
14 consider the locations of Natural Hazard Areas when establishing  
15 or changing zoning patterns and densities.
- 16 Policy 10E-8: To address the causes of flooding and avoid expensive and  
17 maintenance-intensive bank protection measures, the County  
18 should prioritize its floodplain property acquisition program.
- 19 Policy 10E-9: Discourage new development in the floodplain.
- 20 Policy 10E-10: Require applicants for development permits located in natural  
21 hazard areas to provide development plans designed to  
22 minimize the potential to exacerbate the natural hazard as well  
23 as the risk of damage to property or threats to human health  
24 and safety. In natural hazard areas where engineering solutions  
25 cannot be designed to withstand the forces expected to occur  
26 under the design event of a particular natural hazard, or off-site  
27 adverse impacts to adjacent properties or ecosystems cannot be  
28 adequately mitigated, Whatcom County may deny development  
29 permits intended for permanent or seasonal human habitation  
30 as described in the Critical Areas Ordinance.
- 31 Policy 10E-11: Consider conducting a public process with affected citizens,  
32 technical experts, and decision-makers to establish  
33 recommended levels of public risk for each of the identified  
34 natural hazards. In developing recommended levels of public  
35 risk for natural hazards, consider the appropriate variables  
36 affecting developments in hazardous areas. These variables may  
37 include:
- 38 • Specific types of risk associated with the particular hazard  
39 area;
  - 40 • The gradation of hazards associated with a particular geo-  
41 hazard;
  - 42 • Level of detail necessary to map hazard areas;

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- Different levels of risk associated with different ownership classes (e.g. public ownership versus private ownership);
- Different levels of risk associated with different types of land uses; and,
- Mitigation measures related to specific adverse impacts of development in hazard areas.

Once a set of risk levels has been identified, propose these risk levels for adoption of legislation by the County Council as the level to which future development must be designed.

Policy 10E-12: Consider establishing acceptable levels of public risk for use in approving and conditioning development activity in known natural hazard areas. The established level of risk may be expressed as the potential hazard posed as determined by scientific and historical methods applicable to each specific natural hazard.

Policy 10E-13: Review the findings and recommendations of alluvial fan hazard evaluations and make appropriate recommendations for land use and zoning regulations to the County Council to assist in reducing the hazards posed on these fans. Whatcom County has completed or nearly completed alluvial fan evaluations of Canyon Creek, Jones Creek, and Glacier-Gallop Creeks.

Policy 10E-14: Review the findings and recommendations of the Comprehensive Flood Hazard Management Plan (CFHMP) and make appropriate recommendations for land use and zoning regulations to the County Council to assist in the implementation of the CFHMP.

Policy 10-15E: Identify known locations of abandoned wells that could produce methane and/or other hazardous substances and where immediate danger of methane and hazardous substance leaking exists, condition development approvals on affected parcels to mitigate those impacts.

## Water Resources

### Introduction

Water resources refer to the numerous surface waters such as lakes, streams, wetlands; groundwater; estuaries; and marine waterbodies within Whatcom County (**Map 10-1**). These waterbodies are often integrally linked through the complex network referred to as the water cycle. The water cycle describes the series of transformations that occur in the circulation of water from the atmosphere onto the surface and into the subsurface regions of the earth, and then back from the surface to the atmosphere. Water resources of Whatcom County provide: natural beauty; recreation; habitat for fish and wildlife; water for drinking, agriculture, and industry; and other benefits essential to the quality of life and economic health of

1 the community. The quality of life and economic health of our county's communities  
2 depend on the maintenance of a safe and reliable water supply. Decisions affecting  
3 any element of the water environment must be based on consideration of the  
4 effects on other elements.

## 5 **Background Summary**

6 Whatcom County has 16 major freshwater lakes, 3,012 miles of rivers and streams,  
7 over 37,000 acres of wetlands, 134 miles of marine shoreline, and aquifers  
8 containing an undetermined amount of groundwater. These water resources serve  
9 multiple uses, including providing a source of drinking water for the people of  
10 Whatcom County. Surface water sources such as Lake Whatcom, the Nooksack  
11 River, and Lake Samish provide water to more than half the county residents, with  
12 the remainder relying on groundwater, either from individual wells or from about  
13 300 public water systems. Agriculture relies on both ground and surface water for a  
14 variety of uses, including irrigation and drinking water for livestock. Businesses and  
15 industries may also require water, sometimes in substantial quantities, from non-  
16 potable and potable supplies. Water is also essential to meet many of what are  
17 referred to as "instream" uses, such as recreation, shellfish growing and harvesting,  
18 fish and wildlife habitat, aesthetics, and other uses and benefits.

19 Groundwater is contained in aquifers, which are subterranean layers of porous rock  
20 or soil. Most of the surficial aquifers in Whatcom County are replenished by  
21 rainwater. Aquifers are often integrally linked with surface water systems and are  
22 essential for meeting instream and out-of-stream water needs such as for drinking  
23 water, agriculture, industry, and other uses.

24 Rainfall that runs into drainage courses such as ditches, streams, wetlands, rivers,  
25 lakes, and the Strait of Georgia supports local surface and marine waters. Natural  
26 drainage systems have many important functions, including storing excess water  
27 flow, purifying surface water, recharging groundwater, conveying water, and  
28 supporting important biological activities. As more areas in Whatcom County are  
29 being urbanized, natural water resource systems are being replaced with built  
30 systems, leading to permanent changes in hydrology.

31 Whatcom County government has a major role in helping to maintain these benefits  
32 through its many responsibilities and programs, particularly in the areas of health,  
33 safety, land use, and development. The intent of the following goals and policies is  
34 to provide guidance to Whatcom County government as it assists its citizens in  
35 effectively managing our water resources in a manner that ensures that the  
36 benefits of those resources are maintained far into the future. The water resource  
37 section focuses primarily on groundwater and surface water management. Surface  
38 water management relates generally to watershed protection and stormwater/  
39 drainage systems. However, some policy direction may indirectly be provided for  
40 areas such as wetlands, estuaries, streams, and marine waterbodies within the  
41 Water Resource section. Some of these areas are covered in more detail in other  
42 sections within the Environment Chapter.

**Whatcom County Water Resource Programs**

Whatcom County has and/or participates in numerous water resource programs aimed at protecting and enhancing water quality and quantity, including:

- WRIA 1 Watershed Management Project;
- Lake Whatcom Watershed Management;
- Groundwater Protection & Management;
- Flood Hazard Management; and,
- Stormwater Management.

**WRIA 1 Watershed Management Project**

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

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

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

*Historical Organization (1999-2016)*

*WRIA 1 Joint Board*

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

*WRIA 1 Joint Policy Boards*

The WRIA 1 Joint Policy Boards are comprised of members of the WRIA 1 Joint Board and Salmon Recovery Board. This organizational level interacts with federal, state, and regional organizations at a policy-level to coordinate the implementation



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and management of the WRIA 1 Watershed Management Plan – Phase 1, the WRIA 1 Salmonid Recovery Plan and other related activities.

### *Local Integrating Organization (LIO)*

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

### *WRIA 1 Planning Unit*

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

### *Organizational Update (2016)*

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

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

- Facilitate implementation and adaptive management of the WRIA 1 Watershed Management Plan-Phase 1 as currently constituted or subsequently amended;
- Coordinate the implementation and adaptive management of the WRIA 1 Salmonid Recovery Plan and associated implementation documents,
- Serve as the WRIA 1 Salmon Recovery Lead Entity pursuant to RCW 77.85,
- Coordinate participation in Puget Sound salmon recovery efforts,
- Coordinate the development, implementation and adaptive management of WRIA 1 watershed chapters of recovery plans for ESA listed salmonids and other salmonid species as warranted;



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- Coordinate planning, implementation, monitoring and adaptive management of ecosystem recovery actions in WRIA 1 consistent with agreed local goals and objectives,
- Serve as the WRIA 1 Local Integrating Organization and a partner in the Puget Sound Partnership in representing WRIA 1 goals and priorities; and
- Participate in other related activities as agreed to by the Board.

The roles of the Local Integrating Organization and Planning Unit did not change.

### 2005 WRIA 1 Watershed Management Plan – Phase 1

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

- **Water Quantity** – To assess water supply and use, and develop strategies to meet current and future needs. The strategies should retain or provide adequate amounts of water to protect and restore fish habitat, provide water for future out-of-stream-uses, and ensure adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state’s Growth Management Act.
- **Water Quality** – To ensure the quality of our water is sufficient for current and future uses, including restoring and protecting water quality to meet the needs of salmon and shellfish, recreational uses, cultural uses, protection of wildlife, providing affordable and safe domestic water supplies, and other beneficial uses. The initial objectives of the water quality management strategy will be to meet the water quality standards.
- **Instream Flow** – To supply water in sufficient quantities to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.
- **Fish Habitat** – To protect or enhance fish habitat in the management area and to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.

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

Lower Nooksack Strategy Objectives:

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

Streamflow Restoration Act (ESSB 6091)

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

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

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

determined to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

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

## **Lake Whatcom Watershed Management**

Lake Whatcom is a large multi-purpose reservoir that is the source of drinking water for the City of Bellingham, Lake Whatcom Water and Sewer District, several other smaller water districts/associations, and about 250 homes that draw water directly from the lake. The lake provides water to about half the population of Whatcom County.

Lake Whatcom is a multiple use lake and watershed. In addition to providing water for drinking, commercial, and industrial uses, the lake is used for boating, swimming, and fishing. The majority of the watershed is forested, mainly surrounding the large southernmost portion of the lake. Other land uses include residential development (approximately 5,300 homes are located within the watershed), limited agriculture and commercial development, parks, and other public facilities. The on-going management challenge is trying to determine the extent to which these practices can occur while maintaining safe, clean drinking water. The challenge is further complicated by possible requirements related to the Endangered Species Act, tribal water rights, and the potential impact these issues may have on how the City's diversion from the Nooksack River is operated.

The watershed contains four developed areas: the City of Bellingham, which straddles the upper portion of the northern-most basin of the lake; Geneva, which is immediately south and east of Bellingham's city limits and is part of the city's urban growth area; Hillsdale, which is immediately north and east of Bellingham's city limits and is also part of the city's urban growth areas; and the Sudden Valley Rural Community. In addition, it includes a variety of other zones, including resource, rural, and residential rural zones. Outside the Bellingham City limits, approximately 70% of the watershed is in Forestry zoning and more than 75% of the current land use is forestry.

Water and sewer service are provided by the Lake Whatcom Water and Sewer District. Capacity problems in the district's sewer line, which serves Geneva and Sudden Valley, have caused overflows into the lake in the past. An aggressive program to preclude stormwater infiltration has reduced the overflow problems to a large extent. In addition, the district has a contractually limited flow capacity to Bellingham. The Lake Louise Road sewage interceptor was constructed in January 2003 to carry waste water from Sudden Valley and Geneva and serves as a complement to the Lake Whatcom Boulevard trunk line. The interceptor was designed to service full build-out of Sudden Valley and Geneva.

The City of Bellingham and Lake Whatcom Water and Sewer District are responsible for ensuring drinking water standards are met for their customers. To date water supplies have consistently met standards. The ability to continue to economically

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1 meet drinking water standards requires maintaining source water that requires  
2 minimal treatment. For this reason the City of Bellingham maintains an on-going  
3 source water-monitoring program. Other agencies including Western Washington  
4 University, Department of Natural Resources, Department of Fish and Wildlife,  
5 Department of Ecology, Lake Whatcom Water and Sewer District, and Whatcom  
6 County, have also conducted monitoring, studies, and/or evaluations of the lake  
7 and watershed.

8 Studies on Lake Whatcom conducted over a number of years indicate water quality  
9 in the lake has declined. In 1998, the Washington State Department of Ecology  
10 listed Lake Whatcom as an impaired water body and placed Lake Whatcom on the  
11 Federal Clean Water Act 303(d) list because of low oxygen levels in the Lake and  
12 high bacteria levels in streams that flow into the Lake. The 303(d) listing requires  
13 the establishment of a Total Maximum Daily Loads (TMDLs). The Department of  
14 Ecology issued the "Lake Whatcom Watershed Total Phosphorus and Bacteria Total  
15 Maximum Daily Loads: Volume 1, Water Quality Study Findings" in 2008. This study  
16 documented Lake Whatcom is impaired for dissolved oxygen due to phosphorus  
17 loading and that streams flowing into Lake Whatcom do not meet fecal coliform  
18 bacteria standards. Loading capacities for total phosphorus and bacteria reduction  
19 targets were set forth in this document. In 2013 The Department of Ecology issued  
20 a draft "Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum  
21 Daily Loads: Volume 2, Water Quality Improvement Report and Implementation  
22 Strategy." This report identifies how much phosphorus can be discharged to the  
23 Lake and identifies how the bacteria load should be allocated between the County  
24 and City of Bellingham, in order to meet water quality standards.

25 A significant cause of declining oxygen levels has been from residential  
26 development in the watershed. Past development permitted by the City of  
27 Bellingham and Whatcom County has led to increased phosphorus loading into the  
28 lake, which stimulates algae growth. Bacteria that consume the dying algae deplete  
29 the dissolved oxygen, leading to lower oxygen levels in the lake. Past poorly  
30 managed forest practices may have led to significant increases in phosphorus  
31 loading to the lake.

32 Whatcom County has taken a number of actions to reduce phosphorus and  
33 otherwise address Lake Whatcom water quality. These include rezoning land to  
34 allow less development in the watershed, adoption of the Lake Whatcom  
35 Comprehensive Stormwater Management Plan, revising stormwater management  
36 standards for private development to significantly reduce potential phosphorus  
37 runoff, construction of stormwater capital improvement projects and adoption of  
38 regulations that restrict the application of commercial fertilizers.

39 In 2014, approximately 8,800 acres of forest lands around Lake Whatcom were  
40 transferred to Whatcom County from the Washington Department of Natural  
41 Resources through reconveyance. These lands will provide passive recreation  
42 opportunities with hiking and biking trails connecting various communities,  
43 neighborhoods, and parks throughout the watershed. Under County ownership, the  
44 forests will be allowed to mature to an older growth environment benefiting the  
45 watershed and helping to stabilize steep slopes that surround the lake.

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In 2004, the Department of Natural Resources (DNR) Board on Natural Resources adopted the Lake Whatcom Landscape Plan. This plan provides additional protections on remaining state managed lands within the Lake Whatcom watershed. The plan provides additional protections on streams and potentially unstable slopes not normally included in forest practices in Washington State.

### Lake Whatcom Watershed Management Program

A variety of agencies, organizations, and individuals play a role in managing and protecting Lake Whatcom. In an effort to coordinate efforts of these various players, in 1990, the City of Bellingham, Whatcom County, and Water District 10 (now known as the Lake Whatcom Water and Sewer District) began meeting to develop a joint management strategy for the Lake Whatcom watershed.

In November/December 1992, a joint resolution was passed by the Bellingham City Council, Whatcom County Council, and the Lake Whatcom Water and Sewer District (formerly Water District 10) Commissioners, which reaffirmed this position with six general goal statements and a set of specific goal statements in various categories. The specific goal statements for urbanization were the following:

- Prevent water quality degradation associated with development within the watershed.
- Review and recommend changes in zoning and development potential that are compatible with a drinking-water reservoir environment.
- In addition to zoning, identify and promote other actions to minimize potential for increased development in the watershed (i.e. land trust, development rights, cost incentives, etc.).
- Develop specific standards which reduce the impacts of urbanization, such as minimal lot clearing; clustered development to reduce infrastructure; collection and treatment of stormwater before entering the lake.
- Develop appropriate interlocal agreements with governing agencies to prohibit the potential for additional development once an agreed upon level is set.

The joint resolution included goals for watershed management that extended beyond urbanization. Goals were included for stormwater management, on-site waste systems, conservation, forest management, spill response, hazardous materials transport and handling, data/information management, education/public involvement, and other topics. A joint strategy was approved for developing specific plans to meet the adopted goals. Eight high priority goals were selected first and plans have been completed and jointly adopted for each of the goals.

In 1998, the City, County, and District 10 formalized their joint commitment to protect and manage the lake through the joint adoption of an interlocal agreement and allocation of funding toward protection and management efforts in the watershed. A five-year program plan was developed for ten program areas. Specific priority was placed on activities related to watershed ownership, stormwater management, and urbanization/land development.



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The resulting Lake Whatcom Management Program guides actions to protect Lake Whatcom as a long-term supply of drinking water for the City of Bellingham and portions of Whatcom County. The program emphasizes protection over treatment in managing Lake Whatcom and its watershed. The structure of the Lake Whatcom Management Program includes legislative bodies, a management team, an interjurisdictional coordinating team, agency staff, and advisory committees.

The Lake Whatcom Watershed Management Program website (<http://www.lakewhatcom.whatcomcounty.org/resources>) contains the management plans, reports, and work programs, as well as the jurisdictions' pertinent regulations and brochures on the different programs aimed at the various efforts to improve water quality.

### Sudden Valley

Sudden Valley is a community within the Lake Whatcom Watershed. It was established in the early 1970s as a recreation/resort area but over the last thirty years has developed into a significant residential area.

Since 1985, Sudden Valley has mandated the use of appropriate stormwater best management practices through standards for individual stormwater detention for all new construction. Any new building permits on existing lots must be able to demonstrate that stormwater detention is included in the plan as a precondition to issuance of a permit. Sudden Valley is also subject to additional regulatory protections that apply to the Lake Whatcom Watershed under the Water Resource Protection Overlay District, Stormwater Special District, and Water Resource Special Management Area requirements. Under the provisions of these special districts, potential impacts from impervious surfaces, stormwater runoff, and clearing activities are required to be addressed either on-site or through a community-wide process.

### **Groundwater Protection & Management**

Groundwater is contained in aquifers, which are subterranean layers of porous rock or soil. Most aquifers are replenished by rainwater, though some may contain water trapped during glacial periods. Aquifers are often integrally linked with surface water systems and are essential for meeting instream and out-of-stream water needs, such as for drinking water, agriculture, and industry. Whatcom County residents rely heavily on groundwater for drinking water, agriculture, and commercial and industrial needs. Groundwater also plays an important role in maintaining stream flows.

Many studies have been conducted related to groundwater quality in Whatcom County documenting water quality issues, such as exceedances of standards for nitrate, ethylene dibromide (EDB) and 1,2-dichloropropane (1,2-D), pesticides, iron and other agricultural-related contaminants, particularly in the northern portion of the County. In general, groundwater in Whatcom County is very vulnerable to contamination because much of the County's groundwater lies within a shallow unconfined aquifer. Activities that occur on the surface of the ground directly affect groundwater quality. Shallow wells that draw water from unconfined water table aquifers are at highest risk.

Whatcom County's Critical Areas Regulations protect Critical Aquifer Recharge Areas (CARAs) during the development process, by precluding certain uses in CARAs and/or requiring certain precautions be taken in handling certain chemicals.

#### **Flood Hazard Management**

A comprehensive approach to flood hazard management planning provides a better understanding of the river and floodplain system. It also ensures flooding and channel morphology problems are not simply transferred to another location within the basin, but are addressed in a comprehensive, basinwide manner. This approach directs future flood hazard management expenditures in the most efficient and cost effective manner.

Whatcom County Public Works coordinates with the Flood Control Zone District Advisory Committee (FCZDAC) to identify and characterize flooding problems and provide recommendations for achieving consistent, long-term flood hazard reduction strategies. Some activities typically involved in developing a Comprehensive Flood Hazard Management Plan (CFHMP) include data collection, hydraulic modeling, alternatives analysis, floodplain mapping, and meander limit identification. In addition to the technical components in comprehensive flood planning, extensive coordination with the public and other agencies is required throughout the planning process.

Other County flood management programs include:

**Early Flood Warning** – Work with the United States Geological Survey (USGS) to maintain a network of early flood warning stations to help citizens prepare and take appropriate measures to protect lives and property from flood damages.

**Flood Hazard Reduction Program** – Implement projects to reduce future flood damages and public expenditures to repair damaged areas. Examples include construction of setback levees and overflow spillways, and designation of overflow corridors in overbank areas. Two alluvial fan studies have been completed for Jones Creek and Canyon Creek. For Jones Creek, review of potential mitigation measures and concept design of a preferred approach has also been completed.

**Comprehensive Flood Hazard Management Planning** – Identify flooding problems and provide recommendations for achieving long-term flood hazard reduction strategies. The Lower Nooksack River Comprehensive Flood Hazard Management Plan was adopted in 1999. Implementation of the plan is ongoing.

**Preparedness and Response** – Plan for and implement a coordinated response during flood events to ensure public safety and minimize flood damages.

**National Flood Insurance Program** – Participate in the Congress-initiated National Flood Insurance Program (NFIP) of 1968, to make affordable flood insurance available to citizens of communities that adopt approved flood management regulations.

**Repair and Maintenance Program** – Address problem areas with rivers, streams, and coastlines of Whatcom County, and mitigate future flood damages in a proactive and cost-effective manner.



**Technical Assistance** – Provide technical assistance regarding drainage and flood issues to private citizens and businesses located along the many waterbodies within Whatcom County.

## **Organization**

### Flood Control Zone District (FCZD)

Following the severe floods of 1989 and 1990, in 1992 Whatcom County created the countywide Flood Control Zone District (FCZD), including both incorporated and unincorporated areas of the County. The FCZD is a quasi-municipal corporation that is a separate legal entity from Whatcom County government. Even though this legal separation exists, the Whatcom County Council and the County Executive (Board of Supervisors) and the Public Works Department (staff) perform the governance and administrative support for the district.

The primary purpose of the FCZD is flood hazard management. Revenue generated to for this purpose is accomplished in two ways: (1) a county-wide uniformly applied tax; and, (2) supplemental revenue generated within localized Diking Districts and Sub-Flood Districts where specific local project activity is planned.

While the primary purpose of the FCZD is flood hazard management, the district is allowed to address a wide variety of water resource issues. Due to this ability, revenue generated by the district is currently used to finance additional water supply and water quality related improvement projects.

## **Pertinent Documents**

### Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP)

In 1999, the county adopted the Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP). The CFHMP identifies projects, programs, and other recommendations aimed at reducing future flood damages along the Lower Nooksack River.

### Critical Areas Regulations (WCC 16.16)

Whatcom County's Critical Areas Regulations aim to protect people and property in Frequently Flooded Area (FFAs) by requiring development in these areas conforms to WCC Title 17, Flood Damage Prevention.

## **Stormwater Management**

Stormwater runoff occurs when precipitation from rain or snowmelt flows over the land surface. The addition of roads, driveways, parking lots, rooftops, and other surfaces that prevent water from soaking into the ground greatly increases the runoff volume created during storms. This runoff is swiftly carried to our local streams, lakes, wetlands and rivers and can cause flooding and erosion. Stormwater runoff also picks up and carries with it many different pollutants that are found on paved surfaces, such as sediment, nitrogen, phosphorus, bacteria, oil and grease, trash, pesticides, and metals.

**County Stormwater Management Programs**

National Pollutant Discharge and Elimination System (NPDES) Phase II Permit

Stormwater runoff picks up pollutants as it travels over our developed landscapes and is a major source of water quality problems. In 1987, the Federal Clean Water Act was amended to address stormwater pollution. As a result, the United States Environmental Protection Agency (EPA) created the National Pollutant Discharge Elimination System (NPDES) to address stormwater runoff. States are required to administer permits to local jurisdictions to regulate runoff as part of the NPDES Program. The Permit is referred to as the "NPDES Phase II Permit" or "Phase II Municipal Stormwater Permit".

In February of 2007, the Washington State Department of Ecology issued Whatcom County's Phase II Municipal Stormwater Permit. This permit regulates discharges from Small Municipal Separate Storm Sewers, and is part of the National Pollutant Discharge and Elimination System (NPDES) and State Waste Discharge General Permit. It sets forth requirements of municipalities to address stormwater runoff in areas determined to have population densities reaching urban standards. Whatcom County is required to implement various stormwater management strategies to comply with this State permit.

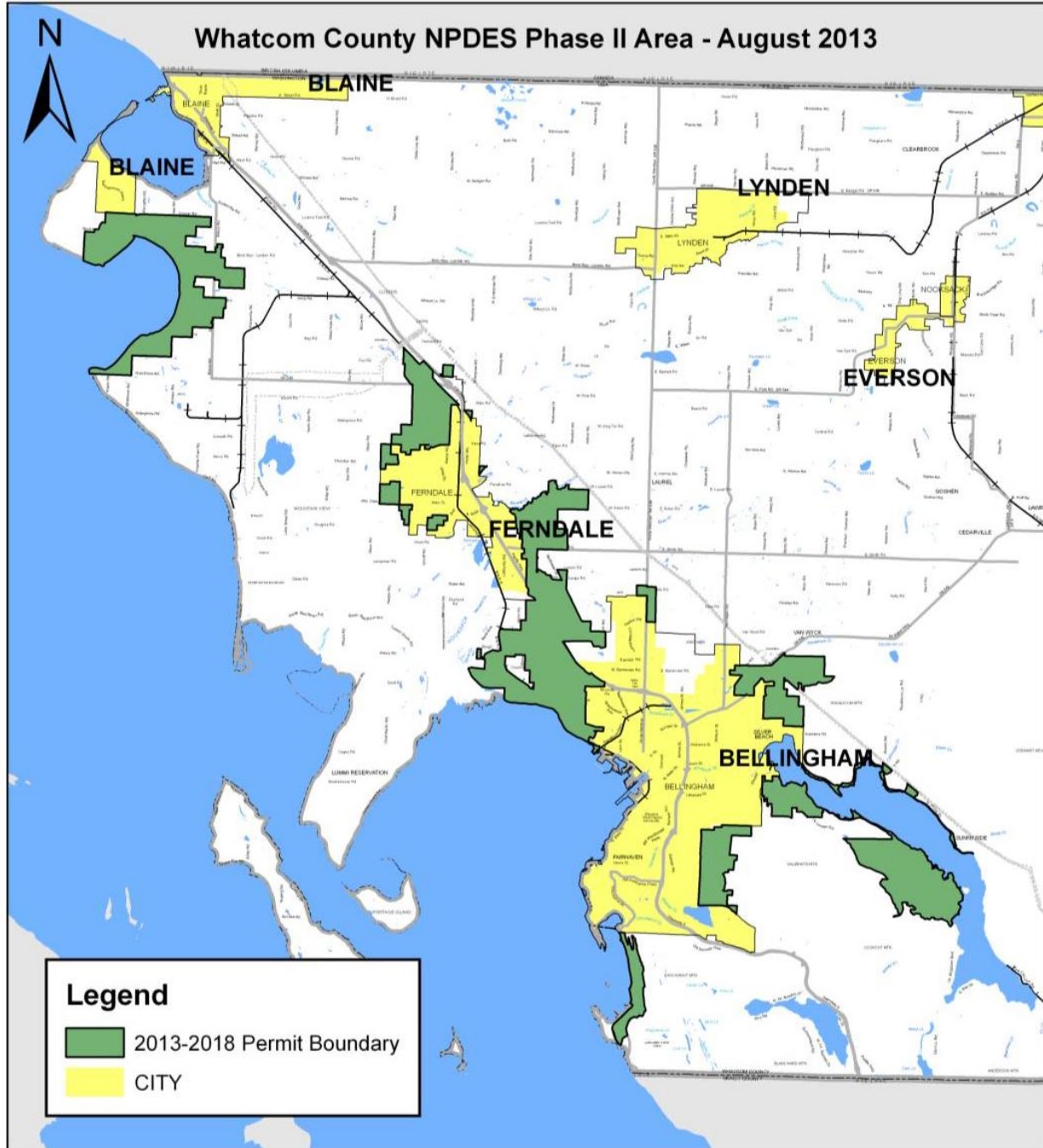
The current Permit boundary covers approximately 15,000 acres and generally includes the following areas (Figure 1):

- Bellingham Urban Growth Area
- Sudden Valley
- Portions of the Hillsdale and Emerald Lake area
- Portions along North Shore Drive on Lake Whatcom and Lake Whatcom Boulevard
- Ferndale Urban Growth Area
- Portions along Chuckanut Drive and Chuckanut Bay
- Birch Bay Urban Growth Area

Additionally, though not within the NPEDES permit area, the County has made the entire Lake Whatcom watershed is subject to the illicit discharge detection and elimination requirements of the Permit through ordinance and agreement with the Department of Ecology.

Jurisdictions are allowed to discharge runoff into waterbodies of the State (such as rivers, lakes, and streams) as long as they implement programs that protect water quality by reducing pollutants to the maximum extent possible through requirements of the NPDES Phase II Permit. Those requirements are reported and submitted to the Department of Ecology through the Stormwater Management Program (SWMP) and the Annual Compliance Report.

The Western Washington Phase II Municipal Stormwater Permit is required by the State of Washington Water Pollution Control Law Chapter 90.48 RCW, and the Federal Water Pollution Control Act Title 33 United States Code (Clean Water Act). The Permit is administered by the Washington State Department of Ecology.



**Figure 1. NPDES Phase II Boundaries**

**Pollution Identification and Correction (PIC) Program**

Clean water supports healthy drinking water, safe recreational uses, quality water for irrigation and livestock, healthy fish, and shellfish that are safe to consume. Currently, many streams in Whatcom County do not meet water quality standards for fecal coliform bacteria. Fecal coliform bacteria are found in the intestinal tract of warm-blooded animals and when found in streams are an indicator of human or animal waste in the water. The higher the bacteria level, the greater the public health risk to people drinking water, wading, fishing, or consuming shellfish. The

Pollution Identification and Correction (PIC) Program was created to help implement community solutions to clean water.

**Pollution** – The key potential sources of bacteria that have been identified in Whatcom County coastal drainages are (1) **animal waste** from agricultural operations, domestic pets, waterfowl, and wildlife, and (2) **human sewage** from failing on-site sewage systems (OSS), leaking sewers, or cross-connections.

**Identification** – Whatcom County coordinates a routine water quality monitoring program at approximately 90 stations in watersheds that discharge to marine waters. Samples are collected on at least a monthly basis and analyzed for fecal coliform bacteria. Results are evaluated annually to identify focus areas with the largest bacteria problems. Within the focus areas, stream segments are monitored and potential bacteria sources are identified.

**Correction** – Technical and financial resources are offered to landowners to identify and implement solutions on their property. Residents can help improve the community's water quality by inspecting and maintaining septic systems and by fencing animals out of streams, ditches and swales. By actively managing pastures, creating protected heavy use areas, and covering manure storage areas, residents can prevent manure-contaminated mud from polluting surface water. Planting shrubs and trees along stream banks and picking up after dogs also contributes to better water quality.

## **Issues, Goals, and Policies**

### **Watershed Planning and Management**

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

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

Policy 10F-2:       Actively participate in and support efforts to coordinate local, federal, tribal, and state agencies to achieve integration and/or consistency between the various levels of environmental regulations relating to the County.

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

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

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

Policy 10F-6:       Actively promote and participate in education, research, and information opportunities that improve our understanding of the

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- 1 county's complex water resource systems. New information  
2 should be considered in the development and evaluation of  
3 management actions.
- 4 Policy 10F-7: Pursue the most effective methods for protecting water quantity  
5 and quality, through both regulatory (e.g. zoning, enforcement,  
6 fines) and non-regulatory approaches (education, incentives,  
7 and technical/financial assistance). Emphasis shall be placed on  
8 non-regulatory approaches where possible and effective.
- 9 Policy 10F-8: Track the development of policies and regulations at the local,  
10 state, and federal level. Provide input to those regulations and  
11 policies as necessary to ensure that the interests of Whatcom  
12 County are considered.
- 13 Policy 10F-9: In conjunction with all jurisdictions, develop and adopt  
14 programs to protect water quality and quantity within  
15 watersheds, aquifers, and marine waterbodies that cross  
16 jurisdictional boundaries.
- 17 Policy 10F-10: Promote awareness and participation in management and  
18 protection efforts by individual citizens and the community as a  
19 whole.
- 20 Policy 10F-11 Pursuant to ESSB 6091, Whatcom County will work through the  
21 Planning Unit and WRIA 1 Watershed Management Board and its  
22 established processes to update the WRIA 1 Watershed  
23 Management Plan, consistent with ESSB 6091, for approval by  
24 the Whatcom County Council by February 1, 2019. The updated  
25 plan shall include recommendations for projects and actions that  
26 will measure, protect, and enhance instream resources and  
27 improve watershed functions that support the recovery of  
28 threatened and endangered salmonids.
- 29 At a minimum, the watershed plan must include those actions  
30 determined to be necessary to offset potential impacts to  
31 instream flows associated with permit-exempt domestic water  
32 use. The highest priority recommendations must include  
33 replacing the quantity of consumptive water use during the  
34 same time as the impact and in the same basin or tributary.  
35 Lower priority projects include projects not in the same basin or  
36 tributary and projects that replace consumptive water supply  
37 impacts only during critical flow periods. The watershed plan  
38 may include projects that protect or improve instream resources  
39 without replacing the consumptive quantity of water where such  
40 projects are in addition to those actions determined to be  
41 necessary to offset potential consumptive impacts to instream  
42 flows associated with permit-exempt domestic water use.
- 43 Watershed plan recommendations may include, but are not  
44 limited to, acquiring senior water rights, water conservation,  
45 water reuse, stream gaging, groundwater monitoring, and



developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

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

## **Surface Water and Groundwater**

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

Policy 10G-1: Manage surface water systems on a watershed basis.

Policy 10-2G: Coordinate efforts to bring all water users in Whatcom County into compliance with state and federal water laws in a way that enhances stream flows, water quality, and fish and wildlife habitat while advocating for adequate water for existing agriculture.

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

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

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

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- 1 Policy 10G-6: Pursue the adoption and implementation of ground and/or  
2 surface water management plans and their integration into local  
3 comprehensive plans. Designate the Lake Whatcom and Lake  
4 Samish Watersheds as high priorities in this effort.
- 5 Policy 10G-7: Oppose the use of hydraulic fracturing in oil and gas wells (also  
6 known as “fracking”) to avoid the potential degradation of water  
7 quality in aquifers and other groundwater.
- 8 Policy 10G-8: Monitor, prevent, and reduce the establishment of invasive  
9 species in Whatcom County waterbodies.
- 10 Policy 10G-9: Identify and/or update wellhead protection areas and critical  
11 aquifer recharge areas and incorporate into the Critical Areas  
12 Ordinance. This information should be available to the public.

### 13 Stormwater and Drainage

14 **Goal 10H: Protect water resources and natural drainage systems by**  
15 **controlling the quality and quantity of stormwater runoff.**

- 16 Policy 10H-1: Manage stormwater runoff to minimize surface water quality and  
17 quantity impacts and downstream impacts on channel  
18 morphology, property owners, and aquatic species and habitats.
- 19 Policy 10H-2: Maintain or enhance, when appropriate, natural drainage  
20 systems and natural water storage sites in order to better  
21 protect water quality, moderate water quantity, minimize  
22 environmental degradation, and reduce public costs.
- 23 Policy 10H-3: Limit the alteration of natural drainage systems and natural  
24 water storage sites without mitigating measures. Such  
25 measures should not degrade water quality or fish and wildlife  
26 habitat and should not increase hazards to the community.
- 27 Policy 10H-4: Support the use by resource industries—such as agriculture,  
28 forestry, and mineral resource extraction—of management  
29 practices that minimize erosion and sedimentation, and  
30 significantly reduce pollutants.
- 31 Policy 10H-5: Evaluate the role of watersheds in the maintenance of water  
32 quality and quantity and determine what cumulative impacts  
33 development activity may have on watershed hydrology.
- 34 Policy 10H-6: Develop specific stormwater management programs for each  
35 drainage basin within the county's jurisdiction that may be  
36 impacted by urban levels of development. Recognize the Lake  
37 Whatcom Watershed, Lake Samish, and Drayton Harbor as high  
38 priorities in this effort. Coordinate efforts with the Lake  
39 Whatcom Policy Group, the various shellfish protection districts,  
40 and other watershed management entities.



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- 1 Policy 10H-7: Establish, as a high priority, a stormwater maintenance program  
2 that ensures that stormwater systems are adequately  
3 maintained and function at or near design capacity.
- 4 Policy 10H-8: Strongly incentivize the use of low impact development  
5 strategies. Minimize the amount of impervious surface whenever  
6 practicable by using natural engineering design methods such as  
7 the use of open, grassed, street swales and rain gardens instead  
8 of curbs and gutters. Where feasible, encourage alternate  
9 surfacing options and other techniques associated with low  
10 impact development (see Glossary).
- 11 Policy 10H-9: Develop and administer stormwater management standards as  
12 required by the NPDES Phase II Permit.
- 13 Policy 10H-10: Develop and administer regulations and incentives such that  
14 there is no net loss of ecological functions and values of  
15 regulated wetlands and fish and wildlife habitats.
- 16 Policy 10H-11: Place a high priority on integrating impervious surface reduction  
17 incentives into policies, regulations, and standards.
- 18 Policy 10H-12: Develop and implement comprehensive stormwater  
19 management programs and strategies designed to address  
20 runoff from all private and public developments and facilities  
21 within regulated and sensitive watersheds.
- 22 1. Implement the Western Washington Phase II Municipal  
23 Stormwater Permit as part of the National Pollutant  
24 Discharge Elimination System (NPDES) Program. Incorporate  
25 watershed considerations into the development of a  
26 comprehensive stormwater management strategy for  
27 designated areas.
- 28 2. Review Stormwater Special Districts Standards, Watershed  
29 Protection Districts, and other related codes that address  
30 runoff treatment from potentially polluting surfaces for their  
31 applicability to other sensitive watersheds with the Technical  
32 Advisory Committee and other appropriate agencies.  
33 Coordinate efforts for ongoing monitoring and evaluation  
34 within the sensitive watersheds and NPDES areas.
- 35 3. Amend subdivision, zoning, and other land use regulations  
36 and design standards to encourage that land use activities  
37 minimize the amount of impervious surface.
- 38 4. Identify and implement a long-term funding source to  
39 provide for water resource protection services, including non-  
40 point source identification and enforcement of applicable  
41 county regulations.
- 42 5. Focus on the Lake Whatcom watershed as a high priority in  
43 developing a stormwater management program. Develop a

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stormwater management plan that achieves a uniform level of protection throughout the Lake Whatcom watershed. Ensure coordination and communication with the public and affected jurisdictions, such as the Lake Whatcom Water and Sewer District, the Sudden Valley Community Association, and the City of Bellingham.

6. Ensure existing stormwater standards are adequately enforced within Stormwater Special Districts, Watershed Protection Districts, and the NPDES areas.

7. Prioritize stormwater polluting areas and develop retrofits for areas most likely to impact sensitive waters.

### Water Conservation

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

Policy 10I-1: Support and assist water users in the development of cost-effective means of improving efficiency of water use.

Policy 10I-2: Support efforts to establish and protect sustainable water supplies to meet existing and future demands for water in the county.

Policy 10I-3: Develop and implement plans to comply with the Department of Ecology's instream flow and water management rules and water resources management programs.

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

Policy 10I-5: Quantify water use to promote conservation.

Policy 10I-6: Use water use data to encourage conservation and maintain availability of water for agriculture and instream flow.

Policy 10I-7: Encourage the Department of Ecology to provide flexibility in the application of the water relinquishment rule simultaneous with establishing a water bank/water exchange program in Whatcom County in cooperation with stakeholders.

### Lake Whatcom Watershed

**Goal 10-J: Prioritize the Lake Whatcom watershed as an area in which to minimize development, repair existing stormwater problems (specifically for phosphorus), and ensure forestry practices do not negatively impact water quality. Provide sufficient funding and support to be successful.**

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1	Policy 10J-1:	Work with property owners to find acceptable development
2		solutions at lower overall densities than the present zoning
3		allows.
4	Policy 10J-2:	Develop and implement the fair and equitable funding
5		mechanisms called for in the 2008 Lake Whatcom
6		Comprehensive Stormwater Plan to support lake water quality
7		protections by 2018.
8	Policy 10J-3:	Recognize that all users of Lake Whatcom water have an
9		interest in the resource and should share in the cost of its
10		protection.
11	Policy 10J-4:	Work cooperatively with the City of Bellingham, the Lake
12		Whatcom Water and Sewer District, and applicable associations
13		and organizations to identify, review, and, as appropriate,
14		recommend changes to existing monitoring programs to better
15		improve lake water quality.
16	Policy 10J-5:	Evaluate and pursue, as appropriate, the use of incentives to
17		encourage voluntary lot consolidation, transfer or purchase of
18		development rights, current use taxation, and participation in
19		open space conservation programs.
20	Policy 10J-6:	Do not allow density bonuses within the Lake Whatcom
21		Watershed.
22	Policy 10J-7:	Work cooperatively with the City of Bellingham and the Lake
23		Whatcom Water and Sewer District to develop and track
24		benchmarks to determine: the effectiveness of management
25		options; when goals have been achieved; and/or when
26		additional actions are necessary.
27	Policy 10J-8:	Continue to develop and refine structural and non-structural
28		best management practices (BMPs), both voluntary and
29		required, to minimize development impacts within the Lake
30		Whatcom watershed.
31	Policy 10J-9:	Work to keep publicly-owned forest lands within the Lake
32		Whatcom watershed in public ownership, and support managing
33		forestry on these lands in a manner that minimizes sediment
34		and phosphorus yields from streams, and is consistent with Best
35		Available Science (BAS) data, in order to protect and enhance
36		water quality.
37	Policy 10J-10:	Encourage the location of public services, such as schools,
38		libraries, parks/open space, and post offices within Sudden
39		Valley in an attempt to reduce the vehicle miles traveled within
40		the watershed.
41	Policy 10J-11:	Continue to work with Bellingham and Lake Whatcom Water and
42		Sewer District to protect and manage the Lake Whatcom
43		watershed in accordance with the 1998 jointly adopted interlocal

agreement. Focus on continued implementation of the 5-Year Work Plans of the Lake Whatcom Management Program. In addition, work with the affected jurisdictions and secure funding for programs that protect and enhance water quality.

Policy 10J-12: Review and modify (as needed) the current development review process for projects in the Lake Whatcom Watershed to ensure coordination with other jurisdictions to streamline regulations that improve and protect water quality.

Policy 10J-13: The existence of sewer lines in the Rural and Rural Forestry comprehensive plan designations will not be used to justify rezoning property in the Lake Whatcom watershed to allow higher density land uses.

Policy 10J-14: Existing Urban Growth Areas shall not be ~~designated or~~ [P/C3] expanded nor new Urban Growth Areas designated within the Lake Whatcom Watershed, and rezones that allow greater residential densities will not be allowed.

## **Ecosystems**

### **Introduction**

Ecological systems, or ecosystems, refer to the natural systems that have developed within the geologic and geographic setting of Whatcom County. Whatcom County contains a significant number of distinct ecosystem types, with associated fish, wildlife, and plant species, as well as many other living organisms. This biodiversity has evolved and adapted according to the specific physical and climatic conditions of the county (Map 10-2, Map 10-3). Ecosystem goals and policies are intended to provide guidance to county government as it assists people to manage and protect these ecosystems. Additionally they ensure other benefits are maintained far into the future.

### **Background Summary**

Whatcom County provides a wide variety of natural habitats that support and shelter a diverse array of fish and wildlife species. The county's wildlife is particularly varied and abundant when compared to many other areas of Washington State. There are a number of factors that have contributed to this: abundant water resources, rich soils, mild climate conditions, and a moderate degree of urbanization are among the most important. Among the habitats of importance to fish and wildlife are the following:

- wetlands, lakes, and streams;
- nearshore, intertidal, estuarine habitats, and marine habitats including, but not limited to, kelp and eelgrass beds;
- riparian areas and other travel corridors;
- snags and downed logs;
- forested habitats in a variety of successional stages;

- caves, cliffs, rocky balds, and talus slopes;
- grasslands and cultivated fields; and,
- thickets and fence rows.

Aquatic habitats include rivers, streams, ponds, lakes, and their riparian borders. Together, these habitats are essential to Whatcom County's fish and wildlife. Twenty-six species of fish—including twelve economically important stocks of salmon and trout—inhabit fresh water in Whatcom County for all or part of their life cycles. Healthy flowing streams and rivers, as well as off-channel wetland habitats, are essential to the survival of the majority of these fish. Wetland ponds, especially beaver ponds, provide optimal habitats for rearing and over-wintering of young fish, particularly Coho salmon and cutthroat trout juveniles.

Most wildlife species regularly use aquatic and riparian habitats for breeding, feeding, shelter, and migratory activities. Of this large grouping, over half are dependent upon wetland habitats at some point in their life cycles, and would decline or disappear in the absence of wetlands. Wetlands also contain unique vegetative communities that harbor many species of rare and unusual plants.

### **Fish and Wildlife Populations and Habitat**

Optimum habitat for Pacific Northwest salmon and other fish is one that resembles the riparian landscape of pre-settlement times: braided streams wandering freely through nearly continuous forest; trees overhanging and partly fallen into streams; stream beds with abundant logs, step waterfalls, pools, and cutbanks; and vegetated marine and estuarine communities. In most cases, it is not realistic to return to that state. However, measures can be taken to retain or regain those features that provide the minimum requirements of a viable fishery.

The best habitat for native wildlife includes native plants, which are more closely matched to local soils, climate, and wildlife. They provide the right kinds of food, shelter, and diversity needed by wildlife. Native plants frequently need less watering, spraying, pruning, fertilizing, or other maintenance than do exotic or imported plants. Loss of native vegetation through conversion to ornamental vegetation and non-native species can result in loss of wildlife habitat, increased competition to native wildlife from introduced species, such as starlings, and increased maintenance needs. Loss of native vegetation also can occur through invasions of non-native species, such as the spread of *Spartina*, which can drastically displace important native eelgrass and mudflat communities.

### **Salmon Recovery Program**

The decline of salmonids throughout Washington and the Pacific Northwest over the past century is well established. Since 1991, numerous evolutionarily significant units (ESUs) of Pacific salmonids have been listed as endangered or threatened under the Endangered Species Act (ESA), including those of chinook, coho, chum, sockeye, and steelhead. Decline in wild salmonid abundances have been attributed to widespread loss and degradation of habitat, due to hydropower, residential and urban development, agriculture, forestry, and fishing and hatchery production.

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In the Nooksack basin, abundances of several salmonid stocks have diminished substantially from historical levels. The declines in local salmonid stocks, especially Chinook salmon, have had profound economic, cultural, and social impacts on the greater WRIA 1 community. Direct impacts include reduced jobs and income for commercial fisherman, severe curtailment of tribal and subsistence catch, and loss of tourism associated with recreational fishing. In addition, ESA listings impose constraints on the activities of local and tribal governments, businesses, the agricultural community, and citizens, who must seek to avoid or minimize take of listed species. Nonetheless, salmon remain an integral part of the natural and social landscape of Whatcom County and the Nooksack River Watershed. Recent watershed recovery planning and restoration efforts by federal, state, local, and tribal governments, non-profit organizations, businesses, and private citizens demonstrate a commitment to salmon recovery in WRIA 1.

The WRIA 1 Salmon Recovery Program is a multi-government planning effort with a WRIA-wide scope to address salmon recovery and protection of ESA and non-ESA listed salmonids.

### WRIA 1 Salmon Recovery Strategy

The ultimate goal for salmon recovery in WRIA 1 is to recover self-sustaining salmonid runs to harvestable levels through the restoration of healthy rivers and natural stream, river, estuarine, and nearshore marine processes; careful use of hatcheries; and responsible harvest, with the active participation and support of local landowners, businesses, and the larger community. The purpose of the *WRIA 1 Salmonid Recovery Plan* is to identify the actions necessary to recover WRIA 1 salmonid populations, especially listed species, and to outline the framework for implementation of recommended actions that have been agreed to by local, state, tribal, and federal governments and stakeholders in WRIA 1. In the near term, the objectives are to:

1. Focus and prioritize salmon recovery efforts to maximize benefit to the two Nooksack early chinook populations;
2. Address late-timed Chinook through adaptive management, focusing in the near-term on identifying hatchery versus naturally-produced population components;
3. Facilitate recovery of WRIA 1 bull trout and steelhead by implementing actions with mutual benefit to early chinook, bull trout, and steelhead, by removing fish passage barriers in presumed bull trout and steelhead spawning and rearing habitats in the upper Nooksack River watershed; and
4. Address other salmonid populations by (a) protecting and restoring WRIA 1 salmonid habitats and habitat-forming processes through regulatory and incentive based programs; and (b) encouraging and supporting voluntary actions that benefit other WRIA 1 salmonid populations without diverting attention from early chinook recovery.

Focusing efforts on early chinook is consistent with regional salmon recovery, current abundance and productivity for the two populations is very low and



recovery of both populations is critical to delisting and recovery of the Puget Sound Evolutionarily Significant Unit (ESU) for Chinook salmon.

*Salmon Recovery Board (SRB)*

WRIA 1 Salmon Recovery Board membership includes the County Executive, Bellingham Mayor, Mayors of the Small Cities of Whatcom County, the regional director of the Washington Department of Fish and Wildlife, and policy representatives from Lummi Nation and Nooksack Indian Tribe.

The WRIA 1 Salmonid Recovery Plan (2005), a chapter of the Puget Sound Salmon Recovery Plan, guides restoration in the Nooksack River and adjacent watersheds. This plan was developed in partnership with Nooksack Tribe, Lummi Nation, Washington Department of Fish and Wildlife, Bellingham, Whatcom County Government, and the small cities of Whatcom County. Chinook salmon populations (listed as threatened with extinction under the Federal Endangered Species Act) are prioritized, yet the plan also provides the template for recovery of threatened steelhead and bull trout and the other salmon and trout populations native to Whatcom County.

The salmon plan was developed in parallel with the WRIA 1 Watershed Management Plan. Salmon habitat is intricately linked to watershed management; salmon recovery will be most successful when fish habitat objectives are carefully coordinated with watershed management objectives. Integrating salmon recovery with flood hazard management and restoring fish passage under County roads are two primary areas of focus.

**Marine Resources Management**

Marine habitats include all saltwater bodies and their shorelines, kelp and macro algae beds, eelgrass meadows, salt marshes, beaches, and mudflats. These habitats play a vital role in the health of the local environment, as well as of the broader Puget Sound region. They provide spawning, rearing, and feeding grounds for a wide variety of marine life, as well as refuge for juvenile and adult fish, birds, and shellfish. The vegetation on back-shore marshes and within estuaries buffers adjacent upland areas by absorbing wave energy and slowing erosion.

Symptoms of ecosystem stress include: declining stocks of salmon, bottomfish, and forage fish; closures of recreational and commercial shellfish beds; degradation and losses of eelgrass beds, kelp forests, and other marine habitats; and dwindling populations of seabirds and marine mammals.

The Northwest Straits Marine Conservation Initiative was authorized by Congress in 1998. The Initiative established the Northwest Straits Commission and Marine Resources Committees (MRCs) in seven western Washington counties, including Whatcom County. The MRCs' main purpose is to guide local communities, using up-to-date information and scientific expertise, to achieve the important goals of resource conservation and habitat protection within the Northwest Straits. The Whatcom County MRC acts as an advisory committee to the Whatcom County Council.



Shellfish Recovery

Many of the marine waterbodies in Whatcom County support natural and cultured bivalve shellfish, including oysters and many species of clams. The warm, nutrient-rich tide flats in and around Lummi, Portage, and Birch Bays; Drayton Harbor; and Eliza and Lummi Islands represent unique water resources in this regard. Commercial shellfish growers, recreational clam and oyster harvesters, and Native Americans have used this resource for many years. It is an important part of our community's heritage.

Our ability to grow and harvest shellfish that is safe for human consumption is directly linked to surface water quality and the influence it has on marine waters. The primary measure of water quality for shellfish harvesting is bacterial contamination. There are many potential sources of fecal bacteria, such as municipal sewage treatment plants, on-site sewage systems, boat waste, farm animals, pets, and wildlife. Since 1995, valuable shellfish beds in Portage Bay and Drayton Harbor have been downgraded (harvest prohibited) due to non-point pollution impacting recreational, tribal, and commercial harvesting. In 2014, Portage Bay was identified as a threatened Shellfish Growing Area by the Washington Department of Health. (Washington Department of Health, 2014)

Shellfish Protection Advisory Boards

Whatcom County has three Shellfish Protection District Advisory Committees, one for each of the Shellfish Protection Districts: Birch Bay, Drayton Harbor, and Portage Bay. Each advises the County Council on proposed actions and operations relating to the restoration of water quality in their respective watersheds.

Shellfish Recovery Plans

Shellfish Recovery Plans have been created for each of three districts. The plans outline the primary sources of bacteria and actions to improve water quality:

- Drayton Harbor Shellfish Recovery Plan (2007)
- Portage Bay Shellfish Recovery Plan (2014), Portage Bay Initial Closure Response Strategy (1998)
- Birch Bay Initial Closure Response Strategy (2009)

Pertinent Documents

- Whatcom Marine Resources Committee 2011 - 2015 Strategic Plan (2010)

This document outlines the MRC's mission, vision, values, goals, objectives, and strategies for achieving them.

**Shoreline Management Program**<sup>[CES4]</sup>

~~The State Legislature passed the Washington State Shoreline Management Act (SMA) in June 1971. The SMA was overwhelmingly passed by public initiative in 1972. Under the SMA, each county and city was required to prepare a shoreline "master program" in accordance with the shoreline guidelines issued by the State Department of Ecology in 1972.~~

~~The Whatcom County Shoreline Management Program (SMP), WCC Title 23, is the document that implements the goals and policies of the SMA at the local level. It was adopted in 1976 in accordance with RCW 90.58. The goals and policies of the~~

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~~Whatcom County Shoreline Management Program also constitute the shoreline component of the Whatcom County Comprehensive Plan.~~

~~Under the provisions of the SMA, all development along shorelines of the state is required to comply with the provisions of local shoreline master programs. The Whatcom County Shoreline Management Program works with other chapters of the Whatcom County Code to protect and preserve saltwater and freshwater shorelines throughout the county by managing natural resources and directing development and land use suitable for the shoreline environment.~~

~~The Whatcom County Shoreline Management Program jurisdiction includes:~~

- ~~• More than 130 miles of marine shoreline;~~
- ~~• More than 60 miles of lake shoreline;~~
- ~~• More than 220 miles of stream channels; and,~~
- ~~• All wetlands and floodways associated with the above shorelines, together with all upland areas within 200 feet of the Ordinary High Water Mark (OHWM).~~

~~Whatcom County and the Washington State Department of Ecology (DOE) share joint authority and responsibility for the Whatcom County SMP. Whatcom County Planning and Development Services is the primary agency responsible for implementation of the Whatcom County Shoreline Management Program.~~

### Issues, Goals, and Policies

#### General – Ecosystems

Development and urbanization of the land base have and may continue to result in the degradation and reduction of ecosystem functions. Wetlands and estuaries continue to be lost incrementally. Streams and their adjacent riparian habitat are affected by land clearing, ditching, erosion, and road building. Lakeshore development degrades the foreshore environment for waterfowl and other species, as well as negatively affecting water quality. It is estimated that Washington has also lost approximately one-third of its historic eelgrass beds from a variety of causes, including dredging, shading, and filling. Large-diameter snags and downed logs, an essential feature for dozens of wildlife species, are lost during clearing or intensive forest management. Forested habitats are lost to a number of development processes including urbanization, agriculture, increased rural/suburban housing density, and timber harvesting. The delicate environment of cliffs and caves may be affected by housing development, mining, and other activities. Conversely, grasslands, thickets, fields, and fence rows are habitats largely provided and enhanced by human activities, and are thus fairly abundant and stable within the developing county. The existence of farms, in particular, has contributed to an abundance of these more open, pastoral habitats.

Many stream systems in Whatcom County have been altered by agriculture, forestry, development, and flood control practices, contributing to low stream flows, fisheries loss, water pollution, sedimentation and other problems. These impacts can directly affect the fisheries resources by depositing silt and debris into spawning beds, by removing trees that shade and cool the water, bank armoring,

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interfering with the recruitment and establishment of large woody debris (LWD), by obstructing fish passage with culverts and roads, by altering natural channels through filling, bank hardening, and channelizing. In addition, the physical processes that create functional habitats for fish life stages are altered by increasing flows through stormwater runoff or consuming water volume for other out-of-stream uses.

Finally, a healthy and functioning ecosystem, including forests, wetlands, fish, wildlife, and native plants they harbor, is an identified resource. A healthy ecosystem supports diverse and abundant wildlife, fish, and plant populations, and is necessary. The gathering of fish, game, and other natural resources forms a central aspect of many cultures in Whatcom County. The mere presence of these natural resources constitutes a community amenity that is a substantial part of our local economic base.

**Goal 10K: Protect and enhance ecosystems, which provide economic, ecological, aesthetic, and cultural benefit.**

Policy 10K-1: Define and identify species, habitats, and habitat features important to a balanced and sustainable web of life, biodiversity, and especially important to fish, native plants, and wildlife. Create, and regularly update an Ecosystem Report.

Policy 10K-2: Develop and adopt programs that protect habitats essential to the conservation of species that have been identified as endangered, threatened, or sensitive by the state or federal government as well as habitats identified as necessary in the Ecosystem Report. These programs should maintain and encourage restoration of habitat conditions for listed species of concern, as well as habitats identified as having significant biodiversity, connectivity, and other important features and functions.

Policy 10K-3: Develop incentives for protection of environmentally fragile areas or critical plant and wildlife habitats as well as habitats that provide connectivity (corridors).

Policy 10K-4: Where feasible, incorporate fish and wildlife habitats into public capital improvement projects.

Policy 10K-5: Provide measures to mitigate negative water quality and quantity impacts from both public and private alterations of natural drainage systems.

Policy 10K-6: Consider sensitive fish, shellfish, and wildlife species and their habitats when establishing zoning densities and patterns.

Policy 10K-7: Promote voluntary fish and wildlife habitat enhancement projects through educational and incentive programs, such as purchase of development rights or habitat conservation easements. These projects, which can be done by individuals, organizations, and businesses, will buffer and expand fish, plant, and wildlife habitat.

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- 1 Policy 10K-8: Give careful consideration to the siting of industrial, commercial,  
2 residential, and other land use designations when located near  
3 important marine, terrestrial, or other critical habitats.
- 4 Policy 10K-9: Protect, retain, and enhance the beneficial uses and functions of  
5 streams and rivers. Define and identify the beneficial uses and  
6 functions of streams and rivers, including wildlife and fisheries  
7 habitat, water quality, open space, aesthetics, and recreation.
- 8 Policy 10K-10: Protect and enhance ecosystem functions when flood hazard  
9 management measures are used.
- 10 Policy 10K-11: Regulate the operation of river gravel extraction activities in  
11 such a manner so as to provide long-term protection of fish and  
12 wildlife habitat and water quality.
- 13 Policy 10K-12: Ensure design and development of residential and industrial  
14 development minimizes disturbance to rivers, streams, and  
15 functioning riparian areas.
- 16 Policy 10K-13: Evaluate the full value of the fishery; including its cultural and  
17 economic value; in land use decisions that may impact that  
18 fishery. Unavoidable impacts to an individual habitat or fishery  
19 shall be mitigated.
- 20 Policy 10K-14: Continue to consider the value of wildlife populations for which  
21 habitat conservation areas have been identified in PDS's wildlife  
22 habitat mapping, their associated habitats, and connectivity in  
23 land use planning that may impact them. This is not intended to  
24 require landowners to pay for any additional studies.
- 25 Policy 10K-15: Mitigation to Habitat Conservation Areas should be tracked and  
26 monitored to ensure no net loss to natural area.
- 27 Policy 10K-16: Monitor Habitat Conservation Areas to obtain a baseline of  
28 current conditions and to ensure no net loss and avoidance of  
29 cumulative impacts.

### 30 **Fish and Wildlife Populations and Habitat**

- 31 **Goal 10L: Protect and enhance ecosystems that support native fish**  
32 **and wildlife populations and habitat.**
- 33 Policy 10L-1: Strongly discourage any activity that might cause significant  
34 degradation of the fishery resource or habitat.
- 35 Policy 10L-2: Support the protection and enhancement of significant fish  
36 spawning and rearing habitat, food resources, refugia (shelter),  
37 and travel passages.
- 38 Policy 10L-3: Establish non-regulatory mechanisms and incentives for  
39 development that accommodates the habitat needs of fish and  
40 wildlife and encourages good stewardship practices.

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- 1 Policy 10L-4: Support protection and enhancement of fish and wildlife habitat  
2 through site design in new development.
- 3 Policy 10L-5: Native vegetation and soils on streambanks and shorelines  
4 should be disturbed as little as possible. In situations where re-  
5 vegetation is necessary to restore streambank or shoreline  
6 stability and provide shading, site-specific native plants should  
7 be used. Retention of vegetated riparian areas on all lake and  
8 marine shorelines shall also be encouraged.
- 9 Policy 10L-6: Discourage shoreline armoring. Instead, encourage natural or  
10 bio-engineering solutions such as planting native vegetation,  
11 engineered log jams/LWD, and beach nourishment along  
12 eroding banks to address stream and shoreline bank erosion  
13 problems. Riparian buffers should be replanted with suitable  
14 native vegetation as a part of all bank stabilization projects.
- 15 Policy 10L-7: Encourage native vegetation and soil retention and plantings  
16 that provide or maintain the beneficial uses and functions of  
17 streams, rivers, lakes, and marine shorelines.
- 18 Policy 10L-8: Maintain and encourage restoration of habitat functions for  
19 threatened and endangered fish species.
- 20 Policy 10L-9: Use Best Available Science to inform the creation of regulations  
21 to mitigate adverse impacts of development adjacent to rivers,  
22 streams, and marine shorelines.
- 23 Policy 10L-10: Encourage landowners to voluntarily protect surface water  
24 quality with filter strips or other appropriate water cleansing  
25 mechanisms installed between lawns, landscaping, livestock  
26 pens, or agricultural fields and waterbodies.
- 27 Policy 10L-11: Formulate and implement a comprehensive, landscape-based,  
28 environmental management program to protect fish and wildlife.  
29 The program should include the following:
- 30 1. Formulate an administrative approach to the review of  
31 development and planning proposals that consider natural  
32 system policies;
- 33 2. Investigate and develop programs for acquisition and  
34 restoration of important fish and wildlife habitat areas;
- 35 3. Develop and enter into cooperative agreements with State  
36 and Federal agencies and neighboring jurisdictions to identify  
37 and protect ecosystems;
- 38 4. Identify and map important habitat corridors and  
39 connectivity throughout the county; and,
- 40 5. Support the development of educational materials which list,  
41 describe, and characterize the appropriate use of native  
42 vegetation to enhance ecosystem functions in Whatcom  
43 County.

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- 1 Policy 10L-12: Consider establishing formal meander limits for the Nooksack  
2 River, precluding additional development within this zone, and  
3 promote the River and Flood property acquisition program  
4 within these areas.
- 5 Policy 10L-13: Diligently work to prevent and/or reduce the establishment  
6 and/or spread of invasive species.
- 7 Policy 10L-14: Actively participate in and support WRIA 1 Salmon Recovery  
8 efforts to return self-sustaining salmonid runs to harvestable  
9 levels through: the restoration of healthy rivers, marine  
10 shorelines, and natural processes; the careful use of hatcheries;  
11 and responsible harvest.
- 12 Policy 10L-15: Participate in protection and improvement of biodiversity.
- 13 Policy 10L-16: Consider establishing important habitat areas as sending  
14 areas after creating a voluntary, workable transfer of  
15 development rights (TDR) program.
- 16 Policy 10L-17: Mitigation of wetlands should be reviewed and tracked over time  
17 to ensure no net loss of wetland function.
- 18 Policy 10L-18: A baseline of wetland identification and function should be made  
19 to track and prevent net loss and avoid cumulative impacts.
- 20 Policy 10L-19: The County will support the work of the Fisheries Co-managers  
21 (Lummi Nation, Nooksack Tribe, and the State Department of  
22 Fish and Wildlife) and stakeholders to establish a sustainable  
23 salmon harvest goal for the Nooksack Basin.]P/C5]

### Wetlands

25 Wetlands are crucial environmental features in Whatcom County. Wetlands provide  
26 invaluable functions in aquifer recharge, groundwater storage, floodwater  
27 detention, pollutant removal and purification of water supplies, as well as provision  
28 of fish and wildlife habitat. Loss of wetlands has been due to many factors,  
29 including urbanization, agricultural development, and drainage projects.

30 A plethora of complex and often confusing laws govern the definition, delineation,  
31 and protection of wetlands. These laws originate at national, state, and county  
32 levels. Land managers and private citizens often experience difficulty in  
33 interpreting, synthesizing, and applying wetland regulations. In general, however,  
34 state regulations must comply with federal standards and local regulations must  
35 comply with both federal and state standards.

### **Goal 10M: Conserve and enhance regulated wetlands.**

- 37 Policy 10M-1: Recognize natural wetlands such as swamps, bogs, saltwater  
38 marshes, and ponds for their value in cleaning water, reducing  
39 flood damage, providing valuable habitat for plants, fish and  
40 wildlife, and as sites for groundwater recharge.



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Policy 10M-2: Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines.

Policy 10M-3: Biological functions of wetlands are complex and interwoven. Evaluate the full range of potential and immediate economic impacts in land use decisions relating to wetlands, including fisheries, wildlife, recreation, farmlands, sustainable resources, air and water quality, flood hazard management, real estate, cultural attributes, and other uses.

Policy 10M-4: Encourage land development to avoid wetland impacts. Impacts to regulated wetlands should be contingent upon full mitigation measures that equitably compensate for wetlands impacts, on a case-by-case basis. Approved mitigation measures shall include resources for long-term monitoring and adaptive management of mitigation outcomes to assure effectiveness. Strongly discourage alteration of land that results in the degradation of type 1 and 2 wetlands.

Policy 10M-5: Property rights and public services are essential components of our political and economic system. Where such rights and public services are significantly compromised by the goal of wetland preservation, adverse wetland impacts may be permitted through standardized mitigation. This may include avoidance, impact minimization, restoration, enhancement, creation, or off-site compensation for loss of wetland functions in accordance with mitigation sequencing.

Policy 10M-6: Recognize beneficial wetland uses, functions, and values. Support protection of fish and wildlife habitat, water quality, plant diversity, flood attenuation and low-flow contribution, and water storage through planning, acquisition, incentive programs, and mitigation.

Policy 10M-7: Development applications should be assessed on a case-by-case basis so that marginal wetlands are not preserved at the expense of upland areas with higher habitat value.

### Marine Habitat

#### **Goal 10N: Protect and enhance marine ecosystems and resources in Whatcom County.**

Policy 10N-1: Support the Whatcom County Marine Resources Committee in its pursuit of the Northwest Straits Commission benchmarks as follows:

- Broad county participation in MRCs;
- A net gain in high-value habitat and ecosystem functions;
- A net reduction in shellfish bed closures;



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- Measurable increases in factors supporting bottomfish recovery;
- Population increases in other key indicator species;
- Coordination of scientific data;
- Successful public education and outreach efforts; and,
- The establishment of a regional system of Marine Protected Areas (MPA's).

Policy 10N-2: Promote naturalized shoreline buffers and restoration of riparian vegetation.

**Goal 10P: Protect and enhance shellfish habitat in commercial and recreational areas to ensure a productive resource base for long-term use.**

Policy 10P-1: Identify and designate marine shellfish habitat for commercial and recreational uses.

Policy 10P-2: Restore degraded waters within the drainage basins of shellfish growing areas to a level that allows/supports shellfish harvesting by work with the Department of Ecology, Tribes, Department of Health, Department of Fish and Wildlife, and affected property owners to improve water quality.

Policy 10P-3: Protect shellfish resources by means of pollution prevention and enforcement when necessary. This should include surface and groundwater monitoring for early detection of pollution to minimize the damage and cost of resource restoration.

Policy 10P-4: Improve knowledge of the importance of protecting, preserving, and improving the quality of shellfish habitat within the County. Seek out valuable partnerships that will raise awareness, provide education, and enhance shellfish habitat.

Policy 10P-5: Develop Low Impact Development standards in shellfish habitat areas.

Policy 10P-6: Identify and encourage the use of stormwater treatment systems and Best Management Practices to reduce fecal coliform bacteria levels in stormwater discharging directly into shellfish habitat areas.

Policy 10P-7: Solicit input from the Shellfish Protection District advisory committees and appropriate state, federal, and tribal agencies when considering updates to the Comprehensive Plan that relate to shellfish protection.

Policy 10P-8: Identify and restore functions, selected through best available landscape-based science, of key wetland areas.

Policy 10P-9: Modify county roadside ditch maintenance procedures to protect water quality.

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- 1 Policy 10P-10: Continue to partner with jurisdictions in British Columbia to  
2 minimize impacts on water quality, including what affects  
3 shellfish habitat.
- 4 Policy 10P-11: Work within the structure of County programs such as the WRIA  
5 Watershed Management Planning process to achieve  
6 improvements in land use Best Management Practices that will  
7 positively affect change in marine water quality.
- 8 Policy 10P-12: Continue to develop programs that identify potential pollution  
9 sources and ensure timely and science-based approaches are  
10 used in response to problems as they arise.
- 11 Policy 10P-13: Develop educational tools and opportunities to raise public  
12 awareness of marine issues and to inform them of how they can  
13 have a positive impact by helping preserve these marine  
14 resources.
- 15 Policy 10P-14: Identify areas (such as wetlands and the nearshore  
16 environment) that are important to shellfish habitat  
17 preservation. Also identify river and stream processes that  
18 adversely impact shellfish habitat. Use this information when  
19 making land use management and preservation decisions.
- 20 Policy 10P-15: Create a tracking mechanism to document progress made  
21 toward improving downgraded shellfish areas. This information  
22 will be useful not only in supporting an upgrade when water  
23 quality shows improvement, but also in preventing degradation  
24 in currently approved shellfish areas.
- 25 Policy 10P-16: Work with the County Shellfish Advisory Committees, Marine  
26 Resources Committee, Salmon Recovery Fund Board, WRIA  
27 Watershed Management Board, and other local, state, federal,  
28 and tribal agencies to address issues associated with shellfish,  
29 shellfish area closures, and shellfish habitat.
- 30 Policy 10P-17: Consider establishing the Drayton Harbor Watershed as a  
31 sending area when considering a transfer of development rights  
32 (TDR) program in.
- 33 Policy 10P-18 Support the Department of Health's On-Site Sewage System  
34 (OSS) Program as a means to lower degradation of our  
35 waterways.

### Other Marine and Marine Dependent Organisms and Systems

37 Our Marine system supports not only local, critical, and global fisheries resources,  
38 but also a myriad of interdependent organisms, the importance of which we lack  
39 the capacity to fully grasp. The Marine ecosystem is a complex web of life that is  
40 increasingly affected by anthropogenic impacts. Toxics, hormones, heavy metals,  
41 and other harmful substances flushed into nearshore and marine environments with  
42 stormwater have been shown to have deleterious cumulative impacts on a range of  
43 aquatic and marine dependent organisms. Whatcom County will take steps to halt

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1 the practice of treating its streams and rivers as a storm sewer and the marine  
2 system as a water treatment facility.

3 Policy 10P-19: Promote Best Management Practices, land use, and stormwater  
4 policies that result in a minimal release of harmful chemicals  
5 and metallic substances into surface water and the marine  
6 environment.

**Chapter Eleven**  
**Shorelines** [CES1]

**Introduction** [CES2]

The State Legislature passed the Washington State Shoreline Management Act (SMA) in June 1971. The SMA was overwhelmingly passed by public initiative in 1972. Under the SMA, each county and city was required to prepare a shoreline “master program” in accordance with the shoreline guidelines issued by the State Department of Ecology in 1972.

The Whatcom County Shoreline Management Program (SMP), ~~WCC Title 23~~, is the set of policies and regulations document that implements the goals and policies of the SMA at the local level. It was first adopted in 1976 in accordance with RCW 90.58. The goals and policies of the Whatcom County Shoreline Management Program-SMP also constitute the shoreline component of the Whatcom County Comprehensive Plan.

The Whatcom County Shoreline Management Program jurisdiction includes:

- More than 130 miles of marine shoreline;
- More than 60 miles of lake shoreline;
- More than 220 miles of stream channels; and,
- All wetlands and floodways associated with the above shorelines, together with all upland areas within 200-feet of the Ordinary High Water Mark (OHWM).

Whatcom County and the Washington State Department of Ecology (DOE) share joint authority and responsibility for the Whatcom County SMP. Whatcom County Planning and Development Services is the primary agency responsible for its implementation ~~of the Whatcom County Shoreline Management Program~~.

**Chapter Organization**

This chapter is composed of an introduction and five sections organized by topic heading. The first section, entitled "Overall SMP Goals and Objectives," addresses general shoreline goals and objectives. The next provides the purposes, designation criteria, and policies for the County's various shoreline area designations. The third section contains the County's policies for Shorelines of Statewide Significance. The fourth section provides the general policies that apply to all area designations. And the fifth section provides the policies specific to the type of use proposed. Together with the regulations of WCC Title 23, the sections of this chapter provide the direction necessary to ensure and promote long-term sustainability of the shorelines in Whatcom County.

**Purpose**

This chapter together with WCC Title 23 comprises Whatcom County's Shoreline Management Program. This chapter contains the SMP's goals, objectives, and policies, while its regulations are found in WCC Title 23. All development proposed

1 within jurisdictional shorelines must be consistent with both the policies of this  
2 chapter and the regulations of WCC Title 23.

3 The Shoreline Management Act (SMA) was developed and adopted to protect “the  
4 most valuable and fragile of [the state’s] natural resources from the “inherent harm  
5 in uncoordinated and piecemeal development of the state’s shorelines” (quotes  
6 from RCW 90.58.020). The SMA in Chapter 90.58 RCW contains three distinct but  
7 related priorities:

8 1. The promotion of shoreline uses that are both water-oriented and  
9 appropriate for the broader environmental context. Developments such as  
10 single family residences, recreational areas, and water-dependent businesses  
11 such as marinas are considered priority uses provided they are constructed in  
12 a manner “consistent with control of pollution and prevention of damage to  
13 the environment” (quote from RCW 90.58.020).

14 2. The SMA requires local governments to take an active role in protecting the  
15 shoreline ecology: the water, the land, the vegetation and the wildlife. The  
16 state guidelines are explicit: “Local master programs shall include regulations  
17 and mitigation standards ensuring that each permitted development will not  
18 cause a net loss of ecological functions of the shoreline.” (WAC 173-26-  
19 186(8)(b)(i).)

20 3. The SMA also promotes public access to the shoreline by requiring protection  
21 of existing public access features and requiring certain types of new  
22 development to include public access.

23 The SMP regulations (WCC Title 23) apply to individual projects, and impacts of  
24 shoreline development are evaluated on a project-by-project basis. However, the  
25 SMP goals and policies, shoreline designations, regulations, and the restoration plan  
26 are comprehensively structured to achieve no net loss of shoreline ecological  
27 functions as a whole in Whatcom County.

## 28 **GMA Goals and Countywide Planning Policies**

29 First adopted in 1990, The Growth Management Act (GMA) is a series of state  
30 statutes that requires fast-growing cities and counties to develop a comprehensive  
31 plan to manage their population growth. It is primarily codified under Chapter  
32 36.70A RCW, although it has been amended and added to in several other parts of  
33 the RCW. Under RCW 36.70A.020, the GMA established a series of 13 goals that  
34 should act as the basis of all comprehensive plans. In 2003, the legislature added  
35 the goals and policies of the Shoreline Management Act as the fourteenth GMA goal  
36 (RCW 36.70A.480). The shoreline goals may be found at RCW 90.58.020.

37 As of this time, there are no Countywide Planning Policies that address  
38 development in the shoreline.

## 39 **GMA-SMA Requirements**

40 Under the provisions of the SMA, all development along shorelines of the state is  
41 required to comply with the provisions of local shoreline master programs. The  
42 Whatcom County ~~Shoreline Management Program~~SMP works with other chapters of

the Whatcom County Code to protect and preserve saltwater and freshwater shorelines throughout the county by managing natural resources and directing development and land use suitable for the shoreline environment.

**~~23.10.030~~ Governing Principles** [CES3]

The following principles, along with the policy statements of RCW 90.58.020 and the principles of Chapter 173-26 WAC, establish basic concepts that underpin the goals, policies, and regulations of the SMPShoreline Management Plan (SMP)~~this program~~:

- A. Any inconsistencies between the SMP~~this program~~ and the Shoreline Management Act (SMAAct) must be resolved in accordance with the SMAAct.
- B. The policies of the SMP~~this program~~ may be achieved by diverse means, one of which is regulation. Other means, authorized by the SMAAct, include, but are not limited to: acquisition of lands and/or easements by purchase or gift, incentive programs, and implementation of capital facility and/or nonstructural programs.
- C. Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. Permitted and/or exempt development, actions taken prior to the SMAAct's adoption, and/or unregulated activities can impair shoreline ecological processes and functions. The SMP~~This program~~ protects shoreline ecology from such impairments in the following ways:
  1. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.
  2. By including policies and regulations that require mitigation of significant ~~[MD4]~~ adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in WCC ~~23.90.030~~ and the Whatcom County Critical Areas Ordinance (CAO, Chapter 16.16 WCC). The SMP~~This program~~ and any future amendment thereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the date of adoption of the comprehensive SMP update~~this program~~, February 27, 2007.
  3. By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.
  4. By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the

- Shoreline Management Program Restoration Plan developed by Whatcom County.
- D. Regulation of private property to implement ~~SMP~~program goals such as public access and protection of ecological functions and processes must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and state Constitutions, ~~recent-pertinent~~ federal and state case law, and state statutes, such as RCW 34.05.328 and 43.21C.060 and Chapter 82.02 RCW.
- E. Regulatory or administrative actions ~~contained herein~~ must be implemented consistent with the public trust doctrine and other applicable legal principles as appropriate and must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- F. The regulatory provisions of ~~the SMP~~this program are limited to ~~jurisdictional shorelines~~shorelines of the state, whereas the planning functions of ~~the SMP~~this program may extend beyond the designated shoreline boundaries.
- G. The policies and regulations established by the ~~SMP~~program must be integrated and coordinated with those policies and rules of the ~~Whatcom County~~Comprehensive Plan and development regulations adopted under the ~~Growth Management Act (GMA)~~ and RCW 34.05.328.
- H. Consistent with the policy and use preferences of RCW 90.58.020, Whatcom County should balance the various policy goals of ~~the SMP~~this program giving consideration to other relevant local, state, and federal regulatory and non-regulatory programs.

**~~Chapter 23.20 Overall SMP~~Shoreline Management Program Goals and Objectives<sup>[MD5]</sup>**

~~23.20.005 Generally.~~

This ~~section~~chapter describes ~~contains~~ overall ~~program~~SMP goals and objectives. They provide the ~~comprehensive~~ foundation and framework upon which the shoreline area designations, policies, regulations, and administrative procedures are based.

The general policies and regulations (~~in a later section of this chapter and in Chapter Title 23.90 WCC, respectively~~) and the specific use policies and regulations (~~in a later section of this chapter and in WCC Chapter Title 23.100 WCC, respectively~~) are the means by which these goals and objectives are implemented.



**~~23.20.010 Adoption:~~**

~~In addition to the policy adopted in WCC 23.10.020(C), the following goals and objectives relating to the program elements specified in RCW 90.58.100(2) are hereby adopted. They provide the comprehensive foundation and framework upon which the shoreline area designations, policies, regulations, and administrative procedures are based. [MD6]~~

**~~23.20.020 Economic Development:~~**

The economic development element provides for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce, and other developments that are particularly dependent upon a shoreline location and/or use of the shorelines of the state.

**Goal 11A:**      ~~Goal. To create and maintain an economic environment that can coexist harmoniously with the natural and human environment.~~

~~B. Objectives:~~

11A-1:      Encourage economic development that has minimal adverse effects and mitigates unavoidable impacts upon shoreline ecological functions and processes and the built environment.

11A-2:      Encourage shoreline development that has a positive effect upon economic and social activities of value to the region.

11A-3:      Encourage new water-dependent, water-related, and water-enjoyment economic development in priority order.

11A-4:      Encourage economic development that is consistent with the adopted Comprehensive Economic Development Strategy (CEDS) for Whatcom County.

11A-5:      Implement economic development policies contained in other chapters of the Whatcom County Comprehensive Plan in shoreline areas consistent with this chapter, WCC Title 23 program and the SMA Act.

11A-6:      Encourage new economic development to locate in areas that are already developed with similar uses.

11A-7:      Discourage expansion of existing development that is incompatible with the Comprehensive Plan ~~this program, WCC Title 23, or~~ the character of the local area, ~~or the Whatcom County Comprehensive Plan.~~

**~~23.20.030 Public Access:~~**

The public access element provides for public access to publicly ~~owned~~ or privately owned shoreline areas where the public is granted a right of use or access.

**Goal 11B:A:**      ~~Goal. To increase the general public's ability of the general public to reach, touch, and enjoy the water's~~

**edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations; provided, that private rights, ~~the~~ public safety, and shoreline ecological functions and processes are protected consistent with the U.S. and state Constitutions, state case law, and state statutes.**

**B. Objectives:**

**11B-1:** Locate, design, manage, and maintain public access in a manner that protects shoreline ecological functions and processes and the public health and safety.

**11B-2:** Design and manage public access in a manner that ensures compatibility with water-dependent uses.

**11B-3:** Where appropriate, acquire access to publicly owned tidelands and shorelands. Encourage cooperation among the County, landowners, developers, and other agencies and organizations to enhance and increase public access to shorelines as specific opportunities arise.

**11B-4:** Provide and protect visual access to shorelines and tidelands.

**11B-5:** Require physical or visual access to shorelines as a condition of approval for shoreline development activities commensurate with the impacts of such development and the corresponding benefit to the public, ~~and~~ consistent with constitutional limitations.

**11B-6:** Develop and manage public access to prevent adverse impacts to adjacent private shoreline properties and developments.

**~~23.20.040~~ Recreation:**

The recreation element provides for the preservation and expansion of water-oriented recreational opportunities that facilitate the public's ability to enjoy the physical and aesthetic qualities of the shoreline through parks, public access to tidelands and beaches, bicycle and pedestrian paths, viewpoints, and other recreational amenities.

**~~Goal 11C:A:~~ ~~Goal. To p~~Provide opportunities and space for diverse forms of water-oriented recreation.**

**B. Objectives:**

**11C-1:** Locate, develop, manage, and maintain recreation areas in a manner that protects shoreline ecological functions and processes.

**11C-2:** Provide a balanced choice of water-oriented public recreational opportunities regionally. Ensure that shoreline recreation facilities serve projected County growth in accordance with the level of service standards established in the ~~Whatcom County~~ Comprehensive Plan and related goals and policies; ~~the~~ the

Comprehensive Park and Recreation Open Space Plan, the Whatcom County Bicycle Plan, and the Natural Heritage Plan.

11C-3: Acquire additional recreation areas and public access areas with a high recreation value prior to demand to assure that sufficient shoreline recreation opportunities are available to serve future recreational needs.

11C-4: Encourage cooperation among public agencies, nonprofit groups, and private landowners and developers to increase and diversify recreational opportunities through a variety of means including incorporating water-oriented recreational opportunities into mixed use developments and other innovative techniques.

11C-5: Recognize and protect the interest of all people of the state by providing increased recreational opportunities within shorelines of statewide significance and associated shorelands.

11C-6: Encourage private and public investment in recreation facilities.

11C-7: Locate, design, and operate recreational development in a manner that minimizes adverse effects on adjacent properties as well as other social, recreational, or economic activities.

**~~23.20.050~~ Transportation and Essential Public Facilities**

The transportation and essential public facilities element provides for the general location and extent of existing and proposed public thoroughfares, transportation routes, terminals, and other public utilities and facilities.

**Goal 11D:A: ~~Goal. To provide~~ Provide transportation systems and essential public facilities in shoreline areas without adverse effects on existing shoreline use and development or shoreline ecological functions and/or processes.**

**B.** Objectives:

11D-1: Locate, develop, manage, and maintain transportation systems and essential public facilities in a manner that protects shoreline ecological functions and processes. Minimize and mitigate unavoidable impacts.

11D-2: Locate and design transportation systems and essential public facilities to be harmonious with the existing and future economic and social needs of the community.

11D-3: Discourage the development of non-water-dependent transportation systems and essential public facilities unless no feasible alternatives exist. Devote roads within the shoreline jurisdiction to low volume local access routes and shoreline public access where feasible.

11D-4: When appropriate, require ~~adequate~~ appropriate compensation where transportation systems and essential public facilities reduce the benefits people derive from their property.

**11D-5:** Provide for alternate modes of travel, encourage freedom of choice among travel modes, and provide multiple use transportation corridors where compatible in association with shoreline transportation development.

**11D-6:** Require transportation system and essential public facility development in shoreline areas to protect and enhance physical and visual shoreline public access.

**~~23.20.060~~ Shoreline ~~Use~~**

The shoreline use element ~~considers~~prioritizes the use and development of shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, forestry, natural resources, recreation, education, public institutions, utilities, and other categories of public and private land use with respect to the type, general distribution, location, and extent of such uses and developments.

**~~Goal 11E:A:~~ ~~Goal. To p~~Preserve and develop shorelines in a manner that allows for an orderly balance of uses.**

**~~B.~~ Objectives:**

**11E-1:** Give preference to water-dependent and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Give secondary preference to water-related and water-enjoyment uses. Allow non-water-oriented uses only when substantial public benefit is provided with respect to the goals of the ~~SMAAct~~ for public access and ecological restoration.

**11E-2:** Designate and maintain appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health.

**11E-3:** Ensure shoreline uses are consistent with the ~~Whatcom County~~ Comprehensive Plan.

**11E-4:** Balance the location, design, and management of shoreline uses throughout the County to prevent a net loss of shoreline ecological functions and processes over time.

**11E-5:** Encourage mixed use developments that include and support water-oriented uses and provide a substantial public benefit consistent with the public access and ecological restoration goals and policies of the ~~SMAAct~~.

**11E-6:** Encourage shoreline uses and development that enhance shoreline ecological functions and/or processes or employ innovative features that further the purposes of ~~the SMP~~this program.

**11E-7:** Encourage shoreline uses and development that enhance and/or increase public access to the shoreline.

**~~23.20.070~~ Conservation**

The shoreline conservation element provides for the protection of natural resources, and shoreline ecological functions and processes. Resources to be conserved and protected include, but are not limited to, wetlands; riparian, nearshore, and aquatic habitats; priority fish and wildlife habitats and species; floodplains; feeder bluffs and other geological features; cultural and historic resources; as well as scenic vistas and aesthetics.

**~~Goal 11F:A:~~ Goal. To c****Conserve shoreline resources and important shoreline features, and protect shoreline ecological functions and the processes that sustain them to the maximum extent practicable.**

**~~B.~~ Objectives:**

**~~11F-1:~~** ~~Develop~~ Maintain regulations and mitigation standards that ensure new shoreline developments prevent a net loss of shoreline ecological functions and processes. Implement such regulations and standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

**~~11F-2:~~** Protect critical areas in accordance with ~~the policies and regulations in the County's critical areas regulations~~ (WCC Chapter 16.16), as adopted by reference in the SMP.

**~~11F-3:~~** Manage renewable natural resources on a sustained yield basis. Extract nonrenewable natural resources in a manner that maintains the quality of other resources and shoreline ecological functions and processes.

**~~11F-4:~~** Prioritize protection and/or conservation of shoreline areas that are ecologically intact and minimally developed or degraded.

**~~23.20.080~~ Archaeological, historical and Cultural Resources**

The ~~archaeological-historical-cultural~~ resource element provides for protection, preservation and/or restoration of buildings, sites, and areas having archaeological, historical, cultural, or scientific value or significance. "Cultural resource" refers to any archaeological, historic, cemetery, or other cultural sites or artifacts; as well as those traditional food, medicine, fibers, and objects that sustain the religious, ceremonial, and social activities of affected Native American tribes that may be regulated under state or federal laws administered by the Washington State Department of Archaeologic and Historic Preservation (DAHP). [CES7]

**~~Goal 11G:A:~~ Goal.****Protect shoreline features of historic, cultural, archeological, or scientific value or significance to prevent damage or destruction through coordination and consultation with the appropriate local, state and federal authorities, including affected Indian tribes.**

**~~B.~~ Objectives:**

- 11G-1:** Protect cultural resources sites in collaboration with appropriate tribal, state, federal, and local governments.
- 11G-2** Engage in and encourage public agencies and private parties to cooperate in the identification, protection and management of cultural resources.
- 11G-3:** Consult with the Washington State Department of Archaeology and Historic Preservation (DAHP) and affected Native American tribes when developing local policies and regulations for identifying, protecting, and preserving cultural resources.
- 11G-4:** Where appropriate, restore unique resources that have cultural, archaeological, historic, educational, or scientific value or significance to further enhance the value of the shorelines. [CES8]
- 11G-5:** Where appropriate provide access to cultural resources in a manner that is culturally sensitive and does not degrade the resource or impact the quality of the environment; make access to such sites available to parties of interest; provided, that access to such sites must be designed and managed in a manner that gives maximum protection to the resource.
- 11G-3:** Provide opportunities for education related to archaeological, historical, and cultural features where appropriate and incorporated into public and private programs and development.

**~~23-20-090~~ Views and ~~A~~aesthetics.**

This element provides for preservation and/or protection of scenic vistas, views of the water, and other aesthetic qualities of shorelines for public enjoyment.

**Goal 11H:A- ~~Goal. To assure that the public's ability and opportunity to enjoy shoreline views and aesthetics is protected.~~**

**B- ~~Objectives:~~**

**11H-1:** Identify and protect areas with scenic vistas and areas where the shoreline has high aesthetic value.

**11H-2:** Design development to minimize adverse impacts on views from public property or views enjoyed by a substantial number of residences.

**~~23-20-100~~ Restoration and ~~e~~Enhancement.**

This element provides for the timely restoration and enhancement of ecologically impaired areas in a manner that achieves a net gain in shoreline ecological functions and processes above baseline conditions set as of the date of adoption of the comprehensive SMP update, February 27, 2007 ~~as of the adoption of this program.~~

**Goal 11I:A- ~~Goal. To r~~Reestablish, rehabilitate and/or otherwise improve impaired shoreline ecological functions and/or processes through voluntary and incentive-based public**



**and private programs and actions that are consistent with the Shoreline Management Program Restoration Plan (~~County Resolution 2007-011~~) and other approved restoration plans.**

**~~B.~~ Objectives:**

**11I-1:** Encourage and facilitate cooperative restoration and enhancement programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.

**11I-2:** Restore and enhance shoreline ecological functions, and processes, ~~and as well as shoreline~~ features through voluntary and incentive-based public and private programs, such as the Shore Friendly Program developed by the Washington State Department of Fish and Wildlife, Washington State Department of Natural Resources, and the Environmental Protection Agency[AP9].

**11I-3:** Target restoration and enhancement towards improving habitat requirements of priority and/or locally important wildlife species.

**11I-4:** Ensure restoration and enhancement is consistent with and, where practicable, prioritized based on the biological recovery goals for early Chinook and bull trout populations and other species and/or populations for which a recovery plan is available.

**11I-5:** Integrate restoration and enhancement with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan, Drayton Harbor and Portage Bay Shellfish Protection District Plans, WRIA 1 Watershed Management Plan, ~~Whatcom County Comprehensive Plan,~~ and the Puget Sound Salmon Recovery Draft Plan.

**~~Chapter 23.30 Shoreline Jurisdiction and Area Environment~~  
~~Designations~~[MD10]**

**~~23.30.022 Shoreline area designations:~~**

**~~A.~~** A set of 10 shoreline area designations has been developed as a part of the SMP~~this program~~. The purpose of the shoreline area designations is to provide a systematic, rational, and equitable basis upon which to guide and regulate development within specific shoreline reaches.

**~~B.~~** Shoreline area designations have been determined after consideration of:

1. The ecological functions and processes that characterize the shoreline, together with the degree of human alteration; ~~and~~



2. Existing development patterns together with WCC Title 20<sup>7</sup> Zoning<sup>7</sup> designations, the ~~County~~ Comprehensive Plan designations<sub>4</sub> and other officially adopted plans; ~~and~~
3. Federal and tribal ownership status; ~~and~~
4. The goals of Whatcom County citizens for their shorelines; ~~and~~
5. Pursuant to RCW 90.58.100(4), in designating state-owned shorelines, consideration has been given to public demand for wilderness beaches, ecological study areas, and other recreational activities; and<sub>4</sub>
6. Other state policies in the ~~SMA~~Act and the ~~SMP~~Shoreline Master Program Guidelines (RCW 90.58.020 and Chapter 173-26 WAC, respectively).

~~23.30.030~~ Urban Shoreline Area

~~23.30.031~~ Urban shoreline area Purpose

The purpose of the urban shoreline area is to provide for intensive development of water-oriented commercial, transportation, and industrial uses and accommodate mixed use developments such as those consisting of urban density residential, commercial<sub>4</sub> and industrial uses, while protecting existing shoreline ecological functions and processes and restoring shoreline ecological functions and/or processes in areas that have been previously degraded.

~~23.30.032~~ Urban shoreline area Designation Criteria

The urban shoreline area is applied to shoreline areas zoned commercial, industrial<sub>4</sub> and urban density residential within urban growth areas and ~~limited~~ industrial or commercial areas in Limited Areas of More Intense Rural Development ~~(LAMIRDs)~~, if they:

- A. Are currently characterized by high intensity development and/or uses; are designated by the Comprehensive Plan for high intensity uses or intensive uses related to commerce, transportation or navigation; or are suitable and planned for high intensity mixed use; and
- B. Do not contain limitations to urban use such as geologic hazards, and have adequate utilities and access; and
- C. Do not provide important ecological functions that would be significantly compromised by high intensity residential, commercial, or industrial use.

~~23.30.033~~ Urban shoreline area Policies

Development within urban shoreline areas shall be consistent with the following policies:

- ~~Policy 11J-1:A:~~ New urban character development should be directed toward already developed or developing areas where compatible.
- ~~Policy 11J-2:B:~~ First priority should be given to water-dependent uses. Second priority should be given to water-related and then water-enjoyment uses. Non-water-oriented uses should not be allowed

except as part of mixed use developments. Non-water-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline, or where the needs of existing and future water-dependent uses are met.

**~~23.30.040~~ Urban Resort Shoreline Area**

**~~23.30.041~~ Urban resort shoreline area — Purpose**

The purpose of the urban resort shoreline area is to provide for intensive residential and commercial uses geared to the needs of tourists and day visitors while protecting existing shoreline ecological functions and processes. Emphasis is on hotels, motels, shops, restaurants, commercial rental campgrounds, rental cabins, and shoreline-related recreation facilities.

**~~23.30.042~~ Urban resort shoreline area — Designation Criteria**

The urban resort shoreline area is applied to shoreline areas identified in the Comprehensive Plan as suitable for resort commercial development with substantial features that might reasonably attract resort development compatible with other development in the area, and which have existing and/or planned infrastructure sufficient to support such development.

**~~23.30.043~~ Urban resort shoreline area — Policies**

Development within urban resort shoreline areas shall be consistent with the following policies:

Policy 11K-1:A- Scale and design of resort development should assure compatibility with allowed uses of adjacent shoreline areas and shoreline ecological functions and processes.

Policy 11K-2:B- Buildings over 35 feet in height may be permitted if additional open space, view areas, public access and/or other amenities are provided.

**~~23.30.050~~ Urban Conservancy Shoreline Area**

**~~23.30.051~~ Urban conservancy shoreline area — Purpose**

The purpose of the urban conservancy shoreline area is to protect shoreline ecological functions and processes in urban growth areas and Limited Areas of More Intense Rural Development (LAMIRDs) that are not designated for high intensity residential use and are not generally suitable for water-dependent uses. The primary management goal is to preserve shoreline ecological functions and processes by avoiding forms of development that would be incompatible with existing functions and processes, as well as identify and focus restoration efforts in areas where benefits to overall functions and processes can be realized. This policy should be furthered by maintaining most of the area's natural character. [CES11]

~~23.30.052 Urban conservancy shoreline area~~—Designation Criteria

The urban conservancy shoreline area is applied to shoreline areas inside urban growth areas where any of the following characteristics apply:

- A. They support or retain important shoreline ecological functions and/or processes, even though partially developed.
- B. They have the potential for development at an intensity and character that is compatible with preserving and restoring ecological functions. They are generally not designated for high intensity residential use, commercial use, or industrial use.
- C. They are characterized by critical areas or ~~indicate~~ the presence of other valuable or sensitive ecological resources.

~~23.30.053 Urban conservancy shoreline area~~—Policies

Development within urban conservancy shoreline areas shall be consistent with the following policies:

Policy 11L-1:A. Primary permitted uses should consist of low intensity residential uses or other low intensity uses that preserve the natural character of the area or promote preservation of open space and critical areas.

Policy 11L-2:B. Moderate to high intensity residential use may be permitted if the proposed uses and design result in substantial open space, public access and/or restoration of shoreline ecological functions and/or processes, and if compatible with surrounding uses.

Policy 11L-3:C. Public access and public recreation facilities are a preferred use if they will not cause substantial ecological impacts and when restoration of ecological functions is incorporated.

Policy 11L-4:D. Low intensity commercial uses may be permitted if the specific uses and design result in substantial open space, public access, and/or restoration of ecological functions, and if compatible with surrounding uses.

~~23.30.060 Shoreline Residential Area~~

~~23.30.061 Shoreline residential area~~—Purpose

The shoreline residential shoreline area accommodates residential development and accessory structures that are consistent with this chapter.

~~23.30.062 Shoreline residential area~~—Designation Criteria

The shoreline residential shoreline area is applied to shorelines if they have been predominantly developed with single-family or multifamily residential uses or are planned and platted for residential development. The designation is generally applied to residential densities of greater than one unit per acre.

**~~23.30.063 Shoreline residential area—Policies~~**

Development within shoreline residential shoreline areas shall be consistent with the following policies:

~~Policy 11M-1:A-~~ The scale and density of new uses and development should be compatible with, and protect or enhance, the existing residential character of the area while sustaining shoreline ecological functions and processes.

~~Policy 11M-2:B-~~ Public or private outdoor recreation facilities should be encouraged if compatible with the character of the area. Preferred uses include water-dependent and water-enjoyment recreation facilities that provide opportunities for substantial numbers of people to access and enjoy the shoreline.

~~Policy 11M-3:C-~~ Commercial development should be limited to water-oriented uses. Non-water-oriented commercial uses may be permitted as part of mixed use developments where the primary use is residential; provided, that such uses ~~should~~ provide a substantial benefit with respect to the goals and policies of ~~the SMP~~~~this program~~, such as providing public access or restoring degraded shorelines.

**~~23.30.070 Rural Shoreline Area~~**

**~~23.30.071 Rural shoreline area—Purpose~~**

The purpose of the rural shoreline area is to protect shoreline ecological functions in areas having a rural character characterized by open space and low density development including, but not limited to: residences, agriculture, forestry, and outdoor recreation. Uses should be compatible with the physical capabilities and limitations, natural resources, and shoreline ecological functions and processes of the area.

**~~23.30.072 Rural shoreline area—Designation Criteria~~**

The rural shoreline area is applied to shoreline areas outside urban growth areas, particularly areas designated as Rural in the ~~Whatcom County~~ Comprehensive Plan, and includes areas:

A. Where the shoreline currently accommodates residential uses outside urban growth areas and is characterized by low density development, pasture, agriculture, woodlots, home occupations, and cottage industries. The distribution of rural land use is adjacent to agricultural, forestry, and urban land uses and often provides a transition between urban areas and commercial agriculture and forestry uses. Natural vegetative cover and topography have been altered in many rural areas, but substantial ecological functions, and/or the potential for restoration of ecological functions, are present.

B. That are now used or potentially usable for a mix of agriculture, forestry, and residential use.

- C. Where residential development is or should be of low density, because of limitations by physical features, infrastructure, the presence of critical areas, and/or lack of utilities or access.
- D. That have high recreational value or unique historic or cultural resources.
- E. Where low intensity outdoor recreation use or development would be appropriate and compatible with other uses and the physical environment.
- F. Where the shoreline has been developed with low intensity water-dependent uses.

**~~23.30.073 Rural shoreline area~~—Policies**

Development within rural shoreline areas shall be consistent with the following policies:

- Policy 11N-1:A- Uses in rural areas should protect or enhance the rural character of the shoreline and sustain the shoreline ecological functions and processes by limiting building density and height, and providing effective setbacks, buffers, and open space.
- Policy 11N-2:B- Residential development consistent with the rural character of the area is permitted, provided it includes measures to protect ecological functions and processes. Related uses consistent with the rural character of the area are permitted.
- Policy 11N-3:C- Public or private outdoor recreation facilities should be encouraged if compatible with the rural character of the area and developed in a manner that maintains shoreline ecological functions and processes. Preferred uses include water-oriented recreation facilities that do not deplete shoreline resources over time, such as boating facilities, angling, wildlife viewing trails, and swimming beaches.
- Policy 11N-4:D- Industrial or commercial development should be limited to water-oriented commercial and industrial uses in the limited locations where such uses have been established or at sites in rural communities that possess appropriate shoreline conditions and services sufficient to support such developments. Non-water-dependent uses should only be allowed when they provide a substantial benefit with respect to the goals and policies of the SMP~~this program~~, such as providing public access and/or restoring degraded shorelines.
- Policy 11N-5:E- Agriculture and forestry consistent with rural character and the maintenance of shoreline ecological functions and processes should be encouraged.

**~~23.30.080~~ Resource Shoreline Area**

**~~23.30.081~~ Resource shoreline area—Purpose**

The purpose of the resource shoreline area is to protect shoreline ecological functions and processes in areas designated in the ~~Whatcom County~~ Comprehensive Plan as agriculture ~~resource lands~~, ~~rural forestry~~, ~~commercial forestry~~, and mineral resource lands and to protect the economic base of those lands and limit incompatible uses.

**~~23.30.082~~ Resource shoreline area—Designation Criteria**

The resource shoreline area is applied to shoreline areas designated as agriculture, rural forestry, commercial forestry, and mineral resource lands in the ~~Whatcom County~~ Comprehensive Plan and includes areas where the shoreline currently accommodates ongoing resource management, where natural vegetation cover has been altered but substantial ecological functions, or the potential for restoring ecological functions, are present.

**~~23.30.083~~ Resource shoreline area—Policies**

Development within resource shoreline areas shall be consistent with the following policies:

Policy 11O-1:A- Uses in resource areas should protect the economic base of those lands, limit incompatible uses, and sustain the shoreline area ecological processes and functions by limiting uses and intensity. Residential use is generally limited to one dwelling per existing parcel. The dwelling may be located within the shoreline jurisdiction, only where no other building site is feasible on the parcel.

Policy 11O-2:B- Public or private outdoor recreation facilities should be permitted if they do not displace designated resource lands and if they are developed in a manner that maintains shoreline ecological functions. Preferred uses include water-dependent and water-enjoyment recreation facilities.

Policy 11O-3:C- Industrial or commercial use and development should be limited to uses that serve resource uses. Such uses may be located within the shoreline only if they are water-dependent, water-related, or if no other feasible location exists within the contiguous property.

**~~23.30.090~~ Conservancy Shoreline Area**

**~~23.30.091~~ Conservancy shoreline area—Purpose**

The purpose of the conservancy shoreline area is to retain shoreline ecological functions in areas outside of urban growth areas and LAMIRDS [CES12] where important ecological processes have not been substantially degraded by human activities. ~~Conservancy areas are designated outside of urban growth areas.~~ The primary



management goal is to preserve shoreline ecological functions and processes by avoiding forms of development that would be incompatible with existing functions and processes, as well as identify and focus restoration efforts in areas where benefits to overall functions and processes can be realized. This policy should be furthered by keeping overall intensity of development or use low, and by maintaining most of the area's natural character.

~~23.30.092 Conservancy shoreline area~~ **Designation Criteria**

The conservancy shoreline area is applied to shoreline areas outside urban growth areas and LAMIRDs that include areas:

- A. Where development activities and uses are buffered from and do not substantially degrade ecological processes and functions.
- B. Where ecological functions are more intact than in areas designated rural or resource.
- C. Of outstanding scenic quality or other aesthetic qualities of high value to the region, which would likely be diminished unless development is strictly controlled.
- D. Containing critical areas or other sensitive natural or cultural features that require more than normal restrictions on development and use.
- E. Having the potential to influence ecological processes in a manner that will produce ecosystem-wide benefits upon restoration.
- F. That contain valuable or sensitive natural or cultural features that preclude more than a low overall density of residents, recreation use, structures, or livestock, as well as extensive alterations to topography or other features.
- G. Have recreational value to the region that would likely be diminished unless development is strictly controlled.

~~23.30.093 Conservancy shoreline area~~ **Policies**

Development within conservancy shoreline areas shall be consistent with the following policies:

~~Policy 11P-1:A.~~ Natural ecological processes should be protected and renewable resources managed so that ecological functions and the resource base are maintained. Nonrenewable resources should only be consumed in a manner compatible with conservation of other resources and other appropriate uses.

~~Policy 11P-2:B.~~ Permitted uses should be limited to those compatible with each other and with conservation of shoreline ecological processes and resources.

~~Policy 11P-3:C.~~ Shorelines should be protected from harmful concentrations of people, livestock, buildings, or structures that would adversely impact shoreline ecological functions and processes.[AP13]



Policy 11P-4:D- Opportunities for ecological restoration should be pursued, prioritizing those areas with the greatest potential to restore ecosystem-wide processes and functions.

Policy 11P-5:E- Outstanding recreational or scenic values should be protected from incompatible development.

**~~23.30.100~~ Natural Shoreline Area**

**~~23.30.101~~ Natural shoreline area—Purpose**

The purpose of the natural shoreline area is to ensure long-term preservation of ecologically intact shorelines inside or outside urban growth areas ~~that are ecologically intact~~.

**~~23.30.102~~ Natural shoreline area—Designation Criteria**

The natural shoreline area is applied to shoreline areas where any of the following characteristics apply:

- A. The majority of natural ecological shoreline functions and/or processes are retained, often evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, they include ecologically intact shorelines that are free of structural shoreline modifications, structures, and intensive human uses.
- B. Forested areas that generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.
- C. Valuable functions are provided for the larger aquatic and terrestrial environments, which could be lost or significantly reduced by human development.
- D. Ecosystems or geologic types that are of particular scientific and educational interest are represented.
- E. Largely undisturbed areas of wetlands, estuaries, unstable bluffs, coastal dunes, and spits are present.
- F. New development, extractive uses, or physical modifications cannot be supported without significant adverse impacts to ecological functions and/or processes or risk to human safety.

**~~23.30.103~~ Natural shoreline area—Policies**

Development within natural shoreline areas shall be consistent with the following policies:

Policy 11Q-1:A- Preservation of the area’s ecological functions, natural features and overall character must receive priority over any other potential use. Uses should not degrade shoreline ecological functions or processes or the natural character of the shoreline area. New development or significant vegetation removal that

would reduce the capability of the shoreline to perform a full range of ecological functions or processes should not be permitted.

Policy 11Q-2:B-

Private and/or public enjoyment of natural shoreline areas should be encouraged and facilitated through low intensity recreational, scientific, historical, cultural, and educational research uses; provided, that no significant ecological impact on the area will result.

Policy 11Q-3:C-

Agricultural and forestry uses of a very low intensity nature may be consistent with the natural shoreline area when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

Policy 11Q-4:D-

The following uses should not be permitted in the natural shoreline area:

1. Commercial uses.
2. Industrial uses.
3. Non-water-oriented recreation.
4. Roads, utility corridors, and parking areas that can be located outside of natural shoreline areas.

~~23.30.110 Aquatic Shoreline Area~~

~~23.30.111 Aquatic shoreline area—Purpose~~

The purpose of the aquatic shoreline area is to protect, restore, and manage the characteristics and resources of the areas waterward of the ordinary high water mark.

~~23.30.112 Aquatic shoreline area—Designation Criteria~~

The aquatic shoreline area is defined as the area waterward of the ordinary high water mark of all streams, rivers, lakes, and marine water-bodies, ~~and lakes,~~ constituting shorelines of the state together with their underlying lands and their water column.

~~23.30.113 Aquatic shoreline area—Policies~~

Development within aquatic shoreline areas shall be consistent with the following policies:

Policy 11R-1:A-

New over-water structures should only be permitted for water-dependent uses, public access, or ecological restoration. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

**Policy 11R-2:B-** All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

**Policy 11R-3:C-** Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be permitted except where necessary to achieve the objectives of RCW 90.58.020, and then only when all potential impacts are mitigated as necessary to assure maintenance of shoreline ecological functions and processes.

**Policy 11R-4:D-** Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural conditions.

### **~~23.30.120~~ Cherry Point Management Area**

#### **Purpose**

Washington [P/C14] State natural resource agencies and Whatcom County have identified certain portions of the Cherry Point management area as providing herring spawning habitat and other key habitat characteristics that warrant special consideration due to their importance to regional fisheries and other elements of the aquatic environment. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and balances the special port, industrial, and natural resource needs associated with the development of this marine resource.

#### **Designation Criteria**

The [CES15] Cherry Point Management Area is a geographic area lying between the eastern property boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11, Township 39 North, Range 1 West, as it existed on June 18, 1987, and the southern boundary of Section 32, Township 39 North, Range 1 East, extending waterward a distance of 5,000 feet and extending landward for 200 feet as measured on a horizontal plane from the OHWM. This area shall have the Cherry Point Management Area shoreline environment designation.

#### **Policies**

~~The policies applicable to the Cherry Point Management Area are found in the Shoreline Use and Modifications Policies section of this chapter; applicable regulations and standards, etc., applicable to the Cherry Point management area are found in WCC Title 23.100.170, except as otherwise specified therein.~~

### **Shorelines of Statewide Significance** [MD16]

#### **~~23.40.010 Adoption of policy.~~**

In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all shorelines of statewide significance in unincorporated Whatcom County, as defined in RCW 90.58.030(2)(e) and identified

in WCC 23.2.06040-020. Consistent with the policy contained in RCW 90.58.020, preference shall be given to the uses that are consistent with the statewide interest in such shorelines. In the following order or preference<sup>[CES17]</sup>, ~~the~~ these are uses that:

- A. Recognize and protect the statewide interest over local interest.
- B. Preserve the natural character of the shoreline.
- C. Result in long-term over short-term benefit.
- D. Protect the resources and ecology of the shoreline.
- E. Increase public access to publicly owned areas of the shoreline.
- F. Increase recreational opportunities for the public in the shoreline.
- G. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

Uses that are not consistent with these policies should not be permitted on shorelines of statewide significance.

#### ~~23.40.030 Policies for Shorelines of Statewide Significance~~

The statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. To ensure that statewide interests are protected over local interests, the County shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.030 and the following policies:

~~Policy 11-1:A.~~ Redevelopment of shorelines should be encouraged where it restores or enhances shoreline ecological functions and processes impaired by prior development activities.

~~Policy 11S-2:B.~~ The Washington Departments of Fish and Wildlife and Ecology, the Lummi Nation, the Nooksack Tribe, and other resources agencies should be consulted for development proposals that could affect anadromous fisheries.

~~Policy 11S-3:C.~~ Where commercial timber cutting takes place pursuant to WCC ~~23.40.110~~<sup>23.90.110</sup> and RCW 90.58.150, reforestation should take place as soon as possible.

~~Policy 11S-4:D.~~ Activities that use shoreline resources on a sustained yield or non-consuming basis and that are compatible with other appropriate uses should be given priority over uses not meeting these criteria.

~~Policy 11S-5:E.~~ The range of options for shoreline use should be preserved to the maximum possible extent for succeeding generations. Development that consumes valuable, scarce, sensitive, or irreplaceable natural resources should be protected to the maximum extent feasible and should not be permitted if alternative sites are available.

## Exhibit B – Planning Commission Approved Draft

May 13, 2021

Chapter 11 – Shorelines

- 1 Policy 11S-6:F- Potential short-term economic gains or convenience should be  
2 measured against potential long-term and/or costly impairment  
3 of natural features.
- 4 Policy 11S-7:G- Protection or enhancement of aesthetic values should be  
5 actively promoted in design review of new or expanding  
6 development.
- 7 Policy 11S-8:H- Resources and ecological systems of shorelines of statewide  
8 significance should be protected. Shorelands and submerged  
9 lands should be protected to accommodate current and  
10 projected demand for economic resources of statewide  
11 importance, such as commercial shellfish beds.
- 12 ~~I. Those limited shorelines containing unique, scarce and/or~~  
13 ~~sensitive resources should be protected to the maximum extent~~  
14 ~~feasible.~~[AP18]
- 15 Policy 11S-9:J- Erosion and sedimentation from development sites should be  
16 controlled to minimize adverse impacts on ecosystem processes.  
17 If site conditions preclude effective erosion and sediment  
18 control, excavations, land clearing, or other activities likely to  
19 result in significant erosion should be severely limited.
- 20 Policy 11S-10:K- Public access development in extremely sensitive areas should  
21 be restricted or prohibited. All forms of recreation or access  
22 development should be designed to protect the resource base  
23 upon which such uses in general depend.
- 24 Policy 11S-11:L- Public and private developments should be encouraged to  
25 provide trails, viewpoints, water access points and shoreline-  
26 related recreation opportunities whenever possible. Such  
27 development is recognized as a high priority use.
- 28 Policy 11S-12:M- Development not requiring a ~~waterside or~~ shoreline location  
29 should be located inland so that lawful public enjoyment of  
30 shorelines is ~~enhanced~~preserved.
- 31 Policy 11S-13:N- Lodging and related facilities should be located inland and  
32 provide for appropriate means of access to the shoreline.

### ~~Chapter 23.90 General Policies and Regulations~~[MD19]

34 ~~The following general policies apply to all use and development activities on~~  
35 ~~shorelines.~~

#### ~~23.90.020 Land Use~~

37 ~~The following land use policies delineate the use preferences of the Act and this~~  
38 ~~program and are intended to support the goals and objectives of the program:~~

##### ~~A. Policies.~~

- 40 Policy 11T-1: Single-family residences should be given preference for location  
41 on shorelines in those limited instances when an alteration of

the shorelines is authorized (RCW 90.58.020). ~~Single-family residences occupied prior to January 1, 1992, and their appurtenant structures should be protected against damage or loss caused by shoreline erosion; provided, that measures to protect single-family residences should be designed to minimize harm to the shoreline environment. However, After that date, all new single-family residences permitted after January 1, 1992, and their appurtenant structures should be built in a manner so as to not need protective structures.~~<sup>[CES20]</sup>

**Policy 11T-2:**

Shoreline uses that are water-dependent or water-related should be given preference (RCW 90.58.020). Such uses should be located, designed, and maintained in a manner that minimizes adverse impacts to shoreline ecological functions and/or processes. Non-water-oriented development may be allowed; provided, that existing water-dependent uses are not displaced and the future supply of sites for water-dependent or water-related uses is not compromised.

**Policy 11T-3:**

Adequate space should be reserved on shorelines to meet the current and projected demand for water-dependent uses, in conjunction with areas provided in cities, towns and areas under tribal jurisdiction.

**~~23.90.030~~ Ecological Protection and Critical Areas**

**~~A. Policies.~~**

**Policy 11U-1:**

Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC Chapter 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, insofar as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

**Policy 11U-2:**

In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.



Policy 11U-3: Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

**~~23.90.040~~ Water Quality and Quantity**

**~~A. Policies.~~**

Policy 11V-1: The location, construction, operation, and maintenance of all shoreline uses and developments should maintain ~~or enhance~~ the quantity and maintain or enhance the quality of surface and ground-water over the long term.[CES21]

Policy 11V-2: Shoreline use and development should minimize the need for chemical fertilizers, pesticides, or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.

Policy 11V-3: Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

**~~23.90.050~~ Views and Aesthetics**

**~~A. Policies.~~**

Policy 11W-1: Shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline.

Policy 11W-2: Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures.

Policy 11W-3: Aesthetic objectives should be implemented through regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards, sign control regulations, appropriate development siting, designation of view corridors, and maintenance of natural vegetative buffers.

Policy 11W-4: To protect shoreline ecological functions and aesthetics, vegetation conservation should be preferred over the creation or maintenance of views from shoreline properties. Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological and/or aesthetic values, and/or slope stability. ~~Vegetation conservation~~



~~should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological functions and aesthetics.~~

**~~23.90.060~~ Vegetation Conservation**

**~~A. Policies.~~**

Policy 11X-1: Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. ~~Important functions of shoreline vegetation include, but are not limited to:~~

~~Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.~~

~~Regulating microclimate in riparian and nearshore areas.~~

~~Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macroinvertebrates.~~

~~Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.~~

~~Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.~~

~~Improving water quality through filtration and vegetative uptake of nutrients and pollutants.~~

~~Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.~~

~~Providing habitat for wildlife, including connectivity for travel and migration corridors.~~ [MD22]

**~~23.90.070~~ Archaeological, Historic and Cultural Resources**

The following policies apply to cultural resources that are (a) listed on the national, state, or local registers of historic places; (b) recorded by the Washington State Department of Archaeology and Historic Preservation (DAHP), a Native American tribe, and/or a local jurisdiction; or (c) undiscovered, inadvertently uncovered , or yet unrecorded.

Archaeological sites located in (as well as outside of) shoreline jurisdiction are subject to RCW Chapter 27.44 (Indian graves and records) and RCW Chapter 27.53 (Archaeological sites and records). Shoreline uses or development that may impact such sites shall comply with WAC Chapter 25-48 as well as the provisions of this Shoreline Master Program.

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Pursuant to RCW 27.53.070, information and documents pertaining to the location of archaeological sites or resources are confidential and not considered public records that require disclosure.

**A. ~~\_\_\_\_\_~~ Policies.**

**Policy 11X-1:** The County should work with tribal, state, federal, and local governments as appropriate to maintain an inventory of all known significant ~~local historic, cultural and archaeological sites~~ resources in observance of applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education, and/or public enjoyment to the maximum possible extent.

**Policy 11X-2:** Site development plans should incorporate provisions for ~~historic, cultural and archaeological sites~~ resource preservation, restoration, and education with open space or recreation areas whenever compatible and possible.

~~3. \_\_\_\_\_ Cooperation among involved private and public parties is encouraged to achieve the archaeological, historical and cultural element goals and objectives of this program. [AP23]~~

**Policy 11X-3:4.** Owners of property containing ~~identified historic, cultural or archaeological sites~~ resources are encouraged to make development plans known well in advance of application, so that appropriate agencies such as the Lummi Nation, Nooksack Tribe, Washington State Department of Archaeology and Historic Preservation, and others may have ~~ample~~ adequate time to assess the site and make arrangements to preserve ~~historical, cultural and archaeological~~ values as applicable.

**Policy 11X-4:5.** Private and public owners of historic sites should be encouraged to provide public access and educational opportunities in a manner consistent with long-term protection of both historic values and shoreline ecological functions.

**Policy 11X-5:6.** ~~Historic, cultural, and archaeological site d~~ Development on sites containing cultural resources should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.

**Policy 11X-6:7.** If development is proposed adjacent to an identified ~~historic, cultural or archaeological sites~~ resource, then the proposed development should be designed and operated so as to be compatible with continued protection of ~~the historic, cultural or archaeological that~~ siteresource.

**Policy 11X-7:8.** The cultural resource provisions of this program are consistent with Chapters 27.44 and 27.53 RCW and WAC 25-48-060. In

accordance with state law, all applicants are subject to these requirements.

Policy 11X-8: The County shall consult with DAHP and affected Native American tribes as appropriate in implementing the cultural ~~archaeological, and historic resources~~ goals, objectives, policies, and regulations of this ~~program-SMP~~.

Policy 11X-9: In reviewing development proposals, the County shall take, or cause project applicants to take, all required actions to:

1. Minimize the risk of disturbing cultural resources within Whatcom County shorelines.
2. Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Tribes and the DAHP.
3. Consult with professional archaeologists, DAHP, and affected Tribes before permitting or otherwise approving the use or development of shoreline areas containing cultural resources. This consultation shall be accomplished through the regulations and procedures provided in WCC Title 23.
4. Consult with DAHP and affected Tribes and coordinate with project archaeologists to establish site- and project-specific procedures for protection and management of cultural resources.
5. Make informed specific land use decisions based upon information provided by DAHP and Tribes.
6. Ensure the use of the best available information, technology, and techniques in identifying, protecting, preserving, and restoring cultural resources.<sup>[CES24]</sup>

### ~~23.90.080~~ Public Access

#### ~~A. Policies.~~

Policy 11Y-1: Use and development that provide an opportunity for substantial numbers of ~~the~~ people to enjoy the shorelines of the state are a preferred use.

Policy 11Y-2: Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. ~~Public health and safety concerns should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured.~~ <sup>[MD25]</sup> As required by the governing principles, all such conditions should be consistent

with all relevant constitutional and other legal limitations on regulation of private property.

Policy 11Y-3:

Public access should be provided for water-oriented uses and non-water-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing, legal access opportunities.

Policy 11Y-4:

Non-water-related uses or activities located on the shoreline should provide public access as a public benefit.

Policy 11Y-5:

Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective, and fair to all affected parties including but not limited to the land-owner and the public.

Policy 11Y-6:

Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.

Policy 11Y-7:

Shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, should provide public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline.

~~23.90.090~~ **Site Planning**

~~A. Policies.~~

Policy 11Z-1:

Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic, and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering, and other appropriate design approaches.

Policy 11Z-2:

To maintain shoreline ecological functions and processes, low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including, but not limited to, porous paving blocks, porous concrete, and other similar materials, should be incorporated in developments where site conditions allow ~~to maintain shoreline ecological functions and processes.~~ Topographic modification, vegetation clearing, use of impervious surfaces, and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering

geologist should be consulted prior to using infiltration practices on shore bluffs.

**Policy 11Z-3:**

Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within shorelines jurisdiction, uses and/or developments such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials should be located inland away from the land/water interface and landward of water-oriented developments and/or other approved uses.

**Policy 11Z-4:**

Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.

**Policy 11Z-5:**

Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, ~~and~~ wading, and other water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

**Climate Change/Sea Level Rise** [CES26]

**Policy 11AA-1:** Coordinate with Tribal, Federal, State, and local agencies to address issues related to climate change and sea level rise as related to shoreline management.

**Policy 11AA-2:** Whatcom County should plan and prepare for the likely impacts of climate change on County-owned facilities, infrastructure, and natural resources and ensure that projects for major maintenance or replacement of utilities, roads, and other public infrastructure consider the impacts of sea-level rise in the location, design, and operation of the projects.

**Policy 11AA-3:** Whatcom County should strive to increase resident and business resiliency to the anticipated impacts of climate change by implementing land use regulations based on best available science, such as sea level rise, changes in rainfall patterns, changes in flood volumes and frequencies, and changes in average and extreme temperatures.

**Policy 11AA-4:** Habitat protection and restoration projects in shoreline jurisdiction should consider implications of sea-level rise and other climate change impacts to promote resiliency of habitats and species. Those that promote climate change and sea-level rise resiliency should be considered priority actions.

Policy 11AA-5: Whatcom County should monitor the impacts of climate change on Whatcom County’s shorelands, the shoreline master program’s ability to adapt to sea level rise and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed. Whatcom County should periodically assess the best available sea level rise projections and other science related to climate change within shoreline jurisdiction and incorporate them into future program updates, as relevant.[P/C27]

Policy 11AA-6: Public infrastructure—such as transportation systems, utilities, flood hazard control, and instream structures—and essential public facilities in shoreline areas should be built in a manner that accounts for increased sea level rise and storm surge, and the flooding that may accompany it.

Policy 11AA-7: Whatcom County should evaluate opportunities to protect shoreline investments and infrastructure from the impacts of climate change, as necessary and feasible. Specifically, the County should maintain shoreline protection and erosion control by:

- Facilitating the installation and maintenance of native vegetation along appropriate areas of shoreline;
- Revisiting development policies with the objective of providing additional shoreline buffer area between developed areas and the shoreline; and
- Only consider structural shoreline stabilization structures when alternative options are unavailable.

**~~Chapter 23.100~~ Shoreline Use and Modification Policies ~~and Regulations~~**

The following shoreline use and modification policies apply to specific development activities on shorelines.

**~~23.100.020~~ Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage**

Policy 11BB-1:A. ~~Policies.~~ Standards for density, setbacks, height, and other provisions should ensure no net loss of shoreline ecological functions and/or processes and preserve the existing character of the shoreline consistent with the purpose of the shoreline area designation.

**~~23.100.030~~ Agriculture**

~~A. Policies.~~

Policy 11BB-1: ~~This program~~The SMP recognizes the importance of agriculture in Whatcom County and supports its continued economic viability. ~~The SMP~~This program It allows for ongoing agricultural



activities and should protect agricultural lands from conflicting uses such as intensive or unrelated residential, industrial, or commercial uses, while also maintaining shoreline ecological functions and processes.

Policy 11BB-2: Agricultural uses and development in support of agricultural uses should be conducted in such a manner as to assure no net loss of shoreline ecological functions and processes and avoid substantial adverse impacts on other shoreline resources and values.

Policy 11BB-3: Conversion of agricultural uses to other uses should comply with all policies and regulations for nonagricultural uses.

## ~~23.100.040~~ Aquaculture

### ~~A. Policies.~~

Policy 11CC-1: Aquaculture is a water-dependent use and, when consistent with control of pollution, and avoidance of adverse impacts to the environment, and preservation of habitat for resident native species, is a preferred use of the shoreline (WAC 173-26-241(3)(b)).

Policy 11CC-2: Potential locations for aquaculture activities are relatively restricted because of specific requirements related to water quality, temperature, oxygen content, currents, adjacent land use, wind protection, commercial navigation, and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the policies of this subsection and the regulations in of this section WCC ChapterTitle 23.100-WCC; provided, that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration.

Policy 11CC-3: Preference should be given to those forms of aquaculture that involve lesser environmental and visual impacts and lesser impacts to native plant and animal species. In general, projects that require ~~no structures, submerged, structures or intertidal, or no~~ structures are preferred over those that involve substantial floating structures. Projects that involve little or no substrate modification are preferred over those that involve substantial modification. Projects that involve little or no supplemental food sources, pesticides, herbicides, or antibiotic application are preferred over those that involve such practices.

~~Policy 11-4. Community restoration projects associated with aquaculture should be reviewed and permitted in a timely manner. [AP28]~~

Policy 11CC-54: Aquaculture activities should be designed, located and operated in a manner that supports long-term beneficial use of the



shoreline and protects and maintains shoreline ecological functions and processes. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species, including eelgrass, kelp, and other macroalgae; adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses.

**Policy 11CC-65:** Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations through potential contribution of antibiotic resistant bacteria, or escapement of nonnative species, or other adverse effects on ESA-listed species should not be permitted.

**Policy 11CC-76:** The County should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate federal, state, and local agencies; the Lummi Nation, Nooksack Tribe, and other affected tribes; and the general public regarding potential adverse impacts. Comments of nearby residents or property owners directly affected by a proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.

**Policy 11CC-87:** The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed through the permit review process. Direct coordination between the applicant/proponent and the tribe should be encouraged.

**Policy 11CC-98:** Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; and on the aesthetic qualities of a project area.

**Policy 11CC-109:** Legally established aquaculture enterprises, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Use or developments that have a high probability of damaging or destroying an existing aquaculture operation may be denied.

**Policy 11CC-1110:** Experimental aquaculture projects in water-bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the state of Washington.

**~~23.100.050 Boating Facilities—Marinas and Launch Ramps~~**

~~Boating facilities, including marinas and launch ramp development, are subject to the following policies. DocksMoorage structures serving four or fewer single-~~

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family residences users are only subject to the policies in Moorage Structures–  
Docks, Piers, and Mooring Buoys.

A. Policies:

Policy 11DD-1: Boating facilities, including marinas and launch ramps, are water-dependent uses and should be given priority for shoreline location. Boating facilities should also contribute to public access and enjoyment of waters of the state. Shorelines particularly suitable for marinas and launch ramps are limited, and should be identified and reserved to prevent irreversible commitment for other uses having less stringent site requirements.

Policy 11DD-2: Regional needs for marina and boat launch facilities should be carefully considered in reviewing new proposals as well as in allocating shorelines for such development. Such facilities should be coordinated with park and recreation plans and, where feasible, collocated with port or other compatible water-dependent uses. Review of such facilities should be coordinated with recreation providers, including cities, adjacent counties, port districts, the Whatcom County Parks and Recreation department, the Washington State Parks and Recreation Commission, and the Washington State Department of Natural Resources to avoid unnecessary duplication and to efficiently provide recreational resources while minimizing adverse impacts to shoreline ecological functions and processes.

Policy 11DD-3: Upland boat storage is preferred over new in-water moorage. Mooring buoys are preferred over docks and piers. Boating facilities that minimize the amount of shoreline modification are preferred.

Policy 11DD-4: Boating facilities should provide physical and visual public shoreline access and provide for multiple uses, including water-related use, to the extent compatible with shoreline ecological functions and processes and adjacent shoreline use.

Policy 11DD-5: Accessory uses at marinas or launch ramps should be limited to water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public.

Policy 11DD-6: New or expanding boating facilities including marinas, launch ramps, and accessory uses should only be sited where suitable environmental conditions are present and should avoid critical saltwater habitat including kelp beds, and eelgrass beds, and spawning and holding areas for forage fish (such as herring, surf smelt and sandlance); subsistence, commercial, and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.

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**Policy 11DD-7:** Boating facilities should be located and designed to avoid adverse effects upon coastal, riverine, and nearshore processes such as erosion, littoral or riparian transport, and accretion, and should, where feasible, enhance degraded, scarce, and/or valuable shore features including accretion shoreforms.

**Policy 11DD-8:** Launch ramps are preferred over marinas on accretion shores because associated impacts are often reversible and such structures will not normally interfere with littoral drift and accretion unless offshore defense structures or dredging are also required.

**Policy 11DD-9:** Nonregulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged during the design, development, and operation of boating facilities. Nonregulatory methods may include public facility and resource planning, education, voluntary protection and enhancement projects, or incentive programs.

**Policy 11DD-10:** Boating facilities should be located, designed, and operated so that other appropriate water-dependent uses are not adversely affected.

**Policy 11DD-11:** Location and design of boating facilities should not unduly obstruct navigable waters and should avoid adverse effects to recreational opportunities such as fishing, shellfish gathering, pleasure boating, commercial aquaculture, swimming, beach walking, picnicking, and shoreline viewing.

**Policy 11DD-12:** Boating facilities should be located, designed, constructed, and maintained, and operated to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; and impacts to public visual access to the shoreline.

**Policy 11DD-13:** Live-aboards should be regulated so as to prevent adverse impacts to public health and safety. [CES29]

**~~23.100.060~~ Commercial Use**

~~Commercial development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

**Policy 11EE-1:** In securing shoreline locations for commercial uses, preference should be given first to water-dependent commercial uses, then to water-related and water-enjoyment commercial uses.

**Policy 11EE-2:** Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.

Policy 11EE-3: Commercial development should ensure visual compatibility with adjacent noncommercial properties.

Policy 11EE-4: Commercial uses located in the shoreline should provide public access in accordance with constitutional or other legal limitations unless such improvements are demonstrated to be infeasible or present hazards to life and property.

**~~23.100.070~~ Dredging**

**~~A. Policies.~~**

Policy 11FF-1: Dredging should be permitted for water-dependent uses of economic importance to the region and/or essential public facilities only when necessary and when alternatives are infeasible or less consistent with the SMP~~this program~~.

Policy 11FF-2: Dredging to provide water-oriented recreation should not be permitted.

Policy 11FF-3: Minor dredging as part of ecological restoration or enhancement, beach ~~enhancement~~nourishment, public access, or public recreation should be permitted if consistent with the SMP~~this program~~.

Policy 11FF-4: New development should be sited and designed to avoid or, where avoidance is not possible, to minimize the need for new maintenance dredging.

Policy 11FF-5: Dredging of bottom materials for the primary purpose of obtaining material for landfill, construction, or beach ~~enhancement~~nourishment should not be permitted.

Policy 11FF-6: Spoil disposal on land away from the shoreline is generally preferred over open water disposal.

Policy 11FF-7: Long-term cooperative management programs that rely primarily on natural processes, and involve ~~land owners~~landowners and applicable local, state, and federal agencies and tribes, should be pursued to prevent or minimize conditions which make dredging necessary.

**~~23.100.080~~ Flood ~~Control Works~~Hazard Reduction and Instream Structures**

**~~A. Policies.~~**

**~~Policy 11GG-1: Purpose and Need.~~**

a. New or expanding development or uses in the shoreline, including subdivision of land, that would likely require structural flood hazard reduction ~~control~~ works within a stream, channel migration zone, or floodway should not be allowed.

Policy 11GG-2~~b~~: Flood hazard reduction ~~control~~ works and instream structures should be planned and designed to be compatible with

appropriate multiple uses of stream resources over the long term, especially in shorelines of statewide significance.

Policy 11GG-3e- Flood hazard reduction control-works should only be allowed in the shoreline if they are necessary to protect existing development and where nonstructural flood hazard reduction measures are infeasible.

Policy 11GG-4d- Flood hazard reduction control-works to protect existing development should be permitted only when the primary use being protected is consistent with the SMP~~this program~~, and the works can be developed in a manner that is compatible with multiple use of streams and associated resources for the long term, including shoreline ecological functions, fish and wildlife management, and recreation.

## ~~23.100.090~~ Forest Practices

### ~~A.~~ Policies.

Policy 11HH-1: Forest lands should be reserved for long-term forest management and such other uses as are compatible with the ~~dominant~~ primary use. Other more intensive and incompatible uses tending to impair the ~~dominant~~ primary use should be discouraged from locating on forest lands.

Policy 11HH-2: Forest practices should maintain high levels of water quality, as well as surface and ground-water movement patterns.

Policy 11HH-3: Forest practices should minimize damage to wetlands, fish and wildlife species, and habitats, especially aquatic habitats.

~~4. Extreme caution must be observed whenever chemicals are to be used along shorelines; such use should be avoided altogether if possible.~~<sup>[MD30]</sup>

Policy 11HH-4:5- Forest practices should maintain or improve the quality of soils and minimize erosion.

Policy 11HH-5:6- Where slopes are extremely steep or soils are subject to sliding, rapid erosion, or high water table, special practices should be employed to minimize damage to shoreland and water features, and adjacent properties.

## ~~23.100.100~~ Industrial and Port Development

The following policies apply to industrial and port development in shoreline areas.

### ~~A.~~ Policies.

Policy 11II-1: Shoreline sites particularly suitable for development such as deep-water harbors with access to adequate rail, highway, and utility systems should be reserved for water-dependent or water-related industrial and port development.

Policy 11II-2: In order to provide adequate shoreline for future water-dependent and water-related uses, industrial or port development at deep-water sites should be limited to those uses that produce the greatest long-term economic base. Industrial and port development that is consistent with ~~this program~~ the SMP should be protected from encroachment or interference by incompatible uses with less stringent siting requirements, such as residential or commercial uses. Mixed use development, including non-water-dependent uses, should only be allowed when they include and support water-dependent uses.

Policy 11II-3: Regional needs for port facilities should be carefully considered in reviewing new port proposals and in allocating shorelines for such development. Such reviews or allocations should be coordinated with port districts, adjacent counties and cities, and the state. Existing, officially designated State Harbor Areas should be used for new port development to the maximum extent whenever possible.

Policy 11II-4: Multiple use of industrial and port facilities is encouraged to limit duplicative facilities and reduce adverse impacts. Multiple use should be implemented in the following manner:

a. Cooperative use of piers, cargo handling, storage, parking and other accessory facilities among private or public entities should be required in industrial or port facilities whenever feasible. New facilities for water-dependent uses should be allowed only after assessment of the potential for shared use of existing facilities.

b. Industrial and port developments should provide opportunities for physical and/or visual public shoreline access in accordance with the public access policies, including recreational use of undeveloped shorelines not needed for port or industry operations; provided, that such uses are safely compatible with facility operations.

Policy 11II-5: Industrial and port development in the shoreline should be located and designed to avoid significant adverse impacts to other shoreline uses, resources, and values, including shoreline geomorphic processes, water quality, fish and wildlife habitat, commercial aquaculture, and the aquatic food chain.

Policy 11II-6: Restoration of impaired shoreline ecological functions and processes should be encouraged as part of industrial and port development.

~~23.100.210~~ **Cherry Point Management Area** [CES31]

~~A. Policies.~~

Policy 11TT-1: ~~Purpose and Intent.~~



a. ~~The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and balances the special port, industrial and natural resource needs associated with the development of this marine resource. This subsection and WCC 23.100.21040.125 (Cherry Point Management Area) identifies policies and regulations, respectively, for water dependent industrial activities that apply in addition to specific other elements of the SMP this program as referenced herein.~~

~~Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry Point management area as providing herring spawning habitat and other key habitat characteristics that warrant special consideration due to their importance to regional fisheries and other elements of the aquatic environment. [CES32]~~

Policy 11JJ-1: Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require marine access for marine cargo transfer, ~~including oil and other materials. For this reason, w~~

a. Water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.

b. Existing legal fossil fuel refineries should be allowed to continue and maintain their operations with limited expansions subject to environmental review, greenhouse gas emission mitigation, and conformance with the Shoreline Master Program and other applicable land use designation.

c. It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers in operation or approved as of January 1, 1998, taking into account the need to:

- Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point herring stock and Southern Resident Orcas;
- Optimally implement the Shoreline Master Program policy regarding shorelines of statewide significance per WCC 23.40;
- Encourage the continued County use of best available science;



- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing; and
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

~~b. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic lands within the Cherry Point management area. The development of such a plan could provide a forum and process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future amendments to this program as appropriate.~~

Policy 11JJ-2: Whatcom County should ensure that shoreline development applicants demonstrate conformance consistency with the State of Washington Department of Natural Resources' Cherry Point Aquatic Reserve Management Plan.

~~All development that is to be located within the Cherry Point Management Area, as defined identified in WCC 23.20.020(E) Chapter 23.110 WCC, shall be subject to the policies in this subsection and the regulations found in WCC 23.40.125 23.100.210. Development that is to be located within the Cherry Point Management Area this section, and shall not be subject to: the General Policies of this chapter; the Shoreline Use and Modification Policies of this chapter, except for those in the Cherry Point Management Area subsection; policies and the regulations found in WCC Chapter 23.930 and WCC Chapter 23.40.23.100.010 through 23.100.160 except WCC 23.40.125, nor Chapter 23.90 WCC, unless otherwise referenced in this subsection. The policies and regulations found in this subsection are applicable only within the geographic boundaries of the Cherry Point management area and do not apply elsewhere in the County. In the event that the provisions of this subsection conflict with other applicable referenced provisions of the SMP this program, the policies and regulations that are most protective of shoreline resources shall prevail.~~

Policy 11JJ-2: Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial facilities should be

allowed in the Cherry Point management area. Industry within the major port/industrial urban growth area, as designated in the ~~County~~ Comprehensive Plan, which is not water-dependent should locate away from shoreline jurisdiction.

**Policy 11JJ-3:**

Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking and other accessory facilities are encouraged.

**Policy 11JJ-4:**

Public Access.

a. Where appropriate, industrial and port development within the Cherry Point management area should provide public beach and shoreline access in a manner that does not cause interference with facility operations or present hazards to life and property. This may be accomplished through individual action or by joint, coordinated action with other developers and landowners, for example, by setting aside a common public access area.

b. Special emphasis should be given to providing public beach and shoreline access for recreational opportunities including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.

c. Public access within the Cherry Point management area should be consistent with the Whatcom County Parks and Recreation Open Space Plan.

**Policy 11JJ-5:**

Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological resources in the Cherry Point management area, consideration of probable effects of all development proposals on shoreline ecological functions and processes should be assessed with the other long-term statewide interests. New port development that requires dredge and fill should not be permitted in the Cherry Point management area due to potential adverse effects on ecological functions, including fish and shellfish habitat and geohydraulic processes.

**Policy 11JJ-6:**

Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the scenic character of the area and to ensure visual compatibility with adjacent nonindustrial zoned properties.

**Policy 11JJ-7:**

Site Development. All development should be constructed and operated in a manner that, while permitting water-dependent uses, also protects shoreline resources, their ecological functions and processes, and that incorporates the following:

a. Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water quality, fish and wildlife habitat, and other natural site conditions;

- b. Adequate temporary and permanent management measures to control erosion and sediment impacts during construction and operation; and
- c. Adequate stormwater management facilities.

**~~23.100.110~~ Landfill and Excavation**

**~~A. Policies.~~**

Policy 11KK-1: Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.

Policy 11KK-2: Landfill in water-bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with the SMP~~this program~~.

Policy 11KK-3: Fill should not be allowed where shore stabilization works would be required to maintain the materials placed.

Policy 11KK-4: Landfills and excavation should be located and developed so that water quality, hydrology~~ie,~~ and runoff patterns are not altered.

Policy 11KK-5: The predicted economic benefits of landfills and excavation should be weighed against long-term cumulative impacts on ecological processes and functions.

**~~23.100.120~~ Mining**

**~~A. Policies.~~**

Policy 11LL-1: Mining should not be located on shorelines where unavoidable adverse impacts on other users or resources together equal or outweigh the benefits from mining.

Policy 11LL-2: Mining should not interfere with public recreation on the shoreline.

Policy 11LL-3: Mining should be located and operated so as to provide long-term protection of water quality, fish and wildlife, and fish and wildlife habitat.

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**Policy 11LL-4:** Mining, particularly surface or strip mining, should provide for timely restoration of disturbed areas to a biologically productive, semi-natural, or other useful condition through a reclamation process consistent with regulations administered by the Department of Natural Resources and other applicable county standards.

**Policy 11LL-5:** Mining of marine and lake shores or accretional shoreforms, such as point bars, that have a high value for recreation or as fish or wildlife habitat should generally not be permitted.

**Policy 11LL-6:** Mining should only be permitted on accretion point and channel bars where appropriate studies and detailed operation plans demonstrate that:

a. Fish habitat, upland habitat and water quality will not be significantly impacted; and

b. The operation will not adversely affect geohydraulic processes, channel alignment, nor increase bank erosion or flood damages.

**Policy 11LL-7:** Mining operations should be located, designed, and managed so that other appropriate uses are not subjected to substantial or unnecessary adverse impacts from noise, dust, or other effects of the operation. The operator may be required to implement measures such as buffers, limited hours, or other mitigating measures for the purpose of minimizing adverse proximity impacts.

**~~23.100.130~~ Moorage Structures —Docks, Piers and Mooring Buoys**

Moorage—including docks, piers and mooring buoys— in shoreline areas are subject to the following policies. Shared mMoorage structures serving with more than four berthusers and boat launching facilities are also subject to the policies in Boating facilities—Marinas and Launch Ramps.

~~—Policies:~~

**Policy 11MM-1:** Moorage associated with a single-family residence is considered a water-dependent use; provided, that it is designed and used as a facility to access watercraft, and other moorage facilities are not available or feasible. Moorage for water-related and water-enjoyment uses or shared moorage for multifamily use should be allowed as part of a mixed use development or where it provides public access.

**Policy 11MM-2:** New moorage, excluding docks accessory to single-family residences, should be permitted only when the applicant/proponent has demonstrated that a specific need exists to support the intended water-dependent or public access use.

**Policy 11MM-3:** As an alternative to continued proliferation of individual private moorage, mooring buoys are preferred over docks or floats.

Shared moorage facilities are preferred over single-user moorage where feasible, especially where water use conflicts exist or are predictable. New subdivisions of more than two lots and new multifamily development of more than two dwelling units should provide shared moorage.

**Policy 11MM-4:** Docks, piers and mooring buoys, including those accessory to single-family residences, should avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift, and critical saltwater habitat including kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sandlance); subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.

**Policy 11MM-5:** Moorage should be spaced and oriented in a manner that minimizes hazards and obstructions to public navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming, and pleasure boating, as well as private riparian rights of adjacent land-owners.

**Policy 11MM-6:** Moorage should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and height <sup>[AP36]</sup> of piers and docks should be no greater than that required for safety and practicality for the primary use.

**Policy 11MM-7:** Pile supports are preferred over fills because piles do not displace water surface and intertidal or aquatic habitat and are removable and thus more flexible in terms of long-term use patterns. Floats may be less desirable than pile structures where aquatic habitat or littoral drift are significant.

**Policy 11MM-8:** The use of buoys for small craft moorage is preferred over pile or float structures because of lesser long-term impact on shore features and users; moorage buoys should be placed as close to shore as possible to minimize obstruction to navigation.

**Policy 11MM-9:** Shoreline resources and water quality should be protected from overuse by boaters living on vessels (live boards). Boaters living on vessels are restricted to established marinas with facilities to address waste handling and other sanitary services.

**Policy 11MM-10:** Vessels should be restricted from extended mooring on waters of the state unless authorization is obtained from the DNR and impacts to navigation and public access are mitigated.

**Policy 11MM-11:** Piers and docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.

**Policy 11MM-12:** New pier and dock development should be designed so as not to interfere with lawful public access to or use of shorelines.

Developers of new piers and shared moorage should be encouraged to provide physical or visual public access to shorelines whenever safe and compatible with the primary use and shore features.

**~~23.100.140~~ Recreation**

~~—Policies—~~

Policy 11NN-1: Shoreline recreational development should be given priority for shoreline location to the extent that the use facilitates the public's ability to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline. Where appropriate, such facilities should be dispersed along the shoreline in a manner that supports more frequent recreational access and aesthetic enjoyment of the shoreline for a substantial number of people.

Policy 11NN-2: Recreational developments should facilitate appropriate use of shoreline resources while conserving them. These resources include, but are not limited to: accretion shoreforms, wetlands, soils, ground-water, surface water, native plant and animal life, and shore processes.

~~3. Recreational development requiring extensive structures, utilities and roads and/or substantial modifications of topography or vegetation removal should not be located or expanded in areas where damage to persons, property, and/or shoreline functions and processes is likely to occur. [AP37]~~

Policy 11NN-3: Recreational developments and plans should provide the regional population a varied and balanced choice of recreation experiences in appropriate locations. Public agencies and private developers should coordinate their plans and activities to provide a wide variety of recreational opportunities without needlessly duplicating facilities.

Policy 11NN-4: Trail links between shoreline parks and public access points should be encouraged for walking, horseback or bicycle riding, and other non-motorized vehicle access where appropriate. The Whatcom County Comprehensive Park and Recreation Open Space Plan should be considered in design and approval of public trail systems.

Policy 11NN-5: Access to natural character recreational areas, including but not limited to beaches and fishing streams, should be a combination of linear shoreline trails or easements and small parking or access tracts to minimize user concentration on small portions of the shoreline.

Policy 11NN-6: Recreation facilities should incorporate public education regarding shoreline ecological functions and processes, the role



of human actions on the environment, and the importance of public involvement in shorelines management. Opportunities incorporating educational and interpretive information should be pursued in design and operation of recreation facilities and nature trails.

Policy 11NN-7: Reasonable physical or visual public access to shorelines should be provided and integrated with recreational developments in accordance with WCC ~~23.90.080~~ 23.30.070 (Public Access).

Policy 11NN-8: Recreation development should be located only where utility and road capability ~~is~~ are adequate, or may be provided without significant damage to shore features commensurate with the number and concentration of anticipated users.

Policy 11NN-9: Cooperative efforts among public and private persons toward the acquisition and/or development of suitable recreation sites or facilities should be explored to assure long-term availability of sufficient public sites to meet local recreation needs.

## ~~23.100.150~~ Residential

### ~~—Policies—~~

Policy 1100-1: Single-family residences are designated in Chapter 90.58 RCW as a priority use in those limited instances when authorization is given for alterations of the natural condition of shorelines of the state.

Policy 1100-2: New residential development is encouraged to cluster dwelling units together to reduce physical and visual impacts on shorelines and to reduce utility and road costs. Planned unit developments that include common open space and recreation facilities, or a variety of dwelling sizes and types, are encouraged at suitable locations as a preferable alternative to extensive single-lot subdivisions on shorelines. Planned unit developments (Chapter 20.85 WCC) may also include a limited number of neighborhood commercial business uses where consistent with the applicable zoning regulations.

Policy 1100-3: Allowable density of new residential development should comply with applicable ~~C~~ comprehensive ~~P~~ plan goals and policies, zoning restrictions, and shoreline area designation standards. The density ~~per acre~~ of development should be appropriate to local natural and cultural features.

Policy 1100-4: Structures or development for uses accessory to residential use should preserve shoreline open space, be visually and physically compatible with adjacent cultural and shoreline features, be reasonable in size and purpose, and result in no net loss of shoreline ecological functions and processes.



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Policy 1100-5: Buildings greater than 35 feet above average grade level that will obstruct the views of a substantial number of residences on areas adjoining such shorelines are limited by the SMA Act (RCW 90.58.320) to those cases where the SMP~~this program~~ does not prohibit such development and then only when overriding considerations of the public interest will be served. The SMP~~This program~~ provides opportunities for buildings greater than 35 feet in height in limited areas where consistent with development objectives and the goals and policies of this chapter~~program~~.

Policy 1100-6: New residential development should be planned and built ~~in accordance with the policies and regulations in WCC 23.90.030 and~~ [MD38] to minimize the need for shoreline stabilization and flood hazard reduction measures.

Policy 1100-7: Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or nonnative vegetation.

Policy 1100-8: Whenever possible, nonregulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for residential development. Such methods may include resource management planning, low impact development techniques, voluntary protection and enhancement projects, education, or incentive programs.

Policy 1100-9: New multiunit residential development, including subdivision of land for more than four parcels, should provide substantial shore ~~space~~ recreational opportunities for ~~development~~ residents and the public, unless public access is infeasible due to incompatible uses, safety, impacts to shoreline ecology, or legal limitations. Developments of four or fewer units should provide private access to the shore for those living in the development (non-public). [CES39]

Policy 1100-10: Development should provide open space corridors between structures, and along site boundaries, so as to provide space for outdoor recreation, preserve views, and minimize use conflicts.

Policy 1100-11: Recreation-oriented residential development in the shoreline should be located only where substantial recreation opportunities are provided on site, and where nearby property owners and other appropriate uses will not be adversely affected.

### ~~23.100.160~~ Restoration and Enhancement

~~– Policies:~~

Policy 11PP-1: ~~The SMP~~This program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.

Policy 11PP-2: Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish and wildlife species, ~~as well as~~ the biological recovery goals for early Chinook and bull trout populations, and other salmonid species and populations.

Policy 11PP-3: Restoration should be integrated with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan and the WRIA 1 Watershed Management Plan.

Policy 11PP-4: Priority should be given to restoration actions that:

- a. Create dynamic and sustainable ecosystems.
- b. Restore connectivity between stream/river channels, floodplains and hyporheic zones.
- c. Restore natural channel-forming geomorphologic processes.
- d. Mitigate peak flows and associated impacts caused by high stormwater runoff volume.
- e. Reduce sediment input to streams and rivers and associated impacts.
- f. Improve water quality.
- g. Restore native vegetation and natural hydrologic functions of degraded and former wetlands.
- h. Replant native vegetation in riparian areas to restore functions.
- i. Restore nearshore ecosystem processes, such as sediment transport and delivery and tidal currents that create and sustain habitat.
- j. Restore pocket estuaries that support salmon life histories, including feeding and growth, refuge, osmoregulation, and migration.
- k. Address contamination along industrial shoreline regions.

~~23.100.170~~ **Shoreline Stabilization**

~~Shore stabilization in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~-. Policies.~~

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Policy 11QQ-1: Alternatives to structures for shore protection should be used whenever possible. Such alternatives may include no action (allow the shoreline to retreat naturally), increased building setbacks, building relocation, drainage controls, and bioengineering, including vegetative stabilization, and beach enhancement~~nourishment~~.

Policy 11QQ-2: <sup>[CES40]</sup> Single-family residences occupied prior to January 1, 1992, and their appurtenant structures should be protected against damage or loss caused by shoreline erosion; provided, that measures to protect single-family residences should be designed to minimize harm to the shoreline environment. After that date, all new single-family residences and their appurtenant structures should be built in a manner so as to not need protective measures.

Policy 11QQ-3: New or expanded structural shore stabilization for new primary structures should be avoided. Instead, structures should be located and designed to avoid the need for future shoreline stabilization where feasible. Land subdivisions should be designed to assure that future development of the created lots will not require structural shore stabilization for reasonable development to occur.

Policy 11QQ-3: New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.

Policy 11QQ-4: New or expanded structural shore stabilization for enhancement, restoration, or hazardous substance remediation projects should only be allowed when nonstructural measures, vegetation planting, or on-site drainage improvements would be insufficient to achieve enhancement, restoration, or remediation objectives.

Policy 11QQ-5: Shore stabilization on streams should be located and designed to fit the physical character and hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent reaches.

Policy 11QQ-6: Shore stabilization should not be permitted to unnecessarily interfere with public access to public shorelines, nor with other appropriate shoreline uses including, but not limited to, navigation, seafood harvest, or ~~private~~ recreation.

Policy 11QQ-7: Provisions for multiple use, restoration, and/or public shore access should be incorporated into the location, design, and maintenance of shore stabilization for public or quasi-public developments whenever safely compatible with the primary purpose. Shore stabilization on publicly owned shorelines should

not be allowed to decrease long-term public use of the shoreline.

**Policy 11QQ-8:**

Shore stabilization should be developed in a coordinated manner among affected property owners and public agencies for a whole drift sector (net shore-drift cell) or reach where feasible, particularly those that cross jurisdictional boundaries, to address ecological and geohydraulic processes, sediment conveyance and beach management issues. Where beach erosion threatens existing development, a comprehensive program for shoreline management should be established.

**Policy 11QQ-9:**

In addition to conformance with the regulations in ~~this section~~the SMP, nonregulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for shore stabilization. Nonregulatory methods may include public facility and resource planning, technical assistance, education, voluntary enhancement and restoration projects, or other incentive programs.

**Policy 11QQ-10:**

Shore stabilization should be located, designed, and maintained to protect and maintain shoreline ecological functions, ongoing shore processes, and the integrity of shore features. Ongoing stream, lake, or marine processes and the probable effects of proposed shore stabilization on other properties and shore features should be considered. Shore stabilization should not be developed for the purpose of filling shorelines.

**Policy 11QQ-11:**

Failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological functions and processes should be restored using nonstructural methods or less harmful long-term stabilization measures.

**Policy 11QQ-12:**

Structural shoreline stabilization measures should only be used when more natural, flexible, sustainable, nonstructural methods such as vegetative stabilization, beach enhancement ~~nourishment~~, and bioengineering have been determined infeasible. Alternatives for shoreline stabilization should be based on the following hierarchy of preference:

- a. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
- b. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach enhancement ~~nourishment~~, protective berms, or vegetative stabilization.
- c. Rigid works constructed of artificial materials such as riprap or concrete.

Materials used for construction of shoreline stabilization should be selected for long-term durability, ease of maintenance, compatibility with local shore features, including aesthetic values, and flexibility for future uses.

Policy 11QQ-13: Larger works such as jetties, breakwaters, weirs, or groin systems should be permitted only for water-dependent uses when the benefits to the region outweigh resource losses from such works, and only where mitigated to provide no net loss of shoreline ecological functions and processes.

Policy 11QQ-14: Alternative structures, including floating, portable or submerged breakwater structures, or several smaller discontinuous structures, should be considered where physical conditions make such alternatives with less impact feasible.

## ~~23.100-180~~ Signs

### ~~A. Policies:~~

Policy 11RR-1: Whatcom County recognizes the constitutional right for property owners to communicate using signs on their property. These policies are intended to ensure that signage within shoreline areas is consistent with the purpose and intent of the SMAAct and ~~the SMPthis program~~ by addressing impacts to ecological functions, public safety, and visual aesthetics.

Policy 11RR-2: Signs should be located, designed, and maintained to be visually compatible with local shoreline scenery as seen from both land and water, especially on shorelines of statewide significance.

Policy 11 RR-3: Sign location and design should not significantly impair shoreline views.

Policy 11 RR-4: As a preferable alternative to continued proliferation of single-purpose signs, communities, districts, and/or multiuse or multitenant commercial developments are encouraged to erect single, common use gateway signs to identify and give directions to local premises and public facilities.

Policy 11 RR-5: Signs of a commercial or industrial nature should be limited to those areas or premises to which the sign messages refer.

Policy 11 RR-6: Billboards and other off-premises signs are not water-dependent, they reduce public enjoyment of or access to shorelines, and they often lower values of nearby properties. ~~Such signs should not be located on shorelines e~~ Except for approved community gateway or directional signs, such signs should not be located on shorelines.

Policy 11 RR-7: Signs near scenic vistas and viewpoints should be restricted in number, location, and height so that enjoyment of these limited and scarce areas is not impaired.

Policy 11 RR-8: Freestanding signs should be located to avoid blocking scenic views and be located on the landward side of public transportation routes, which generally parallel the shoreline.

Policy 11 RR-9: To minimize negative visual impacts and obstructions to shoreline access and use, low profile, on-premises wall signs are strongly preferred over freestanding signs or off-premises wall signs.

Policy 11 RR-10: Signs should be designed mainly to identify the premises and nature of enterprise without unduly distracting uninterested passersby. Moving or flashing signs should be prohibited on shorelines.

## ~~23.100.190~~ Transportation

### ~~A. Policies.~~

Policy 11SS-1: New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:

a. Perpendicular water crossings are required for access to authorized uses consistent with ~~the SMP~~this program; or

b. Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with the policies and regulations for ecological protection in the General Policies section of this chapter and in WCC 23.30.010 (Ecological Protection)~~23.90.030~~, respectively.

Policy 11SS-2: Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological, or cultural sites.

Policy 11SS-3: Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.

Policy 11SS-4: New or expanded public transportation facility route selection and development should be coordinated with related local and state government land use and circulation planning.

Policy 11SS-5: Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or viewpoints, or recreational trails.

Policy 11SS-6: Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where



appropriate, and should be considered when rights-of-way are being vacated or abandoned.

Policy 11SS-7:

Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails, and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.

Policy 11SS-8:

Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.

**~~23.100.200~~ Utilities**

**~~A. Policies:~~**

Policy 11TT-1:

New public or private utilities should be located inland from the land/water interface, preferably out of the shoreline jurisdiction, unless:

- a. Perpendicular water crossings are unavoidable; or
- b. Utilities are required for authorized shoreline uses consistent with ~~the SMP~~this program.

Policy 11TT-2:

Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological, or cultural resources.

Policy 11TT-3:

Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in 23.30.010 (Ecological Protection)~~WCC-23.90.030~~.

Policy 11TT-4:

All utility development should be consistent ~~with~~ and coordinated with all local government and state planning, including comprehensive plans and single purpose plans to meet the needs of future populations in areas planned to accommodate growth. Site planning and rights-of-way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of-way acquisition should also be coordinated with transportation and recreation planning.

Policy 11TT-5:

Utilities should be located in existing rights-of-way and corridors whenever possible.



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1 Policy 11TT-6: Utilities serving new development should be located  
2 underground, wherever possible.

3 Policy 11TT-7: Development of pipelines and cables on aquatic lands and  
4 tidelands, particularly those running roughly parallel to the  
5 shoreline, and development of facilities that may require  
6 periodic maintenance ~~which~~that would disrupt shoreline  
7 ecological functions should be discouraged except where no  
8 other feasible alternative exists. When permitted, provisions  
9 shall assure that the facilities do not result in a net loss of  
10 shoreline ecological functions or significant impacts to other  
11 shoreline resources and values.

12 Policy 11TT-8: Given the different scales of regional, local, and accessory  
13 utilities and their potential impacts, the County may establish  
14 different regulations regarding each.<sup>[CES41]</sup>

**Proposed Amendment to Chapter 8 of the Comprehensive Plan**

*Marine Resource Lands Working Group's Recommendation*

Note: This text is shown as proposed to accomplish Scoping Report issue #21a: Consider adding a Marine Resource Lands policy section as developed by the Marine Resources Committee.

**Chapter Eight  
Resource Lands**

**Marine Resource Lands**

**Introduction**

**Purpose**

Marine resource lands, for the purpose of this plan, are defined as those marine areas waterward of the ordinary high water mark, together with their underlying lands and their water column, within the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23). Marine resource lands have the physical conditions and habitat required to generate and maintain fisheries of all types, including the commercial and recreational harvest of finfish, shellfish, algae, and other invertebrates including but not limited to mollusks, crab, and shrimp, etc. This section is intended to guide Whatcom County in the conservation of functioning marine resource lands of long-term commercial, ecological, cultural, and recreational significance, and to ensure that all water-dependent, water-related, and water-enjoyment uses requiring use or access to marine resource lands thrive in the years to come.

**GMA Requirements**

Goal 8 of the GMA (RCW 36.70A.020) guides the County to **"Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries."** While the GMA does not specifically require the designation of marine resource lands that support aquatic-based uses and industries, functioning marine resource lands are so intrinsically necessary for the creation and sustainability of historical fish and wildlife production that Whatcom County wishes to acknowledge them here.

**Process**

Per County Council direction, staff convened a working group comprised of members of the Marine Resource Committee, the Shellfish Protection Advisory Committee, and other local marine land experts. This working group developed a draft of this section of the Comprehensive Plan, as well as drafts of the goals and policies contained herein. The draft was then presented to the full membership of the Marine Resource Committee and Shellfish Protection Advisory Committees for review and recommendation to the County Planning Commission and Council.

**Background Summary**

The marine resource lands of Whatcom County have historically been one of the most important natural resources in the region. For thousands of years the shores of Whatcom County provided an important shellfish resource, sustaining our local tribes. More recently the tidelands of Drayton Harbor supported one of the earlier commercial oyster-farming businesses in the Salish Sea. The shore and nearshore lands of the County provided spawning, rearing, and forage areas for a diverse array of finfish and shellfish species which together formed an incredible food web for ancestral tribes and early commercial fisheries. The County's marine resource lands are located along the coastal areas bordering the Salish Sea fed by the rivers, streams, and lakes that drain the upland areas of western Whatcom County. Marine resource lands include more than 130 miles of marine shoreline.

Marine resource lands in the area of Cherry Point are designated in the Shoreline Management Program as the Cherry Point Management Area to support adjacent Heavy Impact Industrial (HII) zoned industrial uses that require deep water access, such as the two existing refineries and an aluminum smelter. The harbor area and waterways in Bellingham Bay are designated for preservation of commerce and navigation along the Bellingham shoreline. The tidelands of Drayton Harbor are designated to support a small commercial wharf, marinas, residential shoreline development, shellfish production, and natural areas.

The majority of marine resource lands in Whatcom County are owned by the State of Washington (managed by Department of Natural Resources [DNR]), the Lummi Nation, and the Port of Bellingham (via a Port Management Agreement with DNR). These include many of the tidelands and subtidal lands in the County. Marine resource landowners also include some private entities that were sold tidelands prior to 1971, and who manage their marine resource lands for a variety of uses, including recreational, commercial, and industrial.

Historically, marine resource lands have been managed for natural and farmed shellfish production and harvest, fishing, transportation, utility corridors (oil/gas/natural gas pipelines; sewer and stormwater outfall pipes; communication lines (phone/fiber optic); power (electric) lines, and commercial, recreational and subsistence/cultural fishing and food gathering. Historic uses also included commercial and industrial uses, marinas (Bellingham, Blaine), municipal garbage dumps, public parks, etc.

With a growing population, there is increasing interest in improving public access to marine resource lands through the addition of boat ramps and access points for motor, wind, and human-powered craft. Over the last 20 years the desire to harvest more diverse aquatic resources, particularly from tidelands, has driven a number of significant efforts to improve water quality as well as innovative culturing techniques such as intertidal geoduck seeding, nori farming, etc.

Conservation efforts have resulted in protection of several areas including the Cherry Point Aquatic Reserve and two areas withdrawn from leasing in Bellingham Bay. These areas are valuable due to their high productivity of aquatic life that contributes to the economy and greater ecosystem of Whatcom County. Twenty years of effort and millions of dollars in public investment have kept Drayton Harbor

a viable commercial and recreational shellfish growing area for future generations to enjoy.

Marine resource lands provide a huge economic benefit to the County, and the health of our stream, river, and estuarine environments and marine resource lands are the foundation of a critical tribal and non-tribal finfish and shellfish industry. In 2006, non-tribal commercial fish landings from Washington fisheries totaled nearly 109.4 million pounds, generating \$65.1-million in ex-vessel value (i.e., the price received by commercial fishers for fish). Whatcom County was the State's second-largest commercial port area that year (after Grays Harbor County), with an ex-vessel value of commercial fish landings of more than \$13.5-million, accounting for nearly 21% of the total value of landings from Washington fisheries. Additionally, the North Puget Sound Region—which the Washington Department of Fish and Wildlife defines as including San Juan, Skagit, Snohomish and Whatcom counties—is also the most popular location for recreational shellfishing in the State. In 2006, the combined recreational shellfish catch in those four counties included more than 3.3-million pounds of Dungeness crab, 23,520 pounds of shrimp, 93,038 pounds of clams, and more than 19,000 individual oysters.<sup>1</sup> In 2016, the marine trades provided 6,033 jobs, or 7% of the County's workforce.<sup>2</sup>

Whatcom County marine shorelines continue to provide income to over 250 Lummi Nation registered shellfish harvesters. Many other Lummi and Nooksack tribal members depend on finfish and crab harvest for a substantial part of their yearly family income. The Lummi Nation shellfish enterprise is highly productive and provides clam, oyster, and geoduck seed to a large part of the northwest shellfish industry. To the extent that the environmental health of these lands impacts the ability of Tribal Nations to practice fish and wildlife harvests and conduct ceremonial activities for their cultural, economic, and spiritual welfare, protection of these lands is a Treaty trust resource supporting Treaty reserved rights to take fish.

Other direct and indirect benefits to the County are even more substantial given the multiplier effect from marina-related boat works, electronics, fuel and supplies, charter and whale watching businesses, the Alaska Ferry service, sporting goods, kayaking, rowing, sailing, wind surfing, power boating, and all the sales, repair, maintenance, and provisioning that goes with these type of activities. Whatcom County's marine resource areas are not only an international destination for water-dependent, water-related, and water-enjoyment activities, such as bird and wildlife watching, sailing and cruising, fishing and gathering, but they are also a gateway to the San Juan Islands, Gulf Islands, the greater Salish Sea environs, and international waters. Whatcom County's marine resource lands are a renewable and sustainable economic driver that will serve this region well into the future.

<sup>1</sup> Whatcom County, March 2015. *Whatcom County Comprehensive Economic Development Strategy*, prepared by the Whatcom Council of Governments.

<sup>2</sup> Center of Economic and Business Research, Western Washington University, July 2016. *Whatcom County Marine Trades Impacts*.

**Issues, Goals, and Policies**

The following goals and policies apply to marine resource lands and address the issues of conserving productive aquatic land and meeting the goals of the Growth Management Act.

**Marine Resource Land Base**

Tidelands, marine waters, major lakes, and navigable rivers were owned by the State of Washington at the time of statehood unless reserved for other uses such as federal facilities or Indian reservations. Between 1889 and 1971, the State sold many of its tidelands to railroads, timber companies, and shellfish growers as a way to finance the State. As a result, the State owns only about 30% of the tidelands. The bulk of tidelands and many shoreland areas are owned or managed by ports, industries, tribes, and private property owners. The State retains ownership of most all of the subtidal lands which were not sold.

Since their adoption, the marine resource land base in Washington State and in Whatcom County has largely been protected by the Washington State Shoreline Management Act, as well as Whatcom County's Shoreline Management Program (SMP), Critical Areas Ordinance, and other land use regulations such as stormwater, land disturbance, zoning, and other regulations.

Historically, shoreline modification, including filling, hardening, and diking of many natural shorelines has resulted in a significant reduction in acreage of functioning marine resource lands in many areas of the County. These modifications came as a result of transportation improvements (roads, railroads, barge landings, and ferry terminals), utilities (electrical, communications, sewer, stormwater, etc.), hydropower, water-dependent uses (marinas, fish processing, ship yards), non-water dependent uses (large industrial facilities), flood control efforts, residential development (including bulkheading, armoring,<sup>3</sup> and docks), and parks.

The Washington State Legislature passed the State Shoreline Management Act (SMA) in June 1971. Under the SMA, each county and city is required to adopt and administer a local shoreline management plan to carry out the provisions of the Act. The Whatcom County Shoreline Management Program (SMP) is the document that implements the goals and policies of the SMA at the local level. The SMP was originally adopted by the County Council in May 1976 in accordance with the SMA and the shoreline guidelines issued by the Washington Department of Ecology. The SMP is implemented in coordination with other chapters of the Comprehensive Plan and the Whatcom County Code to protect and manage shorelines throughout the county. It is important to note that Whatcom County and Ecology share joint authority and responsibility for the administration and enforcement of the SMP. In addition, numerous other local, state and federal regulations, permits, and approvals apply to development or use in, on or above the County's marine resource lands. Some of the most common permits and approvals include:

<sup>3</sup> Since adoption of the SMP, shoreline armoring, filling, and bulkheading is only allowed for the purpose of protecting existing structures.

<u>Agency</u>	<u>Permit(s)</u>
<u>Whatcom County</u>	<ul style="list-style-type: none"> <li>• <u>Shoreline statement of exemption</u></li> <li>• <u>Substantial development permit</u></li> <li>• <u>Shoreline conditional use permit</u></li> <li>• <u>Shoreline variance</u></li> <li>• <u>State Environmental Policy Act (SEPA) determination</u></li> </ul>
<u>Washington Department of Ecology</u>	<ul style="list-style-type: none"> <li>• <u>Clean Water Act Section 401 Water Quality Certification</u></li> <li>• <u>Coastal Zone Management Consistency Determination</u></li> </ul>
<u>Washington Department of Fish and Wildlife</u>	<ul style="list-style-type: none"> <li>• <u>Hydraulic project approval (HPA)</u></li> </ul>
<u>Washington Department of Natural Resources</u>	<ul style="list-style-type: none"> <li>• <u>Aquatic use authorization</u></li> <li>• <u>Aquatic lands lease agreements</u></li> </ul>
<u>U.S. Army Corps of Engineers</u>	<ul style="list-style-type: none"> <li>• <u>Clean Water Action Section 404 Permit</u></li> <li>• <u>Rivers and Harbors Act Section 10 Permit</u></li> </ul>

**Goal 8T: Conserve and enhance Whatcom County's marine land base for the long-term and sustainable use and operation of water-dependent, water-related and water-enjoyment activities.**

**Policy 8T-1: Coordinate with public agencies, tribal governments, landowners, and private organizations to protect and maintain an appropriate, productive, and sustainable marine resource land base adequate to support marine-dependent commercial, industrial, recreational, and cultural needs.**

**Aquaculture, Fishing, and other Marine Resource Lands Activities**

**Goal 8U: Support measures to increase the viability and sustainability of Whatcom County's aquatic biodiversity and production.**

**Policy 8U-1: Help improve the efficiency and effectiveness, and flexibility of environmental regulations affecting marine resource lands in order to support environmental protection and improve predictability.**

**Policy 8U-2: Consider developing a range of non-regulatory programs, options, and incentives that owners of marine resource lands can employ to meet or exceed County environmental goals.**

**Policy 8U-3: Support the efforts of people in Whatcom County to operate in a long-term, sustainable manner as part of a stable, broad-based economy.**

**Policy 8U-4: Work cooperatively with the Washington State Departments of Natural Resources, Ecology, and Fish and Wildlife to protect productive and appropriate use of State marine resource lands within Whatcom County.**



**Policy 8U-5** Continue cooperation and funding for a comprehensive Pollution Identification and Correction (PIC) program as needed to reduce bacterial pollution to levels that meet National Shellfish Sanitation Program Growing waters criteria to allow reopening of closed shellfish beds, and to maintain the operation of those beds in a commercially viable manner.

### **Reducing Land Use Impacts**

Different land owners have different goals for their property and employ different practices when using it, whether it be for their business, home, recreation, or personal enjoyment. But oft times, the practices one property owner employs can have detrimental effects on another property owner's use or enjoyment of their property, or the public when using public lands, which can lead to conflict amongst users. ~~One of the most cited is how poorly managed agriculture or failing septic systems can cause bacterial pollution of rivers and streams, causing closure of important shellfish production areas. Other adverse upstream inputs include, but are not limited to, excess nutrients, heavy metals, and aromatic hydrocarbons. But there have been other such actions as well, such as piers placed in fish habitat, use of pesticides in shellfish farming, loading/unloading practices, etc. However, many such users are employing new practices and technologies to alleviate such impacts, yet the public many not be aware.~~ Improved communication and education between these groups would be beneficial for each to understand what the other is doing, how their actions affect one another, and how they plan to avoid such impacts.

**Goal 8V:** **Aim to reduce land use conflicts between Whatcom County's Marine Resource Lands operations and upland property owners.**

**Policy 8V-1:** Support improved communication and understanding between aquatic land landowners and the public through such mechanisms as community forums and educational programs.

**Policy 8V-2:** Work cooperatively with local, State, Federal and Tribal agencies, adjacent upland property owners, and the general public, as applicable, to address community concerns and land use conflicts that may affect the productivity of marine resource lands.

**Policy 8V-3:** ~~Continue to~~ implement land use, building, and transportation planning policies, regulations, and practices that help minimize adverse water quality inputs into waterbodies.

**Policy 8V-4** Support and participate in education efforts and programs that emphasize the importance of and promote the benefits of marine resource lands.

### **Fish and Wildlife**

Land use practices on marine resource lands can impact tidelands and other shallow and deepwater habitats that are important to a wide variety fish and wildlife.



**Goal 8W:** Ensure that operations associated with marine resource lands strive to avoid adverse impacts to the survival and habitat of aquatic species, particularly to threatened and endangered fish and wildlife species and shellfish resources.

**Administration and Regulation**

**Goal 8X:** Recognize the Shoreline Management Program (WCC Title 23) and Zoning Code (WCC Title 20) as the primary regulations used to implement this section.

**Policy 8X-1:** Pursuant to RCW 36.70A.480 and Comprehensive Plan Policy 10B-8, the Whatcom County Shoreline Management Program is an element of this Comprehensive Plan, and the goals and policies therein are recognized as additional goals and policies of this section.

**Policy 8X-2:** Those coastal aquatic lands waterward of the ordinary high water mark are hereby designated as Marine Resource Lands, as shown on Map 8-5.

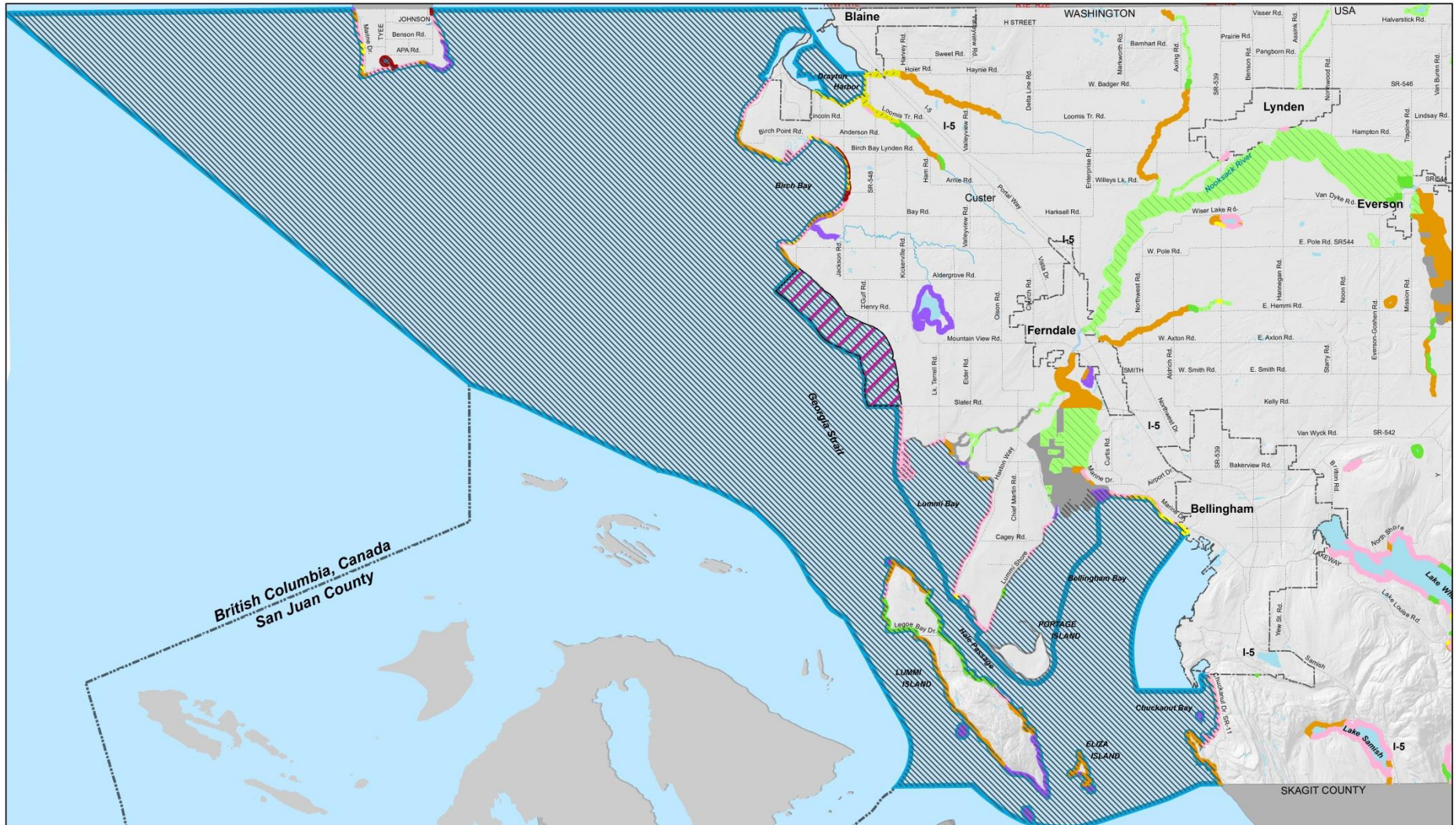
**Policy 8X-3** Regulate land use on Marine Resource Lands within the County through the Shoreline Management Program, Zoning Code, and other appropriate means.

**Policy 8X-4** When updating the Shoreline Management Program, consider new or amended policies to further these goals.

...

# Whatcom County | Comprehensive Plan

## Map 8-5 Designation of Marine Resource Lands



- Marine Resource Lands - 200' inland from OHW, waterward to County line  
**Shoreline Area Designations**  
 Urban  
 Urban Resort  
 Shoreline Residential  
 Rural  
 Resource  
 Conservancy  
 Natural  
 Tribal  
 Cherry Pt. Management Area  
 Aquatic



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.  
 Source:  
 -Whatcom County PDS 2018 (base)  
 0 0.75 1.5 3 4.5 6 Miles

1

2

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## Exhibit D: Proposed Amendments to WCC Title 23

Shoreline Management  
Program Periodic Update  
2020

Whatcom County Planning and Development  
Services

## Title 23 – Shoreline Management Program

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**Chapter 23.10-05 Purpose and Intent General Provisions**

**23.1005.010 Authority.**

Authority for enactment and administration of this program is the Shoreline Management Act of 1971, Chapter 90.58 RCW, also referred to herein as “the Act,” and the Washington Administrative Code 173-27 and 173-26.

**23.1005.020 Purpose and Intent.**

As provided in the Whatcom County Comprehensive Plan, Chapter 11 (Shorelines), Whatcom County’s shorelines provide valuable habitat for fish and wildlife, economic diversity, and recreational opportunities used by residents of all ages. Shorelines play an important role in enhancing the quality of life for our county’s citizens. Therefore, the purpose of the master program is to guide the future development of the County’s shorelines in a manner consistent with the Shoreline Management Act of 1971 (hereinafter referred to as the “Act”). The Act and this program, in conjunction with other County land use regulations, comprise the basic state and County law regulating use of shorelines in the county.

The purposes of this program are:

- A. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Whatcom County shorelines; and
- To manage shorelines in a positive, effective, and equitable manner; and
- B. To further assume and carry out the responsibilities established by the Act for Whatcom County, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the state:
- B. It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

In the implementation of this policy the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State’s shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State...

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~~Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.~~ [CES1]

### ~~23.10.030 Governing principles.~~ [MD2]

~~The following principles along with the policy statements of RCW 90.58.020 establish basic concepts that underpin the goals, policies and regulations of this program:~~

~~— Any inconsistencies between this program and the Act must be resolved in accordance with the Act.~~

~~— The policies of this program may be achieved by diverse means, one of which is regulation. Other means, authorized by the Act, include but are not limited to: acquisition of lands and/or easements by purchase or gift, incentive programs, and implementation of capital facility and/or nonstructural programs.~~

~~— Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. Permitted and/or exempt development, actions taken prior to the Act's adoption, and/or unregulated activities can impair shoreline ecological processes and functions. This program protects shoreline ecology from such impairments in the following ways:~~

~~0. — By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.~~

~~0. — By including policies and regulations that require mitigation of significant adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in WCC 23.90.030 and the Whatcom County critical areas ordinance (Chapter 16.16 WCC). This program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the date of adoption of this program, February 27, 2007.~~

~~0. — By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.~~

~~0. — By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the Shoreline Management Program Restoration Plan developed by Whatcom County.~~

~~— Regulation of private property to implement program goals such as public access and protection of ecological functions and processes must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and state Constitutions, recent federal and state case law, and state statutes, such as RCW 34.05.328 and 43.21C.060 and Chapter 82.02 RCW.~~

~~— Regulatory or administrative actions contained herein must be implemented consistent with the public trust doctrine and other applicable legal principles as appropriate and must not~~

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~~unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.~~

~~—The regulatory provisions of this program are limited to shorelines of the state, whereas the planning functions of this program may extend beyond the designated shoreline boundaries.~~

~~A. The policies and regulations established by the program must be integrated and coordinated with those policies and rules of the Whatcom County Comprehensive Plan and development regulations adopted under the Growth Management Act (GMA) and RCW 34.05.328.~~

~~A. Consistent with the policy and use preferences of RCW 90.58.020, Whatcom County should balance the various policy goals of this program giving consideration to other relevant local, state, and federal regulatory and non-regulatory programs.~~

### **~~23.10.04~~05.030 Title.**

This title, ~~taken together with Chapter 11 (Shorelines) of the Whatcom County Comprehensive Plan,~~ shall be known and may be cited as “The Whatcom County Shoreline Management Program.” ~~Herein, this title together with Chapter 11 of the Comprehensive Plan may be referred to as the “SMP” or the “program.”~~

### **~~23.10.050~~ Short title.**

~~This title may be referred to herein as the “SMP,” or the “program.”~~

### **~~23.10.060~~05.040 Relationship to the Comprehensive Plan and other Federal, State, and County Codes and Regulations**~~References to plans, regulations or information sources.~~

~~A. Consistent with RCW 36.70A.480, the goals and policies of this program approved under Chapter 90.58 RCW are included as Chapter 11 (Shorelines) of the County’s Comprehensive Plan. All regulatory elements of this program shall be considered a part of the County’s development regulations.~~

~~B. Uses, developments, and activities regulated by this program may be independently subject to the Whatcom County Comprehensive Plan, the Whatcom County Code (WCC), the Washington State Environmental Policy Act, and various other federal, state, and county laws.~~

~~C. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional, or federal statutes or regulations applicable to such development or use. The responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question. The applicant must comply with all applicable laws prior to commencing any uses, development, or activity.~~

~~D. Should a conflict occur between the provisions of this program or between this program and the laws, regulations, codes, or rules promulgated by Whatcom County or any other authority having jurisdiction within Whatcom County, the more restrictive requirements shall apply, except when constrained by federal or state law, or where specifically provided otherwise in this program.~~

~~E. Relationship to other County regulations.~~

~~1. Incorporation of the Whatcom County critical areas regulations, WCC Chapter 16.16, is addressed in WCC 23.05.065 (Critical Areas).~~

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1 1-2. The permitting procedures necessary for implementing this program are found in WCC Chapter  
2 22 (Land Use and Development).

3 2-a. In the case of development subject to the shoreline permit requirement of this program, the  
4 County Building Official shall not issue a building permit for such development until a  
5 shoreline permit has been granted; provided, that any permit issued by the Building Official  
6 for such development shall be subject to the same terms and conditions that apply to the  
7 shoreline permit. All shoreline permits shall be obtained prior to issuance of a building  
8 permit. [PDS3] provided, that any permit issued by the Building Official for such development  
9 shall be subject to the same terms and conditions that apply to the shoreline permit.-

10 3-b. In the case of development subject to regulations of this program but exempt from the  
11 shoreline [PDS4] substantial development permit requirement, any A required statement of  
12 exemption shall be obtained prior to issuance of the building permit; provided, that for  
13 single-family residences, review for compliance with this Title may be completed as part of a  
14 building permit or non-shoreline permit. reviewed and signed off by the administrator may  
15 substitute for a written statement of exemption. A record of review documenting  
16 compliance with bulk and dimensional standards as well as policies and regulations of this  
17 program shall be included in the permit review. Conditions of approval for compliance with  
18 Title shall be added to such permit. The conditions of approval shall be enforced with the  
19 provisions of this Title. 23.10.160 Violations, Enforcement and Penalties. The Building  
20 Official shall attach and enforce conditions to the building permit as required by applicable  
21 regulations of this program pursuant to RCW 90.58.140(1).

22 a-c. In the case of zoning conditional use permits and/or variances Project permits are subject  
23 to consolidated review pursuant to Chapter 22.05 (Land Use and Development). T required  
24 by WCC Title 20 for development that is also within shorelines, the County-designated  
25 decision maker for such permits shall document compliance with bulk and dimensional  
26 standards as well as the policies and regulations of this program in consideration of  
27 recommendations from the administrator. The decision maker and shall attach conditions to  
28 such permits and variances approvals as required to make such development consistent with  
29 this program.

30 4. In the case of land divisions, such as short subdivisions, long plats, and planned unit  
31 developments that require County approval, the decision maker shall document compliance  
32 with bulk and dimensional standards as well as policies and regulations of this program and  
33 attach appropriate conditions and/or mitigating measures to such approvals to ensure the  
34 design, development activities and future use associated with such land division(s) are  
35 consistent with this program. [CES5]

36 5-3. Other local ordinances that may be applicable to shoreline development or use include, but are  
37 not limited to:

- 38 a. Building, plumbing, mechanical, and fire codes.
- 39 b. Boating and swimming, WCC Title 11.
- 40 c. On-site sewage system regulations, WCC Chapter 24.05.
- 41 d. Solid waste rules and regulations, WCC Chapter 24.06.

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- e. Zoning, WCC Title 20.
- f. Land division regulations, WCC Title 21.
- g. Development standards.

**F. Relationship to other state, tribal, and federal regulations.**

- 1. Where this program makes reference to any RCW, WAC, or other state or federal law or regulation, the most recent amendment or current edition shall apply.
- 2. This program shall be applied consistent with all federal, state, and local laws affecting tribal rights.
- 3. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged. [RCE6]
- 6.4. Coastal Zone Management Act consistency reviews for sites within federal jurisdiction shall apply the shoreline environment designation criteria of Chapter 11 (Shorelines) of the Comprehensive Plan that most closely correspond to the project site in order to determine applicable program policies.
- ~~—Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional, or federal statutes or regulations applicable to such development or use.~~
- ~~7. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question. [CES7]~~
- ~~7. Stipulated Judgment No. 93-2-02447-6 between Governor's Point Development Company and Whatcom County, the state of Washington, and the Department of Ecology is incorporated by reference into Whatcom County's shoreline management program. A copy of the judgment is on file with the Whatcom County Planning and Development Services department. [CES8]~~

**23.1005.065 Critical Areas.**

- A. The Whatcom County critical areas ~~ordinance regulations~~ (CAO), WCC Chapter 16.16 (Ordinance No. ~~2019-013~~~~2017-077~~, dated ~~February 12, 2019~~~~December~~ [CES9] ~~5, 2017~~), ~~is~~~~are~~ hereby adopted in whole as a part of this program, except that the provisions of WCC 16.16.270 (Reasonable Use Exceptions), 16.16.275 (Nonconforming Uses, Structures, and Lots), and 16.16.285 (Penalties and Enforcement) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), WCC Chapter 16.16, are for this specific version.
- ~~—except that the permit, nonconforming use, appeal and enforcement provisions of the critical areas ordinance (WCC 16.16.270 through 16.16.285) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16 WCC, are for this specific version.~~

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B. The adopted provisions of WCC Chapter 16.16 (Critical Areas) shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or statement of exemption is required.

~~Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with WCC Chapter 16.16 and this program.~~

### **23.1005.1240 Program Effects on Property Values.**

A. As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this program shall be duly considered by the County Assessor and the County Board of Equalization in establishing the fair market value of such properties.

B. Designation of private property as a natural or conservancy shoreline ~~area~~environment pursuant to WCC Chapter 23.230 (Shoreline Jurisdiction and Area Environment Designations) shall qualify the property as meeting the definition of “open space land” under the Open Space Taxation Act of 1970, as amended (RCW 84.34.020(1)) and shall qualify such land for application for open space taxation in accordance with RCW 84.34.037 and WCC Chapter 3.28 (Open Space Land Classification).

### **23.1005.1350 Property Rights.**

A. Regulation of private property to implement program goals, such as public access and protection of ecological functions and processes, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, the protections afforded by the federal and state constitutions, and federal, state, and local laws.

~~A.B. Decisions on shoreline permits and/or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings~~In issuing shoreline permits or statements of exemptions, the decision maker shall assure that conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact.

~~B.C.~~ This program does not alter existing law on access to or trespass on private property and does not give the general public any right to enter private property without the owner’s permission.

~~C.D.~~ Consistent with Whatcom County’s high standard of staff conduct, County staff shall observe all applicable federal, ~~and state, and County~~ laws regarding entry onto privately owned property.

### **~~23.10.070 Liberal construction.~~**

~~As provided for in RCW 90.58.900, the Act is exempted from the rule of strict construction; the Act and this program shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the Act and this program were enacted and adopted, respectively. [CES10]~~

### **23.1005.080 Severability.**

The Act and this program adopted pursuant thereto, in conjunction with other applicable County land use regulations, comprise the basic state and County law regulating use of shorelines in the county. In the event provisions of this program conflict with other applicable County policies or regulations, the more restrictive shall prevail. Should any section or provision of this program be declared invalid, such decision shall not affect the validity of this program as a whole.

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- 1 **23.1005.090 Effective Date.**
- 2 This program and all amendments thereto shall become effective 14 days from immediately upon final
- 3 approval and adoption by the Department of Ecology's written notice of final action.[AP11]



## Chapter 23.20 Goals and Objectives [MD12]

### ~~23.20.005 Generally.~~

~~This chapter describes overall program goals and objectives. The general policies and regulations in Chapter 23.90 WCC and the specific use policies and regulations in Chapter 23.10 WCC are the means by which these goals and objectives are implemented.~~

### ~~23.20.010 Adoption.~~

~~In addition to the policy adopted in WCC 23.10.020(C), the following goals and objectives relating to the program elements specified in RCW 90.58.100(2) are hereby adopted. They provide the comprehensive foundation and framework upon which the shoreline area designations, policies, regulations, and administrative procedures are based.~~

### ~~23.20.020 Economic development.~~

~~The economic development element provides for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent upon a shoreline location and/or use of the shorelines of the state.~~

~~—Goal. To create and maintain an economic environment that can coexist harmoniously with the natural and human environment.~~

~~—Objectives:~~

~~0. Encourage economic development that has minimal adverse effects and mitigates unavoidable impacts upon shoreline ecological functions and processes and the built environment.~~

~~0. Encourage shoreline development that has a positive effect upon economic and social activities of value to the region.~~

~~0. Encourage new water dependent, water related, and water enjoyment economic development in priority order.~~

~~0. Encourage economic development that is consistent with the adopted Comprehensive Economic Development Strategy (CEDS) for Whatcom County.~~

~~0. Implement economic development policies contained in the Whatcom County Comprehensive Plan in shoreline areas consistent with this program and the Act.~~

~~0. Encourage new economic development to locate in areas that are already developed with similar uses.~~

~~0. Discourage expansion of existing development that is incompatible with this program, the character of the local area, or the Whatcom County Comprehensive Plan.~~

### ~~23.20.030 Public access.~~

~~The public access element provides for public access to publicly owned or privately owned shoreline areas where the public is granted a right of use or access.~~

~~—Goal. To increase the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations; provided, that private rights, the public safety, and shoreline ecological functions and~~

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~~processes are protected consistent with the U.S. and state Constitutions, state case law, and state statutes.~~

### ~~—Objectives.~~

~~0.—Locate, design, manage and maintain public access in a manner that protects shoreline ecological functions and processes and the public health and safety.~~

~~0.—Design and manage public access in a manner that ensures compatibility with water-dependent uses.~~

~~0.—Where appropriate, acquire access to publicly owned tidelands and shorelands. Encourage cooperation among the county, landowners, developers, other agencies and organizations to enhance and increase public access to shorelines as specific opportunities arise.~~

~~0.—Provide and protect visual access to shorelines and tidelands.~~

~~0.—Require physical or visual access to shorelines as a condition of approval for shoreline development activities commensurate with the impacts of such development and the corresponding benefit to the public, and consistent with constitutional limitations.~~

~~0.—Develop and manage public access to prevent adverse impacts to adjacent private shoreline properties and developments.~~

### **~~23.20.040 Recreation.~~**

~~The recreation element provides for the preservation and expansion of water-oriented recreational opportunities that facilitate the public's ability to enjoy the physical and aesthetic qualities of the shoreline through parks, public access to tidelands and beaches, bicycle and pedestrian paths, viewpoints and other recreational amenities.~~

~~A.—Goal. To provide opportunities and space for diverse forms of water-oriented recreation.~~

### ~~A.—Objectives.~~

~~1.—Locate, develop, manage, and maintain recreation areas in a manner that protects shoreline ecological functions and processes.~~

~~1.—Provide a balanced choice of water-oriented public recreational opportunities regionally. Ensure that shoreline recreation facilities serve projected county growth in accordance with the level of service standards established in the Whatcom County Comprehensive Plan and related goals and policies; the Comprehensive Park and Recreation Open Space Plan; the Whatcom County Bicycle Plan; and the Natural Heritage Plan.~~

~~1.—Acquire additional recreation areas and public access areas with a high recreation value prior to demand to assure that sufficient shoreline recreation opportunities are available to serve future recreational needs.~~

~~1.—Encourage cooperation among public agencies, nonprofit groups, and private landowners and developers to increase and diversify recreational opportunities through a variety of means including incorporating water-oriented recreational opportunities into mixed use developments and other innovative techniques.~~

~~1.—Recognize and protect the interest of all people of the state by providing increased recreational opportunities within shorelines of statewide significance and associated shorelands.~~

~~1.—Encourage private and public investment in recreation facilities.~~

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1. ~~Locate, design, and operate recreational development in a manner that minimizes adverse effects on adjacent properties as well as other social, recreational, or economic activities.~~

## ~~23.20.050 Transportation and essential public facilities.~~

~~The transportation and essential public facilities element provides for the general location and extent of existing and proposed public thoroughfares, transportation routes, terminals, and other public utilities and facilities.~~

~~—Goal. To provide transportation systems and essential public facilities in shoreline areas without adverse effects on existing shoreline use and development or shoreline ecological functions and/or processes.~~

### ~~A. Objectives:~~

~~0. Locate, develop, manage, and maintain transportation systems and essential public facilities in a manner that protects shoreline ecological functions and processes. Minimize and mitigate unavoidable impacts.~~

~~0. Locate and design transportation systems and essential public facilities to be harmonious with the existing and future economic and social needs of the community.~~

~~0. Discourage the development of non-water dependent transportation systems and essential public facilities unless no feasible alternatives exist. Devote roads within the shoreline jurisdiction to low volume local access routes and shoreline public access where feasible.~~

~~0. When appropriate, require adequate compensation where transportation systems and essential public facilities reduce the benefits people derive from their property.~~

~~0. Provide for alternate modes of travel, encourage freedom of choice among travel modes, and provide multiple use transportation corridors where compatible in association with shoreline transportation development.~~

~~0. Require transportation system and essential public facility development in shoreline areas to protect and enhance physical and visual shoreline public access.~~

## ~~23.20.060 Shoreline use.~~

~~The shoreline use element considers the use and development of shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, forestry, natural resources, recreation, education, public institutions, utilities and other categories of public and private land use with respect to the general distribution, location and extent of such uses and developments.~~

~~A. Goal. To preserve and develop shorelines in a manner that allows for an orderly balance of uses.~~

### ~~A. Objectives:~~

~~1. Give preference to water dependent and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Give secondary preference to water-related and water-enjoyment uses. Allow non-water oriented uses only when substantial public benefit is provided with respect to the goals of the Act for public access and ecological restoration.~~

~~1. Designate and maintain appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health.~~

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- ~~1. Ensure shoreline uses are consistent with the Whatcom County Comprehensive Plan.~~
- ~~— Balance the location, design, and management of shoreline uses throughout the county to prevent a net loss of shoreline ecological functions and processes over time.~~
- ~~2. Encourage mixed-use developments that include and support water-oriented uses and provide a substantial public benefit consistent with the public access and ecological restoration goals and policies of the Act.~~
- ~~2. Encourage shoreline uses and development that enhance shoreline ecological functions and/or processes or employ innovative features that further the purposes of this program.~~
- ~~2. Encourage shoreline uses and development that enhance and/or increase public access to the shoreline.~~

### **~~23.20.070 Conservation.~~**

~~The shoreline conservation element provides for the protection of natural resources, and shoreline ecological functions and processes. Resources to be conserved and protected include, but are not limited to, wetlands; riparian, nearshore, and aquatic habitats; priority fish and wildlife habitats and species; floodplains; feeder bluffs and other geological features; cultural and historic resources; as well as scenic vistas and aesthetics.~~

~~— Goal. To conserve shoreline resources and important shoreline features, and protect shoreline ecological functions and the processes that sustain them to the maximum extent practicable.~~

~~— Objectives.~~

- ~~0. Develop regulations and mitigation standards that ensure new shoreline developments prevent a net loss of shoreline ecological functions and processes. Implement such regulations and standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.~~
- ~~0. Protect critical areas in accordance with the policies and regulations in Chapter 16.16 WCC.~~
- ~~0. Manage renewable natural resources on a sustained yield basis. Extract nonrenewable natural resources in a manner that maintains the quality of other resources and shoreline ecological functions and processes.~~
- ~~0. Prioritize protection and/or conservation of shoreline areas that are ecologically intact and minimally developed or degraded.~~

### **~~23.20.080 Archaeological, historical and cultural resources.~~**

~~The archaeological historical cultural element provides for protection, preservation and/or restoration of buildings, sites, and areas having archaeological, historical, cultural, or scientific value or significance.~~

~~A. Goal. Protect shoreline features of historic, cultural, archeological, or scientific value or significance to prevent damage or destruction through coordination and consultation with the appropriate local, state and federal authorities, including affected Indian tribes.~~

~~A. Objectives.~~

- ~~1. Protect sites in collaboration with appropriate tribal, state, federal and local governments. Encourage public agencies and private parties to cooperate in the identification, protection and management of cultural resources.~~

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~~1. Where appropriate, make access to such sites available to parties of interest; provided, that access to such sites must be designed and managed in a manner that gives maximum protection to the resource.~~

~~1. Provide opportunities for education related to archaeological, historical and cultural features where appropriate and incorporated into public and private programs and development.~~

### **~~23.20.090 Views and aesthetics.~~**

~~This element provides for preservation and/or protection of scenic vistas, views of the water, and other aesthetic qualities of shorelines for public enjoyment.~~

~~Goal. To assure that the public's ability and opportunity to enjoy shoreline views and aesthetics is protected.~~

~~Objectives.~~

~~0. Identify and protect areas with scenic vistas and areas where the shoreline has high aesthetic value.~~

~~0. Design development to minimize adverse impacts on views from public property or views enjoyed by a substantial number of residences.~~

### **~~23.20.100 Restoration and enhancement.~~**

~~This element provides for the timely restoration and enhancement of ecologically impaired areas in a manner that achieves a net gain in shoreline ecological functions and processes above baseline conditions as of the adoption of this program.~~

~~Goal. To reestablish, rehabilitate and/or otherwise improve impaired shoreline ecological functions and/or processes through voluntary and incentive-based public and private programs and actions that are consistent with the Shoreline Management Program Restoration Plan (County Resolution 2007-011) and other approved restoration plans.~~

~~Objectives.~~

~~0. Encourage and facilitate cooperative restoration and enhancement programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.~~

~~0. Restore and enhance shoreline ecological functions and processes as well as shoreline features through voluntary and incentive-based public and private programs.~~

~~0. Target restoration and enhancement towards improving habitat requirements of priority and/or locally important wildlife species.~~

~~0. Ensure restoration and enhancement is consistent with and, where practicable, prioritized based on the biological recovery goals for early Chinook and bull trout populations and other species and/or populations for which a recovery plan is available.~~

~~0. Integrate restoration and enhancement with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan, Drayton Harbor and Portage Bay Shellfish Protection District Plans, WRIA 1 Watershed Management Plan, Whatcom County Comprehensive Plan, and the Puget Sound Salmon Recovery Draft Plan.~~

**Chapter 23.05-10 Administrative Procedures Provisions**

**23.10.010 Authorization.**

RCW 90.58.140(3) requires local governments to establish a program, consistent with the rules adopted by Ecology, for the administration and enforcement of shoreline development. Also, in accordance with RCW 90.58.050, which provides that this program is intended to establish a cooperative program between Whatcom County and the state. Whatcom County shall have the primary responsibility for administering the regulatory program, and Ecology shall act primarily in a supportive and review capacity, in accordance with RCW 90.58.050.

**23.10.100-020 Application to persons and development Applicability.** [AP13]

A. Unless specifically exempted by statute, or as excluded below, this program shall apply to any person, as defined in WCC Chapter 23.110. This program shall apply to any proposed development, use, or activity development as defined in WCC Chapter 23.110. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 23.60 WCC, occurring within shoreline jurisdiction. Such development, use, or activity must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program whether or not a permit is required. [DN14]

B. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with this program, including WCC Chapter 16.16 (Critical Areas).

~~B.C.~~ No substantial development as defined in WCC Chapter 23.110 shall be undertaken within shorelines by any person on shorelines without first obtaining a substantial development permit from Whatcom County; provided, that such a permit shall not be required for the exempt activities listed in WCC 22.07.020 (Exemptions from Shoreline Substantial Development Permits) 23.60.022.

D. All developments, uses and development activities on shorelines shall be subject to the policies of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines) and regulations of this program in addition to any other applicable regulations of the Whatcom County Code, provided, that all use and development that is to be located within the Cherry Point Management Area, as defined in Chapter 23.90 WCC, shall be subject to the regulations found in WCC 23.40.210 only, and shall not be subject to the regulations found in this chapter and Chapter 23.40 WCC unless otherwise specified. [CES15]. [AP16]

E. Application within Federal Reserves or Lands.

1. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of RCW Chapter 90.58 (SMA). [AP17]
2. As recognized by RCW 90.58.350, nothing in this program shall affect any rights established by treaty to which the United States is a party. [CES18]
3. The Act and this program, including the permit system, shall apply to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal

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- 1 ownership, lease, or agreement, even though such lands may fall within the external boundaries  
2 of a federal ownership.
- 3 F. Direct federal agency activities affecting the uses or resources subject to the Act must be consistent  
4 to the maximum extent practicable with the enforceable provisions of the Act and with this master  
5 program as required by WAC 173-27-060.
- 6 G. This master program shall apply to all unincorporated urban lands until such time as a city meets the  
7 requirements of WAC 173-26-150 or 173-26-160 for pre-designation of urban growth areas (UGAs)  
8 or amends its master program as appropriate.
- 9 H. This program shall not apply to: [CES19]
- 10 1. Activities undertaken to comply with a United States Environmental Protection Agency  
11 Superfund-related order, or a Washington Department of Ecology order pursuant to the Model  
12 Toxics Control Act (such as the Swift Creek Sediment Management Action Plan), or a  
13 Department of Homeland Security order that specifically preempts local regulations in the  
14 findings of the order.
- 15 2. Pursuant to RCW 90.58.045 regarding environmental excellence program agreements,  
16 notwithstanding any other provision of law, any legal requirement under the Shoreline  
17 Management Act, including any standard, limitation, rule, or order is superseded and replaced  
18 in accordance with the terms and provisions of an environmental excellence program  
19 agreement, entered into under chapter 43.21K RCW.
- 20 3. The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be  
21 required to obtain a permit under chapter 90.58 RCW.
- 22 I. Pursuant to RCW 90.58.140(12), a permit is not required in order to dispose of dredged materials at  
23 a disposal site approved through the cooperative planning process referenced in RCW 79.105.500,  
24 provided the dredged material disposal proponent obtains a valid site use authorization from the  
25 Dredged Material Management Program office within the Department of Natural Resources.

### 26 **~~23.10.180-030 Administration~~Administrative Duties.**

27 A. The Director is hereby ~~vested with the~~ authorized to:

- 28 1. Administer this program.
- 29 2. Determine if a public hearing should be held on a shoreline permit application by the Hearing  
30 Examiner pursuant to WCC Title 22 (Land Use and Development)-23.60.130.
- 31 3. Grant or deny statements of exemption.
- 32 4. Authorize, approve, or deny shoreline substantial development permits, except for those for  
33 which the Hearing Examiner or County Council is the designated decision maker.
- 34 5. Enforce the code pursuant to WCC 23.10.160 (Violations, Enforcement, and Penalties), including  
35 issuing a stop work orders pursuant to the procedure set forth in WAC 173-27-270 and this  
36 program, upon a person undertaking an activity on shorelines in violation of Chapter 90.58 RCW  
37 or this program; and seek remedies for alleged violations of this program's regulations, or of the  
38 provisions of the Act, or of conditions of approval for attached to a all project permits with  
39 shoreline permit conditions of approval for consistency with this program issued by Whatcom  
40 County.



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6. Decide whether or not a proposal is subject to the consolidated review process of Chapter WCC 22.05 (Land Use and Development) and determine what other permits are required to be included in the consolidated review.
7. Make field inspections as needed, and prepare or require reports on a shoreline permit or statement of exemption applications.
8. Make written recommendations to the County Council or Hearing Examiner as appropriate and, insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter.
9. Propose amendments to the Planning Commission deemed necessary to more effectively or equitably achieve the purposes and goals of this program.
10. Advise interested persons and prospective applicants/proponents as to the administrative procedures and related components of this program.
11. Collect fees as provided for in WCC Title 22 (Land Use and Development) 23.60.070; and
12. Assure that proper notice is given to interested persons and the public ~~through news media, posting, or mailing of notices~~ as required by Title 22 (Land Use and Development).
13. Review administrative and management policies, regulations, plans, and ordinances relative to lands under County jurisdiction that are adjacent to shorelines so as to achieve a use policy on such lands that is consistent with the Act and this program.
14. Review and evaluate the records of project review actions in shoreline environments and report on the cumulative effects of authorized development of shoreline conditions. The Director shall coordinate such review with the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe, and other interested parties.
- ~~15. Make recommendations to the Planning Commission for open space tax designations pursuant to Chapter 84.34 RCW. [pds20]~~
- ~~16.~~ 15. Develop administrative guidance materials related to the interpretations of principles and terms in this program as required to provide for consistent and equitable implementation of this program. Such administrative guidance documents shall be ~~developed in consultation with the provided to~~ Washington State Department of Ecology ~~to ensure that any formal written interpretations are consistent with the purpose and intent of Chapter 90.58 RCW, the applicable guidelines, and the goals and objectives of this program.~~
- B. The Whatcom County Planning Commission is hereby vested with the responsibility to periodically review the program as a major element of the County's planning and regulatory program, and make recommendations for amendments thereof to the County Council. [CES21]
- C. The Whatcom County Council is hereby vested with authority to:
  1. Initiate an amendment to this program according to the procedures prescribed in WAC 173-26-100.
  2. Adopt all amendments to this program, after consideration of the recommendation of the Planning Commission and pursuant to the procedural requirements of WCC Chapter 2.02; provided, that substantive amendments shall become effective 14 days from immediately upon adoption by the Department of Ecology's written notice of final action.

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3. Make final County decisions or recommendations, as applicable, with regard to shoreline permit, shoreline variance, or shoreline conditional use applications that require County Council action on a consolidated review as provided by WCC Chapter 22.05.[CES22]

### **~~23.05.010 Authority.~~**

~~As described in adopted Whatcom County Ordinance 2008-034, the general administrative sections of Title 23 (Whatcom County Shoreline Management Program) are not part of this program. They are, however, included with the text of this title for consistency and ease of use. Department of Ecology will be notified of any changes to the administrative chapters listed below.~~

~~The use of separate local administrative and enforcement procedures is consistent with the 2003 Washington State Shoreline Master Program Guidelines (WAC 173-26-191(2)(a)(iii)(C)), Administrative provisions:~~

~~Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.~~

### **~~23.05.020 Purpose.~~**

~~The purpose of the chapter is to allow Whatcom County to revise local administrative procedures (fees, application meetings, authority of administrator, etc.) without a formal state amendment process. These chapters must still be consistent and remain consistent with the related provisions in the Shoreline Management Act and state shoreline rules (WACs). In the event of a conflict, the state RCW or WAC, as amended, will prevail over the local ordinance.~~

### **~~23.05.030 Administrative procedures.~~**

~~A. All applications for project permits covered by this title shall be reviewed and processed in accordance with Chapter 22.05 WCC, except as otherwise stated within this title.~~

~~A. The following administrative sections and chapters were adopted by the Whatcom County Administrative Procedures Ordinance 2008-034, and are separate from this title:~~

~~— WCC 23.60.050 — Minimum application requirements.~~

~~— WCC 23.60.060 — Pre-application conference.~~

~~— WCC 23.60.070 — Fees.~~

~~— WCC 23.60.080 — Notice of application.~~

~~— WCC 23.60.090 — Permit application review.~~

~~— WCC 23.60.100 — Consolidated permit review.~~

~~— WCC 23.60.110 — State Environmental Policy Act (SEPA) compliance.~~

~~— WCC 23.60.130 — Public hearings.~~

~~— WCC 23.60.140 — Permit conditions.~~

~~— WCC 23.60.150 — Notice of decision, reconsideration and appeal.~~

~~— WCC 23.60.160 — Initiation of development.~~

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~~WCC 23.60.180 – Rescission and modification.~~

~~WCC 23.60.190 – Expiration.~~

~~Chapter 23.70 WCC – Administration.~~

~~Chapter 23.80 WCC – Legal Provisions.~~

### ~~23.10.110 Relationship to other local regulations.~~ [AP23]

~~A. In the case of development subject to the shoreline permit requirement of this program, the county building official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the building official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.~~

~~A. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single-family residences, a building permit reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. The building official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).~~

~~A. In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the county decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program in consideration of recommendations from the administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this program.~~

~~A. In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.~~

~~A. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:~~

~~1. Building, plumbing, mechanical, and fire codes.~~

~~1. Boating and swimming, WCC Title 11.~~

~~1. On-site sewage system regulations, Chapter 24.05 WCC.~~

~~1. Solid waste rules and regulations, Chapter 24.06 WCC.~~

~~1. Zoning, WCC Title 20.~~

~~1. Land division regulations, WCC Title 21.~~

~~1. Development standards.~~

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### ~~23.10.120 Relationship to other state and federal laws.~~ [AP24]

~~A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional or federal statutes or regulations applicable to such development or use.~~

~~A. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.~~

~~A. Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~

~~2. Flood Control Zone Act, Chapter 86.16 RCW.~~

~~2. Forest Practices Act, Chapter 76.09 RCW.~~

~~2. Fish and Wildlife, RCW Title 77.~~

~~2. Water Pollution Control Act, Chapter 90.48 RCW.~~

~~2. Land Subdivision Act, Chapter 58.17 RCW.~~

~~2. Surface Mining Act, Chapter 78.44 RCW.~~

~~2. Washington Clean Air Act, Chapter 70.94 RCW.~~

~~2. State Environmental Policy Act (SEPA), Chapter 43.21C RCW.~~

~~2. Camping Resorts Act, Chapter 19.105 RCW.~~

~~2. Water Resources Act of 1971, Chapter 90.54 RCW.~~

~~2. Growth Management Act, Chapter 36.70A RCW.~~

~~2. State Hydraulic Code, Chapter 77.55 RCW.~~

~~A. Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:~~

~~2. Northwest Clean Air Agency regulations.~~

~~2. Puget Sound Water Quality Management Plan.~~

~~A. Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~

~~2. Rivers and Harbors Act of 1899.~~

~~2. Fish and Wildlife Coordination Act of 1958.~~

~~2. National Environmental Policy Act of 1969 (NEPA).~~

~~2. Coastal Zone Management Act of 1972, as amended.~~

~~2. Federal Water Pollution Control Act, as amended.~~

~~2. Flood Insurance Act of 1968, as amended.~~

~~2. Clean Air Act, as amended.~~

~~2. Endangered Species Act (ESA).~~

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~~23.10.1310 Application within federal reserves.~~

~~As recognized by RCW 90.58.350, the provisions of this program shall not apply to lands held in trust by the United States for Indian nations, tribes or individuals.~~ [CES25]

**23.10.040 Code Interpretation.**

- A. The regulations of this Program shall be interpreted to allow the development, use, or activity as described in the General Regulations and/or Specific Use Regulations only when the proposal is designed, constructed, and/or mitigated to provide no net loss of or a net lift to ecological functions and ecosystem wide processes.
- B. The policies of Chapter 11 (Shorelines) of the Comprehensive Plan shall guide interpretation of the regulations.
- C. Conflict between the provisions of the this Program and the WACs implementing the Act must be resolved in accordance with the WACs; provided that conflict between the provisions of the WACs implementing the Act and the Act must be resolved in accordance with the Act.
- D. In case of conflict between the provisions of this program and Whatcom County Code or the laws, regulations, codes, or rules promulgated by any other authority having jurisdiction within Whatcom County, the more restrictive requirements shall apply, except when constrained by federal or state law.
- E. As provided for in RCW 90.58.900, the Act is exempt from the rule of strict construction, and this program, including these regulations, shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies of the Act for which this program was enacted and adopted, respectively.
- F. Within shoreline jurisdiction, the regulations of WCC Chapter 16.16 adopted pursuant to 23.05.065 (Critical Areas) shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act.

**23.10.050 Shoreline Permits Required.**

- A. To be authorized, all shoreline development, uses, or activities shall be done in a manner consistent with this program and the Shoreline Management Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.
- B. The applicable provisions of WCC Title 22 (Land Use and Development) shall govern the processing of permits required under this Title. If any conflict should exist between Title 22 and this program, the provisions of this program shall prevail.

**23.10.160 Violations, Enforcement, and Penalties.**

- A. The Director, when necessary in consultation with the Department of Ecology, is authorized to adopt such rules as are necessary and appropriate to carry out the provisions of the Shoreline Management Act (RCW 90.58.200) and Chapter 173-27 WAC, Part II. The Act calls for a cooperative program between local government and the state. It provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission.

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- 1 B. In addition to the following provisions, this Title shall be enforced in accordance with WCC Chapter  
2 20.94 (Enforcement and Penalties) and WAC 173-27-240 through 173-27-300 or their successors.
- 3 C. To achieve no net loss, if a development, use, or activity has occurred in violation of this program,  
4 prompt restoration or mitigation of any adverse impacts shall be provided. The standard mitigation  
5 ratio for the critical area or buffer impacts shall be doubled to address temporal loss when  
6 appropriate. If this provision is not complied with, the County may restore or mitigate the site and  
7 charge the responsible person for the full cost of such an activity. Additionally, any and all permits or  
8 approvals issued by the County may be denied for that property for a period of up to six years.
- 9 D. Any responsible party that willfully refuses to complete a required restoration plan pursuant to this  
10 section shall be guilty of a misdemeanor and, in addition to the requirement of subsection (C), shall  
11 provide shoreline restoration equal to double the square footage of the impacted area.
- 12 E. Pursuant to WCC 22.05.150 (Permit Revocation), the County may revoke a permit if the applicant  
13 violates the conditions or limitations set forth in the permit or exceeds the scope of the work set  
14 forth in the permit.

### 15 ~~23.80.040~~ **23.10.170 Abatement.**

16 Structures or development on shorelines considered by the ~~administrator~~ Director to present a hazard  
17 or other public nuisance to persons, properties, or natural features may be abated by the County under  
18 the provisions of WCC Title 15 (Buildings & Construction) and WCC Chapter 22.15 (Code  
19 Enforcement) ~~the applicable provisions of the Uniform Code for the Abatement of Dangerous Buildings,~~  
20 ~~1997 Edition, or successor as adopted by Whatcom County,~~ or by other appropriate means.

### 21 ~~23.10.180~~ **23.10.180 Financial Sureties** [CES26].

22 In approving any application or exemption for a shoreline development, the Director may require the  
23 posting of a financial surety to ensure continued compliance with any conditions imposed, including the  
24 construction of improvements, the adherence to County standards, and/or maintenance, repair or  
25 replacement of such improvements. The financial surety shall be in a form acceptable to the County's  
26 attorney. In the event a condition occurs warranting the use of financial surety, the Director may act  
27 under such financial surety or may perform the work required at the County's expense, which expense  
28 shall be a lien against the property, enforceable as would be a judgment thereon.

### 29 ~~23.80.010~~ **23.10.190 Amendments.**

- 30 A. Amendments to the Shoreline Management Program—including both Comprehensive Plan polices  
31 and Title 23 regulations—shall be processed pursuant to WCC Chapter 22.10 (Legislative Action  
32 Procedures).
- 33 B. All regulatory elements of this Program shall be considered a part of the County's development  
34 regulations. Certain non-regulatory elements of this master program, including but not limited to  
35 the Shoreline Restoration Plan or administrative procedures (WCC Title 22), may be updated and  
36 amended at any time without requiring a formal master program amendment.
- 37 C. After approval or disapproval of a program amendment by the Department of Ecology as provided in  
38 RCW 90.58.090, the County shall publish a notice that the program amendment has been approved  
39 or disapproved by the Department of Ecology. For the purposes of RCW 36.70A.290, the date of

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1 publication for the amendment of a program is the date the County publishes notice that the  
2 program amendment has been approved or disapproved by the Department of Ecology.

3 A.D. The Director shall submit an annual report to the County Council reviewing the effectiveness of  
4 the program in achieving its stated purpose, goals, and objectives. Such report may also include any  
5 proposed amendments deemed necessary to increase its effectiveness or equity. If said report  
6 contains proposed amendments, the Council may schedule a public hearing to consider such matter  
7 in accordance with the procedure described in subsection (A). Said report shall also include a  
8 determination of whether or not the goal of no net loss of shoreline ecological function is being  
9 achieved and provide recommendations for achieving and maintaining the goal.



# **Chapter 23.230 Shoreline Jurisdiction and ~~Area~~ Environment Designations**

## **23.230.010 Shoreline Jurisdiction.**

A. The provisions of this program shall apply to all shorelines of the state in unincorporated Whatcom County, including all shorelines of statewide significance (~~Appendix D of this title~~) and all shorelands ~~as defined in WCC Chapter 23.110~~ and collectively referred to herein as “shorelines.” For the purposes of this program, jurisdictional shorelines are divided into segments or reaches. Each segment is assigned one or more shoreline ~~environment~~ area designations pursuant to this chapter in order to provide for the management of use and development within shorelines.

B. The shoreline master program jurisdiction applies to all shorelines of the state and their associated shorelands. This includes:

1. All marine waters;
2. Rivers and streams with more than twenty cubic feet per second (cfs) mean annual flow;
3. Lakes and reservoirs twenty acres and greater in area;
4. Floodways and contiguous floodplain areas landward two hundred feet from such floodways; and.
5. All associated wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of the Act;
6. Shorelands adjacent to these waterbodies, typically within two hundred feet of the ordinary high water mark (OHWM);
7. Buffers necessary to protect critical areas that are located within shoreline jurisdiction as described in this program.
8. Associated estuarine wetlands: the jurisdictional boundary shall extend two hundred feet landward of the OHWM of the wetland.
9. Associated palustrine wetlands that extend greater than two hundred feet landward of the OHWM of the shoreline: the jurisdictional boundary shall extend to the OHWM of the wetland.
10. Critical areas designated pursuant to Chapter 36.70A RCW and located within shoreline jurisdiction shall be subject to the regulations of this program.

## **~~[CES27]~~ 23.20.020 23.230.020 Official Shoreline Map.**

A. As part of this program, there is one official Whatcom County shoreline environment designations map, which shall be in the custody of the Planning and Development Services Department and available for public inspection during normal business hours and on the Whatcom County website. Unofficial copies of the official map or portions thereof may be included or distributed with copies of this program. Shoreline Area Designations. Shoreline area designations are delineated on a map, hereby incorporated as a part of this program (Appendix E of this title) that shall be known as the Official Shoreline Map. There shall be only one official copy of this map that shall reside in the custody of the Washington State Department of Ecology. Additional copies have been provided to the Whatcom County auditor and the Whatcom County planning and development Sservices department where they are available for public use.

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- 1 B. The purpose of the official shoreline environment designations map is to depict graphically those  
2 areas of Whatcom County falling under the jurisdiction of this program, and the shoreline  
3 environment designations of those areas. Shoreline Jurisdictional Limits. The purpose of the Official  
4 Shoreline Map is to identify shoreline area designations. The map does not necessarily identify or  
5 depict the lateral extent of shoreline jurisdiction nor does it identify all associated wetlands. The  
6 lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the  
7 location of the ordinary high water mark (OHWM), floodway and presence of associated wetlands.  
8 provided, that, exclusive of associated wetlands, the map identifies the lateral extent of shoreline  
9 jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork of the  
10 Nooksack River. [PDS28]
- 11 C. Where questions arise regarding the precise boundaries of any shoreline designation, the Director  
12 will make the final determination following the guidance of 23.20.030 (Interpretation of Official Map  
13 Boundaries) and 23.20.040 (Mapping Errors). Appeals of such interpretations may be filed pursuant  
14 to WCC 22.05.160 (Appeals).
- 15 D. All shorelines waterward of the OHWM shall be designated aquatic, except that in the Cherry Point  
16 Management Area the aquatic designation shall start waterward of the CPMA boundary (see  
17 subsection E).
- 18 E. The Cherry Point Management Area is a geographic area lying between the eastern property  
19 boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11, Township 39 North, Range 1  
20 West, as it existed on June 18, 1987, and the southern boundary of Section 32, Township 39 North,  
21 Range 1 East, extending waterward a distance of 5,000 feet and extending landward for 200 feet as  
22 measured on a horizontal plane from the OHWM. This area shall have the Cherry Point Management  
23 Area shoreline environment designation.
- 24 F. Upland shoreline environment designations shall apply to shorelands, unless specifically stated to be  
25 applied to the aquatic designation by this program.
- 26 F.G. Only one shoreline environment designation shall apply to a given shoreland area. In the case of  
27 designations running parallel to one another (as along the coast), designations shall be divided along  
28 an identified linear feature. Such linear features shall be clearly noted in the metadata associated  
29 with the Official Shoreline Map.
- 30 G.H. All shorelines east of the Mount Baker National Forest western boundary are designated natural  
31 or conservancy unless there are federal projects on federal lands.
- 32 H.I. All areas within shorelines that are not mapped and/or designated and are not directly adjacent to  
33 other shoreline designated areas are automatically assigned a conservancy designation. Within  
34 urban growth areas, such shorelines shall be automatically assigned an urban conservancy  
35 designation until such time that the shoreline environment can be re-designated through a formal  
36 amendment. [CES29]
- 37 23.2020.021-030 Interpretation of ~~shoreline area designation boundaries~~ Official Map Boundaries.  
38 Where the exact location of an environment designation boundary line is uncertain, the official  
39 shoreline environment designations map will be used to determine the location of such line. When

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resorting to the shoreline environment designations map does not resolve the conflict, the following rules will apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, alleys, ~~or other roadways, or railroads~~ shall be construed to follow the nearest right-of-way edge;
2. Boundaries indicated as approximately following lot, fractional section, or other subdivision lines shall be construed as following such subdivision lines;
3. Boundaries indicated as approximately following any lines of corporate limits or other local government jurisdictional lines shall be construed as following such lines;
4. Boundaries indicated as parallel to or extensions of features identified in subsections (1) through (3) of this section shall be so construed; and,
5. Boundaries between parallel environment designations along the shoreline shall be construed as the top of the bluff or vegetation line that distinguishes existing development from the critical area abutting the shoreline.

~~When not specifically indicated on the shoreline environment designations map, distances shall be determined by the scale of the map;~~

~~Where existing physical or cultural features are at variance with those shown on the shoreline environment designations map and cannot be determined with certainty by applying subsections (A)(1) through (6) of this section, the director shall determine the location or existence of such feature utilizing the provisions of WAC 173-27-211, the policies of RCW 90.58.020, and the corresponding master program provisions herein; and~~

~~If disagreement develops as to the exact location of a shoreline area designation boundary line, the Official Shoreline Map shall prevail.~~

~~If disagreement develops as to the exact location of a shoreline area designation boundary line, the following rules shall apply:~~

~~Boundaries indicated as approximately following lot, tract, or section lines shall be so construed.~~

~~Boundaries indicated as approximately following roads or railways shall be respectively construed to follow their centerlines.~~

~~Boundaries indicated as approximately parallel to or extensions of features indicated in subsection (B)(1) or (2) of this section shall be so construed.~~

~~Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the administrator shall interpret the boundaries. Appeals of such interpretations may be filed pursuant to WCC 23.60.150(H).~~

~~All shoreline area waterward of the OHWM shall be designated aquatic.~~

~~Upland shoreline area designations shall apply to shorelands.~~

~~Only one shoreline area designation shall apply to a given shoreland area. In the case of parallel designations, designations shall be divided along an identified linear feature. Such linear features shall be clearly noted in the metadata associated with the Official Shoreline Map.~~

~~All shorelines east of the Mount Baker National Forest western boundary are designated conservancy unless there are federal projects on federal lands.~~

~~All areas within shorelines that are not mapped and/or designated are automatically assigned a conservancy designation. Within urban growth areas, such shorelines shall be automatically~~

~~assigned an urban conservancy designation until such time that the shoreline area can be re-designated through a formal amendment. [CES30]~~

## **23.20.040 Mapping Errors**

Some mapping errors may be adjusted prior to a master program amendment to assign the appropriate designation to that area by the following methods:

1. The common boundary descriptions and the criteria in RCW 90.58.030(2) and Chapter 173-22 WAC supersede the map when there are mapping error conflicts, other than those with a solution provided in this section.
2. In the event that a jurisdictional area, including associated wetlands, is not mapped, it will automatically be assigned a “resource,” “conservancy,” or “urban conservancy” designation depending on its location. If outside a UGA and adjacent to an existing “resource” designation, it shall be “resource;” if adjacent to “conservancy” it shall be “conservancy. If outside or inside of a UGA or LAMIRD it shall be “urban conservancy.” Such designation will apply until a master program amendment is approved that assigns the appropriate designation to the subject area.
3. In the event that a parcel was inadvertently assigned more than one designation, the more restrictive designation shall apply.
4. In the event that a parcel on the boundary between two designations appears to be a mapping error based on the criteria in this section, the County shall apply the most appropriate of the two designations, until such time as the map can be formally corrected consistent with WAC 173-26-100 and Section 22.500.105(I) (Shoreline Master Program Amendment).
5. In the event of an environment designation mapping error where the master program update or amendment record, including the public hearing process, is clear in terms of the correct environment designation to apply to a property, the County shall apply the environment designation approved through the master program update or amendment process and correct the map.
6. If the environment designation criteria were misapplied, but the update or amendment record, including the public hearing process, does not clearly show that a different designation was intended to be shown on the map, a master program amendment may be obtained consistent with WAC 173-26-100 and Section 22.500.105(I) (Shoreline Master Program Amendment). This process is intended to allow for reasonable corrections to the shoreline environment designation process. Such process shall include early consultation with the Department of Ecology and other agencies with jurisdiction, affected tribes, and appropriate public notification prior to local approval. Current designations are reflected in the shoreline environment designations map located pursuant to WCC Chapter 23.20 (Shoreline Jurisdiction and Environment Designations).

## **~~23.3020.022-050~~ Shoreline Area Environment Designations.**

- ~~A. A set of 10 shoreline area designations has been developed as a part of this program. The purpose of the shoreline area designations is to provide a systematic, rational, and equitable basis upon which to guide and regulate development within specific shoreline reaches.~~
- ~~B. Shoreline area designations have been determined after consideration of:~~

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0. ~~The ecological functions and processes that characterize the shoreline, together with the degree of human alteration; and~~
0. ~~Existing development patterns together with WCC Title 20, Zoning, designations, the County Comprehensive Plan designations and other officially adopted plans; and~~
0. ~~Federal and tribal ownership status; and~~
0. ~~The goals of Whatcom County citizens for their shorelines; and~~
0. ~~Pursuant to RCW 90.58.100(4), in designating state-owned shorelines, consideration has been given to public demand for wilderness beaches, ecological study areas, and other recreational activities; and~~
0. ~~Other state policies in the Act and the Shoreline Master Program Guidelines (RCW 90.58.020 and Chapter 173-26 WAC, respectively).~~ [MD31]

A. Development, use and activities ~~use~~ within each designated shoreline ~~area~~ environment shall occur consistent with ~~the SMP this program~~, including but not limited to: the shoreline environment designation purpose, designation criteria, and policies ~~described found in Whatcom County Comprehensive Plan Chapter 11 (Shorelines) below;~~ the general policies and regulations contained in Chapter 11 (Shorelines) and WCC Chapter 23.390 (General Regulations), and the use and modification policies and regulations provided in Chapter 11 (Shorelines) and WCC Chapter 23.4100 (Shoreline Use and Modification Regulations), subject to the provisions of the ~~Whatcom County Zoning Code~~, WCC Title 20 (Zoning), and other applicable land use regulations where more restrictive.

B. Shoreline environment designations in Whatcom County include the following:

1. Urban
2. Urban Resort
3. Urban Conservancy
4. Shoreline Residential
5. Rural
6. Resource
7. Conservancy
8. Natural
9. Aquatic
10. Cherry Point Management Area [CES32]

### **23.3020.023-060 Designation of Shorelines of Statewide Significance.**

In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the following shorelines of unincorporated Whatcom County, including the shorelands and associated wetlands as therein defined, as having statewide significance:

A. Lakes:

1. Lake Whatcom;
2. Ross Lake; and
3. Baker Lake.

B. Rivers:

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1. Nooksack River: its Mainstem downstream to Bellingham Bay, its North Fork upstream to the mouth of Glacier Creek, and its South Fork upstream to the mouth of Hutchinson Creek.
  2. Skagit River: upstream of the Whatcom-/Skagit County line to the point where the mean annual flow is measured at 1,000 feet per second or more, approximately, at the confluence of Newhalem Creek.
- C. Marine:
1. Birch Bay from Birch Point to Point Whitehorn.
  2. All other marine waters, water columns, and bedlands waterward of extreme low tide.

### **23.30.030 Urban shoreline area.** [CES33]

#### **23.30.031 Urban shoreline area—Purpose.**

~~The purpose of the urban shoreline area is to provide for intensive development of water-oriented commercial, transportation, and industrial uses and accommodate mixed-use developments such as those consisting of urban density residential, commercial and industrial uses, while protecting existing shoreline ecological functions and processes and restoring shoreline ecological functions and/or processes in areas that have been previously degraded.~~

#### **23.30.032 Urban shoreline area—Designation criteria.**

~~The urban shoreline area is applied to shoreline areas zoned commercial, industrial and urban density residential within urban growth areas and limited industrial or commercial areas of more intense rural development, if they:~~

- ~~—Are currently characterized by high intensity development and/or uses; are designated by the Comprehensive Plan for high intensity uses or intensive uses related to commerce, transportation or navigation; or are suitable and planned for high intensity mixed use; and~~
- ~~A. Do not contain limitations to urban use such as geologic hazards, and have adequate utilities and access; and~~
- ~~A. Do not provide important ecological functions that would be significantly compromised by high intensity residential, commercial, or industrial use.~~

#### **23.30.033 Urban shoreline area—Policies.**

~~Development within urban shoreline areas shall be consistent with the following policies:~~

- ~~—New urban character development should be directed toward already developed or developing areas where compatible.~~
- ~~—First priority should be given to water-dependent uses. Second priority should be given to water-related and then water-enjoyment uses. Non-water-oriented uses should not be allowed except as part of mixed-use developments. Non-water-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline, or where the needs of existing and future water-dependent uses are met.~~

#### **23.30.034 Urban shoreline area—Permitted uses.**

~~The following uses may be permitted subject to the applicable policies and regulations of this program:~~

- ~~A. Residential.~~
- ~~A. Water-oriented commercial, industrial and/or port development.~~

A. ~~Water-oriented recreation.~~

~~—Agricultural.~~

**~~23.30.035 Urban shoreline area—Conditional uses.~~**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:

~~—Non-water-oriented commercial, industrial and/or port development, subject to the criteria in WCC 23.100.050(B)(1)(d) and 23.100.070(B)(1)(c)(iv), respectively.~~

~~—Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~—Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~—Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

~~—Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

**~~23.30.036 Urban shoreline area—Prohibited uses.~~**

The following uses are prohibited:

~~—Forest practices.~~

~~—Surface mining.~~

**~~23.30.040 Urban resort shoreline area.~~**

**~~23.30.041 Urban resort shoreline area—Purpose.~~**

~~The purpose of the urban resort shoreline area is to provide for intensive residential and commercial uses geared to the needs of tourists and day visitors while protecting existing shoreline ecological functions and processes. Emphasis is on hotels, motels, shops, restaurants, commercial rental campgrounds, rental cabins, and shoreline-related recreation facilities.~~

**~~23.30.042 Urban resort shoreline area—Designation criteria.~~**

~~The urban resort shoreline area is applied to shoreline areas identified in the Comprehensive Plan as suitable for resort commercial development with substantial features that might reasonably attract resort development compatible with other development in the area, and which have existing and/or planned infrastructure sufficient to support such development.~~

**~~23.30.043 Urban resort shoreline area—Policies.~~**

~~Development within urban resort shoreline areas shall be consistent with the following policies:~~

~~—Scale and design of resort development should assure compatibility with allowed uses of adjacent shoreline areas and shoreline ecological functions and processes.~~

~~—Buildings over 35 feet in height may be permitted if additional open space, view areas, public access and/or other amenities are provided.~~

**~~23.30.044 Urban resort shoreline area—Permitted uses.~~**

The following uses may be permitted subject to the applicable policies and regulations of this program:

A. ~~Residential.~~



~~A. Water-oriented commercial.~~

~~— Port development, limited to passenger terminals.~~

~~B. Water-oriented recreation.~~

**~~23.30.045 Urban resort shoreline area – Conditional uses.~~**

~~The following may be permitted as conditional uses subject to the applicable policies and regulations of this program:~~

~~— Non-water-oriented commercial, subject to the criteria in WCC 23.100.050(B)(1)(d).~~

~~— Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~— Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

~~— Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

**~~23.30.046 Urban resort shoreline area – Prohibited uses.~~**

~~The following uses are prohibited:~~

~~— Agricultural.~~

~~— Forest practices.~~

~~— Surface mining.~~

~~— All other industrial and port development.~~

**23.30.050 Urban conservancy shoreline area.**

**~~23.30.051 Urban conservancy shoreline area – Purpose.~~**

~~The purpose of the urban conservancy shoreline area is to protect shoreline ecological functions and processes in urban growth areas and limited areas of more intense rural development that are not designated for high intensity residential use and are not generally suitable for water-dependent uses.~~

**~~23.30.052 Urban conservancy shoreline area – Designation criteria.~~**

~~The urban conservancy shoreline area is applied to shoreline areas inside urban growth areas where any of the following characteristics apply:~~

~~— They support or retain important shoreline ecological functions and/or processes, even though partially developed.~~

~~— They have the potential for development at an intensity and character that is compatible with preserving and restoring ecological functions. They are generally not designated for high intensity residential use, commercial use, or industrial use.~~

~~— They are characterized by critical areas or indicate the presence of other valuable or sensitive ecological resources.~~

**~~23.30.053 Urban conservancy shoreline area – Policies.~~**

~~Development within urban conservancy shoreline areas shall be consistent with the following policies:~~

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- ~~A.—Primary permitted uses should consist of low intensity residential uses or other low intensity uses that preserve the natural character of the area or promote preservation of open space and critical areas.~~
- ~~—Moderate to high intensity residential use may be permitted if the proposed uses and design result in substantial open space, public access and/or restoration of shoreline ecological functions and/or processes, and if compatible with surrounding uses.~~
- ~~B.—Public access and public recreation facilities are a preferred use if they will not cause substantial ecological impacts and when restoration of ecological functions is incorporated.~~
- ~~B.—Low intensity commercial uses may be permitted if the specific uses and design result in substantial open space, public access and/or restoration of ecological functions and if compatible with surrounding uses.~~

### **23.30.054 Urban conservancy shoreline area — Permitted uses.**

The following uses may be permitted subject to the applicable policies and regulations of this program:

~~0.—Single family and duplex residential.~~

~~0.—Agricultural.~~

~~0.—Low intensity recreation; provided, that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 30 vehicles, and buildings for interpretive facilities not exceeding 4,000 square feet, subject to the criteria in WCC 23.100.100.~~

### **23.30.055 Urban conservancy shoreline area — Conditional uses.**

The following may be permitted as conditional uses subject to the applicable policies and regulations of this program:

~~A.—All other residential development.~~

~~A.—Low intensity water oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities subject to the criteria in WCC 23.100.050. Low intensity non water oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities, subject to the criteria in WCC 23.100.050(B)(1)(d).~~

~~A.—Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~A.—Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~A.—Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

~~A.—Sewage outfalls and treatment plants, over water communication or power lines, fuel pipelines, or other types of hazardous materials pipelines, provided there is no feasible location outside of the shoreline.~~

### **23.30.056 Urban conservancy shoreline area — Prohibited uses.**

The following uses are prohibited:

~~A.—Forest practices.~~

~~A. Surface mining.~~

~~— All other industrial and port development.~~

~~B. Transportation facilities not serving a specific approved use.~~

**~~23.30.060 Shoreline residential area.~~**

**~~23.30.061 Shoreline residential area—Purpose.~~**

~~The shoreline residential shoreline area accommodates residential development and accessory structures that are consistent with this chapter.~~

**~~23.30.062 Shoreline residential area—Designation criteria.~~**

~~The shoreline residential shoreline area is applied to shorelines if they have been predominantly developed with single-family or multifamily residential uses or are planned and platted for residential development. The designation is generally applied to residential densities of greater than one unit per acre.~~

**~~23.30.063 Shoreline residential area—Policies.~~**

~~Development within shoreline residential shoreline areas shall be consistent with the following policies:~~

~~— The scale and density of new uses and development should be compatible with, and protect or enhance, the existing residential character of the area while sustaining shoreline ecological functions and processes.~~

~~— Public or private outdoor recreation facilities should be encouraged if compatible with the character of the area. Preferred uses include water-dependent and water-enjoyment recreation facilities that provide opportunities for substantial numbers of people to access and enjoy the shoreline.~~

~~— Commercial development should be limited to water-oriented uses. Non-water-oriented commercial uses may be permitted as part of mixed-use developments where the primary use is residential; provided, that such uses should provide a substantial benefit with respect to the goals and policies of this program such as providing public access or restoring degraded shorelines.~~

**~~23.30.064 Shoreline residential area—Permitted uses.~~**

~~The following uses may be permitted subject to the applicable policies and regulations of this program:~~

~~— Residential.~~

~~— Water-oriented commercial.~~

~~— Water-oriented recreation.~~

~~— Agricultural.~~

**~~23.30.065 Shoreline residential area—Conditional uses.~~**

~~The following may be permitted as conditional uses subject to the applicable policies and regulations of this program:~~

~~A. Non-water-oriented commercial, subject to the criteria in WCC 23.100.050(B)(1)(d).~~

~~A. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~A. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~A. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

~~A. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

~~**23.30.066 Shoreline residential area – Prohibited uses.**~~

~~The following uses are prohibited:~~

~~— Forest practices.~~

~~A. Surface mining.~~

~~A. All other industrial and port development.~~

**23.30.070 Rural shoreline area.**

**23.30.071 Rural shoreline area – Purpose.**

~~The purpose of the rural shoreline area is to protect shoreline ecological functions in areas having a rural character characterized by open space and low density development including, but not limited to: residences, agriculture, forestry and outdoor recreation. Uses should be compatible with the physical capabilities and limitations, natural resources and shoreline ecological functions and processes of the area.~~

**23.30.072 Rural shoreline area – Designation criteria.**

~~The rural shoreline area is applied to shoreline areas outside urban growth areas, particularly areas designated as rural in the Whatcom County Comprehensive Plan, and includes areas:~~

~~— Where the shoreline currently accommodates residential uses outside urban growth areas and is characterized by low density development, pasture, agriculture, woodlots, home occupations, and cottage industries. The distribution of rural land use is adjacent to agricultural, forestry, and urban land uses and often provides a transition between urban areas and commercial agriculture and forestry uses. Natural vegetative cover and topography have been altered in many rural areas, but substantial ecological functions, and/or the potential for restoration of ecological functions, are present.~~

~~— That are now used or potentially usable for a mix of agriculture, forestry, and residential use.~~

~~— Where residential development is or should be of low density, because of limitations by physical features, the presence of critical areas, and/or lack of utilities or access.~~

~~— That have high recreational value or unique historic or cultural resources.~~

~~— Where low intensity outdoor recreation use or development would be appropriate and compatible with other uses and the physical environment.~~

~~— Where the shoreline has been developed with low intensity water dependent uses.~~

**23.30.073 Rural shoreline area – Policies.**

~~Development within rural shoreline areas shall be consistent with the following policies:~~

~~A. Uses in rural areas should protect or enhance the rural character of the shoreline and sustain the shoreline ecological functions and processes by limiting building density and height, and providing effective setbacks, buffers and open space.~~

~~A. Residential development consistent with the rural character of the area is permitted, provided it includes measures to protect ecological functions and processes. Related uses consistent with the rural character of the area are permitted.~~

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~~A. Public or private outdoor recreation facilities should be encouraged if compatible with the rural character of the area and developed in a manner that maintains shoreline ecological functions and processes. Preferred uses include water-oriented recreation facilities that do not deplete shoreline resources over time, such as boating facilities, angling, wildlife viewing trails, and swimming beaches.~~

~~A. Industrial or commercial development should be limited to, water-oriented commercial and industrial uses in the limited locations where such uses have been established or at sites in rural communities that possess appropriate shoreline conditions and services sufficient to support such developments. Non-water dependent uses should provide a substantial benefit with respect to the goals and policies of this program such as providing public access and/or restoring degraded shorelines.~~

~~A. Agriculture and forestry consistent with rural character and the maintenance of shoreline ecological functions and processes should be encouraged.~~

### **23.30.074 Rural shoreline area—Permitted uses.**

The following uses may be permitted subject to the applicable policies and regulations of this program:

- ~~— Residential.~~
- ~~— Water-oriented commercial.~~
- ~~— Water-oriented industrial and/or port development.~~
- ~~— Water-oriented recreation.~~
- ~~— Agricultural and forest practices.~~

### **23.30.075 Rural shoreline area—Conditional uses.**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:

- ~~— Non-water-oriented commercial, industrial and/or port development, subject to the criteria in WCC 23.100.050(B)(1)(d) and 23.100.070(B)(1)(c)(iv), respectively.~~
- ~~— Dams, diversions and tailrace structures for hydroelectric power generation.~~
- ~~— Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~
- ~~— Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~
- ~~— Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~
- ~~— Surface mining.~~

### **23.30.080 Resource shoreline area.**

#### **23.30.081 Resource shoreline area—Purpose.**

~~The purpose of the resource shoreline area is to protect shoreline ecological functions and processes in areas designated in the Whatcom County Comprehensive Plan as agriculture resource lands, rural forestry, commercial forestry and mineral resource lands and to protect the economic base of those lands and limit incompatible uses.~~

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## ~~23.30.082 Resource shoreline area—Designation criteria.~~

~~The resource shoreline area is applied to shoreline areas designated as agriculture, rural forestry, commercial forestry and mineral resource lands in the Whatcom County Comprehensive Plan and includes areas where the shoreline currently accommodates ongoing resource management, where natural vegetation cover has been altered but substantial ecological functions, or the potential for restoring ecological functions, are present.~~

## ~~23.30.083 Resource shoreline area—Policies.~~

~~Development within resource shoreline areas shall be consistent with the following policies:~~

~~—Uses in resource areas should protect the economic base of those lands, limit incompatible uses, and sustain the shoreline area ecological processes and functions by limiting uses and intensity.~~

~~Residential use is generally limited to one dwelling per existing parcel. The dwelling may be located within the shoreline jurisdiction, only where no other building site is feasible on the parcel.~~

~~A. Public or private outdoor recreation facilities should be permitted if they do not displace designated resource lands and if they are developed in a manner that maintains shoreline ecological functions.~~

~~Preferred uses include water dependent and water enjoyment recreation facilities.~~

~~A. Industrial or commercial use and development should be limited to uses that serve resource uses.~~

~~Such uses may be located within the shoreline only if they are water dependent, water related or if no other feasible location exists within the contiguous property.~~

## ~~23.30.084 Resource shoreline area—Permitted uses.~~

~~The following uses may be permitted subject to the applicable policies and regulations of this program:~~

~~—Residential development limited to farm-related residences or one residence and one accessory dwelling unit per existing parcel, where there is no feasible location outside of the shoreline.~~

~~—Water oriented commercial related to natural resource products predominantly produced on site.~~

~~—Water oriented industrial facilities for processing, manufacturing, and storage of natural resource products.~~

~~—Low intensity water oriented recreation, including public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 30 vehicles, subject to the criteria in WCC 23.100.100.~~

~~—Agricultural and forest practices.~~

## ~~23.30.085 Resource shoreline area—Conditional uses.~~

~~The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:~~

~~A. Non-water oriented commercial and industrial development related to natural resource products predominantly produced on site, subject to the criteria in WCC 23.100.050(B)(1)(d) and 23.100.070(B)(1)(c)(iv), respectively.~~

~~A. Water oriented industrial and port development other than those uses related to products predominantly produced on site.~~

~~A. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~A. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

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~~A. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

~~—Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

~~B. Surface mining.~~

### **23.30.086 Resource shoreline area—Prohibited uses.**

The following uses are prohibited:

~~—All other commercial development.~~

~~—Other non-water-oriented industrial and port development.~~

### **23.30.090 Conservancy shoreline area.**

#### **23.30.091 Conservancy shoreline area—Purpose.**

~~The purpose of the conservancy shoreline area is to retain shoreline ecological functions in areas where important ecological processes have not been substantially degraded by human activities. Conservancy areas are designated outside of urban growth areas. The primary management goal is to preserve shoreline ecological functions and processes by avoiding forms of development that would be incompatible with existing functions and processes, as well as identify and focus restoration efforts in areas where benefits to overall functions and processes can be realized. This policy should be furthered by keeping overall intensity of development or use low, and by maintaining most of the area's natural character.~~

#### **23.30.092 Conservancy shoreline area—Designation criteria.**

~~The conservancy shoreline area is applied to shoreline areas outside urban growth areas that include areas:~~

~~—Where development activities and uses are buffered from and do not substantially degrade ecological processes and functions.~~

~~—Where ecological functions are more intact than in areas designated rural or resource.~~

~~—Of outstanding scenic quality or other aesthetic qualities of high value to the region, which would likely be diminished unless development is strictly controlled.~~

~~—Containing critical areas or other sensitive natural or cultural features that require more than normal restrictions on development and use.~~

~~—Having the potential to influence ecological processes in a manner that will produce ecosystem-wide benefits upon restoration.~~

~~—That contain valuable or sensitive natural or cultural features that preclude more than a low overall density of residents, recreation use, structures, or livestock, as well as extensive alterations to topography or other features.~~

~~—Have recreational value to the region that would likely be diminished unless development is strictly controlled.~~

#### **23.30.093 Conservancy shoreline area—Policies.**

~~Development within conservancy shoreline areas shall be consistent with the following policies:~~



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- ~~A. Natural ecological processes should be protected and renewable resources managed so that ecological functions and the resource base are maintained. Nonrenewable resources should only be consumed in a manner compatible with conservation of other resources and other appropriate uses. Permitted uses should be limited to those compatible with each other and with conservation of shoreline ecological processes and resources.~~
- ~~B. Shorelines should be protected from harmful concentrations of people, livestock, buildings, or structures.~~
- ~~B. Opportunities for ecological restoration should be pursued, prioritizing those areas with the greatest potential to restore ecosystem-wide processes and functions.~~
- ~~B. Outstanding recreational or scenic values should be protected from incompatible development.~~

### **23.30.094 Conservancy shoreline area – Permitted uses.**

The following uses may be permitted subject to the applicable policies and regulations of this program:

- ~~Single family and duplex residential development.~~
- ~~Low intensity water oriented recreation; provided, that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 30 vehicles, and buildings for interpretive facilities not exceeding 2,000 square feet, subject to the criteria in WCC 23.100.100.~~
- ~~Agricultural and forest practices.~~

### **23.30.095 Conservancy shoreline area – Conditional uses.**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:

- ~~All other residential development.~~
- ~~Low intensity water oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities. Low intensity non-water oriented commercial uses limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use, subject to the criteria in WCC 23.100.050(B)(1)(d).~~
- ~~Dams, diversions and tailrace structures for hydroelectric power generation.~~
- ~~Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~
- ~~Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~
- ~~Sewage outfalls and treatment plants, over water communication or power lines, fuel pipelines, or other types of hazardous materials pipelines, provided there is no feasible location outside of the shoreline.~~
- ~~Surface mining.~~

### **23.30.096 Conservancy shoreline area – Prohibited uses.**

The following uses are prohibited:

- ~~A. All other industrial and port development.~~

~~A. Transportation facilities not serving a specific approved use.~~

## ~~23.30.100 Natural shoreline area.~~

### ~~23.30.101 Natural shoreline area—Purpose.~~

~~The purpose of the natural shoreline area is to ensure long-term preservation of shorelines inside or outside urban growth areas that are ecologically intact.~~

### ~~23.30.102 Natural shoreline area—Designation criteria.~~

~~The natural shoreline area is applied to shoreline areas where any of the following characteristics apply:~~

- ~~— The majority of natural ecological shoreline functions and/or processes are retained, often evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, they include ecologically intact shorelines that are free of structural shoreline modifications, structures, and intensive human uses.~~
- ~~— Forested areas that generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.~~
- ~~— Valuable functions are provided for the larger aquatic and terrestrial environments, which could be lost or significantly reduced by human development.~~
- ~~— Ecosystems or geologic types that are of particular scientific and educational interest are represented.~~
- ~~— Largely undisturbed areas of wetlands, estuaries, unstable bluffs, coastal dunes, and spits are present.~~
- ~~— New development, extractive uses, or physical modifications cannot be supported without significant adverse impacts to ecological functions and/or processes or risk to human safety.~~

### ~~23.30.103 Natural shoreline area—Policies.~~

~~Development within natural shoreline areas shall be consistent with the following policies:~~

- ~~— Preservation of the area's ecological functions, natural features and overall character must receive priority over any other potential use. Uses should not degrade shoreline ecological functions or processes or the natural character of the shoreline area. New development or significant vegetation removal that would reduce the capability of the shoreline to perform a full range of ecological functions or processes should not be permitted.~~
- ~~— Private and/or public enjoyment of natural shoreline areas should be encouraged and facilitated through low intensity recreational, scientific, historical, cultural, and educational research uses; provided, that no significant ecological impact on the area will result.~~
- ~~— Agricultural and forestry uses of a very low intensity nature may be consistent with the natural shoreline area when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.~~
- ~~— The following uses should not be permitted in the natural shoreline area:~~
  - ~~0. Commercial uses.~~
  - ~~0. Industrial uses.~~
  - ~~0. Non-water-oriented recreation.~~
  - ~~0. Roads, utility corridors, and parking areas that can be located outside of natural shoreline areas.~~

~~23.30.104 Natural shoreline area—Permitted uses.~~

The following uses may be permitted subject to the applicable policies and regulations of this program:

- ~~— Low intensity water-oriented recreation; provided, that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 10 vehicles, and buildings for interpretive facilities not exceeding 500 square feet, subject to the criteria in WCC 23.100.100.~~
- ~~— Low intensity agricultural.~~

~~23.30.105 Natural shoreline area—Conditional uses.~~

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:

- ~~— Single family residential use and development is only permitted on existing lots of record and where there is no feasible location outside the shoreline. Further subdivision is not permitted.~~
- ~~— Forest practices; provided, that it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.~~

~~23.30.106 Natural shoreline area—Prohibited uses.~~

The following uses are prohibited:

- ~~— All other residential.~~
- ~~— Commercial.~~
- ~~— Industrial and port development.~~
- ~~— Non-water-oriented recreation.~~
- ~~— Institutional.~~
- ~~— Transportation facilities not serving a specific approved recreational development.~~
- ~~— Utility development not serving a specific approved use.~~
- ~~— Surface mining.~~

**23.30.110 Aquatic shoreline area.**

**23.30.111 Aquatic shoreline area—Purpose.**

The purpose of the aquatic shoreline area is to protect, restore, and manage the characteristics and resources of the areas waterward of the ordinary high water mark.

**23.30.112 Aquatic shoreline area—Designation criteria.**

The aquatic shoreline area is defined as the area waterward of the ordinary high water mark of all streams, rivers, marine water bodies, and lakes, constituting shorelines of the state together with their underlying lands and their water column.

**23.30.113 Aquatic shoreline area—Policies.**

Development within aquatic shoreline areas shall be consistent with the following policies:

- ~~— New over water structures should only be permitted for water dependent uses, public access, or ecological restoration. The size of new over water structures should be limited to the minimum necessary to support the structure's intended use. In order to reduce the impacts of shoreline~~

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development and increase effective use of water resources, multiple use of over water facilities should be encouraged.

~~— All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.~~

~~— Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be permitted except where necessary to achieve the objectives of RCW 90.58.020, and then only when all potential impacts are mitigated as necessary to assure maintenance of shoreline ecological functions and processes.~~

~~— Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural conditions.~~

### **23.30.114 Aquatic shoreline area — Permitted uses.**

Permitted uses consist of the water dependent uses permitted in abutting upland shoreline area designations, subject to the exceptions listed in WCC 23.30.116.

### **23.30.115 Aquatic shoreline area — Conditional uses.**

Conditional uses consist of those water dependent conditional uses designated in abutting upland shoreline area designations.

### **23.30.116 Aquatic shoreline area — Prohibited uses.**

The following uses are prohibited:

~~— Residential.~~

~~— Non-water dependent commercial, industrial and port development.~~

~~— Institutional.~~

~~— Agricultural.~~

### **23.30.120 Cherry Point management area.**

The policies, regulations and standards, etc., applicable to the Cherry Point management area are found in WCC 23.100.170, except as otherwise specified therein.

## Chapter 23.40 Shorelines of Statewide Significance

### ~~23.40.010 Adoption of policy.~~

~~In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all shorelines of statewide significance in unincorporated Whatcom County, as defined in RCW 90.58.030(2)(e) and identified in WCC 23.40.020. Consistent with the policy contained in RCW 90.58.020, preference shall be given to the uses that are consistent with the statewide interest in such shorelines. These are uses that:~~

~~— Recognize and protect the statewide interest over local interest.~~

~~A. Preserve the natural character of the shoreline.~~

~~A. Result in long term over short term benefit.~~

~~A. Protect the resources and ecology of the shoreline.~~

~~A. Increase public access to publicly owned areas of the shoreline.~~

~~A. Increase recreational opportunities for the public in the shoreline.~~

~~A. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.~~

~~Uses that are not consistent with these policies should not be permitted on shorelines of statewide significance. [MD34]~~

### ~~23.40.020 Designation of shorelines of statewide significance.~~

~~In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the following shorelines of unincorporated Whatcom County, including the shorelands and associated wetlands as therein defined, as having statewide significance:~~

~~C. Lakes:~~

~~2. Lake Whatcom;~~

~~2. Ross Lake; and~~

~~2. Baker Lake.~~

~~C. Rivers:~~

~~2. Nooksack River: its Mainstem downstream to Bellingham Bay, its North Fork to the mouth of Glacier Creek and its South Fork to the mouth of Hutchinson Creek.~~

~~2. Skagit River: upstream of the Whatcom-Skagit County line to the point where the mean annual flow is measured at 1,000 feet per second or more, approximately, at the confluence of Newhalem Creek.~~

~~C. Marine:~~

~~2. Birch Bay from Birch Point to Point Whitehorn.~~

~~2. All other marine waters, water columns, and bedlands waterward of extreme low tide.~~

### ~~23.40.030 Policies for shorelines of statewide significance.~~

~~The statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. To ensure that statewide interests are protected over local interests, the county shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.030 and the following policies:~~

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- 1 A. ~~Redevelopment of shorelines should be encouraged where it restores or enhances shoreline~~
- 2 ~~ecological functions and processes impaired by prior development activities.~~
- 3 A. ~~The Washington Departments of Fish and Wildlife and Ecology, the Lummi Nation, the Nooksack~~
- 4 ~~Tribe, and other resources agencies should be consulted for development proposals that could~~
- 5 ~~affect anadromous fisheries.~~
- 6 A. ~~Where commercial timber cutting takes place pursuant to WCC 23.90.110 and RCW 90.58.150,~~
- 7 ~~reforestation should take place as soon as possible.~~
- 8 A. ~~Activities that use shoreline resources on a sustained yield or non-consuming basis and that are~~
- 9 ~~compatible with other appropriate uses should be given priority over uses not meeting these~~
- 10 ~~criteria.~~
- 11 A. ~~The range of options for shoreline use should be preserved to the maximum possible extent for~~
- 12 ~~succeeding generations. Development that consumes valuable, scarce or irreplaceable natural~~
- 13 ~~resources should not be permitted if alternative sites are available.~~
- 14 A. ~~Potential short-term economic gains or convenience should be measured against potential long-~~
- 15 ~~term and/or costly impairment of natural features.~~
- 16 A. ~~Protection or enhancement of aesthetic values should be actively promoted in design review of new~~
- 17 ~~or expanding development.~~
- 18 A. ~~Resources and ecological systems of shorelines of statewide significance should be protected.~~
- 19 ~~Shorelands and submerged lands should be protected to accommodate current and projected~~
- 20 ~~demand for economic resources of statewide importance such as commercial shellfish beds.~~
- 21 A. ~~Those limited shorelines containing unique, scarce and/or sensitive resources should be protected~~
- 22 ~~to the maximum extent feasible.~~
- 23 A. ~~Erosion and sedimentation from development sites should be controlled to minimize adverse~~
- 24 ~~impacts on ecosystem processes. If site conditions preclude effective erosion and sediment control,~~
- 25 ~~excavations, land clearing, or other activities likely to result in significant erosion should be severely~~
- 26 ~~limited.~~
- 27 A. ~~Public access development in extremely sensitive areas should be restricted or prohibited. All forms~~
- 28 ~~of recreation or access development should be designed to protect the resource base upon which~~
- 29 ~~such uses in general depend.~~
- 30 A. ~~Public and private developments should be encouraged to provide trails, viewpoints, water access~~
- 31 ~~points and shoreline-related recreation opportunities whenever possible. Such development is~~
- 32 ~~recognized as a high priority use.~~
- 33 A. ~~Development not requiring a waterside or shoreline location should be located inland so that lawful~~
- 34 ~~public enjoyment of shorelines is enhanced.~~
- 35 A. ~~Lodging and related facilities should be located inland and provide for appropriate means of access~~
- 36 ~~to the shoreline. [M035]~~

## Chapter 23.390 General Regulations [AP36]

### 23.90.010 Applicability. [DN37]

All use and development activities on shorelines shall be subject to all of the following general policies and regulations in addition to the applicable use policies and regulations of Chapter 23.100 WCC; provided, that all use and development that is to be located within the Cherry Point management area, as defined in Chapter 23.110 WCC, shall be subject to the policies and regulations found in WCC 23.100.170 and shall not be subject to the policies and regulations found in this chapter and Chapter 23.100 WCC unless otherwise specified.

### 23.90.020 Land use.

The following land use policies delineate the use preferences of the Act and this program and are intended to support the goals and objectives of the program:

#### — Policies.

0. Single family residences should be given preference for location on shorelines in those limited instances when an alteration of the shorelines is authorized (RCW 90.58.020). Single family residences occupied prior to January 1, 1992, and their appurtenant structures should be protected against damage or loss caused by shoreline erosion; provided, that measures to protect single family residences should be designed to minimize harm to the shoreline environment.

0. Shoreline uses that are water dependent or water related should be given preference (RCW 90.58.020). Such uses should be located, designed, and maintained in a manner that minimizes adverse impacts to shoreline ecological functions and/or processes. Non-water-oriented development may be allowed; provided, that existing water dependent uses are not displaced and the future supply of sites for water dependent or water related uses is not compromised.

0. Adequate space should be reserved on shorelines to meet the current and projected demand for water dependent uses, in conjunction with areas provided in cities, towns and areas under tribal jurisdiction.

#### — Regulations.

0. Single family residential uses shall be allowed on all shorelines not subject to a preference for commercial or industrial water dependent uses and shall be located, designed, and used in accordance with applicable policies and regulations of this program. [AP38]

0. Resource uses such as agriculture, forestry and mining activities shall be carried out in a manner consistent with the applicable policies and regulations of this program. [AP39]

0. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this program. [DN40]

0. Shoreline uses and developments that are water dependent shall be given priority. Permit conditions may limit the range of uses or sites developed for such uses. Interim non-water-dependent uses authorized as a conditional use may be allowed to respond to short-term



market conditions; provided, that permit conditions are placed on such uses to provide for a specific timetable or review process to ensure water dependent use of the development in the long term.

Shoreline uses and developments should be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.

1. Navigable waters should be kept free of obstructions for the general benefit of the region, state, and nation. No use or development shall be allowed to effectively exclude other appropriate uses from navigable waters.

1. Shoreline uses and developments should be located in a manner so that shoreline stabilization is not likely to become necessary in the future. [DN41]

### **23.90.030-30.010 Ecological Protection and critical areas.**

**A. Ecological protection of shoreline environments shall be achieved through compliance with WCC Chapter 16.16 (Critical Areas) and (B) and (C) of this subsection.**

#### **Policies.**

0. Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in Chapter 16.16 WCC, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, insofar as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

0. In assessing the potential for net loss of ecological functions or processes, project specific and cumulative impacts should be considered.

0. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

#### **Regulations.**

**F. An assessment of the existing ecological functions and/or processes provided by topographic, physical, and vegetation characteristics of the site shall accompany development proposals. Such assessments shall include the following general information:**

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7. ~~Impacts of the proposed use/development on ecological processes with clear designation of existing and proposed routes for water flow, wildlife movement, and other features.~~

~~Infrastructure requirements such as parking, services, lighting, and other features, together with the effects of those infrastructure improvements on shoreline ecological functions and/or processes.~~ [AP42] [CES43]

B. Development, use, and activities within the shoreline jurisdiction shall avoid and minimize adverse impacts, and any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes pursuant to WAC 173-26-186.

C. To provide for flexibility in the administration of the ecological protection provisions of this program, buffer modification and alternative mitigation approaches as provided for in WCC 16.16 may be approved within shorelines where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this program and are scientifically supported.

~~Mitigation Sequencing. To comply with the policies of subsection A of this section, a shoreline permit applicant or project proponent shall demonstrate that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:~~

~~H. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.~~

~~H. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.~~

~~H. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.~~

~~H. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.~~

~~H. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures. Where appropriate, new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes.~~ [CES44]

~~H. Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and, unless otherwise specified.~~ [CES45]

~~I. Because of its incorporation by reference herein under WCC 23.10.060(A), the provisions of the Whatcom County critical areas ordinance, Chapter 16.16 WCC, shall apply to any use, alteration, or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with Chapter 16.16 WCC and the program; provided, that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225(B)(3). Within shoreline jurisdiction, the regulations of Chapter 16.16 WCC shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act. Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this program and Chapter 16.16 WCC.~~

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— ~~Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and, unless otherwise specified,~~

~~J. A. [CES46] Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches, wetlands and/or their associated buffers; except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted. [CES47]~~

~~J. Buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to/ or from important habitat areas consistent with the applicable provisions of Chapter 16.16 WCC this program; provided, that the administrator/Director may exempt security fencing associated with residential, industrial, and/or commercial developments from this requirement on a case-by-case basis. [CES48]~~

~~J. To provide for flexibility in the administration of the ecological protection provisions of this program, alternative mitigation approaches as provided for in WCC 16.16.2610(E) may be approved within shorelines as a conditional use where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this program and are scientifically supported.~~

~~J. The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved. Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s). [CES49]~~

### **23.30.020 Critical Areas**

~~— Because of its incorporation by reference under WCC 23.10.065, the provisions of the Whatcom County critical areas regulations, Chapter 16.16 WCC, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with Chapter 16.16 WCC and this program; provided, that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225. Within shoreline jurisdiction, the regulations of Chapter 16.16 WCC shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act. [CES50]~~

### **23.90.040 23.0320 Water Quality and Quantity [AP51].**

~~A. Policies.~~

~~B. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.~~

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~~C. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.~~

~~D. Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.~~

~~E. Regulations.~~

~~F.A.~~ Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws, including compliance with Whatcom County stormwater and drainage regulations in WCC 20.80.630 through 20.80.635.

1. Development shall meet minimum requirements 1 – 9 of the current stormwater manual, as applicable. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention, and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

2. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan or administrative conditions.

B. To avoid water quality degradation by malfunctioning or failing septic systems located within shoreline jurisdiction, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards. The owner must be in compliance with WCC 24.05.160, (Operation and Maintenance).

~~G.C.~~ Septic tanks and drainfields are prohibited where public sewer is reasonably available [DN52].

~~H.D.~~ All materials that may come in contact with water shall be constructed of materials, ~~such as~~ untreated wood, concrete, approved plastic composites, ~~or steel,~~ that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic, ~~or pentachlorophenol is prohibited in or above shoreline water bodies.~~

E. ~~Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate. [AP53]~~ Outfalls (including stormwater and sewer outfalls) and discharge pipes shall not be located in critical saltwater habitats or areas where outfall or discharge will adversely affect critical saltwater habitat, unless the applicant can show that all of the following can be met:

1. There is no feasible alternative location for the outfall or pipe;

2. The outfall or pipe is placed below the surface of the beach or bed of the waterbody, ~~except at the point of discharge;~~

3. The discharge point(s) on the outfall or discharge pipe is located so the discharges, including nutrients and flow, do not adversely affect critical saltwater habitats; and

4. For public sewage outfalls:

1. The outfall discharges waterward of the intertidal zone.

2. The disturbed area will be revegetated with native vegetation.

H.F. The use of existing outfalls shall be maximized to limit the need for additional outfalls, provided the existing outfall meets the standards of this section, or unless an alternatives analysis demonstrates the dispersal is less impacting to the shoreline environment. [AP54]

**23.90.05030.0430 Views and Aesthetics.**

**~~A. Policies.~~**

~~b. Shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline.~~

~~c. Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures.~~

~~d. Aesthetic objectives should be implemented through regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards, sign control regulations, appropriate development siting, designation of view corridors and maintenance of natural vegetative buffers.~~

~~e. Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological and/or aesthetic values, and/or slope stability. Vegetation conservation should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological functions and aesthetics.~~

**~~A. Regulations.~~**

**~~A. When the two are in conflict,~~** Protection and/or enhancement of critical areas and their associated buffers shall be preferred over provisions for new visual access except where otherwise allowed by this program, when the two are in conflict.

**~~G. The following standards shall apply to developments and uses within the jurisdiction of this program:~~**

**~~B. To protect views of the shoreline from existing structures, setbacks may be modified pursuant to WCC 23.400.020(D) (Shoreline Bulk Provisions, Setbacks)~~**

**~~C. To minimize impacts to views from the water, the Director may require the planting of vegetation to mitigate the impacts.~~**

**~~H.D. Where commercial, industrial, mixed use, multifamily, and/or multi-lot-unit developments are proposed, primary structures shall provide for reasonable view corridors between buildings.~~**

**~~H.E. Buildings shall incorporate architectural and/or landscape features that reduce scale or bulk, such as setbacks, vegetation, pitched roofs, offsets, angled facets, and recesses.~~**

**~~J.F. Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.~~**

**~~K.G. Building mechanical equipment shall be incorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.~~**

**~~L.H. Any other design standards included in community plans or regulations adopted by Whatcom County shall apply.~~**

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~~M-I.~~ Fences, walls, ~~other than retaining walls~~ [AP55], hedges, and other similar accessory structures, excluding those associated with agricultural uses, shall be limited to four feet in height between the ordinary high water mark and structures, and within shoreline view areas as defined in WCC Chapter 23.11.60 (Definitions); provided, that, within shoreline view areas, the ~~administrator~~ Director may approve a greater height where a fence or other feature is parallel to the right-of-way and does not extend above a line of sight between the ordinary high water mark and a point three and one-half feet above the centerline of the road.

~~N.~~ ~~Where permitted, fences, walls, hedges and other similar structures shall be limited to four feet in height within critical area buffers. Outside of critical area buffers, fences shall be limited to six feet in height.~~ [DN56]

J. Fences, walls, hedges, or ~~private~~ accessory structures on public property shall not be permitted to obscure shoreline views within shoreline view areas as defined in WCC Chapter 23.11.60 or from existing residences on adjacent property, ~~or views from the water~~, unless specific findings are made that the proposed view obstruction is justified by overriding considerations of the public interest.

K. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas; prevent glare on adjacent properties, public areas, or roadways; ~~to avoid infringing on the use and enjoyment of such areas; and to prevent hazards.~~ Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas, and screening. [DN57]

~~O-L.~~ Where shoreline setbacks or buffers are ~~allowed to be reduced per this program, the proposed use or development shall not be permitted to substantially obscure shoreline views within shoreline view areas as defined in WCC Chapter 23.60 (Definitions) or from existing residences on adjacent property.~~ [AP58]

M. Limbing, clearing, and/or thinning for limited view corridors shall only be allowed pursuant to WCC 16.16.235(B)(5) (Activities Allowed with Notification), except that view corridors are not permitted in the Natural shoreline environment.

~~— Stairs and walkways located within the shoreline or critical area buffers shall not exceed four feet in width; provided, that where ADA requirements apply, such facilities may be increased to five feet in width. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.~~ [T59]

### **23.90.06030.0540 Vegetation Conservation Management.**

1. Pursuant to WCC 16.16.710, shorelines are designated as Fish & Wildlife Habitat Conservation Areas. Within these areas and their buffers it is important to protect and enhance vegetation to provide ecological and habitat functions as well as human health and safety. Vegetation management practices consist of retaining or improving vegetated areas to protect the integrity, functions, and values of the affected critical area (shoreline) while allowing the shoreline buffer to be modified to accommodate allowed uses when consistent with the Act and this program.

2. Vegetation management within the shoreline buffer shall adhere to the regulations of WCC Chapter 16.16 (Critical Areas). In addition:

1. Vegetation clearing within shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development.



~~1.2. Design of structures~~ Shoreline development shall conform to natural contours and minimize disturbance to soils and native vegetation, ~~as feasible. Feasible shall include incorporation of trails or stairs from parking areas on steep slopes, and other design elements to lessen the need to alter natural contours and minimize soil and native vegetation disturbance.~~ Tiered foundations shall be ~~incorporated~~ incorporate with earth retention ~~incorporated~~ into the structure real design. [DN60]

~~2.3. Where compliance with subsection (B)(1) of this section is not feasible or required, new~~ All shoreline developments shall ~~be required to~~ develop and implement a vegetation management plan. ~~When required, vegetation management plans shall be~~ prepared by a qualified professional and ~~shall be~~ consistent with the requirements in WCC 16.16.260 (BG) and (CH); provided, that the ~~administrator~~ Director may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County auditor.

~~— Policies.~~

- ~~— Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:~~
  - ~~— Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.~~
  - ~~— Regulating microclimate in riparian and nearshore areas.~~
  - ~~— Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macroinvertebrates.~~
  - ~~— Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.~~
  - ~~— Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.~~
  - ~~— Improving water quality through filtration and vegetative uptake of nutrients and pollutants.~~
  - ~~— Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.~~
  - ~~— Providing habitat for wildlife, including connectivity for travel and migration corridors.~~

~~0. — B. Regulations.~~

~~0. — Shoreline developments shall comply with the vegetation conservation policies of this program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.~~



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- 1     ~~3. Nonconforming lots that do not provide sufficient area to meet the standard dimensional~~  
2     ~~requirements for buffers and setbacks as provided for in WCC 23.50.070(N) and are not located~~  
3     ~~within a landslide, alluvial fan, or riverine and coastal erosion hazard areas, as defined in WCC~~  
4     ~~16.16.310, may employ the following standards in lieu of the vegetation management provisions~~  
5     ~~of subsection (B)(2) of this section:~~
- 6     ~~— An inner management zone shall extend perpendicularly from the shoreline ordinary~~  
7     ~~high water mark or critical area edge a distance equal to 50 percent of the buffer~~  
8     ~~dimension established for nonconforming lots in WCC 23.50.070(N). In the inner~~  
9     ~~management zone:~~
- 10     ~~— Lawn or turf is prohibited due to its limited functional benefits and need for~~  
11     ~~chemical and fertilizer applications. Understory consisting of native groundcover~~  
12     ~~and shrubs shall be provided at a sufficient density to prevent erosion, stabilize~~  
13     ~~soils, and intercept surface runoff.~~
- 14     ~~— Native trees shall be provided at a sufficient density and species composition to~~  
15     ~~mimic natural vegetative conditions for purposes of creating shade, attenuating~~  
16     ~~water temperature, stabilizing soils, and providing large woody debris and other~~  
17     ~~organic inputs critical for aquatic resources.~~
- 18     ~~a. An outer management zone shall extend from the outer boundaries of the inner~~  
19     ~~management zone to the edge of the critical area buffer. Within the outer management~~  
20     ~~zone:~~
- 21     ~~— Vegetation management shall consist of the requirements of subsection (B)(3)(a) of~~  
22     ~~this section; provided, that on slopes of 25 percent or less, lawn, turf, ornamental~~  
23     ~~vegetation or gardens may be allowed on up to 10 percent of the area or 500 square~~  
24     ~~feet, whichever is greater.~~
- 25     ~~— Lawn or turf shall be prohibited on slopes greater than 25 percent.~~
- 26     ~~3. Vegetation clearing shall be limited to the minimum necessary to accommodate approved~~  
27     ~~shoreline development.~~
- 28     ~~3. Removal of noxious weeds and/or invasive species shall be incorporated in vegetation~~  
29     ~~management plans, as necessary, to facilitate establishment of a stable community of native~~  
30     ~~plants.~~
- 31     ~~3. Clearing, pruning and revegetation of buffer areas, except landslide hazard areas and buffers~~  
32     ~~and riverine and coastal erosion hazard areas and buffers, may be conducted in accordance with~~  
33     ~~the regulations in WCC 16.16.235(5).~~
- 34     ~~3. Selective vegetation clearing and pruning may be allowed in landslide hazard areas and/or~~  
35     ~~riverine and coastal erosion hazard areas and/or their buffers pursuant to an approved~~  
36     ~~vegetation management plan designed to improve overall slope or bank stability. The plan shall~~  
37     ~~be prepared by a qualified professional and reviewed by a licensed geologist or geotechnical~~  
38     ~~engineer.~~
- 39     ~~3. Vegetation conservation standards shall not apply retroactively to existing uses and~~  
40     ~~developments, such as existing agricultural practices. [CES61]~~

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4. ~~Vegetation conservation standards do not apply to the removal of hazard trees pursuant to WCC 16.16.230(F).~~

4. ~~Unless otherwise stated, the vegetation conservation regulations of this program do not apply to commercial forest practices as defined by this program when such activities are covered under the Washington State Forest Practices Act (Chapter 76.09 RCW), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, and Chapter 16.16 WCC, and shall be limited to the minimum necessary to accommodate an approved use. [AP62]~~

### ~~23.90.07030.0650~~ **Archaeological, Historic, and Cultural Resources.** [AP63]

#### A. Project Approval Requirements.

1. Upon receipt of an application for a permit, exemption, or other approval for a proposed project, the County shall determine whether the project lies within 500 feet of a site known to contain a cultural resource based on the Washington State Department of Archaeology & Historic Preservation's (DAHP) Inventory of Cultural Resources.
2. If the project meets this criterion, a cultural resources survey and report meeting the requirements of subsection (B) shall be required.
3. Whatcom County shall provide the cultural resource report to DAHP—and if Native American cultural resources are addressed, to the Lummi Nation Tribal Historic Preservation Office, the Nooksack Tribe, and/or other affected Native American Tribes—for a fifteen (15) day review and comment opportunity. Said review period may run concurrently with other required public review periods, such as for SEPA.
4. Based upon consultation with DAHP and the affected Tribe(s), the Director may approve the report or reject or request revision of the conclusions reached and/or management recommendations when the assessment is inaccurate or does not fully address the cultural resource management concerns involved.
5. If the cultural resource report identifies the presence of a cultural resource, any permit issued shall be conditioned on meeting the approved report's management recommendations.
6. Regardless of whether any cultural resources are identified or not, any activities are still subject to the state and federal regulations, including those regarding inadvertent discoveries (RCWs 68.50.645, 27.44.055, and 68.60.055).
7. Final cultural resource reports shall be filed with DAHP prior to the County's issuance of a permit, exemption, or other approval by the applicant or his/her agent. The project's cultural resource professional shall also uploading their reports and site forms to WISAARD, the state's digital repository for architectural and archaeological resources and reports maintained by DAHP.
8. Any costs associated with a cultural resource review shall be borne by the applicant.

**B. Cultural Resources Report Standards.**

1. Cultural resources reports shall meet the most recent “Washington State Standards for Cultural Resource Reporting” issued by DAHP (<https://dahp.wa.gov/project-review/washington-state-standards-for-cultural-resource-reporting>)
2. Cultural resources reports addressing archaeological resources shall be conducted by a professional archaeologist that meets the Secretary of the Interior Professional Qualification Standards (36 CFR Part 61). Cultural resources reports addressing historic resources shall be conducted by a qualified historic preservation professional.
3. If the cultural resource assessment identifies the presence of a cultural resource, the report must provide management recommendations that, at a minimum, conform to DAHP’s most current management standards. Such recommendations will depend on the resource identified, but may include but are not limited to:
  - a. Inadvertent Discovery Plan;
  - b. On-site monitoring by a qualified professional and/or a Tribal representative;
  - c. Avoidance, by redesigning the project; or
  - d. When impacts cannot be avoided, obtaining a Cultural Resource Permit (see RCWs 27.44 and 27.53; <https://dahp.wa.gov/archaeology/archaeological-permitting>, and <https://apps.leg.wa.gov/WAC/default.aspx?cite=25-48-060>).

**A. Policies.** [PDS64]

- ~~The county should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known significant local historic, cultural and archaeological sites in observance of applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent.~~
- ~~1. Site development plans should incorporate provisions for historic, cultural and archaeological site preservation, restoration and education with open space or recreation areas whenever compatible and possible.~~
  - ~~1. Cooperation among involved private and public parties is encouraged to achieve the archaeological, historical and cultural element goals and objectives of this program.~~
  - ~~1. Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that appropriate agencies such as the Lummi Nation, Nooksack Tribe, Washington State Department of Archaeology and Historic Preservation, and others may have ample time to assess the site and make arrangements to preserve historical, cultural and archaeological values as applicable.~~
  - ~~1. Private and public owners of historic sites should be encouraged to provide public access and educational opportunities in a manner consistent with long-term protection of both historic values and shoreline ecological functions.~~
  - ~~1. Historic, cultural and archaeological site development should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.~~

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~~If development is proposed adjacent to an identified historic, cultural or archaeological site, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural or archaeological site.~~

~~2. The cultural resource provisions of this program are consistent with Chapters 27.44 and 27.53 RCW and WAC 25-48-060. In accordance with state law, all applicants are subject to these requirements.~~

### ~~A. Regulations:~~

#### ~~KKK. Known Archaeological, Historic, and Cultural Resources:~~

~~Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural, or archaeological resource(s), the county shall require a cultural resource site assessment; provided, that the provisions of this section may be waived if the administrator determines that the proposed development activities do not include any ground-disturbing activities and will not impact a known historic, cultural, or archaeological site. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of significant historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five copies of the site assessment to the administrator for distribution to the applicable parties for review.~~

~~If the cultural resource site assessment identifies the presence of significant historic or archaeological resources, a cultural resource management plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The applicant shall submit a minimum of five copies of the CRMP to the administrator for distribution to the applicable parties for review.~~

~~A CRMP shall contain the following minimum elements:~~

- ~~i. The purpose of the project; and~~
- ~~i. A site plan for proposed on-site development; and~~
- ~~i. Depth and location of all ground-disturbing activities including, but not limited to, utilities, driveways, clearing, and grading; and~~
- ~~i. An examination of project on-site design alternatives; and~~
- ~~i. An explanation of why the proposed activity requires a location on, or access across and/or through, a significant historic or archaeological resource; and~~
- ~~i. A description of the historic/archaeological resources affected by the proposal; and~~
- ~~i. An assessment of the historic/archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and~~

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- ~~i.—An analysis of how these impacts have been avoided, or w~~
    - ~~—Where avoidance is not possible, how these impacts have been mitigated/minimized;~~
    - ~~and~~
  - ~~ii.—A recommendation of appropriate mitigation measures, which may include but are not limited to the following:~~
    - ~~—Recording the site with the State Department of Archaeology and Historic Preservation, or listing the site in the National Register of Historic Places, Washington Heritage Register, as applicable, or any locally developed historic registry formally adopted by the Whatcom County cCouncil;~~
    - ~~—Preservation in place;~~
    - ~~—Re-interment, in the case of grave sites;~~
    - ~~—Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);~~
    - ~~—Excavation and recovery of archaeological resources;~~
    - ~~—Inventorying prior to covering of archaeological resources with structures or development; and~~
    - ~~—Monitoring of construction excavation.~~
  - ~~ii.—An outline of actions to be taken by the property owner, developer, archaeologist, or historic preservation professional, as applicable, in the event that an inadvertent discovery of historic, cultural, or archaeological sites or artifacts occurs during site development, which includes the following:~~
    - ~~—A statement that work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the administrator and other appropriate governments and agencies.~~
    - ~~—Contact information for applicable parties, agencies, and governments including the county administrator, the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe, professional archaeologist or historic preservation professional; and in the event of inadvertent discovery of human remains, additional contact information for the Whatcom County Sheriff's office, Whatcom County Medical Examiner, and/or Lummi Repatriation Office.~~
    - ~~—Proposed measures to stabilize, contain, or otherwise protect the area of inadvertent discovery until a site investigation and/or site assessment is conducted.~~
  - ~~ii.—Where provision of public access for the purpose of public education related to a private or publicly owned building or structure of historic significance is desired by the property owner, a public access management plan shall be developed in consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe, and/or other agencies, as appropriate, to address the following:~~

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- 1           A. ~~The type and/or level of public access that is consistent with the long-term~~  
2           ~~protection of both historic resource values and shoreline ecological functions and~~  
3           ~~processes; and~~  
4           ~~—Site and resource-specific conditions and/or improvements including the~~  
5           ~~following, as applicable:~~  
6           ~~(0) Hours of operation,~~  
7           ~~(0) Interpretive and/or directional signage,~~  
8           ~~(0) Lighting,~~  
9           ~~(0) Pedestrian access, and/or~~  
10          ~~(0) Traffic and parking.~~  
11          ii. ~~Where provision of public access for purposes of public education related to an~~  
12          ~~archaeological or cultural resource site is desired by the property owner, the~~  
13          ~~Washington State Department of Archaeology and Historic Preservation, Lummi~~  
14          ~~Nation Tribal Historic Preservation Office, Nooksack Tribe, and/or other agencies, as~~  
15          ~~appropriate, shall be in agreement prior to providing public access to the site. An~~  
16          ~~access and resource management plan shall be developed in consultation with the~~  
17          ~~Washington State Department of Archaeology and Historic Preservation, the Lummi~~  
18          ~~Nation Tribal Historic Preservation Office, and the Nooksack Tribe.~~  
19          ~~—The recommendations and conclusions of the CRMP shall be used to assist the administrator~~  
20          ~~in making final administrative decisions concerning the presence and extent of historic/~~  
21          ~~archaeological resources and appropriate mitigating measures. The administrator shall~~  
22          ~~consult with the Washington State Department of Archaeology and Historic Preservation,~~  
23          ~~Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe prior to approval of~~  
24          ~~the CRMP.~~  
25          ~~—The administrator may reject or request revision of the conclusions reached in a CRMP~~  
26          ~~when the administrator can demonstrate that the assessment is inaccurate or does not fully~~  
27          ~~address the historic/archaeological resource management concerns involved.~~  
28          ~~—Upon receipt of a complete development permit application in an area of known historic/~~  
29          ~~archaeological resources, the county shall notify and request a recommendation from~~  
30          ~~appropriate agencies such as the Washington State Department of Archaeology and Historic~~  
31          ~~Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe.~~  
32          ~~Recommendations of such agencies and other affected persons shall be duly considered and~~  
33          ~~adhered to whenever possible and reasonable. Notification shall include the following~~  
34          ~~information:~~  
35                  i. ~~The date of application, the date of notice of completion for the application, and the~~  
36                  ~~date of the notice of application;~~  
37                  i. ~~A site map including the street address, tax parcel number, township, range, and section~~  
38                  ~~of the proposed project area;~~  
39                  i. ~~A description of the proposed project action and a list of the project permits included in~~  
40                  ~~the application, and, if applicable, a list of any studies requested by the cCounty;~~

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- ~~i. The identification of other permits not included in the application to the extent known by the cCounty;~~
    - ~~i. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;~~
    - ~~i. Any other information determined appropriate by the Ccounty;~~
    - ~~i. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;~~
    - ~~i. A statement of the limits of the comment period and the right of each agency to comment on the application within a 15-day time period, request a copy of the decision once made, and to appeal a decision when allowed by law.~~
  - ~~— In granting shoreline permits or statements of exemption for such development, the cCounty may attach conditions to provide sufficient time and/or conditions for consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and to assure that historic/archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic/archaeological sites shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the Washington State Department of Archaeology and Historic Preservation pursuant to Chapters 27.44 and 27.53 RCW may apply in addition.~~
- ~~KKK. Inadvertent Discovery.~~
  - ~~0. Whenever historic, cultural, or archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately, the site secured, and the find reported as soon as possible to the administrator. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and the administrator, shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, the administrator may require that an immediate site assessment be conducted or may allow stopped work to resume.~~
  - ~~0. If a site assessment is required, the area of inadvertent discovery shall be stabilized, contained, or otherwise protected until the site assessment and/or CRMP is completed. The site assessment shall be prepared pursuant to subsection (B)(1)(a) of this section to determine the significance of the discovery and the extent of damage to the resource and shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe for a 15-day review period or, in the case of inadvertent discovery of human remains, a 30-day review period to determine the~~



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~~significance of the discovery. If the site has been determined not to be significant by the above-listed agencies or governments, or if the above-listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.~~

~~0. Upon receipt of a positive determination of a site's significance, the administrator may invoke the provisions of subsections (B)(1)(b) through (d) of this section for a cultural resource management plan, if such action is reasonable and necessary to implement related SMP objectives.~~

~~KKK. The requirements of subsection (B)(1) of this section do not apply where an applicant/project proponent has obtained an approved archeological excavation and removal permit from the Washington State Department of Archaeology and Historic Preservation pursuant to WAC 25-48-060; provided, that the applicant must adhere to the requirements of said approved permit.~~

### **23.90.08030.0760 Public Access.** [AP65]

#### ~~—Policies.~~

- ~~— Use and development that provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state are a preferred use.~~
- ~~— Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. Public health and safety concerns should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured. As required by the governing principles, all such conditions should be consistent with all relevant constitutional and other legal limitations on regulation of private property.~~
- ~~— Public access should be provided for water-oriented uses and non-water-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing, legal access opportunities.~~
- ~~— Non-water-related uses or activities located on the shoreline should provide public access as a public benefit.~~
- ~~— Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective and fair to all affected parties including but not limited to the land owner and the public.~~
- ~~— Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.~~
- ~~— Shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, should provide public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline.~~

#### ~~—Regulations.~~

~~J.A. In the review of All shoreline substantial development, shoreline conditional use permits, or developments of more than four residential lots or dwelling units, consideration of shall provide~~

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public access ~~shall be required, subject to the test stated in subsection (A)(2) of this section.~~ When appropriate, provisions for adequate public access shall be incorporated into such proposals, including land division. An applicant shall not be required to provide public access if the decision-maker determines that one or more of the following conditions apply unless the applicant/proponent demonstrates that one or more of the following provisions apply:

- ~~1. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;~~
- ~~2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;~~
- ~~3.1. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long-term cost of the [CES66] proposed development;~~
- ~~4. Significant environmental impacts will result from the public access that cannot be mitigated;~~  
~~— Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.~~
2. The parcel is separated from the water by an existing developed road or an additional parcel that serves to create a distinct break in connectivity to the shoreline.
3. Other reasonable and safe opportunities for public access to the shoreline are located within one-quarter mile of the proposed development site.
4. The site is part of a larger development project that has previously provided public access as part of the development permitting process.
5. The proposed development is for the subdivision of property into four or fewer parcels.
6. The proposed development consists of only agricultural activities.
7. Provision of public access on the site would pose a health or safety risk to the public due to the nature of the proposed use or activity or the location of public access, or would be infeasible due to security requirements associated with the proposed development.
8. Provision of public access at the proposed development site would result in a net loss of shoreline ecological function that cannot be effectively mitigated or avoided, or would pose a risk to threatened and/or endangered species listed under the Endangered Species Act.
- 5.9. The proposal consists solely of a new or expanded utility crossing through shoreline jurisdiction, serving development located outside shoreline jurisdiction [CES67]

~~— When provisions for public access are required as a condition of project approval, the administrator shall prepare written findings, pursuant to Chapter 23.60 WCC, demonstrating consistency with the principles of nexus and proportionality and the test stated in subsection (A)(2) of this section and WCC 23.50.080(A).~~

~~— Prior to deciding public access is not required pursuant to subsection (B)(1)(a) through (e) of this section, the county must determine that all reasonable alternatives have been exhausted; including, but not limited to:~~

- ~~1. Regulating access by such means as maintaining a gate and/or limiting hours of use;~~
- ~~1. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and~~

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~~1. Providing for access at a site geographically separated from the proposal such as a street end, vista, tideland or trail system.~~

~~. Public access shall not be required for the following uses except as determined on a case-by-case basis in conjunction with the provisions of subsection A of this section and this subsection B:~~

~~1. Single-family residential development of four or fewer lots.~~

~~1. Dredging.~~

~~1. Forest practices.~~

~~1. Landfill and excavation.~~

~~1. Mining.~~

~~1. Private docks serving four or fewer dwelling units.~~

~~1. Instream structures.~~

~~1. Shoreline stabilization.~~

~~1. Ecological restoration or enhancement activities not associated with development when the purpose of the project would be undermined.~~

~~1. Agriculture.~~

**B.** Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means ~~of to~~ view and/or physically approach ~~to~~ public waters, and may include interpretive centers and displays.

**C.** Where public access planning as described in WAC 173-26-221(4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, the County may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements. [CES68]

~~R.D.~~ Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and the maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority. [AP69]

~~S.E.~~ Alternate off-site provision of public access to shorelines may be used upon approval, as a means of offsetting identifiable on-site impacts. If public access is demonstrated to be infeasible or inappropriate on site due to significant interference to operations or hazards to life and property, alternative visual access opportunities ~~may be provided at a location not directly adjacent to the water~~ (such as a viewpoint, observation tower, or other areas serving as a means to view public waters (such as an interpretive center and displays explaining maritime history and industry) ~~may be provided at a location not directly adjacent to the water~~; provided, that visual access to the water is provided.

**F.** Public access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished (RCW 35.79.035 and 36.87.130).

~~T.G.~~ Shoreline development by public entities shall include public access measures as part of each development project.

~~—~~ Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized. [DN70]

~~U.~~ Public access shall incorporate the following location and design criteria: [CES71]

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Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the property is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to five feet in width to reduce impacts to ecologically sensitive resources.

Public access shall be located adjacent to other public areas, accesses, and connecting trails, connected to the nearest public street, and include provisions for handicapped and physically impaired persons where feasible.

Where views of the water or shoreline are available and physical access to the water's edge is not present or appropriate, a public viewing area shall be provided.

Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.

Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.

Public amenities appropriate to the use of a public access area such as benches, picnic tables, and sufficient public parking to serve the users shall be provided.

Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste, and other appropriate public facilities.

The minimum width of public access easements shall be 10 feet, unless the administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the hardship.

The requirement for public access on a specific site may be fulfilled by:

Participation in a public access plan incorporated in the program; or

Provision of facilities specified in a permit approval.

Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.

Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.

Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the county auditor's office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.

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Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or nonprofit agency through a formal agreement recorded with the County Auditor's office.

Public access facilities shall be available to the public 24 hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of subsection (B)(1) of this section.

The standard state approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.

Incentives for public access improvements such as density or bulk and dimensional bonuses shall be considered through applicable provisions of zoning and subdivision regulations.

### 23.390.090 Site planning. [DN72]

#### Policies.

Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering and other appropriate design approaches.

Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including, but not limited to, porous paving blocks, porous concrete and other similar materials should be incorporated in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographic modification, vegetation clearing, use of impervious surfaces and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering geologist should be consulted prior to using infiltration practices on shore bluffs.

Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within shorelines jurisdiction, uses and/or developments such as parking, service buildings or areas, access roads, utilities, signs and storage of materials should be located inland away from the land/water interface and landward of water-oriented developments and/or other approved uses.

Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.

Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

#### Regulations.

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1 ~~Where appropriate new development shall use clustering to minimize adverse impacts on~~  
2 ~~shoreline ecological functions and processes.~~

3 ~~An assessment of the existing ecological functions and/or processes provided by topographic,~~  
4 ~~physical and vegetation characteristics of the site shall accompany development proposals;~~  
5 ~~provided, that proposals for single-family residences shall be exempt from this requirement.~~

6 ~~Such assessments shall include the following general information:~~

7 ~~Impacts of the proposed use/development on ecological processes with clear designation of~~  
8 ~~existing and proposed routes for water flow, wildlife movement and other features.~~

9 ~~Infrastructure requirements such as parking, services, lighting and other features, together with~~  
10 ~~the effects of those infrastructure improvements on shoreline ecological functions and/or~~  
11 ~~processes.~~[DN73]

12 ~~Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and~~  
13 ~~alteration of topography and natural features. Roadway and driveway alignment shall follow the~~  
14 ~~natural contours of the site and minimize width to the maximum extent feasible. Elevated~~  
15 ~~walkways should be utilized to cross wetlands.~~

16 ~~Impervious surfacing for parking lot/space areas shall be minimized through the use of~~  
17 ~~alternative surfaces where feasible, consistent with the May 2005 Low Impact Development~~  
18 ~~Technical Guidance Manual for Puget Sound.~~[DN74]

19 ~~Utilities shall be located within roadway and driveway corridors and rights-of-way wherever~~  
20 ~~feasible.~~[CES75]

21 ~~Design of structures should conform to natural contours and minimize disturbance to soils and~~  
22 ~~native vegetation. Foundations shall be tiered with earth retention incorporated into the~~  
23 ~~structure.~~[DN76]

24 ~~Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground~~  
25 ~~water interflow processes where appropriate.~~[DN77]

26 ~~Fencing, walls, hedges and similar features shall be designed in a manner that does not preclude~~  
27 ~~or significantly interfere with wildlife movement to/from important habitat areas.~~[AP78]

28 ~~Accessory uses that do not require a shoreline location shall be sited away from the land/water~~  
29 ~~interface and landward of the principal use and, unless otherwise specified, shall observe critical~~  
30 ~~area regulations and buffers in Chapter 16.16 WCC.~~[DN79]

31 ~~Development shall be located, designed, and managed so that impacts on public use of the~~  
32 ~~shoreline are minimized.~~[DN80]

33 ~~Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and~~  
34 ~~water-related recreation shall be protected through specific provisions to avoid impacts, or~~  
35 ~~provide access as applicable.~~[DN81]

36 ~~Interior and exterior lighting shall be designed and operated to avoid illuminating nearby~~  
37 ~~properties or public areas, prevent glare on adjacent properties, public areas or roadways to~~  
38 ~~avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of~~  
39 ~~controlling spillover light include, but are not limited to, limits on height of structure, limits on~~  
40 ~~light levels of fixtures, light shields, setbacks, buffer areas and screening.~~[DN82]

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1 All facilities shall be located and designed to avoid impediments to navigation and to avoid  
2 depriving other properties of reasonable access to navigable waters. Review and approval by  
3 the U.S. Coast Guard may be required as a condition of issuance of building or development  
4 permits to assure compliance. All in-water structures shall be marked and lighted in compliance  
5 with U.S. Coast Guard regulations. [DN83]

6 All shoreline use and development shall provide setbacks from adjacent properties in  
7 accordance with WCC Table 23.90.130(C). Setbacks shall be of adequate width to attenuate  
8 proximity impacts such as noise, light and glare, and may address scale and aesthetic impacts.  
9 Fencing or landscape areas may be required to provide a visual screen. [DN84]

10 ~~KKK.H.~~



Chapter ~~23.100~~23.40 Shoreline Use and Modification Regulations [AP85]

~~23.100~~23.40.010 Shoreline Use and ~~Development~~ Modification.

A. All uses and modifications in shoreline areas shall be subject to the policies and regulations of this program.

B. Table 1. Shoreline Use by Environment Designation generally sets forth the permissible uses within the respective shoreline environment designations in the county. It should be read in close conjunction with the definitions in Chapter 23.60 (Definitions) and the other provisions in this program. The contents of Table 1 provisions are subject to limitations, conditions, and exceptions listed under of each of the categories of this chapter. Such text modifies the requirements of Table 1, and in the event there is a conflict between ~~the use(s) identified in Table 23.100.010 Table 1~~ and the policies or regulations, the policies and regulations shall prevail~~apply~~.

C. Shoreline use and development shall be classified by the ~~administrator~~Director and regulated under one or more of the following applicable sections of WCC Chapter ~~23.100~~23.40 (Shoreline Use and Modification Regulations). ~~Unless otherwise stated, all use and development shall also comply with all of the general policies and regulations of Chapter 23.90 WCC and, if applicable, the policies of Chapter 23.40 WCC. A proposed development may contain different types of uses and/or modifications, and may be classified under and be subject to multiple categories (e.g., a marina may fall under and be subject to Marinas, Moorage, Commercial, and Industrial, depending on what is proposed).~~

D. ~~(b) In the Aquatic~~ shoreline environment designation, only W~~water-dependent uses shall be allowed only~~, subject to the use and development regulations of the abutting upland shoreline ~~area~~ environment designation.

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Table 1. WCC Table 23.100.010<sup>(a)</sup>

Table 1. Shoreline Use by Environment Designation

Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point Mgmt Area
<b>Agriculture</b>										
<a href="#">Agriculture – General</a>	P <sup>(+)</sup>	X	P <sup>(+)</sup>	P <sup>(+)</sup>	P <sup>*</sup>	P	P	<del>P<sup>(+)</sup></del> <del>X</del> <sup>(CES86)*</sup>	X	<u>P</u>
<a href="#">Liquid Manure Storage Facilities and Spreading</a>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
<a href="#">Animal Feeding Operations and Confined Animal Feeding Operations (AFOs/CAFOs)</a>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
<b>Aquaculture</b>										
<a href="#">Aquaculture – General</a>	P	P <sup>*(+)</sup>	P	P <sup>*(+)</sup>	P <sup>(+)</sup>	P	P	<del>P<sup>(+)</sup></del> <del>X</del> <sup>(CES87)*</sup>	<u>P</u> <u>see upland</u>	<u>P</u>
Commercial Salmon Net Pen Facilities	X <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	<u>X</u>
Commercial Geoduck Aquaculture	<u>C<sup>(+)</sup></u>	<u>C<sup>(+)</sup></u>	<u>C<sup>(+)</sup></u>	<u>C<sup>(+)</sup></u>	<u>C<sup>(+)</sup></u>	<u>C<sup>(+)</sup></u>	<u>C<sup>(+)</sup></u>	<u>C<sup>(+)</sup></u>	<u>C<sup>*</sup></u>	<u>C</u>
<b>Marinas and Launch RampsBoating Facilities</b>										
<a href="#">Marinas, including accessory structures</a>	P	P	C	P	P	<u>PX</u>	C	X	<u>P</u> <u>see upland</u>	<u>X</u>
<a href="#">Launch ramps – Marina</a>	P	P	<u>PC</u>	P	P	<u>PX</u>	<u>PC</u>	X <sup>(+)</sup>	<u>P</u> <u>see upland</u>	<u>X</u>
<a href="#">Launch ramps – Public</a>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X/P*</u>	<u>see upland</u>	<u>P</u>
<a href="#">Launch ramps – Residential</a>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>see upland</u> <u>X</u>	<u>X</u>
<a href="#">Accessory Structures</a>	<u>P<sup>(+)</sup></u>	<u>P<sup>(+)</sup></u>	<u>C</u>	<u>P<sup>(+)</sup></u>	<u>P<sup>(+)</sup></u>	<u>P<sup>(+)</sup></u>	<u>C</u>	<u>X</u>	<u>see upland</u>	
Covered Over-Water	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P <sup>*(+)</sup>	P <sup>(+)</sup>

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point Mgmt Area
Structures										
<b>Commercial</b>										
<u>Water-Dependent Commercial</u>	<u>P</u>	<u>P*</u>	<u>C*</u>	<u>P</u>	<u>P</u>	<u>P*</u>	<u>C*</u>	<u>X</u>	<u>see upland</u>	<u>P</u>
<u>Water-oriented-Related and Water-Enjoyment Commercial</u>	P	P <sup>(+)</sup>	C <sup>(+)</sup>	P	P	P <sup>(+)</sup>	C <sup>(+)</sup>	X	X <sup>(+)</sup>	<u>P</u>
Non-Water-Oriented Commercial	C	C <sup>(+)</sup>	C <sup>(+)</sup>	C	C	C <sup>(+)</sup>	C <sup>(+)</sup>	X	X	<u>C</u>
<b>Dredging and Dredge Material Disposal</b>										
Dredging	C	C	C	C	C	C	C	X/ <u>P</u> <sup>(+)</sup>	C <sup>(+)</sup>	X/ <u>C</u> <sup>(+)</sup>
Maintenance Dredging	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P*</u>	<u>P*</u>
Dredge Material Disposal	<u>P</u> <sup>(+)</sup>	<u>P</u> <sup>(+)</sup>	<u>P</u> <sup>(+)</sup>	<u>P</u> <sup>(+)</sup>	<u>P</u> <sup>(+)</sup>	<u>P</u> <sup>(+)</sup>	<u>P</u> <sup>(+)</sup>	<u>P</u> <sup>(+)</sup>	X <sup>(+)</sup>	<u>P</u>
<b>Essential Public Facilities</b>										
	C	C	C	C	C	C	C	X	C	<u>C</u>
<b>Landfill and Excavation</b>										
	<u>P</u> <sup>(+)</sup> / <u>C</u>	<u>P</u> <sup>(+)</sup> / <u>C</u>	<u>P</u> <sup>(+)</sup> / <u>C</u>	<u>P</u> <sup>(+)</sup> / <u>C</u>	<u>P</u> <sup>(+)</sup> / <u>C</u>	<u>P</u> <sup>(+)</sup> / <u>C</u>	<u>P</u> <sup>(+)</sup> / <u>C</u> / <u>GP</u> <sup>(+)</sup> / <u>C</u> / <u>CES88</u>	X <sup>(+)</sup>	<u>C</u> <sup>(+)</sup> / <u>X</u> <sup>(+)</sup> / <u>C</u> <sup>(+)</sup>	X/ <u>C</u> <sup>(+)</sup>
<b>Flood Control-Hazard Reduction and Instream Structures</b>										
<u>Flood Hazard Reduction Control and Instream Structures – General</u>	P	P	P	P	P	P	P	X	<u>see upland</u>	<u>P</u>
Channelization or Dams for <u>Hazard Reduction Flood Control</u>	P	P	X	P	C	C	X	X	<u>see upland</u> <sup>P</sup>	<u>P</u>

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	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point Mgmt Area
Forest Practices[CES89]										
Outside of shorelines of statewide significance	<u>X</u> P	<u>X</u> P	<u>X</u> P	<u>X</u> P	P	P	P	C <sup>(+)</sup>	<u>see upland</u> X	<u>P</u>
Within shorelines of statewide significance	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Industrial and Port										
Water-Dependent Industrial and Port Development	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u> *	<u>P/C</u> *	<u>X</u>	<u>X</u>	<u>see upland</u>	<u>P</u>
Water-oriented-Related and Water-Enjoyment Industrial and Port development	P	X <sup>(+)</sup>	X	X	<u>P</u> * <sup>(+)</sup>	<u>P</u> <sup>(+)</sup> / <u>C</u> *	X	X	<u>P/C</u> <sup>(+)</sup> <u>X</u>	<u>P</u> <sup>(+)(+)</sup>
Existing legal fossil-fuel refinery operations or existing legal fossil fuel transshipment facilities	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>P</u>
Expansion of existing legal fossil-fuel refinery operations or expansion of existing legal fossil fuel transshipment facilities	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>
New or expansion of existing legal renewable fuel refinery operations or renewable fuel transshipment facilities[CES90]	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>
Non-Water-Oriented Industrial and Port Development	C	X	X	X	C	C <sup>(+)</sup>	X	X	X	X

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	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point Mgmt Area
<a href="#">Terminals for Passenger-Only Vessels</a>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<a href="#">see upland</a>	<u>C</u>
<a href="#">In-Water Log Storage</a>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>C</u> →	<u>X</u>
<del>Dams, Diversion, and Tailrace Structures for Hydroelectric Power Generation</del>	<del>C</del>	<del>X</del>	<del>C</del>	<del>C</del>	<del>C</del>	<del>C</del>	<del>C</del>	<del>X</del>	<del>see upland</del> <u>P</u>	<del>X</del> [CES91]
<b>Institutional</b>										
	C	C	C	C	C	C	C	X	X	X
<b>Land Division</b>										
<a href="#">Boundary Line Adjustments and Lot Consolidation</a>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
<a href="#">Short Plats</a>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
<a href="#">Subdivisions</a>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
<b>Mining</b>										
<a href="#">Mining – General</a>	X	X	X	X	C	C	C	X	<del>C</del> → <u>X</u> *	<u>C</u>
Surface oil or gas drilling	X	X	X	X	X	X	X	X	X	X
<b><del>Moor</del>age Structuresage: Docks, Piers, and Mooring Buoys</b>										
<a href="#">Private Individual DeckMoorage (other than mooring buoys) – Freshwater</a>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<a href="#">see upland</a>	<u>X</u>
<a href="#">Private Individual DeckMoorage (other than mooring buoys) – Marine</a>	<u>P</u>	<u>C</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>X</u>	<a href="#">see upland</a>	<u>X</u>

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<u>Private Shared Deck Moorage</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>see upland</u>	<u>X</u>
<del>Private and Shared Moorage</del>	<del>P</del>	<del>C</del>	<del>P(+)/C(+)</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P(+)/C(+)</del>	<del>X(+)</del>	<del>P</del>	
Public Moorage <u>(other than mooring buoys)</u>	C	C	C	C	C	C	C	<del>X</del> <u>C</u> (+)	<u>see upland</u> <sup>P</sup>	<u>X</u>
Commercial Moorage <u>(other than mooring buoys)</u>	C	<del>X</del> <u>C</u> (+)	C	C	C	C	C	X(+)	<u>see upland</u> <sup>P</sup>	<u>X</u>
Industrial Moorage <u>(other than mooring buoys)</u>	C	X	X	X	C	C	X	X(+)	<u>see upland</u> <sup>P</sup>	<del>Existing: P(+)</del> <del>New: X</del> <sup>[CES92]</sup>
Covered Moorage Accessory to Permitted Moorage	<del>C</del> <u>P</u>	<del>C</del> <u>P</u>	X	<del>C</del> <u>P</u>	X	X	X	X	<u>see upland</u> <sup>P</sup>	C
Float Plane Moorage Accessory to Permitted Moorage	C	C	C	C	C	C	C	X	<u>see upland</u> <sup>P</sup>	<u>C</u>
<del>Recreational Mooring Buoys</del>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>see upland</u>	<del>X</del> <u>P</u>
<b>Recreational</b>										
Water-Oriented Recreation	P	P	P(+)	P	P	P(+)	P(+)	P(+)	P(+)/C(+)	P(+)
Non-Water-Oriented Recreation	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>X</u>
<b>Residential</b> <sup>[AP93]</sup>										
<del>Single-Family</del>	P	P	P(+)/C	P	P	P(+)	P(+)/C	<del>C(+)/X</del> <u>C</u> (+)	X	<del>X</del> <u>P</u>

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Duplex	P	P	P	P	P	P	P	X	X	X
Multi-Family	P	P	C	P	P	X	C	X	X	X
Over-Water Residences	X	X	X	X	X	X	X	X	X	X
Restoration and Enhancement										
	P	P	P	P	P	P	P	P	P	P
Shoreline Stabilization*										
Groins <sup>[CES94]</sup>	G <sup>(+)</sup> X	G <sup>(+)</sup> X	X	G <sup>(+)</sup> X	G <sup>(+)</sup> X	G <sup>(+)</sup> X	X	X	G <sup>(+)</sup> X	X
Breakwaters and Jetties	C <sup>(+)</sup>	C <sup>(+)</sup>	C <sup>*(+)(+)</sup>	C <sup>(+)</sup>	C <sup>(+)</sup>	C <sup>(+)</sup>	C <sup>*(+)(+)</sup>	X	C <sup>(+)</sup>	C <sup>(+)(+)</sup>
Bulkheads and Revetments	P <sup>(+)</sup>	P <sup>(+)</sup>	C <sup>(+)</sup>	P <sup>(+)</sup>	P <sup>(+)</sup>	P <sup>(+)</sup>	C <sup>(+)</sup>	X <sup>(+)</sup>	X <sup>(+)</sup>	C <sup>(+)</sup>
Drift Sills	P	P	C	P	P	P	C	X	See upland	C
Gabions	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X	X	X/C*
Revetments	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X	X*	X/C*
Bioengineering Approaches & other Soft-Shore Measures	P	P	P	P	P	P	P	P <sup>*(+)</sup>	P <sup>*(+)</sup>	P
Signs										
	P	P	P	P	P	P	P	X <sup>(+)</sup>	P <sup>*(+)</sup>	P



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<b>Transportation</b>										
Transportation Facilities serving a specific approved use*	P	P	P(+)	P	P	P	P(+)	X(*)	P(+)/C(*)	P(+)
Transportation Facilities not serving a specific approved use	C	C	X	C	C	C	X	X	C	X
<b>Utilities</b>										
Accessory Utilities	P	P	P	P	P	P	P	P	P	P
Local Utilities distribution facilities	P(+)	P(+)	P(+)/C(*)	P(+)	P(+)	P(+)	P(+)/C(*)	X(+)	P(+)/C(+)/X*	P(+)
Regional transmission facilities utilities [AP95]	C(+)	C(+)	C(+)	C(+)	C(+)	C(+)	C(+)	X(+)	C(+)/X*	C(+)
Desalinization Facilities	C(+)	C(+)	C(+)	C(+)	C(+)	C(+)	C(+)	X(+)	C(+)	C(+)
Dams, Diversion, and Tailrace Structures for Hydroelectric Power Generation	C	X	C	C	C	C	C	X	see upland	X [CES96]

P = Permitted, ~~may be~~ subject to policies and regulations of this program ~~and subject to shoreline substantial development permit requirements.~~

C = Shoreline conditional use, subject to policies and regulations of this program ~~and may be subject to shoreline substantial development permit requirements.~~

(-) Subject to limitations.

(+) Subject to conditions.

(\*) Subject to exceptions.

X = Prohibited.

N/A = Not applicable.

\* = Refer to the regulations under this use and modification category for certain caveats.

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~~(a) In the event that there is a conflict between the use(s) identified in Table 23.1040.010 and the policies or regulations in Chapters 23.230, 23.390, or 23.4100 WCC, the policies and regulations shall apply.~~

~~(b) Aquatic: Water dependent use only, subject to the use and development regulations of the abutting upland shoreline area designation.~~

**23.4100.020 Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage.**<sup>[AP97]</sup>

- ~~— Policies. Standards for density, setbacks, height, and other provisions should ensure no net loss of shoreline ecological functions and/or processes and preserve the existing character of the shoreline consistent with the purpose of the shoreline area designation.~~
- ~~— Regulations.~~
- A. **Error! Reference source not found.** ~~Table of Bulk Regulations. WCC Table 23.90.130(C)~~ establishes the minimum required dimensional requirements for development, uses, and activities including all structures and substantial alteration of natural topography. Dimensional standards relating to critical areas are governed by the provisions of WCC Chapter 16.16. Dimensional standards specified in this program shall not exceed the geographic limit of the Act’s jurisdiction. Additional standards may be established in WCC, Chapter ~~23.100~~23.40 (Shoreline Use and Modification Policies and Regulations).
- B. Where the bulk provisions of other County regulations (e.g., Title 20, Zoning) differ, the stricter shall apply.
- C. All measurements except height and area shall be measured outward on the horizontal plane and in the direction that results in the greatest dimension from property lines, or from other features specified.
  - ~~— Except as otherwise stated, the Whatcom County Comprehensive Plan, zoning regulations, critical areas regulations, flood control regulations, subdivision regulations, health regulations and other adopted regulatory provisions apply within shoreline jurisdiction. In the event the provisions of this program conflict with provisions of other county regulations, the more protective of shoreline resources shall prevail.~~
  - ~~— All use and development activities shall conform to all applicable plans, policies, standards, guidelines and regulations of other agencies with jurisdiction in shoreline areas.~~
- D. **Setbacks.**
  1. Setbacks shall be pursuant to **Error! Reference source not found.**; except as allowed by subsection (D)(2).
  2. **Common-Line Setback for Single-Family Residences**<sup>[CES98]</sup>. For the purpose of accommodating views for new residences while protecting predominant shoreline views of the water from legally existing primary residences in developed residential areas, the shoreline buffer (setback) may be modified for primary residential structures in the Urban, Shoreline Residential, and Rural environments (only), consistent with the following. The presence of nearby shacks, sheds, or dilapidated structures does not constitute the existence of a residence, nor can such structures be used to determine a common-line setback.
    - a. Where there are legally established single-family residential primary structures within 150 feet on both sides of the proposed residence, the setback shall be determined as the greater of either:
      - i. A common line drawn between the nearest corners of the foundation closest to the sideyard property line of the proposed residence to each adjacent residence, or
      - ii. A common line calculated by the average of both adjacent residences’ existing setbacks.

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- a. Urban services, including sanitary sewers, public water supply, fire protection, storm drainage, and police protection, must be provided at adequate levels to protect the public health, safety, and welfare.
  - b. Circulation, parking areas, and outdoor storage or loading areas should be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas should be screened from open space areas by landscaping, fences or similar structures, or grade separation.
  - c. Recreational needs of building clientele must be provided for through on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases. [CES100]
  4. In the Cherry Point Management Area, cranes, gantries, mobile conveyors, light standards, and similar equipment necessary for the functions of water-dependent uses or the servicing of vessels may extend above the applicable maximum height limit provided in Table 1, provided that such structures shall be designed to minimize view obstruction. [CES101]
  5. Residential accessory structures that are not waterward of the primary structure may be built to the maximum height for the environment designation. [CES102]
- F. Open Space.** Open space shall be provided for certain types of development, use, or activities. The amount of open space, as a percentage of lot coverage, shall be as provided in **Table 2, below.**
- F.G. Uses Allowed in Buffers and Setbacks.** The following development activities are ~~not subject to~~ allowed in buffers and setbacks; provided, that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline functions and processes; and provided further, that they comply with all the applicable regulations in WCC Chapter 16.16, including mitigation:
1. Those portions of approved private water-dependent development or public water-oriented development that require a location waterward of the ordinary high water mark of streams, rivers, lakes, ponds, marine shorelines, associated wetlands, and/or within their associated buffers.
  2. Accessory and uUnderground utilities.
  3. Necessary power poles and transmission towers are not subject to height limits but shall not be higher than necessary to achieve the intended purpose.
  4. Modifications to existing development that are necessary to comply with environmental requirements of any state or federal agency, when otherwise consistent with this program; provided, that the decision maker determines that the facility cannot meet the dimensional standard and accomplish the purpose for which it is intended and the facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible, and the modification is in conformance with the provisions of Chapter WCC 23.50-070 (Nonconforming Uses, Structures, and Lots) for nonconforming development and uses.
  5. Roads, railways, and other essential public facilities that must cross shorelines and are necessary to access approved water-dependent development.
  6. Stairs and walkways no greater than four feet in width and no higher than 18 inches in height above grade, except for railings; provided, that where ADA requirements apply, such facilities may be increased to five feet in width and the height requirement may be waived to

provide for site-specific ADA compliance. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces. [AP103]

7. Shared moorages ~~shall not be subject to sideyard setbacks~~ when located on or adjacent to a property line shared in common by the project proponents and where appropriate easements or other legal instruments have been executed providing for ingress and egress to the facility.
8. Retaining walls or similar slope stabilization structures, when associated with an approved shoreline use or development consistent with the provisions of this program and demonstrated to be necessary for the approved use or development through a geotechnical analysis. [AP104]
9. Where permitted, fences, walls ~~other than retaining walls~~ [AP105], hedges and other similar structures shall be limited to four feet in height within shoreline setbacks and six feet in height outside of shoreline setbacks; provided, that the Director may exempt security fencing from this requirement as required by federal or state regulations.
10. Signs.
  - a. On publicly owned park properties, interpretive, wayfinding, and park identification signs. [AP106]
  - b. Signage required by state or federal security requirements.
11. Passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails; provided, that all the criteria in WCC 23.40.160(A)(6) (Recreation) are met. [AP107].
- ~~12. Residential accessory structures that are not waterward of the primary structure may be built to the maximum height for the designation.~~ Accessory structures as allowed by 16.16.720(G)(4) Habitat Conservation Areas – Use and Modification.
13. Residential structures which share a common wall with the primary structure shall be considered an extension of the primary structure (i.e., an attached garage) and may be built to the maximum height for the designation.
14. ~~Height limits contained in this program for accessory structures i~~ In the Rural, Resource, or Conservancy shoreline environments, accessory structures that are 150 feet or greater from the OHWM of the Nooksack or Sumas Rivers may be built to the maximum height for the designation. ~~shall not apply within shoreline jurisdiction of the Nooksack and Sumas Rivers beyond 150 feet from the OHWM.~~

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**Table 2. Bulk Regulations for Shoreline Development** ~~WCC Table 23.90.130(C) Buffer, Setbacks, Height, Open Space, and Impervious Surface Coverage Standards for Shoreline Development~~

Shoreline Uses	Shoreline <del>Environment</del> Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Agriculture										
Shoreline Buffer <sup>(1)</sup> Setback	Per Shoreline Buffer Standards in WCC 23.30.040 <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
•Side Setback <sup>(2,3)</sup>	20'	N/A	20'	20'	20'	20'	20'	N/A	N/A	20'
Maximum Height Limit <sup>(5)</sup> (a/b)	35'	N/A	35' / 35'	35' / 35'	35' / 35'	35' / 35'	35' / 35'	N/A	N/A	35'
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title 20.					10% <sup>(9)</sup>	10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title 20.		
Aquaculture										
Shoreline Buffer <sup>(1)</sup> Setback	Per Shoreline Buffer Standards in WCC 23.30.040 <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
•Side Setback <sup>(2,3)</sup>	10'	10'	10'	10'	10'	10'	15'	N/A	N/A	20'
Maximum Height Limit <sup>(4,5)</sup> (a/b)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	10'	20' / 30'
Open Space %	30%	40%	50%	30%	50%	50%	60%	N/A	N/A	30%
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title 20.					10% <sup>(9)</sup>	10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title 20.		
Commercial										
Shoreline Buffer <sup>(1)</sup> Setback	Per Shoreline Buffer Standards in WCC 23.30.040 <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
•Side Setback <sup>(2,3,6)</sup>	5'-*	5'-*	10'-*	10'-*	10'-*	10'-*	15'-*	N/A	N/A	15'
Maximum Height Limit <sup>(4,5)</sup> (a/b/g)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	15'	35'
Open Space % (c/d)	30% / 15%	40% / 20%	60% / 30%	30% / 15%	50% / 25%	50% / 25%	60% / 30%	N/A	N/A	30% / 15%
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title 20.					10% <sup>(9)</sup>	10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title 20.		
Boating Facilities: Marinas and Launch Ramps										
Shoreline Buffer <sup>(1)</sup> Setback	Per Shoreline Buffer Standards in WCC 23.30.040 <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
•Side Setback <sup>(2,3)</sup>	10'	10'	10'	10'	10'	10'	15'	N/A	N/A	20'
Maximum	25' /	25' / 35'	25' / 35'	25' / 35'	20' /	20' / 25'	15' / 25'	N/A	N/A	25' / 35'



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<u>Height</u> <sup>(4,5)</sup> <u>Height Limit</u> (a/b)	35'				25'					
Open Space % (c/d)	15%	30%	50%	15%	30%	30%	50%	N/A	N/A	<u>15%</u>
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					<del>10%</del> <sup>(9)</sup>	<del>10%</del> <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		
Mining										
<u>Shoreline Buffer</u> <sup>(1)</sup> <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
• <u>Side Setback</u> <sup>(2,3)</sup>	N/A	N/A	N/A	N/A	50'	50'	100'	N/A	N/A	<u>50'</u>
Open Space %	N/A	N/A	N/A	N/A	50%	50%	50%	N/A	N/A	<u>50%</u>
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					<del>10%</del> <sup>(9)</sup>	<del>10%</del> <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		
Industrial and Port Development										
<u>Shoreline Buffer</u> <sup>(1)</sup> <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
• <u>Side Setback</u> <sup>(2,3)</sup>	30'	10'	30'	30'	40'	40'	60'	N/A	N/A	<u>40'</u>
<u>Maximum Height</u> <sup>(5)</sup> <u>Height Limit</u> (a/b)	35' / 35'	15' / 25'	20' / 30'	35' / 35'	25' / 35'	25' / 35'	25' / 35'	N/A	20'	<u>25' / 35'</u>
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	<u>30%</u>
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					<del>10%</del> <sup>(9)</sup>	<del>10%</del> <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		
<u>Land Division</u>										
<u>Shoreline Buffer</u> <sup>(1)</sup>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u>									
<u>Side Setback</u> <sup>(2,3)</sup>	<u>Based on shoreline use</u>									
<u>Maximum Height</u> <sup>(5)</sup> (a/b)	<u>Based on shoreline use</u>									
<u>Open Space %</u>	<u>30%</u>	<u>40%</u>	<u>50%</u>	<u>30%</u>	<u>50%</u>	<u>50%</u>	<u>60%</u>	<u>N/A</u>	<u>N/A</u>	<u>30%</u>
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone, WCC Title 20.</u>					<u>10%</u> <sup>(9)</sup>	<u>10%</u> <sup>(9)</sup>	<u>Per the underlying zone, WCC Title 20.</u>		
Recreation										
<u>Shoreline Buffer</u> <sup>(1)</sup> <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
• <u>Side Setback</u> <sup>(2,3)</sup>	10'	10'	15'	10'	15'	15'	20'	20'	N/A	<u>20'</u>

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Shoreline Uses	Shoreline <u>Environment Area</u> Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
<u>*Maximum Height<sup>(4,5)</sup></u> <u>Height Limit (a/b)</u>	25' / 35'	25' / 35'	20' / 35'	25' / 35'	20' / 35'	20' / 35'	15' / 25'	10' / 15'	15'	<u>20' / 35'</u>
Open Space % (c/d)	30% / 25%	40% / 40%	50% / 60%	30% / 25%	50% / 60%	50% / 60%	60% / 75%	95%	N/A	<u>30% / 25%</u>
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					◇◇ 10% <sup>(9)</sup>	◇◇ 10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		
Residential – Single-Family and Duplex										
<u>Shoreline Buffer<sup>(1)</sup></u> <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
◇Maximum Density <sup>(8)</sup>	6:1 ac-	22:1 ac-	6:1 ac-	6:1 ac-	1:1 ac-	1:20 ac-	1:1 ac-	N/A	N/A	<u>1:1 ac</u>
▲Side Setback <sup>(2,3)</sup>	5'	5'	10'	5'	10'	10'	15'	15'	N/A	<u>20'</u>
<u>*Maximum Height<sup>(4,5)</sup></u> <u>Height Limit (a/b)</u>	30' / 30'	30' / 30'	30' / 35'	30' / 30'	30' / 35'	30' / 35'	30' / 35'	30' / 35'	N/A	<u>30' / 35'</u>
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					◇◇ 10% <sup>(9)</sup>	◇◇ 10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		
Residential – Multifamily (3 – 6 units)										
<u>Shoreline Buffer<sup>(1)</sup></u> <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
◇Maximum Density <sup>(8)</sup>	6:1 ac.	22:1 ac.	6:1 ac.	6:1 ac.	1:1 ac.	1:20 ac.	1:1 ac.	N/A	N/A	<u>N/A</u>
▲Side Setback <sup>(2,3,6)</sup> (e/f)	5'→	5'→	15'→	5'→	15'→	15'→	20'	N/A	N/A	<u>N/A</u>
<u>*Maximum Height<sup>(4,5)</sup></u> <u>Height Limit (a/b/g)</u>	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A	<u>N/A</u>
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	<u>N/A</u>
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					◇◇ 10% <sup>(9)</sup>	◇◇ 10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		<u>N/A</u>
Residential – Multifamily (7+ units)										
<u>Shoreline Buffer<sup>(1)</sup></u> <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
◇Maximum Density <sup>(8)</sup>	6:1 ac-	22:1 ac-	6:1 ac-	6:1 ac-	1:1 ac-	1:20 ac-	1:1 ac-	N/A	N/A	<u>N/A</u>
▲Side Setback <sup>(2,3,6)</sup> (e/f)	5'→	5'→	15'→	5'→	15'→	15'→	20'	N/A	N/A	<u>N/A</u>
<u>*Maximum Height<sup>(4,5)</sup></u> <u>Height Limit (a/b/g)</u>	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A	<u>N/A</u>
Open Space	30%	40%	50%	30%	50%	50%	60%	N/A	N/A	<u>N/A</u>

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	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					◇◇ 10% <sup>(9)</sup>	◇◇ 10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		<u>N/A</u>
Residential – Decks and Accessory Structures										
Shoreline Buffer <sup>(1)</sup> Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
Side Setback <sup>(2,3)</sup>	5'	5'	10'	5'	10'	10'	15'	15'	N/A	
*Height Limit <sup>(4)</sup>	15'	15'	15'	15'	15'	15'	15'	15'	N/A	
Transportation Facilities										
Shoreline Buffer <sup>(1)</sup> Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
Signs										
**Shoreline Buffer <sup>(1,7)</sup> Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
Side Setback <sup>(1,2,3)</sup>	5'	5'	10'	5'	10'	10'	15'	N/A	N/A	<u>10'</u>
*Maximum Height <sup>(4,5)</sup> Height Limit (a/b)	10' / 15'	10' / 15'	6' / 10'	10' / 15'	6' / 10'	6' / 10'	6' / 10'	N/A	10'	<u>6' / 10'</u>
Utilities										
Shoreline Buffer <sup>(1)</sup> Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
Side Setback <sup>(1,2,3)</sup>	5'	5'	10'	5'	10'	10'	15'	N/A	N/A	<u>10'</u>
*Maximum Height <sup>(4,5)</sup> Height Limit (a/b)	20' / 35'	20' / 35'	20' / 20'	20' / 35'	20' / 20'	20' / 20'	20' / 20'	N/A	N/A	<u>20' / 20'</u>
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	<u>50%</u>
Impervious Surface Coverage	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					◇◇ 10% <sup>(9)</sup>	◇◇ 10% <sup>(9)</sup>	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .		
All Other Development										
Shoreline Buffer <sup>(1)</sup> Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <del>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</del>									
Side Setback <sup>(2,3)</sup>	10'	10'	10'	10'	15'	15'	20'	N/A	N/A	
*Maximum Height <sup>(4,5)</sup> Height Limit (a/b)	25' / 35'	25' / 35'	25' / 35'	20' / 30'	20' / 30'	20' / 30'	20' / 30'	N/A	N/A	
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	
Impervious Surface	Per the underlying zone <del>district</del> , WCC Title <u>20</u> .					◇◇	◇◇	Per the underlying		

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Shoreline Uses	Shoreline <u>Environment Area</u> Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Coverage						10% <sup>(9)</sup>	10% <sup>(9)</sup>	zone <del>district</del> , WCC Title <u>20</u> .		

## Footnotes:

(1) = Water dependent development shall have a buffer of zero feet. Unless specifically exempted from setback requirements in WCC 23.40.020, minimum required setbacks for permanent freestanding signs are 50 feet from the OWHM where not subject to critical areas or buffers. Other non-water dependent uses that may be allowed within the shoreline buffer are identified in WCC 23.40.020(G).

(2) = Roof overhangs or other architectural features shall not project further than 18 inches into the side setbacks.

(3) = A side setback of 5 feet applies to residential decks and accessory structures 15 feet tall or less.

(4) = Maximum height for accessory structures is 15 feet, except as provided in WCC 23.40.020(E).

(5) = Maximum height is as shown, except as provided in WCC 23.40.020(E).

(6) = Add five feet of setback for each five feet of height over 15 feet.

(7) = See WCC 23.40.200 (Signs) for additional allowances and restrictions.

(8) = Maximum allowable development density shall be calculated pursuant to the applicable underlying zone district, per WCC Title 20; provided, that maximum allowable density in dwelling units/acre shall not exceed the density ratios identified above. Density shall be calculated based on the total area of the parent parcel including those areas located outside of shoreline jurisdiction. Submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in density calculations.

(9) = Where the maximum total impervious surface percentage does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.

(a/b) = ~~"a"~~ Applies to structures within 100 feet of OHWM or wetland edge; ~~z~~.

~~"b"~~ ~~a~~ Applies to structures more than 100 feet from OHWM or wetland edge.

(c/d) = ~~"c"~~ ~~a~~ Applies to development that includes overnight lodging; ~~z~~.

~~"d"~~ = ~~A~~ Applies to development that does not include overnight lodging.

(e/f) ~~e~~ = ~~"e"~~ ~~A~~ Applies to structures not more than 35 feet high; ~~z~~.

~~"f"~~ = ~~A~~ Applies to structures more than 35 feet high.

~~g~~ = Height limit may be increased to 75 feet via conditional use permit – see WCC 23.90.130(B)(5).

~~+~~ = Add five feet of setback for each five feet of height over 15 feet.

~~\*~~ = Maximum height for accessory buildings is 15 feet.

~~\*\*~~ = See WCC 23.100.140(B)(10) through (14).

~~^~~ = Roof overhangs or other architectural features shall not project further than 18 inches into the side yard setbacks.

~~◇~~ = Maximum allowable development density shall be calculated pursuant to the applicable underlying zone district, per WCC Title 20; provided, that maximum allowable density in dwelling units/acre shall not exceed the density ratios identified above. Density shall be calculated based on the total area of the parent parcel including those areas located outside of shoreline jurisdiction. Submerged lands and/or tidelands within the boundaries of

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~~any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in density calculations.~~

~~◇ ◇ = Where the maximum total impervious surface percentage does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.~~

N/A = Not applicable.

**23.40.030 General Shoreline Use and Modification Regulations**

- A. Proposed uses and developments shall limit the number and extent of shoreline modifications.[CES108]
- B. Shoreline uses and developments that are water-dependent shall be given priority. Permit conditions may limit the range of uses or sites developed for such uses.
- ~~B-C.~~ Interim non-water-dependent uses authorized as a shoreline conditional use may be allowed to respond to short-term market conditions; provided, that permit conditions are placed on such uses to provide for a specific timetable or review process to ensure water-dependent use of the development in the long term.
- ~~C-D.~~ Shoreline uses and developments shall be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.
- ~~D-E.~~ Navigable waters shall be kept free of obstructions for the general benefit of the region, state, and nation. No use or development shall be allowed to effectively exclude other appropriate uses from navigable waters.
- F. Shoreline uses and developments shall be located in a manner so that shoreline stabilization is not likely to become necessary in the future[DN109].
- G. Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and not placed waterward of the principal use.[CES110]
- ~~E-H.~~ Nothing in the policies or regulations may be construed as to impinge on tribal treaty rights exercised within usual and accustomed areas.[AP111]
- I. No ~~flood control works or instream structures~~ shoreline use or development may commence without the proponent~~developer~~ having obtained all applicable federal, state, and local permits and approvals, including but not limited to a Hydraulic Permit Application (HPA) from the State Department of Fish and Wildlife.[AP112]
- J. Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches, wetlands and/or their associated buffers; except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted.[CES113]
- K. Buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to or from important habitat areas consistent with the applicable provisions of this program; provided, that the Director may exempt security fencing associated with residential, industrial, and/or commercial developments from this requirement on a case-by-case basis.[CES114]

**23.4100.030-040 Agriculture.**

- ~~A. Policies.~~
  1. ~~This program recognizes the importance of agriculture in Whatcom County and supports its continued economic viability. This program allows for ongoing agricultural activities and should protect agricultural lands from conflicting uses such as intensive or unrelated residential,~~

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~~industrial or commercial uses, while also maintaining shoreline ecological functions and processes.~~

~~0. Agricultural uses and development in support of agricultural uses should be conducted in such a manner as to assure no net loss of shoreline ecological functions and processes and avoid substantial adverse impacts on other shoreline resources and values.~~

~~0. Conversion of agricultural uses to other uses should comply with all policies and regulations for nonagricultural uses.~~

## ~~Regulations.~~

### A. General.

1. Agricultural activities within shorelines are governed by the critical areas regulations in WCC Chapter 16.16, including the conservation program on agricultural lands (CPAL) provided for in ~~therein~~ WCC 16.16.290.

1.2. Accessory uses and buildings shall observe critical area buffer requirements ~~as defined in (see~~ WCC Chapter 16.16); except that utility development associated with an approved agriculture activity or development may encroach on critical area buffers where it can be demonstrated that the proposed utility development is essential to the agriculture activity or development and that such development complies with the general provisions of WCC Chapter 16.16; such utilities shall be placed underground where feasible.

2.3. Intentional discharge of any manure storage facility into ground or surface water is prohibited.

3.4. Feedlots are prohibited in critical areas and their buffers ~~as defined in (see~~ WCC Chapter 16.16).

4.5. Conversion of agricultural uses to other uses shall comply with the provisions of WCC Chapter 16.16 and this program for the proposed use.

### B. Regulations for Specific Shoreline Environment Designations.

5.1. In the Natural shoreline environment, only low-intensity agricultural activities are permitted; provided, that the use does not expand or alter agricultural practices in a manner inconsistent with the purpose of this designation.

## ~~Shoreline Area Regulations.~~

~~0. Urban. Agricultural activities are permitted subject to policies and regulations of this program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.~~

~~0. Urban Resort. New agricultural activities are prohibited.~~

~~0. Urban Conservancy. Agricultural activities are permitted subject to policies and regulations of this program, except that new animal feeding operations/concentrated animal feeding operations (AFO/CAFOs) are not permitted.~~

~~0. Shoreline Residential. Agricultural activities are permitted subject to policies and regulations of this program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.~~

~~0. Rural. Agricultural activities are permitted subject to policies and regulations of this program.~~

~~0. Resource. Agricultural activities are permitted subject to policies and regulations of this program.~~

~~0. Conservancy. Agricultural activities are permitted subject to policies and regulations of this program.~~



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1. ~~Natural. Low intensity agricultural activities are permitted subject to policies and regulations of this program; provided, that the use does not expand or alter agricultural practices in a manner inconsistent with the purpose of this designation. All other agricultural activities are prohibited.~~
- ~~—Aquatic. New agricultural activities are prohibited. Farming of fin fish, shellfish and management of other aquatic products are subject to the policies and regulations for aquaculture under WCC 23.100.030.~~ [CES115]

### **23.4100.040-050 Aquaculture.** [CES116]

~~Aquaculture in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~Nothing in these policies or regulations may be construed as to impinge on tribal treaty rights exercised within usual and accustomed areas. See also the policy in subsection (A)(8) of this section and the regulation in subsection (B)(1)(u) of this section.~~ [AP117]

#### **A. Policies.**

~~D. Aquaculture is a water dependent use and, when consistent with control of pollution and avoidance of adverse impacts to the environment and preservation of habitat for resident native species, is a preferred use of the shoreline (WAC 173-26-241(3)(b)).~~

~~E. Potential locations for aquaculture activities are relatively restricted because of specific requirements related to water quality, temperature, oxygen content, currents, adjacent land use, wind protection, commercial navigation, and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the regulations of this section; provided, that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration.~~

~~F. Preference should be given to those forms of aquaculture that involve lesser environmental and visual impacts and lesser impacts to native plant and animal species. In general, projects that require no structures, submerged structures or intertidal structures are preferred over those that involve substantial floating structures. Projects that involve little or no substrate modification are preferred over those that involve substantial modification. Projects that involve little or no supplemental food sources, pesticides, herbicides or antibiotic application are preferred over those that involve such practices.~~

~~G. Community restoration projects associated with aquaculture should be reviewed and permitted in a timely manner.~~

~~H. Aquaculture activities should be designed, located and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species including eelgrass, kelp, and other macroalgae; adversely impact other habitat conservation areas; or interfere with navigation or other water dependent uses.~~

~~I. Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations through potential~~

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contribution of antibiotic resistant bacteria, or escapement of nonnative species, or other adverse effects on ESA listed species should not be permitted.

J. ~~The county should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate federal, state and local agencies; the Lummi Nation, Nooksack Tribe, and other affected tribes; and the general public regarding potential adverse impacts. Comments of nearby residents or property owners directly affected by a proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.~~

K. ~~The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed through the permit review process. Direct coordination between the applicant/proponent and the tribe should be encouraged.~~

L. ~~Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; and on the aesthetic qualities of a project area.~~

M. ~~Legally established aquaculture enterprises, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Use or developments that have a high probability of damaging or destroying an existing aquaculture operation may be denied.~~

N. ~~Experimental aquaculture projects in water bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the state of Washington.~~

### ~~A. Regulations.~~

#### ~~P.A. General Site Design and Operation.~~

1. ~~Aquaculture activities proposed within Shorelines of Statewide Significance shall be subject to, first, the policies contained in Chapter 23.40 WCC, Shorelines of Statewide Significance, and, second, the policies and regulations contained in this section.~~ [CES118]

2.1. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site.

3.2. The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible.

4.3. Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact ~~existing kelp beds or other macroalgae, eelgrass beds~~ critical saltwater habitat, or other fish and wildlife habitat conservation areas.

~~5.4.~~ Aquaculture activities, ~~which that~~ would have a significant adverse impact on natural, dynamic shoreline processes or ~~which that~~ would result in a net loss of shoreline ecological functions, shall be prohibited.

~~6. Aquaculture uses and facilities shall be located at least 600 feet from any national wildlife refuge lands; except that:~~

~~i. Projects involving substantial substrate modification and/or fish net pens, if authorized, shall be located 1,500 feet or more from such areas.~~

~~i. Lesser distances may be authorized by permit if it is demonstrated by the applicant/proponent that the wildlife resource will be protected and if the change is supported by the WDFW, the Lummi Nation and/or Nooksack Tribe.~~

~~i. Greater distances may be required if supported by the reviewing resource agencies and/or where there is sound evidence demonstrating that a greater distance is required.~~ [AP119]

~~10.5.~~ Unless otherwise provided in the shoreline permit issued by the County, repeated introduction of an approved organism in the same location shall require approval by the County only at the time the initial aquaculture use permit is issued. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of Whatcom County regardless of whether it is a native or resident organism within the county and regardless of whether it is being transferred from within or without the waters of Whatcom County.

~~11.6.~~ The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the applicant/proponent and the affected tribe(s) through the permit review process.

#### B. Site Design and Operation.

1. Aquaculture ~~practices~~ shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants and animals.

2. Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and/or equipment shall be removed or repaired promptly by the owner, including when a business ceases operations. Where any structure might constitute a potential hazard to the public in the future, the County shall require the posting of a bond commensurate with the cost of removal or repair. The County may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in 30 days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies.

3. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.

4. Predator control shall not involve the killing or harassment of birds or mammals. Approved controls include, but are not limited to, double netting for seals, overhead netting for birds, and three-foot-high fencing or netting for otters. The use of other nonlethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

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5. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (Chapter 90.48 RCW). No garbage, waste~~s~~, or debris shall be allowed to accumulate at the site of any aquaculture operation.
6. No processing of any aquaculture product, except for the sorting or culling of the cultured organisms~~s~~ and the washing or removal of surface materials or organisms after harvest, shall occur in or over the water unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be subject to the ~~policies of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines) and~~ regulations of WCC ~~23.40.100~~23.40.120 (Industrial and Port Development), in addition to the regulations in this section.
7. For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of the ordinary high water mark shall be limited to containers of not more than three feet in height, as measured from the surface of the raft or dock; provided, that in locations where the visual impact of the proposed aquaculture structures will be minimal, the County may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant/proponent. Materials ~~which-that~~ are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the ordinary high water mark.
8. The County shall reserve the right to require aquaculture operations to carry liability insurance in an amount commensurate with the risk of injury or damage to any person or property as a result of the project. Insurance requirements shall not ~~be required to~~ duplicate requirements of other agencies.
9. Where aquaculture activities are authorized to use ~~public~~County facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities.

### C. Additional Standards for Net Pens.

1. Fish net pens and rafts shall meet the following criteria in addition to the other applicable regulations of this section:
  - a. Fish net pens shall meet, at a minimum, state-approved administrative guidelines for the management of net pen cultures. In the event there is a conflict in requirements, the more restrictive requirement shall prevail.
  - b. Fish net pens shall not occupy more than two surface acres of water area, excluding booming and anchoring requirements. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed. Such operations shall not use chemicals or antibiotics.
  - c. Aquaculture proposals that include net pens or rafts shall not be located closer than one nautical mile to any other aquaculture facility that includes net pens or rafts; provided, that a lesser distance may be authorized if the applicant/proponent can demonstrate that the proposal will be consistent with the environmental and aesthetic policies ~~and objectives of~~ the Whatcom County Comprehensive Plan Chapter 11 (Shorelines). If a lesser distance is

- 1 requested, the burden of proof shall be on the applicant/proponent to demonstrate that the
- 2 cumulative impacts of existing and proposed operations would not be contrary to the
- 3 policies of the Comprehensive Plan and regulations of this program.
- 4 d. Net cleaning activities shall be conducted on a frequent enough basis so as not to violate
- 5 state water quality standards. When feasible, the cleaning of nets and other apparatus shall
- 6 be accomplished by air drying, spray washing, or hand washing.
- 7 e. In the event of a significant fish kill at the site of a net pen facility, the fin fish aquaculture
- 8 operator shall submit a timely report to the Whatcom County Health Department,
- 9 Environmental Health division, and the Whatcom County Planning and Development
- 10 Services Department stating the cause of death and shall detail remedial action(s) to be
- 11 implemented to prevent reoccurrence.
- 12 2. Commercial salmon net pen facilities shall not be located in Whatcom County waters, except for
- 13 limited nonprofit penned cultivation of wild salmon stocks during a limited portion of their
- 14 lifecycle to enhance restoration of native stocks when such activities involve minimal
- 15 supplemental feeding and no use of chemicals or antibiotics.~~[AP120]~~s shall not be considered
- 16 commercial salmon net pen facilities and may be permitted.
- 17 D. Additional Standards for Commercial Geoduck Aquaculture.
- 18 1. Commercial geoduck aquaculture shall only be allowed where sediments, topography, land, and
- 19 water access support geoduck aquaculture operations without significant clearing or
- 20 grading.~~[AP121]~~
- 21 2. Shoreline conditional use permits are required for new commercial geoduck aquaculture and
- 22 existing aquaculture being converted to commercial geoduck aquaculture. However, shoreline
- 23 conditional use permits must take into account that commercial geoduck operators have a right
- 24 to harvest geoduck once planted and all subsequent cycles of planting and harvest shall not
- 25 require a new shoreline conditional use permit.
- 26 3. A substantial development permit is not required for the planting, growing, and harvesting of
- 27 farm-raised geoduck clams unless a specific project or practice causes substantial interference
- 28 with normal public use of the surface waters.~~[AP122]~~
- 29 ~~Shoreline conditional use permits must take into account that commercial geoduck operators~~
- 30 ~~have a right to harvest geoduck once planted.~~
- 31 4. A single shoreline conditional use permit application may be submitted for multiple sites within
- 32 an inlet, bay, or other defined feature, provided the sites are all under control of the same
- 33 applicant and under the County's shoreline permitting jurisdiction.
- 34 E. Additional Standards for Experimental Aquaculture.
- 35 1. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, and for all
- 36 experimental aquaculture activities, baseline and periodic operational monitoring by a County-
- 37 approved consultant (unless otherwise provided for) may be required, at the
- 38 applicant's/proponent's expense, and shall continue until adequate information is available to
- 39 determine the success of the project and/or the magnitude of any probable significant adverse
- 40 environmental impacts. Permits for such activities shall include specific performance measures

- 1 and provisions for adjustment or termination of the project at any time if monitoring indicates
- 2 significant; adverse environmental impacts that cannot be adequately mitigated.
- 3 2. Aquaculture developments, not including net pens, approved on an experimental basis shall not
- 4 exceed five acres in area (except land-based projects and anchorage for floating systems) and
- 5 three years in duration; provided, that the County may issue a new permit to continue an
- 6 experimental project as many times as is deemed ~~necessary and~~ appropriate.
- 7 3. ~~New a~~Aquatic species that are not previously cultivated in Washington State shall not be
- 8 introduced into Whatcom County salt ~~waters~~ or freshwaters without prior written approval of
- 9 the Director of the Washington State Department of Fish and Wildlife and the Director of the
- 10 Washington Department of Health. In saltwaters, the County shall not issue permits for projects
- 11 that include the introduction of such organisms until it has also received written comment from
- 12 the Marine Resources Committee, the Lummi Nation, and the Nooksack Tribe; provided, that
- 13 such comment is received in a timely manner. This regulation does not apply to Pacific, Olympia,
- 14 Kumomoto, Belon, or Virginica oysters; Manila, Butter, or Littleneck clams; or geoduck clams.
- 15 Q.F. Supplemental Application Requirements – General Aquaculture. [CES123]
- 16 1. In addition to the minimum application requirements specified in WCC Title 22 (Land Use and
- 17 Development), Applications for aquaculture use or development shall include ~~in their~~
- 18 ~~applications~~ all information necessary to conduct a thorough evaluation of the proposed
- 19 aquaculture activity, including but not limited to the following:
- 20 a. A site plan map including:
- 21 i. The perimeter of the proposed aquaculture operations area.
- 22 ii. Existing bathymetry depths based on mean lower low water (MLLW datum).
- 23 iii. Adjacent upland use, vegetation, presence of structures, docks, bulkheads and other
- 24 modifications. If there are shore stabilization structures, provide the beach elevation at
- 25 the toe of the structure and the top of the structure (MLLW datum).
- 26 iv. Areas where specific substrate modification will take place or structures will be
- 27 constructed or installed.
- 28 v. Access provisions for barges or track equipment.
- 29 vi. Location of storage or processing structures or facilities.
- 30 b. A baseline description of existing conditions, including best available information on:
- 31 i. Water quality.
- 32 ii. Tidal variations.
- 33 iii. Prevailing storm wind conditions.
- 34 iv. Current flows.
- 35 v. Flushing rates.
- 36 vi. Littoral drift.
- 37 vii. Areas of differing substrate composition.
- 38 viii. Areas of aquatic, intertidal, and upland vegetation complexes. A vegetation habitat
- 39 survey must be conducted. WDFW must be contacted prior to the survey to ensure it is
- 40 conducted according to their most current eelgrass/macroalgae survey guidelines.
- 41 ix. Existing shoreline or water uses and structures.

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x. Aquatic and benthic organisms. Information must include an assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site.

~~—A vegetation habitat survey must be conducted. The WDFW must be contacted prior to the survey to ensure it is conducted according to the most current WDFW eelgrass/macroalgae survey guidelines.~~

~~xi. —Assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site.~~

Further baseline studies including surveys and sampling may be required depending upon the adequacy of available information, existing conditions, and the nature of the proposal.

c. A detailed description of the project proposal including:

i. Species to be reared.

ii. Substrate modification or vegetation removal.

iii. Planting, harvest and processing location, method and timing, including work proposal and construction techniques proposed (list all hand tools, machinery used (such as track hoes, trucks or barges), type of work, frequency, and duration.

d. Anticipated use of any feed, pesticides, herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals, and an assessment of predicted impacts. Approvals for the use of ~~No~~ such materials shall be ~~used until approval is~~ obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and Drug Administration, and the Washington State Departments of Ecology, Fish and Wildlife, and Agriculture, as required, and ~~proof thereof is~~ submitted to the County. ~~Compounds with the least persistence shall be used.~~ An annual report of antibiotic use shall be submitted to the Whatcom County Department of Health, Environmental Health division. The report shall indicate the type and amount of antibiotics used during the previous calendar year. Actual usage data for all chemicals and antibiotics shall be maintained for review by County inspectors at all times.

e. Number of employees/workers necessary for the project, including average and peak employment.

f. Methods of waste disposal and predator control.

g. Methods to address pollutant loading, including biological oxygen demand (BOD).

h. Assessment of potential impacts on shoreline ecological functions and processes addressing the baseline conditions identified, including but not limited to indirect and cumulative effects.

i. A visual impact analysis ~~F~~for floating culture facilities or other structures, if required by the County ~~may require a visual impact analysis.~~ (See the Department of Ecology’s “Aquaculture Siting Study” 1986 for general approach.) Depending on the size and complexity of the proposal, such analysis may be prepared by the applicant/proponent, without professional assistance; provided, that it includes an adequate assessment of impacts.



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- j. Information demonstrating that the site has natural potential for the type(s) of aquaculture proposed, due to necessary substrate or other conditions, as well as water quality suitable for the type(s) of aquaculture proposed.
  - k. Information demonstrating that the proposed aquaculture activities will not result in a net loss of shoreline ecological functions or processes or adversely affect habitat conservation areas ~~as defined by~~(see WCC Chapter 16.16 (Critical Areas)).
  - l. Information demonstrating that the proposed aquaculture activities will not substantially and materially conflict with areas devoted to established uses of the aquatic environment. Such uses include but are not limited to navigation, moorage, sport or commercial fishing, log rafting, underwater utilities, and scientific research. Existing public opportunities for gathering wild stock aquatic resources on public lands shall be addressed in any application for aquaculture on public tidelands or bedlands. Compensation for loss of public access to public aquatic resources may be required.
  - m. Other pertinent information deemed necessary by the ~~administrator~~Director.
2. Applications for aquaculture activities must demonstrate that the proposed activity will be compatible with surrounding existing and planned uses.
    - a. Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise.
    - b. Aquaculture activities shall ~~be restricted to reasonable hours and/or days of operation when necessary to minimize substantial~~, adverse impacts from noise, light, and/or glare on nearby residents, other sensitive uses, or critical habitat.
    - c. Aquaculture facilities shall not ~~significantly impact introduce incompatible visual elements or substantially degrade~~ the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials.[CES124]
- G. Supplemental Application Requirements – Commercial Geoduck Aquaculture.
1. In addition to the general application requirements of WCC Title 22 (Land Use and Development), subsection F, above, and chapter 173-27 WAC, applications for new geoduck aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:
    - a. A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above;
    - b. A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application or comparable information mentioned above; and
    - c. Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.[AP125]

H. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Resort, Shoreline Residential, and Rural shoreline environments, proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.
- ~~1.2.~~ In the Natural shoreline environment, aquaculture activities that do not require structures, facilities, or mechanized harvest practices and that will not result in the alteration of natural systems or features are permitted.

~~B. Shoreline Area Regulations.~~ [AP126] [CES127]

- ~~— Urban. Aquaculture activities are permitted subject to policies and regulations of this program.~~
- ~~— Urban Resort. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.~~
- ~~— Urban Conservancy. Aquaculture activities are permitted subject to policies and regulations of this program.~~
- ~~— Shoreline Residential. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.~~
- ~~— Rural. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis.~~
- ~~— Resource. Aquaculture activities are permitted subject to policies and regulations of this program.~~
- ~~— Conservancy. Aquaculture activities are permitted subject to policies and regulations of this program.~~
- ~~— Natural. Aquaculture activities that do not require structures, facilities or mechanized harvest practices and that will not result in the alteration of natural systems or features are permitted subject to policies and regulations of this program.~~

~~23.4100.050060 Boating Facilities~~ —Marinas and Launch Ramps.

~~A. Policies.~~

- ~~B. Boating facilities, including marinas and launch ramps, are water-dependent uses and should be given priority for shoreline location. Boating facilities should also contribute to public access and enjoyment of waters of the state. Shorelines particularly suitable for marinas and launch ramps~~

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- are limited and should be identified and reserved to prevent irreversible commitment for other uses having less stringent site requirements.
- ~~C.—Regional needs for marina and boat launch facilities should be carefully considered in reviewing new proposals as well as in allocating shorelines for such development. Such facilities should be coordinated with park and recreation plans and, where feasible, collocated with port or other compatible water-dependent uses. Review of such facilities should be coordinated with recreation providers, including cities, adjacent counties, port districts, the Whatcom County parks and recreation department, the Washington State Parks and Recreation Commission, and the Washington State Department of Natural Resources to avoid unnecessary duplication and to efficiently provide recreational resources while minimizing adverse impacts to shoreline ecological functions and processes.~~
- ~~D.—Upland boat storage is preferred over new in-water moorage. Mooring buoys are preferred over docks and piers. Boating facilities that minimize the amount of shoreline modification are preferred.~~
- ~~E.—Boating facilities should provide physical and visual public shoreline access and provide for multiple use, including water-related use, to the extent compatible with shoreline ecological functions and processes and adjacent shoreline use.~~
- ~~F.—Accessory uses at marinas or launch ramps should be limited to water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public.~~
- ~~G.—New or expanding boating facilities including marinas, launch ramps, and accessory uses should only be sited where suitable environmental conditions are present and should avoid critical saltwater habitat including kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sandlance); subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.~~
- ~~H.—Boating facilities should be located and designed to avoid adverse effects upon coastal, riverine, and nearshore processes such as erosion, littoral or riparian transport, and accretion, and should, where feasible, enhance degraded, scarce, and/or valuable shore features including accretion shoreforms.~~
- ~~I.—Launch ramps are preferred over marinas on accretion shores because associated impacts are often reversible and such structures will not normally interfere with littoral drift and accretion unless offshore defense structures or dredging are also required.~~
- ~~J.—Nonregulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged during the design, development and operation of boating facilities. Nonregulatory methods may include public facility and resource planning, education, voluntary protection and enhancement projects, or incentive programs.~~
- ~~K.—Boating facilities should be located, designed and operated so that other appropriate water-dependent uses are not adversely affected.~~

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- ~~L. Location and design of boating facilities should not unduly obstruct navigable waters and should avoid adverse effects to recreational opportunities such as fishing, shellfish gathering, pleasure boating, commercial aquaculture, swimming, beach walking, picnicking and shoreline viewing.~~
- ~~M. Boating facilities should be located, designed, constructed and maintained to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; and impacts to public visual access to the shoreline.~~

### ~~7A. Regulations.~~

#### **A. Marinas and Launch Ramps – General.**

1. ~~Boating facilities, including marinas and launch ramp development, in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. This section applies to marinas and public boat launches, though the moorage structures of such facilities shall also comply with WCC 23.40.150 (Moorage Structures). For Docks, moorage structures serving four or fewer single-family residences users, only are subject to the policies and regulations of WCC 23.40.150 100.090, (Moorage Moorage Structures) applies — Docks, piers, and mooring buoys.~~
2. Accessory uses shall be limited to those that are water-dependent, related to boating, and necessary for facility operation, or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and/or launch ramp and surrounding uses.
3. All developments shall provide boater education addressing boater impacts on water quality and other shoreline resources, boater safety, and requirements for boater use of sewage pump-outs.

#### **B. Marinas – Location Standards.** [CES128]

1. When marina sites are considered, sufficient evidence must be presented to show there is a regional demand and existing marinas are inadequate and cannot be expanded to meet regional demand.
2. Marinas shall be sited to prevent any restrictions in the use of commercial and recreational shellfish beds or commercial aquaculture operations. The specific distance shall be determined in conjunction with the Washington State Department of Health, the Washington State Department of Ecology, and other agencies with expertise. Criteria for determining the specific distance may include:
  - a. The size and depth of the waterbody;
  - b. Tidal flushing action in the project area;
  - c. Size of the marina and projected intensity of use;
  - d. Whether fuel will be handled or stored;
  - e. Location of a sewer hook-up; and
  - f. Expected or planned changes in adjacent land uses that could result in additional water quality impacts or sanitary treatment requirements.
3. Marinas shall be allowed only on stable shoreline areas where water depth is adequate to eliminate or minimize the need for channel dredging (for construction or maintenance), soil disposal, filling, beach enhancement, and other harbor and channel maintenance activities.

4. Marinas shall be located only in areas where there is adequate water mixing and flushing and shall be designed so as not to reduce or negatively influence flushing characteristics.
5. Fixed breakwaters are discouraged.
6. Marinas shall be clearly separated from beaches commonly used for swimming and shall provide signage and protection measures to ensure the safety of swimmers.
7. Marinas shall not be located at or along:
  - a. Significant littoral drift cells, including resource material areas, such as feeder bluffs and accretion beaches, barrier beaches, points, sand spits and hooks; or
  - b. Wetlands, marshes, bogs, swamps and lagoons; or
  - c. Mud flats and salt marshes; or
  - d. Fish and shellfish spawning and rearing areas.
8. Solid structures shall not be permitted to extend without openings from the shore to zero tide level (mean lower low water, or MLLW), but shall stop short to allow sufficient shallow fringe water for fish passage.

C. Marinas – Site Design. [CES129]

1. Proposals for marinas shall include public launch facilities unless the applicant can demonstrate that providing such facilities is not feasible.
2. Marinas shall be designed, constructed, and maintained to:
  - a. Provide thorough flushing of all enclosed water areas and shall not restrict the movement of aquatic life requiring shallow water;
  - b. Minimize interference with geo-hydraulic processes and disruption of existing shore forms;
  - c. Be aesthetically compatible with existing shoreline features and uses;
  - d. Avoid adverse proximity impacts such as noise, light, and glare;
  - e. Include vegetative screening for parking, and upland storage areas and facilities consistent with landscaping standards prescribed in WCC 20.80.300, et seq. (Landscaping); and,
  - f. Include public restrooms, accessory parking, or other recreational uses according to the scale of the facility.
3. Short-term loading/unloading areas and hand-launch storage areas may be located at ramps or near berthing areas and should be constructed of pervious material.
4. Public access, both visual and physical, such as viewpoints or walkways, shall be an integral part of all marina design and development commensurate with the particular proposal and must meet the standards of WCC 23.30.0760 (Public Access).
5. Innovative construction techniques and construction methods of foreshore marinas may be allowed when demonstrated to the satisfaction of the Director that the design will prevent degradation of fish migration, critical saltwater habitat, and/or shellfish resources.

D. Operations and Management. [CES130]

1. The discharge of sewage and/or toxic material from boats and/or shore installations is prohibited. The responsibility for the adequate and approved collection and disposal of marina-originated sewage, solid waste, and petroleum waste is that of the marina operator. An emergency spill kit and use instructions shall be provided for tenants in an easy-to-access area and be accessible twenty-four (24) hours a day.

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2. Commercial fish or shellfish processing and the discharge or discarding of unused bait, scrapfish, or viscera shall be prohibited.
  3. Swimming shall be prohibited within marina facilities unless the swimming area is adequately separated, protected, and posted.
  4. If dredging at marina entrances changes the littoral drift processes and adversely affects adjacent shores, the marina operator shall be required to periodically replenish these shores with the appropriate quantity and quality of aggregate as determined by a geohydraulic study, paid for by the operator or owner and completed to the satisfaction of the Director.
  5. Temporary vacant moorage spaces shall be made available for “transient moorage” (less than two-week stay) when at least one of the following applies:
    - a. The marina is owned, operated, or franchised by a governmental agency for use by the public;
    - b. The marina provides more than three thousand (3,000) lineal feet of moorage; or
    - c. The marina is part of a mixed-use development which includes restaurants or other water-enjoyment uses.
  6. Marina operators shall execute a lease, contract, or deed that establishes permission to use a slip for a stated period of time and that establishes conditions for use of the slip, including the requirement that all boats meet applicable sanitation regulations.
  7. Marinas shall meet the following before occupancy:
    - a. Marinas that dispense fuel shall have adequate facilities and post procedures for fuel handling and storage to prevent/minimize accidental spillage.
    - b. Marinas shall have facilities, equipment, such as emergency spill kits, and post procedures for containment, recovery, and mitigation of spilled petroleum, sewage, and toxic products.
    - c. Marina operators shall post signs where they are readily visible to all marina users describing regulations:
      - i. Pertaining to handling and disposal of waste, wastewater, toxic materials, and recycling;
      - ii. Prohibiting the discharge of marine toilets (i.e., no untreated sewage discharge);
      - iii. Prohibiting the disposal of fish and shellfish cleaning wastes; and
      - iv. Describing best management practices (BMPs) for boat maintenance and repairs on site.
    - d. Garbage or litter receptacles shall be provided and maintained by the marina operator at several locations convenient to users in sufficient numbers to properly store all solid waste generated on site.
    - e. Marina docks shall be equipped with adequate lifesaving equipment, such as:
      - i. Life rings, hooks, ropes and ladders, or equivalent, on the end of fingers; and/or
      - ii. One ladder (per side) either every one hundred (100) linear feet of the dock, or every six (6) slips whichever is greater. This regulation does not apply to a float which is less than one hundred (100) feet from a shoreline; or
      - iii. At least one ladder to serve a float with six (6) or more slips and is one hundred (100) linear feet in length or less.
- E. Additional Standards for Boat Launches. [CES131]
1. Boat launches are prohibited in:

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- a. Significant littoral drift cells, including resource material areas such as feeder bluffs and accretion beaches, points, spits and hooks;
- b. Wetlands, marshes, bogs, swamps, and lagoons;
- c. Mud flats and salt marshes; and
- d. Fish spawning and rearing areas and commercial or recreational shellfish areas.
2. Launch ramps shall be:
  - a. Located on stable shorelines where water depths are adequate to eliminate or minimize the need for:
    - i. Offshore or foreshore channel construction dredging; or
    - ii. Maintenance dredging; or
    - iii. Spoil disposal; or
    - iv. Filling; or
    - v. Beach enhancement; or
    - vi. Other harbor and channel maintenance activities.
  - b. Located in areas where there is adequate water mixing and flushing.
  - c. Designed so as not to negatively influence flushing characteristics.
3. Innovative or hinged boat launches may be permitted on marine accretion shoreforms, provided that continual grading is not required. When grading is permitted it must not adversely affect ecological functions and ecosystem-wide processes. Accessory facilities shall be located out of critical areas.
4. Boat launches may be allowed on stable banks where current deflectors or other stabilization structures will not be necessary.
5. Boat launches shall not be permitted where the upland within twenty-five (25) feet of the OHWM has a slope that exceeds twenty-five percent (25%) grade and/or where substantial cutting, grading, filing, or defense works is necessary.
6. Boat launches, minor accessory buildings, and haul-out facilities shall be designed to be in character and scale with the surrounding shoreline.
7. Boat launches shall be built from flexible, hinge-segmented pads **that** can adapt to changes in beach profiles, unless a solid structure is demonstrated to be more appropriate for the intended level of use.
8. Boat launches shall be placed and kept near flush with the foreshore slope to minimize the interruption of geo-hydraulic processes and **impacts to** critical saltwater habitats.
9. Marine rails for boat launching shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.
10. Boat launch facilities shall be clearly separated from beaches commonly used for swimming and shall provide signage and protection measures to **ensure** the safety of swimmers.
- F. Additional Standards for Live-Aboard Vessels.
  1. Live-aboard **vessels** are only allowed in marinas and only as follows:
    - a. **Vessels must be** for residential use only;
    - b. **Slips occupied by live-aboard vessels** shall not exceed 10 percent of the total slips in the marina;



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c. Vessels shall be owner-occupied; and

~~a-d.~~ Vessels must be operational for cruising. [AP132]

2. Live-aboard vessels must comply with all marine regulations, policies, and procedures of the U.S. Coast Guard, and any other federal and state government agencies that pertain to health, safety and/or environmental protection. Proof of seaworthiness of the vessel and the adequacy of the mooring arrangement must be provided and laws governing all the citizens of Whatcom County must be obeyed.

### Θ.G. Additional Standards for Boat Storage.

1. Marinas shall provide dry upland boat storage with a launch mechanism to protect shoreline ecological functions and processes, efficiently use shoreline space, and minimize consumption of public water surface area unless:
  - a. No suitable upland locations exist for such facilities; or
  - b. It can be demonstrated that wet moorage would result in fewer impacts to ecological functions and processes; or
  - c. It can be demonstrated that wet moorage would enhance public use of the shoreline.
2. Dry moorage and other storage areas shall be located away from the shoreline and be landscaped pursuant to WCC 20.80.300, et seq. (Landscaping) with native vegetation to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.

### P.H. Additional Standards for Parking and Vehicle Access.

1. Parking facilities shall meet County zoning design and location standards; provided, that at a minimum, one vehicle space shall be maintained for every four moorage spaces and for every 400 square feet of interior floor space devoted to accessory retail sales or service use. Bicycle parking shall be provided commensurate with the anticipated demand.
2. ~~Public or quasi-public~~ launch ramps shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.
3. Parking ~~that does not require a shoreline location in order to carry out its functions~~ shall:
  - a. Be sited away from the land/water interface unless no feasible alternative location exists outside of the shoreline;
  - b. Be planted or landscaped pursuant to WCC 20.80.300, et seq. (Landscaping) ~~preferably~~ with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas; and
  - ~~c. Observe critical area buffers in Chapter 16.16 WCC; and~~ [AP133]
  - ~~d-c.~~ Be designed to incorporate low impact development practices, such as pervious surfaces, and bioswales, ~~to the extent feasible~~ pursuant to WCC 20.80.630, et seq. (Stormwater and drainage).

### Q.I. Supplemental Application Requirements. In addition to the general application requirements of WCC Title 22 (Land Use and Development), applications for marinas or launch ramps shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:

1. ~~Applications for new boating facilities, including marinas and launch ramps, shall be approved only if enhanced public access to public waters outweighs the potential adverse impacts of the~~

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- 1 ~~use~~ [CES134]. Applications shall b ~~Providee accompanied by supporting application materialsa~~  
2 level of service needs analysis that documents the market demand for such facilities, including:  
3 a. The total amount of moorage proposed;  
4 b. The proposed supply, as compared to the existing supply within the service range of the  
5 proposed facility, including vacancies or waiting lists at existing facilities;  
6 c. The expected service population and boat ownership characteristics of the population;  
7 d. Existing approved facilities or pending applications within the service area of the proposed  
8 new facility.
- 9 ~~2. New marinas with in-water moorage and expansion of in-water moorage facilities in existing~~  
10 ~~marinas shall be approved only when:~~  
11 ~~3. Opportunities for upland storage sufficient to meet the demand for moorage are not available~~  
12 ~~on site; and~~  
13 ~~4. Expansion of upland storage at other existing marinas is not feasible.~~ [DN135]  
14 ~~5.2. Applications shall d~~ Document that a preferred method of providing moorage facilities is not  
15 feasible. Review of proposals involving public aquatic lands may be required to include an  
16 analysis of other alternative sites not controlled by the applicant/proponent.
- 17 ~~6.3. Applications for launch ramps shall Provide a critical area assessment report pursuant to WCC~~  
18 ~~16.16 (Critical Areas), including contain:~~  
19 ~~7. A habitat survey.~~  
20 ~~8.4.~~ A slope bathymetry map.  
21 ~~9.5.~~ Evaluation of effects on littoral drift.
- 22 ~~10.6. Applications for marinas, launch ramps, and accessory uses shall include Provide a~~ an  
23 assessment of existing water-dependent uses in the vicinity including, but not limited to,  
24 navigation, fishing, shellfish harvest, pleasure boating, swimming, beach walking, picnicking, and  
25 shoreline viewing, and shall document potential impacts and mitigating measures. Impacts on  
26 these resources shall be considered in review of proposals and specific conditions to avoid or  
27 minimize impacts may be imposed.
- 28 ~~11.7. A Marina and launch ramp proposals may be required to prepare a Provide a~~ visual  
29 assessment of views from surrounding residential properties, public viewpoints, and the view of  
30 the shore from the water surface, if required.
- 31 ~~R. Tabular Regulations – Setbacks, Height and Open Space for Marinas and Launch Ramp Development.~~  
32 ~~Minimum required setbacks from shorelines and side property lines, maximum height limits, and~~  
33 ~~open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers,~~  
34 ~~setbacks, height, open space, and impervious surface coverage.~~
- 35 J. Regulations for Specific Shoreline Environment Designations.  
36 1. In the Natural shoreline area environment, m ~~Marinas or launch ramps are prohibited; except~~  
37 that primitive ramps to facilitate hand launching of small craft are permitted if materials and  
38 design are compatible with the site.  
39 2. In the Aquatic shoreline area environment, covered over-water structures may be permitted  
40 only where vessel construction or repair work is to be the primary activity and covered work  
41 areas are demonstrated to be the minimum necessary over water. [AP136]

0. ~~Site Design and Operation.~~

b. ~~Marinas or launch ramps shall not be permitted on the following marine shores unless it can be demonstrated that interference with littoral drift and/or degradation or loss of shoreline ecological functions and processes, especially those vital to maintenance of nearshore habitat, will not occur. Such areas include:~~

a. ~~Feeder bluffs exceptional;~~

a. ~~High energy input driftways;~~

a. ~~Marinas or launch ramps shall not be permitted within the following marine shoreline habitats because of their scarcity, biological productivity, and sensitivity unless no alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program:~~

a. ~~Marshes, estuaries and other wetlands;~~

a. ~~Tidal pools on rock shores;~~

a. ~~Kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sandlance);~~

a. ~~Subsistence, commercial and recreational shellfish beds; and~~

a. ~~Other critical saltwater habitats.~~

a. ~~Marinas or launch ramps shall not be permitted on the following marine accretion shoreforms unless it can be demonstrated that no other alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program. Hoists are preferred over dredged marinas or launch ramps at such locations:~~

a. ~~Open points;~~

a. ~~Spits and hooks;~~

a. ~~Tomboles;~~

a. ~~Open bay barrier beaches;~~

a. ~~Accretional pocket beaches.~~

q. ~~Foreshore marinas or launch ramps may be permitted on low erosion rate marine feeder bluffs or on low energy input erosional driftways if the proposal is otherwise consistent with this program. Foreshore marinas or launch ramps are prohibited on accretional lake shores because these natural features are uncommon on lakes and are highly valuable for recreation.~~

r. ~~Backshore marinas and launch ramps may be permitted on closed accretional points, closed accretional bluff and bay barrier beaches, or low energy input driftways, except where wetlands are present or it can be demonstrated that a foreshore location would result in fewer impacts to shoreline ecological functions and processes, natural features and uses.~~

s. ~~Marinas or launch ramps may be permitted on low bank lake shores where backshore wetlands are protected, or where wetlands are not present, if most of the beach and backshore are preserved in a natural condition for public or quasi-public recreation.~~

t. ~~Marinas shall not be permitted in low gradient, broad meander stream channel reaches, except where located on outer, concave bends or straight, moderately eroding or stable banks, so that dredging and/or shore protection will not be necessary.~~

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- 1 u. ~~Marina basins or structures shall not be permitted on river point bars or other accretional~~
- 2 ~~beaches. A limited number of launch ramps may be permitted on accretion shoreforms;~~
- 3 ~~provided, that any necessary grading will not adversely affect shoreline ecological functions or~~
- 4 ~~fluvial processes, and any accessory facilities are located out of the floodway.~~
- 5 v. ~~Marinas shall not be permitted in areas of active channel migration, where channel dredging will~~
- 6 ~~be required, if a flood hazard will be created, or if valuable shoreline ecological functions and~~
- 7 ~~processes will be degraded.~~
- 8 w. ~~Launch ramps may be located immediately downstream of accretion shoreforms, or on other~~
- 9 ~~non-erosional banks, where no or a minimum number of current deflectors will be necessary.~~
- 10 x. ~~Floating piers shall be required in rivers and streams unless it can be demonstrated that fixed~~
- 11 ~~piers will result in substantially less impact on geohydraulic processes and flood hazards can be~~
- 12 ~~minimized or mitigated.~~
- 13 y. ~~Where foreshore marinas are permitted:~~
- 14 ~~i. Open pile or floating breakwater designs shall be used unless it can be demonstrated that~~
- 15 ~~riprap or other solid construction would not result in any greater net impacts to shoreline~~
- 16 ~~ecological functions or processes or shore features.~~
- 17 ~~i. Solid structures shall not be permitted to extend without openings from the shore to zero~~
- 18 ~~tide level (mean lower low water, or MLLW), but shall stop short to allow sufficient shallow~~
- 19 ~~fringe water for fish passage.~~
- 20 bb. ~~Foreshore and backshore marinas shall be designed to allow the maximum possible circulation~~
- 21 ~~and flushing of all enclosed water areas.~~
- 22 ~~— New or expanding marinas with dredged entrances that adversely affect littoral drift to the~~
- 23 ~~detriment of other shores and their users shall be required to periodically replenish such shores~~
- 24 ~~with the requisite quantity and quality of aggregate as determined by professional coastal~~
- 25 ~~geologic engineering studies.~~
- 26 cc. ~~All facilities shall be located and designed to avoid impediments to navigation and to avoid~~
- 27 ~~depriving other properties of reasonable access to navigable waters. Review and approval by~~
- 28 ~~the U.S. Coast Guard may be required as a condition of issuance of building or development~~
- 29 ~~permits to assure compliance. All in-water structures shall be marked and lighted in compliance~~
- 30 ~~with U.S. Coast Guard regulations.~~
- 31 dd. ~~Design and other standards for physical improvement of docks and piers are found in~~
- 32 ~~WCC 23.100.090, Moorage — Docks, piers and mooring buoys.~~
- 33 ~~— Public Access.~~
- 34 ~~— New launch ramps shall be approved only if they provide public access to public waters, which~~
- 35 ~~are not adequately served by existing access facilities, or if use of existing facilities is~~
- 36 ~~documented to exceed the designed capacity. Prior to providing ramps at a new location,~~
- 37 ~~documentation shall be provided demonstrating that expansion of existing launch facilities~~
- 38 ~~would not be adequate to meet demand.~~
- 39 ff. ~~Public access areas shall provide space and facilities for physical and/or visual access to water~~
- 40 ~~bodies, including feasible types of public shore recreation.~~

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gg. Marinas and boat launches shall provide public access for as many water dependent recreational uses as possible, commensurate with the scale of the proposal. Features for such access could include, but are not limited to, docks and piers, pedestrian bridges to offshore structures, fishing platforms, artificial pocket beaches, and underwater diving and viewing platforms.

### 0. Site Considerations.

ii. Marinas, launch ramps, and accessory uses shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed nor made dangerous.

jj. Public launch ramps and/or marina entrances shall not be located near beaches commonly used for swimming, valuable fishing and shellfish harvest areas, or sea lanes used for commercial navigation unless no alternative location exists, and mitigation is provided to minimize impacts to such areas and protect the public health, safety and welfare.

kk. Marinas and accessory uses shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.

ll. Marinas, launch ramps, and accessory uses shall be located where water depths are adequate to avoid the need for dredging and minimize potential loss of shoreline ecological functions or processes.

mm. Marinas, launch ramps, and accessory uses shall be located and designed with the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft from floods, abnormally high tides, and/or destructive storms.

### 0. Boat Storage.

41. Marinas shall provide dry upland boat storage with a launch mechanism to protect shoreline ecological functions and processes, efficiently use shoreline space, and minimize consumption of public water surface area unless:

i. No suitable upland locations exist for such facilities; or

i. It can be demonstrated that wet moorage would result in fewer impacts to ecological functions and processes; or

i. It can be demonstrated that wet moorage would enhance public use of the shoreline.

45. Dry moorage and other storage areas shall be located away from the shoreline and be landscaped with native vegetation to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.

— New covered moorage for boat storage is prohibited.

46. Covered over water structures may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water.

### 0. Waste Disposal.

48. Marinas shall provide pump out, holding, and/or treatment facilities for sewage contained on boats or vessels.

49. Discharge of solid waste or sewage into a water body is prohibited. Marinas and boat launch ramps shall provide adequate restroom and sewage disposal facilities in compliance with applicable health regulations.

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50. Garbage or litter receptacles shall be provided and maintained by the operator at several locations convenient to users.
51. Disposal or discarding of fish or shellfish cleaning wastes, scrap fish, viscera, or unused bait into water or in other than designated garbage receptacles is prohibited.
52. Marina operators shall post all regulations pertaining to handling, disposal, and reporting of waste, sewage, fuel, oil, or toxic materials where all users may easily read them.
0. Oil Product Handling, Spills, and Wastes. Fail-safe facilities and procedures for receiving, storing, dispensing, and disposing of oil or hazardous products, as well as a spill response plan for oil and other products, shall be required of new marinas and expansion or substantial alteration of existing marinas. Compliance with federal or state law may fulfill this requirement. Handling of fuels, chemicals or other toxic materials must be in compliance with all applicable federal and state water quality laws as well as health, safety and engineering requirements. Rules for spill prevention and response, including reporting requirements, shall be posted on site.
0. Parking and Vehicle Access.
55. Parking facilities shall meet County zoning standards; provided, that at a minimum, one vehicle space shall be maintained for every four moorage spaces and for every 400 square feet of interior floor space devoted to accessory retail sales or service use. Bicycle parking shall be provided commensurate with the anticipated demand.
56. Public or quasi-public launch ramps shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.
57. Parking that does not require a shoreline location in order to carry out its functions shall:
  - a. Be sited away from the land/water interface unless no feasible alternative location exists outside of the shoreline;
  - a. Be planted or landscaped preferably with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas;
  - a. Observe critical area buffers in Chapter 16.16 WCC; and
  - d. Be designed to incorporate low impact development practices, such as pervious surfaces, and bioswales, to the extent feasible.
- . Connecting roads between marinas and public streets shall have all weather surfacing, and be satisfactory to the County Engineer in terms of width, safety, alignment, sight distance, grade and intersection controls.
1. Launch Ramp Design.
- . Preferred ramp designs, in order of priority, are:
  - i. Open grid designs with minimum coverage of beach substrate.
  - i. Seasonal ramps that can be removed and stored upland.
  - i. Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in beach profile.
- . Ramps shall be placed and maintained near flush with the foreshore slope.
1. Accessory Uses.
- a. Accessory uses at marinas or launch ramps shall be limited to those water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public.

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1 ~~Accessory development includes, but is not limited to, parking, open-air storage, waste storage~~  
2 ~~and treatment, stormwater management facilities, utility, and upland transportation~~  
3 ~~development.~~

4 ~~sss. Water-oriented accessory uses reasonably related to marina operation may be located over~~  
5 ~~water or at the water's edge by conditional use if an over-water or water's edge location is~~  
6 ~~essential to the operation of the use or if opportunities are provided for public access for a~~  
7 ~~substantial number of persons.~~

8 ~~ttt. Application Requirements.~~

9 ~~1. Applications for new boating facilities, including marinas and launch ramps, shall be~~  
10 ~~approved only if enhanced public access to public waters outweighs the potential adverse~~  
11 ~~impacts of the use. Applications shall be accompanied by supporting application materials~~  
12 ~~that documents the market demand for such facilities, including:~~

13 ~~i. The total amount of moorage proposed;~~

14 ~~i. The proposed supply, as compared to the existing supply within the service range of the~~  
15 ~~proposed facility, including vacancies or waiting lists at existing facilities;~~

16 ~~i. The expected service population and boat ownership characteristics of the population;~~

17 ~~i. Existing approved facilities or pending applications within the service area of the~~  
18 ~~proposed new facility.~~

19 ~~1. New marinas with in-water moorage and expansion of in-water moorage facilities in~~  
20 ~~existing marinas shall be approved only when:~~

21 ~~11. Opportunities for upland storage sufficient to meet the demand for moorage are not~~  
22 ~~available on-site; and~~

23 ~~11. Expansion of upland storage at other existing marinas is not feasible.~~

24 ~~11. Applications shall document that a preferred method of providing moorage facilities is~~  
25 ~~not feasible. Review of proposals involving public aquatic lands may be required to include~~  
26 ~~an analysis of other alternative sites not controlled by the applicant/proponent.~~

27 ~~11. Applications for launch ramps shall contain:~~

28 ~~(A) A habitat survey.~~

29 ~~(A) A slope bathymetry map.~~

30 ~~(A) Evaluation of effects on littoral drift.~~

31 ~~11. Applications for marinas, launch ramps, and accessory uses shall include An~~  
32 ~~assessment of existing water-dependent uses in the vicinity including, but not limited to,~~  
33 ~~navigation, fishing, shellfish harvest, pleasure boating, swimming, beach walking, picnicking~~  
34 ~~and shoreline viewing and document potential impacts and mitigating measures. Impacts on~~  
35 ~~these resources shall be considered in review of proposals and specific conditions to avoid~~  
36 ~~or minimize impacts may be imposed.~~

37 ~~11. Marina and launch ramp proposals may be required to prepare a visual assessment of~~  
38 ~~views from surrounding residential properties, public viewpoints and the view of the shore~~  
39 ~~from the water surface.~~

40 ~~1. Tabular Regulations — Setbacks, Height and Open Space for Marinas and Launch Ramp Development.~~  
41 ~~Minimum required setbacks from shorelines and side property lines, maximum height limits, and~~



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~~open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions— Buffers, setbacks, height, open space, and impervious surface coverage.~~ [CES137]

### ~~A. Shoreline Area Regulations.~~

~~0. Urban. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~0. Urban Resort. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~0. Urban Conservancy. Launch ramps are permitted subject to policies and regulations of this program. Marinas may be permitted as a conditional use.~~

~~0. Shoreline Residential. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~0. Rural. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~0. Resource. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~0. Conservancy. Launch ramps are permitted subject to policies and regulations of this program. Marinas may be permitted as a conditional use.~~

~~0. Natural. Marinas or launch ramps are prohibited; except that primitive ramps to facilitate hand launching of small craft are permitted if materials and design are compatible with the site.~~

~~0. Aquatic.~~

~~uuuu.a. Marinas and launch ramps are permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

### ~~23.100.060-23.40.070 Commercial Uses.~~

~~Commercial development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

### ~~A. Policies.~~

~~C. In securing shoreline locations for commercial use, preference should be given first to water-dependent commercial uses, then to water-related and water-enjoyment commercial uses.~~

~~D. Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.~~

~~E. Commercial development should ensure visual compatibility with adjacent noncommercial properties.~~

~~F. Commercial uses located in the shoreline should provide public access in accordance with constitutional or other legal limitations unless such improvements are demonstrated to be infeasible or present hazards to life and property.~~

### ~~A. Regulations.~~

#### ~~—General.~~

~~H.A. Allowed Use. Commercial uses that result in no net loss of shoreline ecological functions and processes are allowed subject to the policies and regulations of WCC 23.90.030 and the specific criteria below: Prior to approval of an application, the Director shall review a proposal for design,~~

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- 1 layout, and operation of the use and determine whether the proposed use is water-dependent,  
2 water-related, water-enjoyment, or a non-water-oriented commercial use.
- 3 1. Water-dependent commercial uses shall be given first preference over non-water dependent  
4 water-related and water-enjoyment. [CES138] commercial uses. ~~Prior to approval of water-~~  
5 ~~dependent uses, the administrator shall review a proposal for design, layout and operation of~~  
6 ~~the use and shall make specific findings that the use qualifies as a water-dependent use.~~
- 7 2. Water-related commercial uses may shall not be approved if they displace existing water-  
8 dependent uses. ~~Prior to approval of a water-related commercial use, the administrator shall~~  
9 ~~review a proposal for design, layout and operation of the use and shall make specific findings~~  
10 ~~that the use qualifies as a water-related use.~~
- 11 3. Water-enjoyment commercial uses may shall be not be approved if they displace existing water-  
12 dependent or water-related uses or if they occupy space designated for water-dependent or  
13 water-related use identified in a substantial development permit or other approval. ~~Prior to~~  
14 ~~approval of water-enjoyment uses, the administrator shall review a proposal for design, layout~~  
15 ~~and operation of the use and shall make specific findings that the use qualifies as a water-~~  
16 ~~enjoyment use.~~
- 17 4. Non-water-oriented commercial uses may be permitted as a conditional use where located on a  
18 site physically separated from the shoreline by another property in separate ownership or a  
19 public right of way such that access for water-oriented use is precluded; provided, that such  
20 conditions were lawfully established prior to the effective date of this program. All other non-  
21 water-oriented commercial uses are prohibited in the shoreline unless the use provides  
22 significant public benefit with respect to the objectives of the Act and is the proposed use:
- 23 a. Is part of a mixed use project that includes a water-oriented use; or  
24 b. Is on a site where navigability is severely limited; or,  
25 c. Does not occupy space designated for water-dependent or water-related use identified in a  
26 project permit approval; or, [AP139] [CES140]  
27 b-d. In areas designated for commercial use and the site is physically separated from the  
28 shoreline by another property or public right of way.
- 29 5. ~~When permitted, non-w~~ Water-oriented commercial uses shall provide public access in  
30 accordance with the provisions of WCC 23.30.060 (Public Access).
- 31 ~~5-6.~~ Non-water oriented commercial uses shall provide public access and/or restoration as follows:
- 32 a. ~~Non-water-oriented commercial uses shall provide p~~ Public access shall be in the form of  
33 unrestricted open space. ~~The administrator shall determine the amount of access in~~  
34 ~~accordance with the provisions of WCC 23.90.080 on a case-by-case basis.~~
- 35 b. If no water-oriented commercial uses are located on or adjacent to the water as part of a  
36 mixed use development, 80% of the shoreline and associated buffers shall be preserved or  
37 restored to provide shoreline ecological functions that approximate the functions provided  
38 by the site in natural conditions.
- 39 c. The requirements ~~in subsections (B)(1)(c)(i) and (ii)~~ of this section may be modified when:  
40 i. The site is designated as a public access area by a shoreline public access plan, in which  
41 case public access consistent with that plan element shall be provided; or

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- ii. Specific findings are made demonstrating that the size of the parcel and the presence of adjacent uses preclude restoration of shoreline ecological functions. Where on-site restoration is infeasible, equivalent off-site restoration shall be provided ~~consistent with the policies and regulations of this program.~~
  - d. Where restoration is proposed, buffers shall be designed as appropriate to protect shoreline resources based on a ~~site-specific restoration plan~~ assessment and may differ from the standard critical area buffer dimensions provided in Chapter 16.16WCC; provided, that the building envelope for the proposed non-water-oriented use shall be based on current site conditions.
  - ~~vi. The requirements of this subsection (B)(1)(e) shall not apply to those non-water-oriented commercial uses located on a site physically separated from the shoreline where access to the land/water interface is precluded.~~
  7. If water-oriented commercial uses are located on or adjacent to the water, the remaining undeveloped water frontage that is not devoted to water-dependent use shall be preserved in a substantially undeveloped condition until such time that an appropriate water-dependent use has been identified for the area. If the site has been previously altered by past development, the balance of the site may be reserved for future water-related use.
- B. Site Design and Operation.
1. Commercial recreation-oriented uses, including commercial resorts and ~~rental~~ campgrounds, shall provide adequate access to water areas for their patrons or shall provide adequate on-site outdoor recreation facilities so that such resorts s or campgrounds s will neither be dependent on nor place undue burdens upon public access and recreational facilities.
  2. ~~New and expanded c~~Commercial development shall install or establish access roads of sufficient capacity and with appropriate improvements to provide vehicular and pedestrian access to the site. Utilities shall be adequate to serve the demands of the proposed uses.
  3. Over-Water Structures.
    - a. Only those portions of water-dependent commercial uses that require over-water facilities such as boat fuel stations shall be permitted to locate waterward of the OHWM, provided they are located on floats, piling, or other open-work structures.
    - b. Non-water-dependent commercial uses shall not be allowed over water except in limited instances where they are appurtenant to existing structures and necessary in support of water-dependent uses.
  4. Marine rails shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.
  - ~~9. Building Height.~~
    - a. ~~As mandated by the Act (RCW 90.58.320), no permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this program does not prohibit such development and only when overriding considerations of the public interest will be served.~~ ~~[PDS141]~~

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a. ~~Lodging developments over 35 feet in height may be allowed in resort communities within the Urban Resort shoreline area designation, subject to the requirements of WCC 23.90.130(5). However, due to the potential for adverse impact upon adjacent uses and the community from such development, special consideration must be given to the following factors during review of such proposals:~~

i. ~~Urban services, including sanitary sewers, public water supply, fire protection, storm drainage, and police protection, must be provided at adequate levels to protect the public health, safety, and welfare.~~

i. ~~Circulation, parking areas, and outdoor storage or loading areas should be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas should be screened from open space areas by landscaping, fences or similar structures, or grade separation.~~

i. ~~Recreational needs of building clientele must be provided for through several on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases.~~ [PDS142]

~~P. Tabular Regulations – Setbacks, Height and Open Space for Commercial Development. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers, setbacks, height, open space and impervious surface coverage.~~

### C. Regulations for Specific Shoreline Environment Designations.

1. In the Conservancy and Urban Conservancy shoreline environments, only low intensity commercial use and development – either water-oriented or non-water-oriented, and limited to resort, campground, and similar facilities – may be permitted as a shoreline conditional use. Non-water-oriented uses are subject to the criteria for such uses of this section.

2. In the Urban Resort shoreline environment, water-oriented resort-oriented commercial use and developments are permitted. Non-water-oriented commercial uses and developments may be permitted as a shoreline conditional use subject to the criteria for such uses in this section. Commercial uses in this shoreline environment are permitted either by themselves or as part of a structure or development also containing residential uses.

3. In the Resource shoreline environment, water-oriented commercial use and development related to natural resource products predominantly produced on site is permitted. Non-water-oriented commercial related to natural resource products predominantly produced on site may be permitted as a shoreline conditional use subject to the criteria for such uses in this section.

#### 1. Shoreline Area Regulations: [CES143]

~~Urban. Water-oriented commercial use and development is permitted subject to policies and regulations of this program. Non-water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Urban Resort. Water-oriented resort-oriented commercial use and development is permitted subject to policies and regulations of this program. Non-water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section. Commercial~~

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~~uses allowed in this designation are permitted either by themselves or as part of a structure or development also containing residential uses, subject to policies and regulations of this program.~~

~~Urban Conservancy. Low intensity water oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non water oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Shoreline Residential. Water oriented commercial use and development is permitted subject to policies and regulations of this program. Non water oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Rural. Water oriented commercial use and development is permitted subject to policies and regulations of this program. Non water oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Resource. Water oriented commercial use and development related to natural resource products predominantly produced on site is permitted subject to policies and regulations of this program. Non water oriented commercial related to natural resource products predominantly produced on site may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Conservancy. Low intensity water oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non water oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Natural. Commercial use and development is prohibited.~~

~~—Aquatic. Commercial use and development is prohibited, except that water dependent uses and appurtenant structures may be permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

### **23.4100.070-080 Dredging and Dredge Material Disposal.** [AP144]

#### **A.—Policies.**

~~0.—Dredging should be permitted for water dependent uses of economic importance to the region and/or essential public facilities only when necessary and when alternatives are infeasible or less consistent with this program.~~

~~0.—Dredging to provide water oriented recreation should not be permitted.~~

~~0.—Minor dredging as part of ecological restoration or enhancement, beach nourishment, public access or public recreation should be permitted if consistent with this program.~~

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- ~~0. New development should be sited and designed to avoid or, where avoidance is not possible, to minimize the need for new maintenance dredging.~~
- ~~0. Dredging of bottom materials for the primary purpose of obtaining material for landfill, construction, or beach nourishment should not be permitted.~~
- ~~0. Spoil disposal on land away from the shoreline is generally preferred over open water disposal.~~
- ~~0. Long-term cooperative management programs that rely primarily on natural processes, and involve land owners and applicable local, state and federal agencies and tribes, should be pursued to prevent or minimize conditions which make dredging necessary.~~

### A. Regulations.

#### A. General.

1. Dredging shall only be permitted for the following activities:
  - a. Development of approved ~~wet moorages, harbors, ports and~~ water-dependent uses of economic importance to the region and/or essential public facilities industries of economic importance to the region only when there are no feasible alternatives.
  - ~~b. Development of essential public facilities when there are no feasible alternatives.~~
  - e.b. Maintenance dredging for the purpose of restoring a lawfully established development or the previously permitted or authorized hydraulic capacity of streams.
  - ~~d.c.~~ Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.
  - e.d. Establishing, expanding, relocating, or reconfiguring navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses. Maintenance dredging of established navigation channels and basins shall be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
  - f.e. Removal of gravel for flood management purposes consistent with an adopted flood hazard reduction plan and only after a biological and geomorphological study demonstrates that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of shoreline ecological functions and processes, and is part of a comprehensive flood management solution.
  - g.f. Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
  - h.g. Minor in-water trenching to allow the installation of necessary underground pipes or cables if no alternative, including boring, is feasible, and:
    - i. Impacts to fish and wildlife habitat are avoided to the maximum extent possible.
    - ii. The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.
    - iii. Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.
  - h. Dredging for the purpose of obtaining ~~landfill~~ material is prohibited, except that:
    - i. ~~L~~imited bar scalping of gravel in streams is permitted subject to policies of the Whatcom County Comprehensive Plan and regulations for mining under WCC ~~23.100.080~~23.40.140 (Mining), and WCC Title 20 (Zoning).

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- ~~d. Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.~~
- ~~e. Offshore habitat will be protected, restored, or enhanced.~~
- ~~f. Adverse effects on water quality or biologic resources from contaminated materials will be mitigated.~~
- ~~g. Shifting and dispersal of spoil will be minimal.~~
- ~~Water quality will not be adversely affected. [CES147]~~

~~h.b. Dredge material~~ disposal at an open water disposal site approved through the auspices of the Dredged Material Management Program (RCW 79.105.500) is allowed and shall not require a shoreline permit. [AP148]

### C. Supplemental Application Requirements.

~~K.D.~~ In addition to the minimum application requirements specified in ~~WCC 23.60.050~~ WCC Title 22 (Land Use and Development), applications for dredging and material disposal use or development shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:

- a. A description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this program and WCC Title 20 (Zoning).
- b. A detailed description of the existing physical character, shoreline geomorphology, and biological resources provided by the area proposed to be dredged, including:
  - i. A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry depths based on mean lower low water (MLLW) and have data points at a minimum of two-foot depth increments.
  - ii. A habitat survey must be conducted and WDFW must be contacted to ensure the survey is conducted according to the most recent WDFW eelgrass/macroalgae survey guidelines.
  - iii. Information on stability of bedlands adjacent to proposed dredging and spoils disposal areas.
- c. A detailed description of the physical, chemical and biological characteristics of the dredge spoils to be removed.
  - i. Physical analysis of material to be dredged: material composition and amount, grain size, organic materials present, source of material, etc.
  - ii. Chemical analysis of material to be dredged: volatile solids, chemical oxygen demand (COD), grease and oil content, mercury, lead and zinc content, etc.
  - iii. Biological analysis of material to be dredged.
- d. A description of the method of materials removal, including facilities for settlement and movement.
  - i. Dredging procedure: length of time it will take to complete dredging, method of dredging and amount of materials removed.
  - ii. Frequency and quantity of project maintenance dredging.
- e. Detailed plans for dredge spoil disposal, including specific land disposal sites and relevant information on the disposal site, including but not limited to:

- i. Spoils disposal area:
  - (A) Physical characteristics including location, topography, existing drainage patterns, surface and ground water;
  - (B) Size and capacity of disposal site;
  - (C) Means of transportation to the disposal site;
  - (D) Proposed dewatering and stabilization of spoils;
  - (E) Methods of controlling erosion and sedimentation; and
  - (F) Future use of the site and conformance with land use policies and regulations.
- ii. Total initial spoils volume.
- iii. Plan for disposal of maintenance spoils for at least a 50-year period.
- f. Hydraulic modeling studies sufficient to identify existing geohydraulic patterns and probable effects of dredging.

E. Regulations for Specific Shoreline Environment Designations.

2.1. In the Natural shoreline ~~area environment~~, dredging is prohibited except ~~that dredging is permitted~~ as an essential element of an approved shore restoration or enhancement plan, ~~subject to policies and regulations of this program.~~

2. In the Aquatic shoreline ~~area environment~~:

a. Dredging may be permitted as a ~~shoreline~~ conditional use subject to the use and development regulations of the abutting upland shoreline ~~area environment~~ designation;

b. ~~Dredging for a mutually designated reach of river with a provided, that the conditional use permit requirement may be waived upon county County and Ecology approval of a sediment management plan component for a mutually designated reach of river is permitted subject to the use and development regulations of the abutting upland shoreline area environment designation.~~

c. Maintenance dredging pursuant to WAC 173-27-140 is permitted ~~subject to the policies of and regulations of this program without a conditional use permit~~, provided the original constructed bottom contours have been established and documented in a prior shoreline permit or authorization. [AP149]

~~Shoreline Area Regulations.~~

~~Urban. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Urban Resort. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Urban Conservancy. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Shoreline Residential. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

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1 A. ~~Rural. Dredging may be permitted as a conditional use subject to policies and regulations of this~~  
2 ~~program.~~

3 A. ~~Resource. Dredging may be permitted as a conditional use subject to policies and regulations of~~  
4 ~~this program.~~

5 A. ~~Conservancy. Dredging may be permitted as a conditional use subject to policies and regulations~~  
6 ~~of this program.~~

7 A. ~~Natural. Dredging is prohibited except that dredging is permitted as an essential element of an~~  
8 ~~approved shore restoration or enhancement plan, subject to policies and regulations of this~~  
9 ~~program.~~

10 A. ~~Aquatic. Dredging may be permitted as a conditional use subject to the use and development~~  
11 ~~regulations of the abutting upland shoreline area designation; provided, that the conditional use~~  
12 ~~permit requirement may be waived upon county and Ecology approval of a sediment~~  
13 ~~management plan component for a mutually designated reach of river. Maintenance dredging~~  
14 ~~pursuant to WCC 23.60.022(B) is permitted subject to the policies and regulations of this~~  
15 ~~program without a conditional use permit, provided the original constructed bottom contours~~  
16 ~~have been established and documented in a prior shoreline permit or authorization. [CES150]~~

### 17 **23.100.11023.40.090 Landfill and Excavation**<sup>[AP151]</sup>.

#### 18 A. ~~Policies.~~

19 B. ~~Landfill and excavation should only be permitted to the minimum extent necessary to~~  
20 ~~accommodate an approved shoreline use or development and with assurance of no net loss of~~  
21 ~~shoreline ecological functions and processes. Enhancement and voluntary restoration of~~  
22 ~~landforms and habitat are encouraged.~~

23 C. ~~Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of~~  
24 ~~new uplands, unless it is part of an approved ecological restoration activity. Landfill should be~~  
25 ~~permitted in limited instances to restore uplands where recent erosion has rapidly reduced~~  
26 ~~upland area, to build beaches and protective berms for shore stabilization or recreation, to~~  
27 ~~restore or enhance degraded shoreline ecological functions and processes, or to moderately~~  
28 ~~elevate low uplands to make such uplands more suitable for purposes consistent with this~~  
29 ~~program.~~

30 D. ~~Fill should not be allowed where shore stabilization works would be required to maintain the~~  
31 ~~materials placed.~~

32 E. ~~Landfills and excavation should be located and developed so that water quality, hydrologic and~~  
33 ~~runoff patterns are not altered.~~

34 F. ~~The predicted economic benefits of landfills and excavation should be weighed against long-~~  
35 ~~term cumulative impacts on ecological processes and functions.~~

#### 36 A. ~~Regulations.~~

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### A. General.

1. ~~Landfill~~ Fill and excavation shall be avoided to the extent feasible, and shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this program. Where necessary, fill in shoreline jurisdiction shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration. [CES152]
2. Excavation waterward of the OHWM or within wetlands shall be considered dredging or ~~gravel bar scalping~~ mining for purposes of this program.
3. Fill materials shall only be clean sand, gravel, soil, rock, or similar material. Use of polluted dredge spoils or other solid or dangerous wastes is prohibited.
4. ~~Landfill and excavation~~ [CES153] ~~within wetlands or~~ waterward of the ordinary high water mark shall only be permitted through a shoreline conditional use permit [CES154] in limited instances for the following purposes ~~only~~, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities ~~that are consistent with this program:~~
  - a. ~~Port development for~~ Water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports, are infeasible.
  - b. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
  - c. Ecological restoration, mitigation, or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
  - d. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.
  - e. Public access.
    - a. ~~Maintenance of lawfully established development.~~
    - a. ~~Development of shore stabilization projects, flood control, and instream structures.~~ [CES155]
    - a. ~~Except for landfill for county-approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use.~~
5. Fill shall not be used to create land to serve residential development.
6. ~~Landfill~~ Fills or excavation shall not be located where shore stabilization will be necessary to protect materials placed or removed. Disturbed areas shall be immediately stabilized and revegetated, as applicable.
7. ~~On marine shores, fill may be permitted in the foreshore where located at drift sector ends in low energy driftways, or on erosional pocket beaches for restoration and enhancement programs where the effect of the landfill's interruption of the littoral process can be mitigated.~~
8. ~~Landfill~~ Fills, beach nourishment, and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long-term appropriate use including lawful access and enjoyment of scenery.
9. ~~Perimeter banks shall generally be sloped no steeper than one foot vertical for every three feet horizontal unless a specific engineering analysis has been provided, and the administrator determines that the landfill blends physically and visually with existing topography.~~

~~10.8.~~ Fill shall be designed to avoid water quality impacts in accordance with local, state and federal regulations. A temporary erosion and sediment control (TESC) plan shall be provided required for all proposed land fill and excavation activities.

**23.4010.080100 Flood Hazard Reduction Control Works and Instream Structures.**

~~a. Flood control works and instream structures in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

~~C. Purpose and Need.~~

~~a. New or expanding development or uses in the shoreline, including subdivision of land, that would likely require structural flood control works within a stream, channel migration zone, or floodway should not be allowed.~~

~~a. Flood control works and instream structures should be planned and designed to be compatible with appropriate multiple uses of stream resources over the long term, especially in shorelines of statewide significance.~~

~~a. Flood control works should only be allowed in the shoreline if they are necessary to protect existing development and where nonstructural flood hazard reduction measures are infeasible.~~

~~a. Flood control works to protect existing development should be permitted only when the primary use being protected is consistent with this program, and the works can be developed in a manner that is compatible with multiple use of streams and associated resources for the long term, including shoreline ecological functions, fish and wildlife management, and recreation.~~

~~H. Design Considerations.~~

~~a. Flood control works should incorporate native vegetation to enhance ecological functions, create a more natural appearance, improve ecological processes, and provide more flexibility for long-term shoreline management. Such features include vegetated berms; vegetative stabilization including brush matting and buffer strips; and retention of existing trees, shrubs and grasses on stream banks.~~

~~a. Flood control works and instream structures should be located, designed, constructed and maintained so their resultant effects on geohydraulic shoreline processes will not cause significant damage to other properties or valuable shoreline resources, and so that the physical integrity of the shoreline process corridor is maintained.~~

~~a. To minimize flood damages and to maintain natural resources associated with streams, overflow corridors and other alternatives to traditional bank levees, revetments and/or dams should be considered. Setback levees and similar measures should be employed where they will result in lower flood peaks and velocities, and more effective conservation of resources than with high bank levees.~~

~~a. Recognizing the large number of physical variables to be considered in properly locating and designing flood control works and instream structures, such as dams and weirs, and the high probability that poorly located and inadequately designed works will fail and/or adversely affect properties and shore features, such works should be sited and designed consistent with appropriate engineering principles and WCC Title 17.~~

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~~a. Nonstructural and nonregulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged as an alternative to structural flood control works and instream structures. Nonregulatory and nonstructural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.~~

~~a. Design of flood control works should incorporate continued long-term multiple use of shoreline resources by all appropriate user groups.~~

~~a. Design of flood control works should provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood control works should not decrease public access or use potential of shorelines.~~

## ~~P. Coordination.~~

~~a. In cooperation with other applicable agencies and persons, the county should continue to develop long-term, comprehensive flood hazard management plans, such as the Lower Nooksack River Comprehensive Flood Hazard Management Plan, to prevent needless flood damage, maintain the natural hydraulic capacity of floodways, and conserve valuable, limited resources such as fish, water, soil, and recreation and scenic areas.~~

~~a. Planning and design of flood control works and instream structures should be consistent with and incorporate elements from applicable watershed management plans, restoration plans and/or surface water management plans.~~

## ~~A. Regulations.~~

### ~~T.A. Purpose and Need-General.~~

- 1. Applicability.** This section applies to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2). [CES156]
2. Development in floodplains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the Department of Ecology.
3. New development or new uses in shoreline jurisdiction should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.
4. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:
  - a. Actions that protect or restore the ecosystem-wide processes or ecological functions.

- b. Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- c. Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- d. Mining when conducted in a manner consistent with the environment designation and with the provisions of Chapter 23.40.140 (Mining).
- e. Bridges, utility lines, **flood Hazard Reduction works**, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
- f. Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
- g. Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- h. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- i. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream. [CES157]

~~1-5.~~ Structural flood **hazard reduction control** works shall be permitted only when it is demonstrated by engineering and scientific evaluations that:

- a. They are necessary to protect health/safety and/or existing development;
- b. Nonstructural flood hazard reduction measures are infeasible; and
- c. Measures are consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system or otherwise approved by Whatcom County Public Works' River and Flood Division.

~~2-6.~~ Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through an ~~geotechnical~~ analysis performed by a qualified professional. [RCE158]

~~3-7.~~ ~~New flood~~ **hazard reduction control** works are prohibited on estuarine shores, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.



4-8. Revetments shall only be permitted for public projects, and shall not be placed waterward of the OHWM. ~~except for weirs and current deflectors where necessary to protect bridges and roads.~~

5. ~~Revetments and levees shall be designed consistent with appropriate engineering standards and WCC Title 17. Height shall be limited to the minimum required to protect the adjacent lands from the designed flood and demonstrated through hydraulic modeling that the height will not adversely impact shoreline ecological functions and processes.~~

9. Weirs and current deflectors are permitted only when necessary to protect public bridges, roads, and levees.

6-10. Channelization projects that damage fish and wildlife resources, degrade recreation and aesthetic resources, or result in high flood stages and velocities shall not be permitted when feasible alternatives are available.

7-11. Flood ~~hazard reduction control~~ works and instream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The County may require reasonable conditions such as setbacks, buffers, or storage basins to achieve this objective.

8-12. Flood hazard reduction works should provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood hazard reduction works should not decrease public access or use potential of shorelines. [CES159]

## U-B. Site Design and Operation.

1. The County shall require professionally engineered design of any proposed flood ~~hazard reduction control~~ works or instream structure.
2. The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the state of Washington. The professional design shall include a maintenance schedule.
3. For all dams that are not regulated by either the Federal Energy Regulatory Commission licensing procedures, or the State Department of Ecology reservoir permit requirements, a maintenance agreement and construction bond for 150% of the cost of the structure shall be filed with the director of the Public Works Department prior to construction. The maintenance agreement shall specify who is responsible for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a civil engineer licensed in the state of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.
4. Natural instream features such as snags, uprooted trees, or stumps should be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages.
5. Flood ~~hazard reduction control~~ works and instream structures shall allow for normal groundwater movement and surface runoff.
6. Flood ~~hazard reduction control~~ works and instream structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, islands, and braided banks.

~~6.7. New~~ Structural flood ~~hazard reduction control~~ works shall be placed landward of associated wetlands, and designated habitat conservation areas, except for works that improve ecological functions, such as wetland restoration.

~~7.8.~~ Where flood ~~hazard reduction control~~ works are necessary, they shall be set back at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Levees that have already cut off point bars should be relocated where feasible to lower flood stages and current velocities.

~~8.9.~~ Where levees are necessary to protect floodway fringe areas, they shall be located and designed to protect shoreline ecological functions and processes. Such works should be located near the tangent to outside meander bends so that the stream can maintain normal meander progression and ~~utilize~~ use most of its natural flood water storage capacity.

~~9.10.~~ No motor vehicles, appliances, other similar structures or parts thereof; nor structure demolition debris; nor any other solid waste shall be used for flood ~~hazard reduction control~~ works.

~~11.~~ Cut-and-fill slopes and back-filled areas shall be stabilized with brush matting and buffer strips and revegetated with native grasses, shrubs, or trees to prevent loss of shoreline ecological functions and processes.

A. ~~Shoreline Area Regulations.~~ [CES160]

~~0. Urban. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~

~~0. Urban Resort. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~

~~0. Urban Conservancy. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control are prohibited.~~

~~0. Shoreline Residential. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~

~~0. Rural. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control may be permitted as a conditional use.~~

~~0. Resource. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control may be permitted as a conditional use.~~

~~0. Conservancy. Flood control works and instream structures are permitted subject to policies and regulations; provided, that channelization or dams for flood control are prohibited.~~

~~0. Natural. Flood control works and instream structures are prohibited except for normal maintenance and repair.~~

~~0. Aquatic. Flood control works and instream structures are permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

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## ~~23.4100.090-110~~ **Forest Practices.** [AP161]

### ~~A. Policies.~~

~~B. Forest lands should be reserved for long term forest management and such other uses as are compatible with the dominant use. Other more intensive and incompatible uses tending to impair the dominant use should be discouraged from locating on forest lands.~~

~~C. Forest practices should maintain high levels of water quality, as well as surface and ground water movement patterns.~~

~~D. Forest practices should minimize damage to wetlands, fish and wildlife species and habitats, especially aquatic habitats.~~

~~E. Extreme caution must be observed whenever chemicals are to be used along shorelines; such use should be avoided altogether if possible.~~

~~F. Forest practices should maintain or improve the quality of soils and minimize erosion.~~

~~G. Where slopes are extremely steep or soils are subject to sliding, rapid erosion or high water table, special practices should be employed to minimize damage to shoreland and water features, and adjacent properties.~~

### ~~A. Regulations.~~

#### ~~A. General~~ [CES162].

1. All forest practices undertaken on shorelines shall comply with the applicable policies and provisions of the Forest Practices Act, Chapter 76.09 RCW as amended, and any regulations adopted pursuant thereto (WAC Title 222), as administered by the Department of Natural Resources.

2. Unless otherwise stated, the vegetation ~~conservation management~~ regulations of this program do not apply to commercial forest practices as defined by this program when such activities are covered under the Washington State Forest Practices Act (Chapter 76.09 RCW), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, and WCC Chapter 16.16 (Critical Areas), and shall be limited to the minimum necessary to accommodate an approved use. [AP163]

3. A forest practice that only involves timber cutting is not a development under the Act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit, as required by WAC 222-50-020. [CES164]

4. ~~For the purposes of this program, preparatory work associated with the Any~~ conversion of land to ~~a non-forestry uses and/or development~~ use not compatible with forestry shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, including vegetation conservation, and shall be must:

a. Comply with the applicable policies and regulations of this program;

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- 1 b. Limited the conversion to the minimum necessary, while complying with the purpose of the
- 2 shoreline environment designation, general policies and regulations, and specific shoreline
- 3 use and modification policies and regulations on the subject property;
- 4 a-c. Ensure no net loss of shoreline ecological functions or significant adverse impacts to other
- 5 shoreline uses, resources, and values provided for in RCW 90.58.020, such as navigation,
- 6 recreation, and public access.
- 7 ~~1. Forest practices roads are prohibited on marine or lake shores where slopes exceed 35~~
- 8 ~~percent except when necessary to obtain access to road networks on land outside the Act's~~
- 9 ~~jurisdiction.~~
- 10 ~~2. Cutting of more than 30 percent of the merchantable trees over a 10-year period within 50~~
- 11 ~~feet of the bank rim on feeder bluffs and landslide hazard areas is prohibited. Only selective~~
- 12 ~~thinning methods that minimize erosion potential shall be employed.~~
- 13 5. Per RCW 90.58.150, W with respect to timber situated within shoreline jurisdiction along
- 14 shorelines of statewide significance, only selective commercial timber cutting may be permitted
- 15 so that no more than 30 percent of the merchantable timber may be harvested in any 10-year
- 16 period; provided that:
- 17 a. Other timber harvesting methods may be permitted as a conditional use permit in those
- 18 limited instances where topography, soil conditions, or silviculture practices necessary for
- 19 regeneration render selective logging ecologically detrimental; and
- 20 b. Timber removal that is to the minimum necessary for the conversion of land for other uses
- 21 may be permitted.
- 22 ~~1. Shoreline Area Regulations. [CES165]~~
- 23 ~~— Urban. Forest practices are prohibited.~~
- 24 ~~3. Urban Resort. Forest practices are prohibited.~~
- 25 ~~3. Urban Conservancy. Forest practices are prohibited.~~
- 26 ~~3. Shoreline Residential. Forest practices are prohibited.~~
- 27 ~~3. Rural. Forest practices are permitted subject to policies and regulations of this program and~~
- 28 ~~critical areas buffer regulations.~~
- 29 ~~3. Resource. Forest practices are permitted subject to policies and regulations of this program and~~
- 30 ~~critical areas buffer regulations.~~
- 31 ~~3. Conservancy. Forest practices are permitted subject to policies and regulations of this program~~
- 32 ~~and critical areas buffer regulations.~~
- 33 23.100.170-40.120 Industrial and Port Development [P/C166].
- 34 a. Industrial and port development in shoreline areas outside of the Cherry Point management area
- 35 shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.
- 36 ~~**Cherry Point Management Area.** All industrial and port development in shorelines within the Cherry~~
- 37 ~~Point management area as defined in Chapter 23.110 WCC shall be subject to the policies and~~
- 38 ~~regulations found in WCC 23.100.170 instead of the policies and regulations of this section, unless~~
- 39 ~~otherwise specified therein.~~
- 40 ~~A. Policies.~~

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~~D.—Shoreline sites particularly suitable for development such as deep water harbors with access to adequate rail, highway and utility systems should be reserved for water dependent or water-related industrial and port development.~~

~~E.—In order to provide adequate shoreline for future water dependent and water-related uses, industrial or port development at deep water sites should be limited to those uses that produce the greatest long-term economic base. Industrial and port development that is consistent with this program should be protected from encroachment or interference by incompatible uses with less stringent siting requirements, such as residential or commercial uses. Mixed use development, including non-water dependent uses, should only be allowed when they include and support water dependent uses.~~

~~F.—Regional needs for port facilities should be carefully considered in reviewing new port proposals and in allocating shorelines for such development. Such reviews or allocations should be coordinated with port districts, adjacent counties and cities, and the state. Existing, officially designated State Harbor Areas should be used for new port development to the maximum extent whenever possible.~~

~~G.—Multiple use of industrial and port facilities is encouraged to limit duplicative facilities and reduce adverse impacts. Multiple use should be implemented in the following manner:~~

~~a.—Cooperative use of piers, cargo handling, storage, parking and other accessory facilities among private or public entities should be required in industrial or port facilities whenever feasible. New facilities for water dependent uses should be allowed only after assessment of the potential for shared use of existing facilities.~~

~~a.—Industrial and port developments should provide opportunities for physical and/or visual public shoreline access in accordance with the public access policies, including recreational use of undeveloped shorelines not needed for port or industry operations; provided, that such uses are safely compatible with facility operations.~~

~~J.—Industrial and port development in the shoreline should be located and designed to avoid significant adverse impacts to other shoreline uses, resources, and values, including shoreline geomorphic processes, water quality, fish and wildlife habitat, commercial aquaculture, and the aquatic food chain.~~

~~K.—Restoration of impaired shoreline ecological functions and processes should be encouraged as part of industrial and port development.~~

### ~~A.—Regulations.~~

#### ~~M.A. Purpose and Need~~General.

~~1.—Water dependent industrial and port uses designed, developed and operated consistent with the policies and regulations of this program shall be given preference over all other uses on the shoreline.~~

1. Prior to approval of an application~~water dependent industrial or port uses~~, the ~~administrator~~Director shall review a proposal for design, layout, and operation of the proposed use and shall ~~determine whether~~make specific findings that the use ~~qualifies as a~~is water-dependent, water-related, water-enjoyment or non-water-oriented industrial and port use.

2. All harbor areas, established pursuant to Article XV of the Washington State Constitution, that have reasonable commercial navigational accessibility and necessary support facilities such as transportation shall be reserved for water-dependent and water-related uses that are associated with commercial navigation unless a specific finding is made in the permit review process that adequate shoreline is reserved for navigation use elsewhere in the affected harbor area.
3. Industrial and port uses ~~that result in no net loss of shoreline ecological functions and processes~~ are allowed subject to ~~the policies and regulations of WCC 23.90.030 and the~~ specific criteria below:
  - a. Water-dependent industrial and port uses shall be given first preference over ~~non-waterdependent~~ ~~[CES167] water-related and water-enjoyment~~ industrial and port uses. ~~Prior to approval of water-dependent industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-dependent use.~~
  - ~~a.b.~~ Water-related industrial and port uses shall be given second preference over non-water dependent industrial and port uses.
  - ~~b.c.~~ Water-related industrial and port uses may not be approved if they displace existing water-dependent uses. ~~Prior to approval of water-related industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-related use.~~
  - ~~c.d.~~ Water-enjoyment industrial and port uses may be not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. ~~Prior to approval of water-enjoyment industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-enjoyment use.~~
  - ~~d.e.~~ Non-water-oriented industrial and port uses may be permitted where located on a site physically separated from the shoreline by another property in separate ownership or a public right of way such that access for water-oriented use is precluded. All other non-water-oriented industrial and port uses are prohibited in the shoreline, except for those identified above; provided that unless the use provides significant public benefit with respect to the objectives of the Act and the following is:
    - i. The proposal is part of a mixed use project that includes a water-oriented use; or
    - ii. The proposal is on a site where navigability is severely limited; ~~[AP168]; or~~
    - ~~iii.~~ The proposal does not occupy space designated for water-dependent or water-related use identified in a project permit approval.
  - f. Water-oriented industrial and port uses shall provide public access in accordance with the provisions of WCC 23.30.060 (Public Access). ~~[CES169]~~
  - ~~e.g.~~ When permitted, non-water-oriented industrial and port uses shall provide public access and/or restoration as follows:

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- i. ~~Non-water-oriented industrial and port uses shall provide p~~Public access ~~shall be~~ in the form of unrestricted open space. ~~The administrator shall determine the amount of required access in accordance with the provisions of WCC 23.90.080 on a case-by-case basis.~~<sup>[CES170]</sup>
  - ii. If no water-oriented uses are located on or adjacent to the water as part of a mixed use development, 80% of the shoreline and associated buffers shall be restored to provide shoreline ecological functions that approximate the functions provided by the site in natural conditions.
  - iii. The requirements ~~in subsections (B)(1)(c)(v)(A) and (B)~~ of this section may be modified when:
    - (A) The site is designated as a public access area by a shoreline public access plan, in which case public access consistent with that plan element shall be provided; or
    - (B) Specific findings are made demonstrating that the size of the parcel and the presence of adjacent uses preclude restoration of shoreline ecological functions. Where on-site restoration is infeasible, equivalent off-site restoration shall be provided ~~consistent with the policies and regulations of this program.~~
  - iv. Buffers shall be designed as appropriate to protect shoreline resources based on a ~~site-specific restoration assessment plan, and may differ from the standard critical area buffer dimensions provided in Chapter 16.16 WCC; provided, that the building envelope for the proposed non-water-oriented use shall be based on current site conditions.~~<sup>[AP171]</sup>
  - v. If water-oriented uses are located on or adjacent to the water, the remaining undeveloped water frontage that is not devoted to water-dependent use shall be preserved if in a substantially unaltered condition. If the site has been previously altered by past development, the balance of the site may be reserved for future water-related use.
  - vi. The requirements of this section shall not apply to those ~~non-water-oriented~~ industrial or port uses located on a site physically separated from the shoreline where access to the land/water interface is precluded; provided, that such conditions were lawfully established prior to the effective date of this program.
- ~~f.h.~~ Interim use of facilities approved and/or permitted for water-dependent use for non-water-dependent uses may be approved by a shoreline conditional use permit under the following conditions:
- i. A specific occupancy plan has been approved that allows interim uses for a specific period while the market for water-dependent uses is being developed, and the proposed interim use is consistent with the occupancy plan.
  - ii. The period of interim lease or commitment of the space shall not exceed five years. At the end of five years, a new application for interim use shall be submitted.
  - iii. A good faith effort to obtain water-dependent uses has been made and suitable tenants were not found. The period of the search for water-dependent uses, the notice of



- availability, listing or advertising employed, and any inquiries received shall be documented.
- iv. No permanent improvements will be made to the space that requires more than five years of occupancy to repay the investment. No permanent improvements will be made that will reduce the suitability of the space for water-dependent use.
4. Required setback areas shall not be used for storage of industrial equipment or materials, or waste disposal, but may be used for outdoor recreation. Portions of such setbacks may be used for motor vehicle parking if design of such facilities is consistent with this program and critical area regulations in WCC Chapter 16.16.
5. Disposal or storage of solid or other industrial wastes is not permitted on shorelines; except that liquid waste treatment facilities may be permitted as a [shoreline](#) conditional use if it is demonstrated that a shoreline location is required or where it is demonstrated that an alternative site outside of the shoreline is not feasible; and further excepted, that land application of waters used in the processing of fruits and vegetables within the shoreline is permitted as a [shoreline](#) conditional use.
6. Marine rails shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.
  - ~~a. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers, setbacks, height, open space and impervious surface coverage.~~
- O.B. Additional Standards for Log Rafts and Storage.
  1. Storage of logs is prohibited in water-bodies, except where an upland location is not feasible; provided, that no ~~new~~ log storage may be allowed in marine or estuarine waters or tidelands.
  2. Log rafting shall be allowed in cases where overland transportation of logs would produce unacceptable transportation impacts, or for transportation of logs from islands or from other locations in Puget Sound. Areas for assembly and disassembly of log rafts shall meet all standards below for log storage.
  3. Offshore log storage shall only be allowed on a temporary basis, and should be located where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes.
  4. Log rafting or storage operations are required to implement the following, whenever applicable:
    - a. Logs shall not be dumped, stored, or rafted where grounding will occur.
    - b. Easy let-down devices shall be provided for placing logs in water.
    - c. Bark and wood debris controls and disposal shall be implemented at log dumps, raft building areas, and mill-side handling zones. Accumulations of bark and other debris on the land and docks around dump sites shall be fully contained and kept out of the water.
    - d. Where water depths will permit the floating of bundled logs, they shall be secured in bundles on land before being placed in the water. Bundles shall not be broken again except on land or at mill sites.
  5. Impervious pavement is required for log yards where the wet season water table is less than four feet below surface level in order to reduce waste buildup and impacts on ground ~~water~~ and surface water.

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6. Stormwater management facilities shall be provided to protect the quality of affected waters.
7. Log storage facilities shall be located upland and properly sited to avoid fish and wildlife habitat conservation areas.
8. Log storage facilities must be sited to avoid and minimize the need for dredging in order to accommodate ~~new~~ barging activities at the site.
9. Log storage facilities shall be located in existing developed areas to the greatest extent feasible. If a ~~new~~ log storage facility is proposed along an undeveloped shoreline, an alternatives analysis shall be required.
10. A berm must be located around the outer edge of the upland sort surface using rocks, or other suitable materials to prevent loss of wood debris into the water.
11. Log booming shall only be allowed offshore in sub-tidal waters in order to maintain unimpeded nearshore migration corridors for juvenile salmonids and to minimize shading impacts from log rafts. Log booming activities include the placement in or removal of logs and log bundles from the water, and the assembly and disassembly of rafts for water-borne transportation.
12. A debris management plan describing the removal and disposal of wood waste must be developed and submitted to the County. Debris monitoring reports shall be provided, when ~~re~~ stipulated.
13. Existing in-water log storage and log booming facilities in critical habitats ~~utilized~~ used by threatened or endangered species classified under ESA shall be reevaluated if use is discontinued for two years or more, or if substantial repair or reconstruction is required. The evaluation shall include an alternatives analysis in order to determine if logs can be stored upland and out of the water, or if the site should be used for other purposes that would have lesser impacts on ESA-listed species. The alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and booming to uplands.

### ~~P. Hydropower Development.~~ [CES172]

- ~~a. Hydropower facilities shall be located, designed, and operated to minimize impacts to fish and wildlife resources including spawning, nesting, and rearing habitat, and migratory routes, and critical areas. Mitigation measures to achieve no net loss of shoreline ecological functions and processes shall be implemented in accordance with WCC.~~
- ~~a. Hydropower facilities shall be located, designed, and operated to protect and minimize impacts to geohydraulic processes; waterfalls; erosion and accretion shoreforms; agricultural land; scenic vistas; recreation sites; and sites having significant historical, cultural, scientific, or educational value.~~
- ~~a. Hydropower facilities shall accommodate public access to, and multiple use of, the shoreline.~~
- ~~a. For all dams that are not regulated by either the Federal Energy Regulatory Commission licensing procedures, or the State Department of Ecology reservoir permit requirements, a maintenance agreement and construction bond for 150 percent of the cost of the structure shall be filed with the director of the Public Works Department prior to construction. The maintenance agreement shall specify who is responsible for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a~~

- ~~civil engineer licensed in the state of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.~~
- ~~a. The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the state of Washington. The professional design shall include a maintenance schedule.~~
- C. Regulations for Specific Shoreline Environment Designations. [CES173]
  1. In the Rural shoreline environment, permitted water-oriented port development and industrial facilities are limited to those used for processing, manufacturing, and storage of finished or semi-finished goods.
  2. In the Resource shoreline environment, water-oriented facilities for the processing, manufacturing, and storage of natural resource products are permitted. Other water-oriented industrial or port use and development may be permitted as a shoreline conditional use. Non-water-oriented oriented facilities for the processing, manufacturing, and storage of natural resource products may be permitted as a shoreline conditional use subject to the criteria for such uses in this section.
  3. In the Aquatic shoreline environment, water-dependent industrial or port use and development are permitted, subject to the use and development regulations of the abutting upland shoreline environment designation.
  4. In the Cherry Point Management Area, WCC 23.40.125 shall also apply. Where this section differs from WCC 23.40.125, the regulation(s) of that section shall govern.
- ~~—Shoreline Area Regulations.~~
  - ~~0. Urban. Water-oriented industrial and port use and development are permitted subject to policies and regulations of this program. Non-water-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section. Dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
  - ~~0. Urban Resort. Port development limited to passenger terminals is permitted. All other industrial or port use and development is prohibited.~~
  - ~~0. Urban Conservancy. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
  - ~~0. Shoreline Residential. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
  - ~~0. Rural.~~
    - ~~—Water-oriented port development and industrial facilities for processing, manufacturing, and storage of finished or semi-finished goods are permitted.~~
    - ~~—Non-water-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section.~~
    - ~~—Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~

1. ~~Resource.~~

~~—Water oriented facilities for processing, manufacturing, and storage of natural resource products are permitted subject to the policies and regulations of this program.~~

~~a. Non-water-oriented facilities for processing, manufacturing and storage of natural resource products, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section, and other water-oriented industrial or port use and development may be permitted as a conditional use.~~

~~a. Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~

~~a. Other non-water-oriented industrial or port use and development are prohibited.~~

~~1. Conservancy. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~

~~1. Natural. Industrial or port use and development are prohibited.~~

~~1. Aquatic. Water-dependent industrial or port use and development are permitted, subject to the use and development regulations of the abutting upland shoreline area designation. Log storage may be permitted as a conditional use.~~

**23.4100.210-125 Cherry Point Management Area.** [AP174]

~~A. Policies.~~

~~A. Purpose and Intent.~~

~~A. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and balances the special port, industrial and natural resource needs associated with the development of this marine resource. This section identifies policies and regulations for water-dependent industrial activities that apply in addition to specific other elements of this program as referenced herein.~~

~~A. Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry Point management area as providing herring spawning habitat and other key habitat characteristics that warrant special consideration due to their importance to regional fisheries and other elements of the aquatic environment.~~

~~A. Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require marine access for marine cargo transfer, including oil and other materials. For this reason, water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.~~

~~A. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic lands within the Cherry Point management area. The development of such a plan could provide a forum and process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future amendments to this program as appropriate.~~

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~~A.—All development that is to be located within the Cherry Point management area, as defined in Chapter 23.110 WCC, shall be subject to the policies and regulations found in this section, and shall not be subject to the policies and regulations found in WCC 23.100.010 through 23.100.160, nor Chapter 23.90 WCC, unless otherwise referenced in this section. The policies and regulations found in this section are applicable only within the geographic boundaries of the Cherry Point management area and do not apply elsewhere in the county. In the event that the provisions of this section conflict with other applicable referenced provisions of this program, the policies and regulations that are most protective of shoreline resources shall prevail.~~

~~A.—Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial facilities should be allowed in the Cherry Point management area. Industry within the major port/industrial urban growth area, as designated in the County Comprehensive Plan, which is not water-dependent should locate away from shoreline jurisdiction.~~

~~A.—Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking and other accessory facilities are encouraged.~~

~~A.—Public Access.~~

~~A.—Where appropriate, industrial and port development within the Cherry Point management area should provide public beach and shoreline access in a manner that does not cause interference with facility operations or present hazards to life and property. This may be accomplished through individual action or by joint, coordinated action with other developers and landowners, for example, by setting aside a common public access area.~~

~~A.—Special emphasis should be given to providing public beach and shoreline access for recreational opportunities including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.~~

~~A.—Public access within the Cherry Point management area should be consistent with the Whatcom County Parks and Recreation Open Space Plan.~~

~~A.—Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological resources in the Cherry Point management area, consideration of probable effects of all development proposals on shoreline ecological functions and processes should be assessed with the other long-term statewide interests. New port development that requires dredge and fill should not be permitted in the Cherry Point management area due to potential adverse effects on ecological functions, including fish and shellfish habitat and geohydraulic processes.~~

~~A.—Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the scenic character of the area and to ensure visual compatibility with adjacent nonindustrial zoned properties.~~

~~A.—Site Development. All development should be constructed and operated in a manner that, while permitting water-dependent uses, also protects shoreline resources, their ecological functions and processes, and that incorporates the following:~~

~~A.—Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water quality, fish and wildlife habitat, and other natural site conditions;~~

~~A.—Adequate temporary and permanent management measures to control erosion and sediment impacts during construction and operation; and~~

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~~A. Adequate stormwater management facilities.~~

~~A. Regulations.~~

~~A. All uses and modifications within the Cherry Point Management Area shall be subject to the regulations found in this section (as well as those of Title 20, Zoning), and not those of WCC 23.40.120 (Industrial and Port Development). Where this section differs from WCC 23.40.120, the regulation(s) of this section shall govern.~~

~~U.B. Allowed Uses.~~

1. Water-dependent industrial and port uses are allowed within the Cherry Point management area ~~only upon finding; provided, that specific findings are made in a shoreline substantial development permit or conditional use permit~~ that:

- a. Policies for optimum implementation of the statewide interest have been achieved through protection of shoreline ecological functions and processes;
- b. The long-term statewide benefits of the development have been considered with the potential adverse impacts on ecological functions; and
- c. Proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated in the proposal.

2. Fuel Uses – Shoreline Permits and Requirements:

- a. Existing legal fossil or renewable fuel refinery operations or existing legal fossil or renewable fuel transshipment facilities [as of XXX(CES175) effective date] are considered permitted shoreline substantial developments.
- b. Expansions of existing legal fossil-fuel refineries or expansions of existing legal fossil-fuel transshipment facilities shall require a shoreline conditional use permit.
- c. New or expansion of existing legal renewable fuel refinery or renewable fuel transshipment facility shall require a shoreline conditional use permit. [DN176]

~~2.3.~~ Water-related and water-enjoyment uses are allowed only as part of public access and public recreation development, subject to the ~~findings-criteria~~ in subsection (B)(1)(~~a~~) of this section.

~~3.4.~~ Accessory ~~development~~ uses, which does not require a shoreline location in order to carry out ~~its~~ their support functions, shall be sited away from the land/water interface and landward of the principal use. Accessory ~~development~~ uses shall observe critical area buffers in WCC Chapter 16.16. Accessory ~~development~~ uses includes, but ~~are~~ is not limited to, parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land transport ~~development~~.

~~4.5.~~ Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that are located and designed to minimize shoreline alteration are permitted.

6. Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.

~~5.7.~~ Liquid manure storage facilities and spreading and animal feeding operations and confined animal feeding operations shall be prohibited.

**W.C. Public Access.**

1. Public access shall be provided in accordance with WCC 23.930.0780 (Public Access) unless it is demonstrated that public access poses significant interference with facility operations or hazards to life or property.
2. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access may be provided in accordance with WCC 23.930.0780 at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include interpretive centers and displays that explain maritime history and industry; provided, that visual access to the water is also provided.
3. As an alternative to on-site public access facilities, public access may be provided in accordance with a public access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

**W.D. Critical Areas.** In addition to meeting the provisions of WCC 23.30.01090-030, ~~(Ecological~~

Protection)~~), and critical areas~~, development and alteration shall not be located or expanded within critical areas designated pursuant to WCC Chapter 16.16 except where the site is approved for water-dependent use, and the following are met:

1. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with WCC 23.930.0130 (Ecological Protection).
2. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade the existing water quality within the wetland.
3. The minimum required setback from the OHWM for all industrial and port facilities, including development components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.
4. Development and alteration other than recreation development for public and quasi-public shoreline access is prohibited on the accretion shoreforms identified on the map in Appendix C of this title, ~~subject to the regulations in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations of Chapters 23.90 and 23.100 WCC;~~ provided, that lawfully established uses or developments may be maintained subject to the provisions of WCC ~~23.50.070~~ Chapter 23.50 (Nonconforming Uses, Structures, and Lots).

**X.E. Location and Design.**

1. Piers.
  - a. Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to ~~one pier, in addition to~~ ~~(CES177)~~ those in operation as of January 1, 1998.
  - a-b. Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the movement of material and cargo from land to water and water to land. The length of piers shall not extend beyond that which is necessary to accommodate the draft of the vessels intending to use the facility.



~~b.c.~~ Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlife habitats.

~~c.d.~~ Piers shall be designed to minimize impacts on steep shoreline bluffs.

~~d.e.~~ All pilings in contact with water shall be constructed of materials such as concrete, steel, or other materials that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard construction provisions of this section.

~~e.f.~~ All piers on piling structures shall have a minimum vertical clearance of one foot above extreme high water.

~~f.g.~~ Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers, except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means non-portable storage in fixed tanks. Secondary containment shall be provided for portable containers.

~~g.h.~~ All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and approved for compliance with U.S. Coast Guard regulations.

2. Dredging.

a. Dredging to accommodate water access to, or construction of, new development is prohibited. New development shall be located and designed to avoid the need for dredging. Dredging for existing development shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and wildlife habitats.

~~b. Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations in WCC 23.90.120, (B)(4) and (5), Dredging.~~

~~c.b.~~ Dredging is prohibited in the accretion shoreform and backshore wetland areas ~~described in Appendix C of this title.~~

3. ~~Landfill~~ is prohibited, except for the minimum necessary to access piers or other structures that provide access to the water. Pier design should accommodate the connection between the pier and uplands by employing a pile-supported structure to the point of intersection with stable upland soils. ~~Limited landfill may be allowed for pier access that does not extend further toward the OHWM than existing topography. Any fill or excavation waterward of the OHWM requires a shoreline conditional use permit.~~

4. Excavation/Stabilization.

- a. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration will adversely affect the existing littoral drift process. ~~New~~ ~~dD~~Development shall avoid, rather than modify, feeder bluffs.
  - b. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.
5. Shoreline stabilization defense works shall be regulated in accordance with WCC ~~23.100.130~~23.40.190 and be consistent with the conservancy and aquatic shoreline area environment regulations of that section.

~~Y.F.~~ Adjacent Use.

1. ~~New or expanded p~~Port or industrial development adjacent to properties which are zoned for nonindustrial purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare; and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.
2. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for non-port or non-industrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields and screening.
3. The minimum setback from side property lines which intersect the OHWM for industrial and port development shall be 60 feet; provided, that:
  - i. The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard houses, power vaults or transformers; and
  - ii. The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point management area shall be administered in accordance with WCC 20.68.550 (Buffer Area).
4. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but may be used for public access or outdoor recreation.

~~Z.G.~~ Oil and Hazardous Materials.

1. Release of oil or hazardous materials on shorelines is prohibited.
2. A management plan shall be developed for ~~new~~ permitted or conditionally permitted development for the safe handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic waters, surface or ground water. Specific provisions shall address prompt and effective clean-up of spills that may occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill management/response plan has been approved by the state, said plan may be used to satisfy the requirements of this section.
3. Necessary spill containment facilities associated with existing development may be permitted within shoreline jurisdiction where there are no feasible alternatives.

~~Recreational Development. All recreational development shall comply with the policies and regulations of WCC 23.100.100 and be consistent with the conservancy and aquatic shoreline area regulations of that section.~~

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~~5. Archaeological, Historic and Cultural Resource Management. All development associated with archaeological, historic or cultural site activities shall comply with the policies and regulations of WCC 23.90.070.~~

### **23.40.130 Land Division**<sup>[CES178]</sup>

#### A. Additional Standards for Residential Divisions<sup>General.</sup>

1. Land divisions, including boundary line adjustments, shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel.

1-2. All ~~new sub~~land divisions shall provide for vegetation conservation to mitigate cumulative impacts of intensification of use within or adjacent to the shoreline that shall include compliance with vegetation conservation requirements of WCC ~~23.30.050~~23.30.040, together with replanting and control of invasive species within setbacks and open space to assure establishment and continuation of a vegetation community characteristic of a native climax community.

~~2. Residential lots created through land division in the shoreline shall only be permitted when the following standards are met:~~

3. Land division may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.

4. ~~New~~Land division shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. ~~New~~Land division that would require shoreline stabilization is prohibited.

~~5. New or expanded subdivisions and all multiunit residential developments shall provide a community recreation and/or open space area for the benefit of all residents or property owners in the development; provided, that such provisions shall not apply to lot line adjustment, lot consolidation, and subdivision of land into four or fewer lots.~~<sup>[CES179]</sup>

6-5. ~~New or amended sub~~Land divisions of four or fewer lots adjacent to the shoreline shall provide common access to the shoreline for all lots, consistent with , except those for lot line adjustment and lot consolidation purposes, shall provide public access as provided for in WCC 23.930.0780 (Public Access) and this section.

7-6. All ~~new sub~~land divisions shall record a prohibition on ~~new~~ private docks on the face of the plat. An area for shared moorage may be approved if it meets all requirements for shared moorage in WCC 23.40.150~~100.090~~ (Moorage), including demonstration that ~~public and private~~ marinas and ~~other boating facilities~~ launch ramps are not sufficient to meet the moorage needs of the subdivision.

8-7. Subdividing tidelands for sale or lease in connection with individual building lots is prohibited.

9-8. Substandard shoreline lots unsuitable for development of a primary permitted use under the WCC ~~Official Zoning Ordinance~~ (Title 20 (Zoning)) and this program shall not be subdivided.

10-9. Land divisions of more than four lots and, including subdivision of land for more than four parcels, shall incorporate public access to ~~publicly owned shorelines or public water~~

~~bodies~~shorelines of the state as provided for in WCC 23.390.0780 unless the site is designated in a shoreline public access plan for a greater component of public access or public access is demonstrated to be infeasible or inappropriate. The amount and configuration of public access shall depend on the proposed use(s) and the following criteria:

- a. Subdivisions ~~within the shoreline~~ that have views of water areas shall provide a public pedestrian viewing area.
- b. Subdivisions adjacent to ~~public waterways~~waters of the state ~~and marine waters~~ shall provide access to a point ~~that abuttings~~ the water that will provide visual access, and shall provide physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.
- c. Subdivisions subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the area dedicated may be fenced or otherwise restricted to limit public access to ecologically sensitive areas.

11.10. Clustering and other low-impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines.

#### ~~23.4100.120-140~~ Mining.

~~Mining in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

##### ~~A. Policies.~~

~~C. Mining should not be located on shorelines where unavoidable adverse impacts on other users or resources together equal or outweigh the benefits from mining.~~

~~D. Mining should not interfere with public recreation on the shoreline.~~

~~E. Mining should be located and operated so as to provide long-term protection of water quality, fish and wildlife, and fish and wildlife habitat.~~

~~F. Mining, particularly surface or strip mining, should provide for timely restoration of disturbed areas to a biologically productive, semi-natural, or other useful condition through a reclamation process consistent with regulations administered by the Department of Natural Resources and other applicable county standards.~~

~~G. Mining of marine and lake shores or accretional shoreforms, such as point bars, that have a high value for recreation or as fish or wildlife habitat should generally not be permitted.~~

~~H. Mining should only be permitted on accretion point and channel bars where appropriate studies and detailed operation plans demonstrate that:~~

~~— Fish habitat, upland habitat and water quality will not be significantly impacted; and~~

~~— The operation will not adversely affect geohydraulic processes, channel alignment, nor increase bank erosion or flood damages.~~

~~K. Mining operations should be located, designed, and managed so that other appropriate uses are not subjected to substantial or unnecessary adverse impacts from noise, dust or other effects of~~

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~~the operation. The operator may be required to implement measures such as buffers, limited hours, or other mitigating measures for the purpose of minimizing adverse proximity impacts.~~

### ~~A. Regulations.~~ [DN180]

#### ~~M.A.~~ General.

~~1. The removal of gravel for flood management purposes shall be regulated in accordance with the policies-regulations for under of WCC 23.100.06023.40.100 (Flood Hazard Reduction Control Works and Instream Structures) as well as this section.~~

~~1.2. New m~~ Mining and associated activities shall be designed and conducted to result in no net loss of shoreline ecological functions and processes in accordance with WCC 23.90.03023.30.010 (Ecological Protection). ~~Mining should not be approved where it could interfere with shoreline ecological functions or processes or cause irreparable damage to shoreline resources or features such as accretion shoreforms.~~ Application of this standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. The determination of whether there will be no net loss of ecological function shall be based on an evaluation of the reclamation plan required for the site and shall consider impacts on ecological functions during operation. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

~~3. Permit requirements for mining should be coordinated with the requirements of RCW Chapters 78.44 (Surface Mining) and 77.55 (Construction Projects in State Waters).~~

~~4. The proposed subsequent use of mined property shall be consistent with the provisions of the environment designation in which the property is located. Reclamation of disturbed shoreline areas shall provide appropriate ecological functions consistent with the setting.~~

~~5. Pursuant to RCW 90.48.615, motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout is prohibited. This section does not apply to:~~

~~a. Aquatic mining using nonmotorized methods, such as gold panning, if the nonmotorized method does not involve use of a gravity siphon suction dredge;~~

~~b. Mining operations where no part of the operation or discharge of effluent from the operation is to waters of the state;~~

~~c. Surface mining operations regulated by the State Department of Natural Resources under Title 78 RCW;~~

~~d. Metals mining and milling operations as defined in chapter 78.56 RCW; or~~

~~e. Activities related to an industrial facility, dredging related to navigability, or activities subject to a clean water act section 404 individual permit.~~ [CES181]

~~Mining shall not be permitted in critical areas except as a part of an approved flood control program or in conjunction with a habitat restoration or enhancement plan; provided, that such activities may be permitted where demonstrated to be water dependent. A determination of water dependency shall be based on evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on~~

- 1 ~~analysis or studies prepared for purposes of GMA designations, be integrated with any relevant~~
- 2 ~~environmental review conducted under SEPA (Chapter 43.21C RCW), or otherwise be shown in a~~
- 3 ~~manner consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a).~~ [AP182]
- 4 ~~a. Application for permits for mining operations shall be accompanied by operation plans,~~
- 5 ~~reclamation plans and analysis of environmental impacts in accordance with WCC 20.73.700.~~
- 6 ~~Such information shall provide sufficient documentation to make a determination as to whether~~
- 7 ~~the project will result in net loss of shoreline ecological functions and processes during the~~
- 8 ~~course of mining and after reclamation. Creation, restoration, or enhancement of habitat for~~
- 9 ~~priority species and the future productivity of the site may be considered in determining no net~~
- 10 ~~loss of ecological functions.~~
- 11 ~~a. The applicant/proponent must show that mining is dependent on a shoreline location, and that~~
- 12 ~~demand cannot reasonably be accommodated in operations outside shoreline jurisdiction.~~
- 13 ~~Information required to meet this criterion shall evaluate geologic factors such as the~~
- 14 ~~distribution and availability of mineral resources as well as evaluation of need for such mineral~~
- 15 ~~resources, economic, transportation, and land use factors.~~
- 16 ~~a. Where a lawfully established mining operation has resulted in the creation of a lake(s) greater~~
- 17 ~~than 20 acres and such lake(s) is subject to the provisions of the shoreline management program~~
- 18 ~~and the Act, such lake(s) shall be given a resource shoreline area designation. Notwithstanding~~
- 19 ~~any other applicable regulations, such mining operations shall be permitted to continue and~~
- 20 ~~may be expanded subject to approval of a shoreline conditional use permit.~~
- 21 ~~a. Reclamation Plan.~~
- 22 ~~i. A reclamation plan that complies with the format and detailed minimum standards of~~
- 23 ~~Chapter 78.44 RCW shall be included with any shoreline permit application for mining.~~
- 24 ~~i. A reclamation plan that is inconsistent with this program or the Act shall constitute~~
- 25 ~~sufficient grounds for denial of a shoreline permit; provided, that the applicant/proponent~~
- 26 ~~shall be given reasonable opportunity to revise the plan.~~
- 27 ~~a. Overburden.~~
- 28 ~~iv. Overburden or other mining spoil or non-putrescible solid wastes shall be disposed of in an~~
- 29 ~~appropriate manner to protect shoreline ecological functions and processes, other uses, and~~
- 30 ~~aesthetic values.~~
- 31 ~~iv. Disposal of overburden or mining spoil on shorelines shall comply with landfill policies and~~
- 32 ~~regulations of WCC 23.90.100.~~
- 33 ~~a. Surface Oil, Coal Bed or Gas Drilling. As provided in the Act (RCW 90.58.160), surface drilling for~~
- 34 ~~oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the~~
- 35 ~~Strait of Juan de Fuca waterward from OHWM and on all lands within 1,000 feet landward~~
- 36 ~~therefrom. Coal bed drilling is also prohibited.~~
- 37 ~~Y. Marine and Lake Shores.~~
- 38 ~~. Mining of, including but not limited to, sand, gravel, cobbles, or boulders from any marine or~~
- 39 ~~lake shore is prohibited.~~
- 40 ~~. Mining of quarry rock may be permitted as a conditional use; provided, that shore processes~~
- 41 ~~and resources are not adversely affected.~~



B. Additional Standards for Rivers and Streams.

1. Mining waterward of the ordinary high-water mark of a river shall not be permitted unless:

a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

b. The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

~~a-c.~~ The determinations required by this section shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).

d. In considering renewal, extension, or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, the County shall require compliance with this subsection to the extent that no such review has previously been conducted. Where there has been prior review, the County shall review previous determinations comparable to the requirements of this section to assure compliance with this section under current site conditions.<sup>[AP183]</sup>

~~b-e.~~ The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WCC 23.40.080 (Dredging and Dredge Material Disposal).

2. Mining within any ~~designated~~ channel migration zone (CMZ) ~~may be approved as~~ shall require a shoreline conditional use.

1-3. Scalping of accretional point bars may be permitted as a shoreline conditional use for flood hazard reduction ~~control~~ purposes and ~~or market demands~~ commercial purposes under the following conditions:

a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole. Specific studies accompanying the application shall demonstrate that no adverse flood, erosion, or other environmental impacts occur either upstream or downstream of extraction sites. Mining extraction amounts, rates, timing, and locations shall be based on a scientifically determined sediment budget adjusted periodically according to data provided by a regular monitoring plan.

b. Aggregate washing and ponding of waste water are prohibited in floodways.

c. Storage within the FEMA floodway is prohibited in the shoreline during the flood season (November 1<sup>st</sup> through March 1<sup>st</sup>); provided, that temporary stockpiling is permitted during working hours if all such materials are removed from the floodway at the end of each day's operation.

d. All applicable permits and approvals, including, but not limited to, hydraulic project approval (HPA) from the Department of Fish and Wildlife and a Whatcom County flood permit, shall be obtained and all applicable provisions attached thereto shall be adhered to.



d. ~~Open-pit mining may be permitted in a floodplain; provided, that all of the following criteria are met;~~<sup>[DN184]</sup>

i. ~~All pits and other operations should be located outside of the channel migration zone.~~

i. ~~All pits of each operation should be located and excavated to a depth so as to function as a self-flushing chain of lakes whenever the pits are overtopped by floods in order to prevent eutrophication and fish entrapment.~~

i. ~~The entire operation should be sized and designed so that neither additional bank erosion, catastrophic changes in channel location, nor adverse impact to fish resources or water quality will likely result in the long term.~~

i. ~~The scale and mode of operation will not have adverse impacts on fish resources, water quality, and recreation resources, nor adversely impact a stream's natural capacity to erode, shift, accrete, and/or flood.~~

i. ~~All equipment, works and structures are designed to withstand flooding without becoming a hazard in themselves nor causing adverse effects on shore features, without the necessity for shore stabilization structures.~~

i. ~~All structures or equipment which are not flood-proof shall be located outside of the 100-year floodplain during the flood season (November 1st through March 1st); provided, that such equipment is permitted during daily operations.~~

#### ~~II.C. Regulations for Specific Shoreline Environment Designations~~

1. ~~In the Aquatic shoreline environment mining is prohibited, except that accretional bar scalping in streams may be permitted as a shoreline conditional use; provided, that upon approval by the County and Ecology of a sediment management plan component for a mutually designated reach of river, including incorporating the findings of a programmatic environmental impact statement, the shoreline conditional use requirement will no longer be in effect unless mutually agreed to in said management plan.~~<sup>[CES185]</sup>

JJ. ~~Shoreline Area Regulations;~~<sup>[CES186]</sup>

Urban. Mining is prohibited.

Urban-Resort. Mining is prohibited.

Urban-Conservancy. Mining is prohibited.

Shoreline-Residential. Mining is prohibited.

Rural. Mining may be permitted as a conditional use subject to policies and regulations of this program.

Resource. Mining may be permitted as a conditional use subject to policies and regulations of this program.

Conservancy. Mining may be permitted as a conditional use subject to policies and regulations of this program.

Natural. Mining is prohibited.

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1       ~~—Aquatic. Mining is prohibited, except that accretional bar scalping in streams may be permitted~~  
2       ~~as a conditional use subject to policies and regulations of this program; provided, that upon~~  
3       ~~approval by the county and Ecology of a sediment management plan component for a mutually~~  
4       ~~designated reach of river, including incorporating the findings of a programmatic environmental~~  
5       ~~impact statement, the conditional use requirement will no longer be in effect unless mutually~~  
6       ~~agreed to in said management plan.~~

## ~~23.4100.130-150~~ **Moorage Structures—Docks, Piers and Mooring Buoys.** [AP187]

### ~~A. Policies.~~

~~B. Moorage associated with a single family residence is considered a water dependent use; provided, that it is designed and used as a facility to access watercraft, and other moorage facilities are not available or feasible. Moorage for water related and water enjoyment uses or shared moorage for multifamily use should be allowed as part of a mixed use development or where it provides public access.~~

~~C. New moorage, excluding docks accessory to single family residences, should be permitted only when the applicant/proponent has demonstrated that a specific need exists to support the intended water dependent or public access use.~~

~~D. As an alternative to continued proliferation of individual private moorage, mooring buoys are preferred over docks or floats. Shared moorage facilities are preferred over single user moorage where feasible, especially where water use conflicts exist or are predictable. New subdivisions of more than two lots and new multifamily development of more than two dwelling units should provide shared moorage.~~

~~E. Docks, piers and mooring buoys, including those accessory to single family residences, should avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift.~~

~~F. Moorage should be spaced and oriented in a manner that minimizes hazards and obstructions to public navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming and pleasure boating, as well as private riparian rights of adjacent land owners.~~

~~G. Moorage should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and height of piers and docks should be no greater than that required for safety and practicality for the primary use.~~

~~H. Pile supports are preferred over fills because piles do not displace water surface and intertidal or aquatic habitat and are removable and thus more flexible in terms of long term use patterns. Floats may be less desirable than pile structures where aquatic habitat or littoral drift are significant.~~

~~I. The use of buoys for small craft moorage is preferred over pile or float structures because of lesser long term impact on shore features and users; moorage buoys should be placed as close to shore as possible to minimize obstruction to navigation.~~

~~J. Shoreline resources and water quality should be protected from overuse by boaters living on vessels (live aboards). Boaters living on vessels are restricted to established marinas with facilities to address waste handling and other sanitary services.~~

~~K. Vessels should be restricted from extended mooring on waters of the state unless authorization is obtained from the DNR and impacts to navigation and public access are mitigated.~~

~~L. Piers and docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.~~

~~M. New pier and dock development should be designed so as not to interfere with lawful public access to or use of shorelines. Developers of new piers and shared moorage should be encouraged to provide physical or visual public access to shorelines whenever safe and compatible with the primary use and shore features.~~

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## ~~A. Regulations.~~

### A. General.

1. ~~This section applies to all moorage structures. Marinas and boat launches are regulated pursuant to Moorage including docks, piers and mooring buoys in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. Shared moorage with more than four berths and Boat launching facilities are regulated under~~ WCC 23.40.060~~100.040, (Boating Facilities—Marinas and Launch Ramps).~~
2. No pier or dock shall be used for a residence.
3. Public access facilities shall be ~~regulated pursuant to~~ WCC 23.30.0760 (Public Access).
4. Commercial ~~moorage~~ shall be permitted only for water-dependent uses, and only if the applicant/proponent demonstrates that existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for the proposed water-dependent use.
5. Commercial covered moorage may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including demonstration that adequate upland sites are not feasible.
6. ~~Moorage structures~~ shall not be permitted within the following shoreline habitats because of their scarcity, biological productivity, and sensitivity:
  - a. Feeder bluffs and accretion shoreforms;
  - b. Marshes and other wetlands;
  - c. Kelp and eelgrass beds; and,
  - d. Areas of high energy or shallow sloping bottoms (<2% gradient) in the marine environment.
7. ~~Moorage structures~~ shall not be permitted within the following shoreline habitats because of their scarcity, biological productivity, and sensitivity unless no alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program:
  - a. Estuaries;
  - b. Tidal pools on rock shores;
  - c. Spawning and holding areas for forage fish (such as herring, surf smelt and sandlance);
  - d. Subsistence, commercial and recreational shellfish beds; and
  - e. Other critical saltwater or freshwater habitats.[CES188]
8. Other than for day use, all vessels mooring on waters of the state must obtain a lease or permission from the State Department of Natural Resources, except as allowed by applicable state regulations.
9. ~~No moorage shall impact the rights of navigation or public access, unless mitigated.~~ [CES189]
- ~~1.10.~~ When there is not a moorage structure, marine rails are permissible, but shall be supported with as few piles as practicable.

### ~~Q.B. Dimensional Standards—Freshwater.~~

1. ~~Freshwater – New overwater Moorage~~ structures in freshwater environments may be permitted, subject to the following:

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	Design and Dimensional Standards
<b>Maximum Area:</b> surface coverage, including all attached float decking, platform lifts, covered moorage, ramps, ells, and fingers	<ul style="list-style-type: none"> <li>• 480 sq. ft. for an individual use dock or pier</li> <li>• 700 sq. ft. for a shared moorage facility used by 2 residential property owners</li> <li>• 1,000 sq. ft. for a shared moorage facility used by 3 or more residential property owners</li> <li>• Public and commercial moorage structures shall be limited to the minimum area needed to accommodate the intended use.</li> <li>• These area limitations shall include platform lifts</li> <li>• Where a pier or dock cannot reasonably be constructed under the area limitation above to obtain a moorage depth of 5 feet measured below ordinary high water mark, an additional 4 sq. ft. of area may be added for each additional foot of pier or dock length needed to reach 5 feet of water depth at the waterward end of the pier or dock; provided, that all other area dimensions, such as maximum width and length, have been minimized.</li> </ul>
<b>Maximum Width</b>	<ul style="list-style-type: none"> <li>• For moorage structures accessory to a residential use: <ul style="list-style-type: none"> <li>○ 4 feet for pier or dock walkway or ramp</li> <li>○ 6 feet for ells</li> <li>○ 2 feet for fingers</li> <li>○ 6 feet for float decking</li> </ul> </li> <li>• Public and marina moorage structures shall be a maximum of 6 feet for all elements unless a need for a larger size is demonstrated</li> </ul>
<b>Height</b>	<ul style="list-style-type: none"> <li>• Minimum of 1.5 feet above ordinary high water to bottom of pier stringers, except the floating section of a dock and float decking attached to a pier</li> </ul>
<b>Maximum Length</b> <ul style="list-style-type: none"> <li>○ Marine Rails</li> <li>○ Floats</li> <li>○ Overall Dock Length</li> </ul>	<ul style="list-style-type: none"> <li>• 20 feet</li> <li>• 20 feet for float decking</li> <li>• Minimum necessary to obtain a moorage depth of 5.5 feet measured below ordinary high watermark at the waterward end of the dock.</li> </ul>
<b>Decking</b> for piers, docks, walkways, platform lifts, ells, and fingers	<ul style="list-style-type: none"> <li>• Floats 6 feet wide or less must have at least 30% of the deck surface covered in functional grating</li> <li>• Floats greater than 6 feet wide must have at least 50% of the deck surface covered in functional grating</li> <li>• All other dock components must have 100% of the deck surface covered in functional grating</li> <li>• The open area of functional grating must be at least 60%</li> <li>• Replacement of more than 33% or 250 sq. ft., whichever is greater, of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only</li> </ul>

## ~~0. Dimensional Standards – Marine.~~

~~3.2. Marine – New overwater Moorage~~ structures in marine environments may be permitted, subject to the following; provided that port, industrial, and commercial piers and floats shall be the minimum area, length, and width necessary for the intended use:

	Design and Dimensional Standards <span style="border: 1px solid black; padding: 0 2px;">CES1901</span>
<b>Maximum Area:</b> surface coverage, including all componentants	<ul style="list-style-type: none"> <li>• 480 sq. ft. for an individual use dock or pier</li> <li>• 700 sq. ft. for a shared moorage facility used by 2 residential property owners</li> <li>• 1,000 sq. ft. for a shared moorage facility used by 3 or more residential property owners</li> <li>• Where a pier or dock cannot reasonably be constructed under the area limitation above to obtain a moorage depth of -9.5 feet mean low low water as measured at the waterward end of the dock, an additional 4 sq. ft. of area may be added for</li> </ul>

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	<u>each additional foot of pier or dock length needed to reach -9.5 feet mean low low water as measured at the waterward end of the pier or dock; provided, that all other area dimensions, such as maximum width and length, have been minimized</u>
<u>Maximum Width</u>	<ul style="list-style-type: none"> <li>• <u>For moorage structures accessory to a residential use:</u> <ul style="list-style-type: none"> <li>○ 4 feet for pier or dock walkway or ramp</li> <li>○ 6 feet for ells</li> <li>○ 2 feet for fingers</li> <li>○ 8 feet for float decking</li> </ul> </li> <li>• <u>For a joint-use structure – 8 feet</u></li> <li>• <u>Public and marina moorage structures shall be a maximum of 6 feet for all elements unless a need for a larger size is demonstrated</u></li> </ul>
<u>Height</u>	<ul style="list-style-type: none"> <li>• <u>Maximize height over the bed to improve light transmission</u></li> <li>• <u>The bottom of the pier must be at least six feet above the bed at the landward end</u></li> </ul>
<u>Maximum Length</u>	<ul style="list-style-type: none"> <li>• <u>Marine Rails – 20 feet</u></li> <li>• <u>Floats – 30 feet per user (e.g., single-user – 30 feet, 2-users – 60 feet, etc)</u></li> <li>• <u>Overall Dock Length – Minimum necessary to obtain a moorage depth of -9.5 feet mean low low water as measured at the waterward end of the dock .</u></li> </ul>
<u>Decking</u>	<ul style="list-style-type: none"> <li>• <u>Floats must have at least 50% of the deck surface covered in functional grating.</u></li> <li>• <u>Piers, stairs, ramps, and platform lifts must have 100% of the deck surface covered in functional grating</u></li> <li>• <u>Grating openings should be oriented lengthwise in the eastwest direction to the maximum extent practicable.</u></li> <li>• <u>Grating must not be covered (on the surface or underneath) with any items (e.g., kayaks, planters, sheds, lawn chairs, etc.) except utility boxes.</u></li> <li>• <u>Grating must be either multi-directional grating with a minimum of 40% open space or square grating with a minimum of 60% open space. Provide documentation to show amount of % open area.</u></li> <li>• <u>Replacement of more than 10% or 48 sq. ft. of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only[CES191]</u></li> </ul>

## C. Construction Standards for ~~Overwater~~ Moorage Structures.

1. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use, ~~and shall observe the following criteria:~~
2. ~~Piers and docks~~ Moorage structures shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions of a pier or dock, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Piers and docks in lakes providing a public water supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete or steel.
3. Piers and docks shall use pile supports unless engineering studies demonstrate that pile supports are insufficient to ensure public safety. Riprapped or bulkheaded fills may be approved for public projects only and [AP192] only as a shoreline conditional use and only when demonstrated that no feasible alternative is available. Mitigation shall be provided to ensure no net loss of shoreline ecological functions and processes.

4. Approaches to piers and docks shall use piers or other structures to span the entire upper foreshore to the point of intersection with stable upland soils and shall be design to avoid interference with littoral drift or wave refraction. Limited fill or excavation may be allowed landward of the OHWM to match the upland with the elevation of the pier or dock.
5. Pile diameter shall be the minimum necessary and pile spacing shall be the maximum feasible to minimize shading and avoid a “wall” effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment. Piles supporting a new pier must be spaced no closer than 20 feet apart.<sup>[CES193]</sup>
- 5-6. Offshore and foreshore pile structures shall allow for continuity of hydraulic energy patterns, unless specifically designed to reduce wave impact on shores.
7. Floatation for the float shall be fully enclosed and contained in a shell (e.g., polystyrene tubs not shrink wrapped or sprayed coatings) that prevents breakup or loss of the flotation material into the water and is not readily subject to damage by ultraviolet radiation and/or abrasion caused by rubbing against piling and/or waterborne debris.
8. Flotation components shall be installed under the solid portions of the float, not under the grating.
9. If the project includes the replacement of existing piling, they should be either partially cut with a new piling secured directly on top, fully extracted, or cut 2 feet below the mudline. If treated piling are fully extracted or cut, the holes or piles must be capped with clean, appropriate material.
- 6-10. A maximum of two moorage pilings may be installed to accommodate the moorage of boats exceeding the length of the floats.
11. Overhead wiring or plumbing is not permitted on moorage structures.
12. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
13. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.
14. Water supply, sewage disposal and disposal of nonhazardous materials associated with activities on docks and piers shall conform to applicable health standards.
15. No private or shared moorage may be constructed to within 200 feet of OHWM on the opposite shore of any lake or semi-enclosed body of water such as a bay, cove, or natural channel. This restriction shall not apply within marinas, dredged canal systems or approved marina-home developments.
16. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.
17. The width of landings, stairways, or steps must not exceed 4 feet for single-use and 6 feet for joint-use.
18. Additional standards for marine moorage sturctures:



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- a. Floats may be held in place with lines anchored with a helical screw or “duckbill” embedded anchor, piles with stoppers and/or float support/stub piles. (1) For a single-user float, a maximum of 4 piles (not including stub piles) or embedded anchors may be installed. (2) For a joint-use float, a maximum of 8 piles (not including stub piles) or embedded anchors may be installed. (3) If embedded anchors need to be utilized, the anchor lines shall not rest on the substrate at any time; each must contain a mid-line float. (4) Only if the substrate prohibits use of piles or embedded anchors may a Corps-approved alternative be used. (5) If a concrete anchor or other Corps-approved alternative is needed to hold the float, calculations showing that it will hold without dragging or breaking during storm events are required. This analysis should include the size of the float and the dry weight and dimensions of the anchor.
  - b. If the float is positioned perpendicular to the ramp, a small access float may be installed to accommodate tidal movement of the ramp. The access float cannot be larger than 6 feet wide and 10 feet long.
  - c. No floats may be installed in the Upper Shore Zone (area landward of +5 MLLW).
  - d. Float Stops:
    - i. To suspend the float above the substrate at all tides, float stops should be installed on piles anchoring floats. This method is preferred over (d)(ii) and (d)(iii) because float stops are less impacting to the marine environment.
    - ii. If float stops attached to piles are not feasible (provide explanation) then up to four 10-inch diameter stub piles may be installed.
    - iii. Float “feet” attached to the float are an option if the substrate consists of coarse material as described in the column to the right
19. Additional standards for marine mooring buoys:
- a. Mooring buoys shall be placed at a distance specified by the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, and the U.S. Coast Guard to balance the goals of avoiding nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet Washington Department of Fish and Wildlife standards.
  - b. The location (latitude/longitude) of the anchor for the buoy must be identified on the project drawings.
  - c. Anchor lines must not rest or drag on the substrate, and a midline float must be installed to prevent this.
  - d. Anchors should be helical screw or another type of embedded anchor. Only if the substrate prohibits use of embedded anchors may alternative anchors (i.e., concrete block) be used. If an embedded anchor cannot be used and a concrete anchor is needed, calculations showing that the anchor will hold without dragging or breaking during storm events is required. This analysis should include the size of the vessel and the dry weight and dimensions of the anchor.

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e. No other moorage structures may be anchored within a 117-foot radius (with the proposed buoy in the center of the 117-foot radius circle, which would result in a concentration of no more than one per acre) of the proposed buoy.

f. New mooring buoys may not be installed in any waterbody the Washington State Department of Health has designated as “threatened” or “closed” to shellfish harvesting due to the number of boats moored there. [CES194]

P. ~~Private recreational moorage for individual lots is permitted in existing subdivisions approved on or before January 28, 1993, only where shared moorage has not already been developed. Prior to development of a new dock for a single residential lot, the applicant/proponent shall demonstrate that:~~

Q. ~~Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for use;~~

R. ~~On marine shorelines, alternative moorage, such as mooring buoys or a dock sized to accommodate a tender to provide access in conjunction with a mooring buoy, are not adequate or feasible; and~~

S. ~~The applicant/proponent has contacted abutting property owners and none have indicated a willingness to share an existing dock or develop a shared moorage in conjunction with the applicant/proponent.~~

T. ~~If allowed, only one private dock shall be permitted on a shoreline residential lot.~~

U. ~~Shared moorage shall be required in accordance with the following to prevent the proliferation of moorage facilities:~~

V. ~~Shared moorage shall be provided for all new residential developments of more than two dwelling units. New subdivisions shall contain a restriction on the face of the plat prohibiting individual docks. A site for shared moorage should be owned in undivided interest by property owners within the subdivision. Shared moorage facilities shall be available to property owners in the subdivision for community access and may be required to provide public access depending on the scale of the facility. If shared moorage is provided, the applicant/proponent shall file at the time of plat recordation a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:~~

W. ~~Apportionment of construction and maintenance expenses;~~

X. ~~Easements and liability agreements; and~~

Y. ~~Use restrictions.~~

Z. ~~On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock sized to accommodate tenders.~~

AA. ~~Where a multifamily residential development, camping club or subdivision development provides shared moorage, space for the number of waterfront lots or dwelling units may be provided with an additional provision for sites without water frontage up to a ratio of 1.25 moorage spaces per total lots or units.~~

BB. ~~Prior to issuing a permit for shared moorage, a proponent shall file with the Whatcom County auditor a legally enforceable joint use agreement that, at minimum, addresses the following:~~

CC. ~~Apportionment of construction and maintenance expenses;~~

DD. ~~Easements and liability agreements; and~~

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- 1 ~~EE. Use restrictions.~~
- 2 ~~FF. Commercial docks shall be permitted only for water dependent uses, and only if the~~
- 3 ~~applicant/proponent demonstrates that existing facilities in the vicinity, including marinas and~~
- 4 ~~shared moorage, are not adequate or feasible for the proposed water dependent use.~~
- 5 ~~GG. Private moorage for float planes may be permitted as a conditional use where construction will not~~
- 6 ~~adversely affect shoreline functions or processes, including wildlife use. Ecological restoration may~~
- 7 ~~be required to compensate for the greater intensity of activity associated with the use.~~
- 8 ~~HH. If allowed under the provisions of this program, only one private dock with one accessory float, one~~
- 9 ~~boat lift, and one covered moorage accessory to a permitted moorage, shall be permitted on a~~
- 10 ~~shoreline lot owned for residential or private recreational use.~~
- 11 ~~II. Docks with or without a float shall be the minimum size required to provide for moorage. Single-~~
- 12 ~~family docks and floats shall not exceed 40 feet in length measured perpendicularly from the OHWM~~
- 13 ~~nor exceed three feet in height above the extreme high water level. Shared moorage may extend to~~
- 14 ~~80 feet in length if demonstrated to be necessary to provide adequate moorage. In the case of pile~~
- 15 ~~docks at marine or river locations, the height shall be limited to that which may be reasonably~~
- 16 ~~necessary to accommodate landing and moorage of watercraft. Commercial docks shall be the~~
- 17 ~~minimum length necessary to serve the type of vessel served.~~
- 18 ~~JJ. Private docks up to 60 feet in length or shared moorage up to 100 feet in length measured~~
- 19 ~~perpendicularly from the OHWM, including floats, may be permitted by the administrator in shallow~~
- 20 ~~areas where a dock sized to accommodate a tender to provide access to a mooring buoy is not~~
- 21 ~~feasible and where existing docks on adjacent properties presently extend out as far as that which is~~
- 22 ~~proposed, and where such added length is necessary in order to allow a reasonable use of the dock,~~
- 23 ~~as determined based upon adjacent uses; and where the extension in dock length will not adversely~~
- 24 ~~affect ecological processes and functions, provided the required dock length is the minimum~~
- 25 ~~necessary to achieve such purposes. Docks that cannot reasonably meet this standard may request a~~
- 26 ~~review under the variance provisions of this program.~~
- 27 ~~KK. Moorage shall be designed to avoid the need for maintenance dredging. The moorage of a boat~~
- 28 ~~larger than provided for in the original moorage design shall not be grounds for approval of d~~
- 29 ~~LL. In order to minimize impacts on nearshore areas and avoid reduction in ambient light level:~~
- 30 ~~MM. The width of piers, docks and floats shall be the minimum necessary and shall not exceed four~~
- 31 ~~feet in width, except where specific information on use patterns justifies a greater width. Marine~~
- 32 ~~floats shall not exceed eight feet in width nor 40 feet in length and freshwater floats shall not~~
- 33 ~~exceed six feet in width and 20 feet in length unless authorized by a variance. Exceptionally large~~
- 34 ~~vessels or vessels that require a relatively deep draft may be required to use a buoy, other~~
- 35 ~~alternative mooring scheme, or to moor in a marina. Materials that will allow light to pass through~~
- 36 ~~the deck may be required where width exceeds four feet.~~
- 37 ~~NN. Dock surfaces designed to allow maximum light penetration shall be used on walkways or~~
- 38 ~~gangplanks in nearshore areas.~~
- 39 ~~OO. Piers, docks and floats shall be located along a north/south orientation to the maximum extent~~
- 40 ~~feasible.~~

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~~PP. Private docks shall not encroach into the required sideyard setbacks for residential development (both onshore and offshore); provided, that a shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.~~

~~QQ. Dock and Pier Design.~~

~~RR. Moorage buoys shall be placed at a distance specified by the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, and the U.S. Coast Guard to balance the goals of avoiding nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet Washington Department of Fish and Wildlife standards.~~

~~SS. A covered moorage accessory to a single-family pier or dock, not accessory to a marina, shall have no walls other than an open structural framework to support a roof and shall not cover more than 200 square feet nor exceed 15 feet in height above OHWM. Roof materials shall be translucent, or at least 50 percent clear skylights.~~

~~TT. Commercial covered moorage may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including demonstration that adequate upland sites are not feasible.~~

~~UU. No private or shared moorage may be constructed to within 200 feet of OHWM on the opposite shore of any lake or semi-enclosed body of water such as a bay, cove, or natural channel. This restriction shall not apply within marinas, dredged canal systems or approved marina home developments.~~

~~VV. If a dock is provided with railing, such railing shall not exceed 36 inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties or lawful use of water surface~~

~~WW. Water supply, sewage disposal and disposal of nonhazardous materials associated with activities on docks and piers shall conform to applicable health standards.~~

~~XX. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.~~

~~YY. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.~~

~~ZZ. No pier or dock shall be used for a residence.~~

~~AAA. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.~~

~~BBB. Public access facilities shall be provided in accordance with policies and regulations in WCC 23.90.080.~~

~~D. Additional Standards for Individual use docks and piers Moorage. [CES195]~~

~~1. An individual use dock may consist of one pier, one float or platform lift, one boat lift, and one covered moorage.~~

~~2. When allowed under the provisions of this program, only one private dock shall be permitted as an accessory use to a primary use.~~

- 1 3. Private recreational moorage for individual lots is permitted in subdivisions approved on or
- 2 before January 28, 1993, only where shared moorage has not already been developed.
- 3 4. Prior to development of a new dock for a single residential lot, the applicant/proponent shall
- 4 demonstrate that:
- 5 a. Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or
- 6 feasible for use;
- 7 b. Alternative moorage, such as mooring buoys or a dock sized to accommodate a tender to
- 8 provide access in conjunction with a mooring buoy, are not adequate or feasible; and
- 9 c. The applicant/proponent has contacted abutting property owners and none have indicated
- 10 a willingness to share an existing dock or develop a shared moorage in conjunction with the
- 11 applicant/proponent.
- 12 5. Private moorage for float planes may be permitted as a shoreline conditional use where
- 13 construction will not adversely affect shoreline functions or processes, including wildlife use.
- 14 Ecological restoration may be required to compensate for the greater intensity of activity
- 15 associated with the use.
- 16 6. Private docks shall not encroach into the required sideyard setbacks for residential development
- 17 (both onshore and offshore).
- 18 ~~4-7.~~ Covered moorage accessory to a single-family pier or dock shall have no walls other than an
- 19 open structural framework to support a roof and shall not cover more than 200 square feet nor
- 20 exceed 15 feet in height above OHWM. Roof materials shall be translucent, or at least 50
- 21 percent clear skylights.
- 22 E. Additional Standards for Shared Moorage.
- 23 1. When allowed under the provisions of this program, a shared moorage dock may be permitted
- 24 for multiple users. Such docks may consist of one pier and multiple floats or platform lifts, boat
- 25 lifts, and covered moorages, not to exceed the number of authorized users nor the total
- 26 maximum area allowed per WCC 23.40.140(B).
- 27 2. Shared moorage shall be required in accordance with the following to prevent the proliferation
- 28 of moorage facilities:
- 29 a. Shared moorage shall be provided for all residential developments of more than two
- 30 dwelling units.
- 31 b. Subdivisions shall contain a restriction on the face of the plat prohibiting individual docks.
- 32 c. Shared moorage facilities shall be available to property owners in the subdivision for
- 33 community access and may be required to provide public access depending on the scale of
- 34 the facility. A site for shared moorage should be owned in undivided interest by property
- 35 owners within the subdivision.
- 36 d. If shared moorage is provided, the applicant/proponent shall file at the time of plat
- 37 recordation a legally enforceable joint use agreement or other legal instrument that, at
- 38 minimum, addresses the following:
- 39 i. Apportionment of construction and maintenance expenses;
- 40 ii. Easements and liability agreements; and
- 41 iii. Use restrictions.

- e. On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock sized to accommodate tenders.
  - f. Where a new multifamily residential, camping club, or subdivision development proposes to provide shared moorage, space for the number of waterfront lots or dwelling units may be provided with an additional provision for sites without water frontage up to a ratio of 1.25 moorage spaces per total lots or units. This provision does not apply to existing developments.
3. Shared moorage shall be limited to the amount of moorage needed to serve lots with water frontage; provided, that a limited number of upland lots may also be accommodated. Applications for shared moorage shall demonstrate that mooring buoys are not feasible prior to approval of dock moorage. Shared moorage currently leased or proposed to be leased to upland property owners shall be reviewed as a marina.
  4. Shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.

B. Shoreline Area Regulations. [CES196]

- ~~Urban. Private and shared moorage are permitted subject to policies and regulations of this program. Public, commercial and industrial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use.~~
- ~~Urban Resort. Private, shared and public moorage, and covered moorage or floatplane moorage accessory to a permitted moorage, may be permitted as a conditional use subject to the policies and regulations of this program. Commercial moorage is prohibited, except piers serving small passenger vessels may be permitted as a conditional use. Industrial moorage is prohibited.~~
- ~~Urban Conservancy. Private and shared moorage on non-marine shorelines are permitted subject to policies and regulations of this program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorage are prohibited.~~
- ~~Shoreline Residential. Private and shared moorage are permitted subject to policies and regulations of this program. Public and commercial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial moorage is prohibited.~~
- ~~Rural. Private and shared moorage are permitted subject to policies and regulations of this program. Public, industrial and commercial moorage, including expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.~~
- ~~Resource. Private and shared moorage are permitted subject to policies and regulations of this program. Public, industrial and commercial moorage, including expansion of existing~~

piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.

—Conservancy. Private and shared moorage on nonmarine shorelines are permitted subject to policies and regulations of this program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorages are prohibited.

A. Natural. Moorage is prohibited, except public access, interpretive or nature observation facilities that are compatible with the area's physical and visual character may be conditionally permitted subject to policies and regulations of this program. Covered and floatplane moorage are prohibited.

A. Aquatic. Moorage is permitted, subject to the use and development regulations of the abutting upland shoreline area designation. Unless authorized by WA DNR or its designees, extended moorage longer than 60 consecutive days in one location shall be considered an obstruction which interferes with the normal public use of the surface of the waters of the state, and is prohibited.

#### **23.4100.140-160 Recreation.**

~~Shoreline recreation shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

~~C. Shoreline recreational development should be given priority for shoreline location to the extent that the use facilitates the public's ability to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline. Where appropriate, such facilities should be dispersed along the shoreline in a manner that supports more frequent recreational access and aesthetic enjoyment of the shoreline for a substantial number of people.~~

~~D. Recreational developments should facilitate appropriate use of shoreline resources while conserving them. These resources include, but are not limited to: accretion shoreforms, wetlands, soils, ground water, surface water, native plant and animal life, and shore processes.~~

~~E. Recreational development requiring extensive structures, utilities and roads and/or substantial modifications of topography or vegetation removal should not be located or expanded in areas where damage to persons, property, and/or shoreline functions and processes is likely to occur.~~

~~F. Recreational developments and plans should provide the regional population a varied and balanced choice of recreation experiences in appropriate locations. Public agencies and private developers should coordinate their plans and activities to provide a wide variety of recreational opportunities without needlessly duplicating facilities.~~

~~G. Trail links between shoreline parks and public access points should be encouraged for walking, horseback or bicycle riding and other non-motorized vehicle access where appropriate. The Whatcom County Comprehensive Park and Recreation Open Space Plan should be considered in design and approval of public trail systems.~~



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- ~~H.—Access to natural character recreational areas, including but not limited to beaches and fishing streams, should be a combination of linear shoreline trails or easements and small parking or access tracts to minimize user concentration on small portions of the shoreline.~~
- ~~I.—Recreation facilities should incorporate public education regarding shoreline ecological functions and processes, the role of human actions on the environment and the importance of public involvement in shorelines management. Opportunities incorporating educational and interpretive information should be pursued in design and operation of recreation facilities and nature trails.~~
- ~~J.—Reasonable physical or visual public access to shorelines should be provided and integrated with recreational developments in accordance with WCC 23.90.080.~~
- ~~K.—Recreation development should be located only where utility and road capability is adequate, or may be provided without significant damage to shore features commensurate with the number and concentration of anticipated users.~~
- ~~L.—Cooperative efforts among public and private persons toward the acquisition and/or development of suitable recreation sites or facilities should be explored to assure long-term availability of sufficient public sites to meet local recreation needs.~~
- ~~A.—Regulations. Where significant adverse impacts are adequately mitigated, recreational development is a priority use for shoreline location, subject to the following:~~
- ~~A. General.~~
- ~~1. Water-related and water-enjoyment uses ~~do shall~~ not displace water-dependent uses ~~and are consistent with existing water-related and water-enjoyment uses.~~~~
  2. Activities provided by recreational facilities must bear a substantial relationship to the shoreline, or provide physical or visual access to the shoreline. Facilities for water-dependent recreation such as fishing, clam digging, swimming, boating, and wading, and water-related recreation such as picnicking, hiking, and walking should be located near the shoreline, while non-water-related recreation facilities shall be located inland.
  3. Recreation areas or facilities ~~on the shoreline~~ shall provide physical or visual public access consistent with the criteria of WCC 23.~~30.06090.080~~ (Public Access).
  4. Recreational facilities with large grass areas, such as golf courses and playing fields, and facilities with extensive impervious surfaces shall incorporate means to prevent erosion, control the amount of runoff, and prevent harmful concentrations of chemicals and sediment from entering waterbodies in accordance with the ~~policies and~~ regulations of WCC 23.~~390.0340~~ (Water Quality and Quantity).
  5. Recreational use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Such use is prohibited on tidelands, backshore beaches, streams, or wetlands; except as necessary for public health and safety or maintenance.
  6. Trails shall meet the requirements of WCC Chapter 16.16 (Critical Areas).
- ~~B. Regulations for Specific Shoreline Environment Designations.~~
1. In the Urban Conservancy shoreline environment, low intensity water-oriented recreational use and development is permitted subject to the following criteria:

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- 1 a. Structures will not result in more than 10 percent building coverage or 4,000 square feet,  
2 whichever is greater, and total impervious surface will not exceed 20 percent, or 10,000  
3 square feet, whichever is greater.
- 4 b. Alteration of topography shall be limited to the minimum necessary to accommodate  
5 allowed development, and generally less than 30 inches.
- 6 c. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline  
7 ecological functions.
- 8 2. In the Resource shoreline [environment](#), low intensity water-oriented recreational use and  
9 development is permitted; provided, that no designated agricultural or forest resource lands of  
10 long-term significance are displaced.
- 11 3. In the Conservancy shoreline [environment](#), low intensity water-oriented recreational use and  
12 development is permitted subject to the following criteria:
  - 13 a. Structures on sites of one acre or less will not result in more than 10 percent building  
14 coverage or 2,000 square feet, whichever is greater, and total impervious surface will not  
15 exceed 20 percent or 5,000 square feet, whichever is greater.
  - 16 b. Structures on sites greater than one acre will not result in more than five percent building  
17 coverage or 2,000 square feet, whichever is greater, and total impervious surface will not  
18 exceed 10 percent or 10,000 square feet, whichever is greater.
  - 19 c. Alteration of topography shall be limited to the minimum necessary to accommodate  
20 allowed development, and generally less than 30 inches.
  - 21 d. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline  
22 ecological functions.
- 23 4. In the Natural shoreline [environment](#), low intensity water-oriented recreational use and  
24 development consisting of primitive trails or primitive campsites is permitted subject to the  
25 following criteria:
  - 26 a. Essential minor structures such as trails, stairs, small picnic areas, primitive roads,  
27 viewpoints, restrooms, interpretive facilities, or development that will not adversely affect  
28 shoreline ecological functions and processes are permitted.
  - 29 b. Any necessary landscaping shall use native or similar self-maintaining vegetation.
  - 30 c. Recreational development requiring extensive structures or substantial alterations to  
31 topography or native vegetation is prohibited.
- 32 5. In the Aquatic shoreline [area environment](#), water-oriented recreational use and development is  
33 permitted, subject to the use and development regulations of the abutting upland shoreline  
34 [area environment](#) designation; provided, that underwater parks may be permitted as a  
35 [shoreline conditional use](#). [AP197]
- 36 A. ~~Shoreline Area Regulations~~. [CES198]
  - 37 — Urban. Water-oriented recreational use and development is permitted subject to policies and  
38 regulations of this program.
  - 39 1. Urban Resort. Water-oriented recreational use and development is permitted subject to policies  
40 and regulations of this program.

- ~~1. Urban Conservancy. Low intensity water oriented recreational use and development is permitted subject to policies and regulations of this program and the following criteria:
  - ~~— Structures will not result in more than 10 percent building coverage or 4,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent, or 10,000 square feet, whichever is greater.~~
  - ~~— Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.~~
  - ~~— Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.~~~~
- ~~0. Shoreline Residential. Water oriented recreational use and development is permitted subject to policies and regulations of this program.~~
- ~~0. Rural. Water oriented recreational use and development is permitted subject to policies and regulations of this program.~~
- ~~0. Resource. Low intensity water oriented recreational use and development is permitted subject to policies and regulations of this program; provided, that no designated agricultural or forest resource lands of long-term significance are displaced.~~
- ~~0. Conservancy. Low intensity water oriented recreational use and development is permitted subject to policies and regulations of this program and the following criteria:
  - ~~— Structures on sites of one acre or less will not result in more than 10 percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent or 5,000 square feet, whichever is greater.~~
  - ~~— Structures on sites greater than one acre will not result in more than five percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 10 percent or 10,000 square feet, whichever is greater.~~
  - ~~— Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.~~
  - ~~— Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.~~~~
- ~~0. Natural. Low intensity water oriented recreational use and development consisting of primitive trails or primitive campsites is permitted subject to policies and regulations of this program and the following criteria:
  - ~~— Essential minor structures such as trails, stairs, small picnic areas, primitive roads, viewpoints, restrooms, interpretive facilities, or development that will not adversely affect shoreline ecological functions and processes are permitted, subject to policies and regulations of this program.~~
  - ~~— Any necessary landscaping shall use native or similar self-maintaining vegetation.~~
  - ~~— Recreational development requiring extensive structures or substantial alterations to topography or native vegetation is prohibited.~~~~
- ~~0. Aquatic. Water oriented recreational use and development is permitted, subject to the use and development regulations of the abutting upland shoreline area designation; provided, that underwater parks may be permitted as a conditional use.~~

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**23.4100.150-170 Residential.**

~~Residential development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. This section applies to residential development, uses, and activities, as defined in WCC Chapter 23.110 includes multifamily development and the creation of new residential lots through land division is regulated pursuant to WCC 23.40.130 (Land Division).~~

~~—Policies.~~

~~—Single-family residences are designated in Chapter 90.58 RCW as a priority use in those limited instances when authorization is given for alterations of the natural condition of shorelines of the state.~~

~~A. New residential development is encouraged to cluster dwelling units together to reduce physical and visual impacts on shorelines and to reduce utility and road costs. Planned unit developments that include common open space and recreation facilities, or a variety of dwelling sizes and types, are encouraged at suitable locations as a preferable alternative to extensive single-lot subdivisions on shorelines. Planned unit developments (Chapter 20.85 WCC) may also include a limited number of neighborhood commercial business uses where consistent with the applicable zoning regulations.~~

~~A. Allowable density of new residential development should comply with applicable comprehensive plan goals and policies, zoning restrictions, and shoreline area designation standards. The density per acre of development should be appropriate to local natural and cultural features.~~

~~A. Structures or development for uses accessory to residential use should preserve shoreline open space, be visually and physically compatible with adjacent cultural and shoreline features, be reasonable in size and purpose, and result in no net loss of shoreline ecological functions and processes.~~

~~A. Buildings greater than 35 feet above average grade level that will obstruct the views of a substantial number of residences on areas adjoining such shorelines are limited by the Act (RCW 90.58.320) to those cases where this program does not prohibit such development and then only when overriding considerations of the public interest will be served. This program provides opportunities for buildings greater than 35 feet in height in limited areas where consistent with development objectives and the goals and policies of this program.~~

~~A. New residential development should be planned and built in accordance with the policies and regulations in WCC 23.90.030 and to minimize the need for shoreline stabilization and flood hazard reduction measures.~~

~~A. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or nonnative vegetation.~~

~~A. Whenever possible, nonregulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for residential development. Such methods may include resource management planning, low impact development techniques, voluntary protection and enhancement projects, education, or incentive programs.~~

~~A. New multiunit residential development, including subdivision of land for more than four parcels, should provide substantial shore space for development residents and the public, unless public~~

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~~access is infeasible due to incompatible uses, safety, impacts to shoreline ecology or legal limitations.~~

~~A. Development should provide open space corridors between structures, and along site boundaries, so as to provide space for outdoor recreation, preserve views, and minimize use conflicts.~~

~~A. Recreation-oriented residential development in the shoreline should be located only where substantial recreation opportunities are provided on site, and where nearby property owners and other appropriate uses will not be adversely affected.~~

~~A. Regulations:~~

~~A. General.~~

~~1. New~~ Over-water residential structures, including floating homes, are prohibited.

~~1.2. New~~ Residential development may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.

~~3. New~~ Residential development shall assure through a geotechnical analysis that the development will not require shoreline stabilization for the life of structure (100 years). Prior to approval, geotechnical analysis of the site and shoreline characteristics shall demonstrate that shoreline stabilization is unlikely to be necessary; setbacks from steep slopes, bluffs, landslide hazard areas, seismic hazard areas, riparian and marine shoreline erosion areas shall be sufficient to protect structures during the life of the structure (100 years); and impacts to adjacent, downslope or down-current properties are not likely to occur. The greater setback resulting from this regulation or WCC ~~23.90.130~~23.40.020 (Shoreline Bulk Provisions) shall apply.

~~2. Clustering and low impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines in accordance with policies and regulations of WCC 23.90.090.~~ [CES199]

~~4. Residential structures, accessory uses, and related facilities shall be designed and located so as to minimize view obstructions to and from shorelines and waterbodies.~~

~~5. Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.~~ [CES200]

~~B. Standards for Single-Family Residential Use on Constrained Lots.~~ [CES201]

~~1. Legally existing lots with a depth (the distance from the ordinary high water mark to the inside edge of the frontage setback) that would not allow for compliance with the reduced standard buffer may be allowed without a shoreline variance when the following criteria are met:~~

~~2. The lot is vacant or existing structures are removed; provided an existing primary single family residential structure may be enlarged, consistent to WCC 23.50.020, to the maximum building area allowed in (3) below.~~

~~1.3. The building area lying landward of the shoreline buffer and interior to required side yard setbacks shall not exceed 2,500 square feet or less. The building area means the entire area that will be disturbed to construct the home, sidewalks and similar structures (except the single path allowed for shoreline access), parking areas, normal appurtenances (except drainfields). Additionally, and another 500 square feet of low-impact development (LID) landscaping,~~

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including any lawn, turf, ornamental vegetation, or gardens is allowed, provided that it is set back as far as feasible from the shoreline.

4. Consideration shall be given to view impacts in accordance with WCC 23.40.020(D)(2) (Common-Line Setback).

~~2.5.~~ The lot is not subject to landslide hazard areas, ~~alluvial fan hazard areas~~, or riverine and coastal erosion hazard areas or associated buffers ~~as defined in~~ (see WCC 16.16.310);

~~3.6.~~ The nonconforming lot was created prior to the effective date of this program (August 8, 2008);

7. Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline and any critical areas and their buffers.; and provided, that;

8. All ~~administrative~~ reductions to side yard and/or frontage setbacks are pursued, when doing so will not create a hazardous condition or a condition that is inconsistent with this program and WCC Title 20.

~~4.9.~~ There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity;

10. The shoreline jurisdiction shoreline area outside of the approved development is optimized to provide the maximum shoreline ecological functions and ecosystem wide functions;

11. Development may not take place waterward of the ordinary high water mark; and

12. Accessory utilities Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, subject to specific criteria in Chapter 16.16 WCC.

### C. Additional Standards for Multifamily Residential Development.

~~1. Due to the potential for adverse impact upon adjacent uses and the community from such high-rise and multiunit buildings that exceed 35 feet in height, the County must find proposals for such buildings to be consistent with this program and the Act, particularly as related to RCW 90.58.320, and the following factors: [CES202]~~

~~2.1.~~ Open space areas and setbacks shall be required along shorelines and between buildings ~~wherever feasible~~. These areas should be large enough so that ~~local~~ views are not extensively blocked, and building residents have privacy and ample space for outdoor recreation and circulation. The amount of open space shall increase proportionately as density and/or height increase. In general, a view corridor must be maintained across 30 percent of the average parcel width with additional width provided for the percentage increase above 35 feet to a maximum of 50 percent of the lot width. The increased area within a view corridor due to increased height must be devoted to landscaping or other open space.

~~3. Urban services, including sanitary sewers, public water supply, fire protection, stormwater drainage, and police protection shall be provided at adequate levels to protect the public health, safety, and welfare. [CES203]~~

~~4.2.~~ Circulation, parking areas, and outdoor storage or loading areas shall be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas shall be screened where appropriate from open space areas by landscaping, fences or other similar structures, or grade separation.



~~3. New multiunit mMultifamily~~ development ~~with more than four units and, including subdivision of land for more than four parcels,~~ shall incorporate public access to ~~publicly owned shorelines or public waterbodies~~ waters of the state as provided for in WCC 23.390.0780 (Public Access)

unless the site is designated in a shoreline public access plan for a greater component of public access or public access is demonstrated to be infeasible or inappropriate. The amount and

configuration of public access shall depend on the proposed use(s) and the following criteria:

a. Multifamily development that have views of water areas shall provide a public pedestrian viewing area.

b. Multifamily development adjacent to waters of the state shall provide access to a point abutting the water that will provide visual access, and shall provide physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.

c. Multifamily development subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the area dedicated may be fenced or otherwise restricted to limit public access to ecologically sensitive areas. [CES204]

~~5-4. Recreational needs of building residents shall be provided through on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases. Where appropriate, public access should be provided and integrated with the development.~~

#### ~~N. Location and Design.~~

~~0. As mandated by the Act (RCW 90.58.320), no shoreline permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this program does not prohibit such development and only when overriding considerations of the public interest will be served.~~

~~0. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions— Buffers, setbacks, height, open space and impervious surface coverage.~~ [CES205]

#### Q.D. Additional Standards for Accessory Uses and Development.

~~1. Accessory development common to residences includes, but is not limited to, recreational moorage (mooring buoys, docks and floats), garages and shops, parking areas, water craft storage, shoreline stabilization, fences, cabanas, tennis courts, swimming pools, saunas, antennas, decks, walkways and landscaping.~~ [DN206]

~~2. Shoreline permits shall be required for accessory development that does not meet the intent and definition of an appurtenance as defined in WCC 23.110.010(16).~~

1. Such Non-water dependent accessory uses development shall not be located ~~are prohibited in~~ required shoreline setbacks; except, as provided in WCC Chapter 16.16 (Critical Areas).



~~3.2. Non-water dependent development uses and shall be prohibited over the water, unless clearly water dependent such as moorage (mooring buoys, docks and floats) for recreational or personal use.~~

~~4. For projects involving two or more dwelling units, only shared moorage consisting of mooring buoys, or shared moorage and/or floats, is permitted. Individual private docks are prohibited. Shared moorage may be approved if it meets all requirements in WCC 23.100.090.~~

~~5.3. Private recreational docks and floats for individual lots are permitted in existing subdivisions which were approved on or before January 28, 1993, only where shared moorage has not already been developed and subject to the policies and regulations in WCC 23.100.090. For docks and piers, see WCC 23.40.150 (Moorage Structures).~~

## E. Regulations for Specific Shoreline Environment Designations.

1. ~~In the Natural shoreline environment, residential development is prohibited, except that one single-family residence per legal lot may be permitted as a shoreline conditional use where there is no feasible location outside of the shoreline.~~ [AP207]

## B. ~~Shoreline Area Regulations.~~ [CES208]

~~Urban. Residential development is permitted subject to policies and regulations of this program.~~

~~Urban Resort. Residential development is permitted subject to policies and regulations of this program.~~

~~Urban Conservancy. Single family and duplex development is permitted subject to policies and regulations of this program. Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.~~

~~Shoreline Residential. Residential development is permitted subject to policies and regulations of this program.~~

~~Rural. Residential development is permitted subject to policies and regulations of this program.~~

~~Resource. Residential development limited to farm-related residences or one residence and one accessory dwelling unit is permitted per existing parcel where there is no feasible location outside of the shoreline.~~

~~Conservancy. Single family and duplex development is permitted subject to policies and regulations of this program. Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.~~

~~Natural. Residential development is prohibited, except that one single-family residence per existing lot of record may be permitted as a conditional use where there is no feasible location outside of the shoreline.~~

~~Aquatic. Residential development is prohibited.~~

**23.100.160-180 Restoration and Enhancement.**

~~b. Restoration in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

**~~B. Policies.~~**

~~0. This program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.~~

~~0. Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish and wildlife species as well as the biological recovery goals for early Chinook and bull trout populations, and other salmonid species and populations.~~

~~0. Restoration should be integrated with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan and the WRIA 1 Watershed Management Plan.~~

~~0. Priority should be given to restoration actions that:~~

~~5. Create dynamic and sustainable ecosystems.~~

~~5. Restore connectivity between stream/river channels, floodplains and hyporheic zones.~~

~~5. Restore natural channel-forming geomorphologic processes.~~

~~5. Mitigate peak flows and associated impacts caused by high stormwater runoff volume.~~

~~5. Reduce sediment input to streams and rivers and associated impacts.~~

~~5. Improve water quality.~~

~~5. Restore native vegetation and natural hydrologic functions of degraded and former wetlands.~~

~~5. Replant native vegetation in riparian areas to restore functions.~~

~~5. Restore nearshore ecosystem processes, such as sediment transport and delivery and tidal currents that create and sustain habitat.~~

~~5. Restore pocket estuaries that support salmon life histories, including feeding and growth, refuge, osmoregulation, and migration.~~

~~5. Address contamination along industrial shoreline regions.~~

**A. Regulations. General.**

1. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed, and implemented in accordance with applicable policies and regulations of this program.<sup>[DN209]</sup>

2. Restoration shall be carried out in accordance with an approved shoreline restoration plan, ~~County Resolution 2007-011, and in accordance with the policies and regulations of this program.~~

3. The County may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.<sup>[AP210]</sup>

**1. Shoreline Area Regulations.**<sup>[CES211]</sup>

— Urban. Restoration activities are permitted subject to policies and regulations of this program.

- ~~a. Urban Resort. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~a. Urban Conservancy. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~a. Shoreline Residential. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~a. Rural. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~a. Resource. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~a. Conservancy. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~a. Natural. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~a. Aquatic. Restoration activities are permitted subject to policies and regulations of this program.~~

## **23.4100.170-190 Shoreline Stabilization.**

### **A. General.**

1. All development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible. [CES212]
2. Shoreline stabilization measures shall comply with the principals and standards of WAC 173-26-231(3)(a) (Shoreline Stabilization).
3. Shoreline stabilization structures shall not result in a net loss of shoreline ecological functions. If shoreline stabilization is necessary pursuant to a geotechnical analysis, the method, either hard or soft, may be required to provide mitigation.
4. When authorized consistent with these provisions, [CES213] shoreline stabilization measures shall be designed in accordance with WDFW's Integrated Streambank Protection Guidelines or WDFW's Marine Shoreline Design Guidelines, whichever is relevant to the particular environment.
- 1-5. Alternatives for shoreline stabilization shall be based on the following order of preference:
  - a. No action, increase building setbacks, ~~relocate structures~~;
  - ~~a-b.~~ Nonstructural shoreline stabliaztion;
  - ~~b-c.~~ Other sSoft shoreline stabilization treatment;
  - d. Hybrid shoreline stabilization;
  - e. Hard shoreline stabilization.
6. Soft shoreline stabilization treatment shall be used unless demonstrated through a geotechnical analysis not to be sufficient to protect primary structures, dwellings, or businesses.
7. Hard shoreline stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:
  - a. To protect legally existing primary structures:
    - i. New or enlarged structural shoreline stabilization measures for the existing primary structure, including residences and their primary appurtenant structures or uses, shall not be allowed unless there is conclusive evidence, documented by a geotechnical

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12. Revetments are prohibited, except for use in water-dependant and public infrastructure projects, which may be permitted as conditional use.
13. Gabions are prohibited along marine shorelines, but may be permitted as a conditional use along freshwater shorelines.
14. Shore stabilization should not be developed for the purpose of filling shorelines. Shoreline stabilization measures shall not be for the purpose of creating dry land, leveling or extending property, creating or preserving residential lawns, yards, or landscaping, and shall not be allowed except when otherwise allowed in this program.
15. Minimize disturbance pertaining to beach access by avoiding trails that require hard stabilization.
- ~~16. Bluff stabilization walls shall be prohibited unless proven necessary through a geotechnical report.~~ [CES215]
16. Placement of shoreline stabilization methods shall follow the natural contour of the existing shoreline, be parallel to and at or above the OHWM.
17. When determined to be necessary pursuant to this section Bulkheads and other similar hard structures are shoreline stabilization prohibited on marine feeder bluffs or on marine or lake accretion shoreforms, shall require a except as a conditional use permit where exposure to storm waves and driftwood battering seriously threaten other similar existing structures and no feasible alternatives exist. Such bulkheads shall be set back a minimum of 20 feet landward from the OHWM.
- a. Shoreline stabilization on marine feeder bluffs may require additional mitigation measures, including those necessary to offset the loss of sediment supply.
- b. Shoreline stabilization on accretion shoreforms shall be set back a minimum of 20 feet landward from the OHWM. [CES216]
18. Shoreline stabilization must be designed by a professional engineer licensed in the state of Washington with demonstrated experience in hydraulic activities of shorelines. Alternatively, soft treatment shoreline stabilization may be designed by a habitat biologist or a professional with demonstrated expertise in designing soft treatment shoreline stabilization.
19. Depending on the degree of hard or soft elements to the project, the County, WDFW, and/or U.S. Army Corps of Engineers may require varying degrees of mitigation or other permit conditions.
20. Shoreline stabilization, as applied in this section, is generally distinguished from shoreline restoration activities. However, specific shoreline stabilization elements of restoration activities shall be guided by this section.
21. Use of shoreline armoring to protect a lot where no primary structure presently exists shall be prohibited.
22. Shoreline stabilization structures shall not be constructed with waste materials such as demolition debris, derelict vessels, tires, concrete or any other materials which might have adverse toxic or visual impacts on shoreline areas.

B. Additional Standards for Replacement or Repair of Existing Shoreline Stabilization.

1. Damaged structural stabilization may be repaired up to 50% of the linear length within a 5-year period. Repair area that exceeds 50% shall be considered a replacement. Stabilization repair applications shall consider cumulative approvals of each successive application within a five-year period.<sup>[CES217]</sup>
2. Any replacement of, additions to, or increases in the dimensions of existing shoreline stabilization measures shall be considered as a new structure.
3. An existing stabilization structure may be replaced with a similar structure if there is a demonstrated need, through a geotechnical report, to protect principal uses or structures from erosion caused by currents, tidal action or waves.
4. If the OHWM has been re-established, the replacement structure must be located at or near the new OHWM.
5. Alternative or soft treatment stabilization shall be considered prior to in-kind replacement through an alternatives analysis.
6. The replacement structure shall:
  - a. Be designed, located, sized and constructed to assure no net loss of ecological functions.
  - b. Perform the same stabilization function of the existing structure and not require additions to or increases in size.
  - c. Not encroach waterward of the OHWM or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
7. When possible or as an element of mitigation sequencing, failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological functions and processes should be restored using nonstructural or soft and/or long-term stabilization measures.

C. Supplemental Application Materials Requirements.

- 2-1. Geotechnical reports required pursuant to this section shall address the need for shoreline stabilization and shall include the following:
  - a. A scaled site plan showing:
    - i. The location of existing and proposed shore stabilization, structures, fill, and vegetation, with dimensions indicating distances to the OHWM; and
    - ii. Existing site topography, preferably with two-foot contours.
  - b. A description of the processes affecting the site, and surrounding areas that influence or could be influenced by the site, including areas in which stream processes, lake or marine geomorphic processes affect the site, including, but not limited to:
    - i. Soil erosion, deposition, or accretion;
    - ii. Evidence of past or potential channel migration;
    - iii. Evidence of past or potential erosion due to tidal action and/or waves;
    - iv. Littoral drift; and
    - v. An estimate of shoreline erosion rates.

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- c. A description and analysis of the urgency and risk associated with the specific site characteristics, an alternative analysis addressing the order of preference as specified in subsection (A)(4), and demonstrated need as specified in subsection (A)(7) [CES218].
- d. A discussion and analysis demonstrating conformance with the standards enumerated in WCC Chapter 16.16 (Critical Areas).

### D. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Conservancy and Conservancy shoreline environments, breakwaters and jetties may be permitted as a shoreline conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.
2. In the Natural shoreline area environment, shoreline stabilization is prohibited; except that using bioengineering approaches may be permitted when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.
3. In the Aquatic shoreline environment:
  - a. Bioengineering approaches are permitted on tidelands and shorelands when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.
  - b. Drift sills, breakwaters, and jetties may be permitted as a shoreline conditional use if such development is permitted in the abutting upland shoreline environment designation.
  - c. Bulkheads or revetments are prohibited except for an approved water-dependent development. [AP219]

~~Shore stabilization in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

#### ~~—Policies.~~

- ~~0. Alternatives to structures for shore protection should be used whenever possible. Such alternatives may include no action (allow the shoreline to retreat naturally), increased building setbacks, building relocation, drainage controls, and bioengineering, including vegetative stabilization, and beach nourishment.~~
- ~~0. New or expanded structural shore stabilization for new primary structures should be avoided. Instead, structures should be located and designed to avoid the need for future shoreline stabilization where feasible. Land subdivisions should be designed to assure that future development of the created lots will not require structural shore stabilization for reasonable development to occur.~~
- ~~0. New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.~~
- ~~0. New or expanded structural shore stabilization for enhancement, restoration, or hazardous substance remediation projects should only be allowed when nonstructural measures, vegetation planting, or on-site drainage improvements would be insufficient to achieve enhancement, restoration or remediation objectives.~~



- ~~1. Shore stabilization on streams should be located and designed to fit the physical character and hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent reaches.~~
- ~~—Shore stabilization should not be permitted to unnecessarily interfere with public access to public shorelines, nor with other appropriate shoreline uses including, but not limited to, navigation, seafood harvest, or private recreation.~~
- ~~2. Provisions for multiple use, restoration, and/or public shore access should be incorporated into the location, design and maintenance of shore stabilization for public or quasi-public developments whenever safely compatible with the primary purpose. Shore stabilization on publicly owned shorelines should not be allowed to decrease long-term public use of the shoreline.~~
- ~~2. Shore stabilization should be developed in a coordinated manner among affected property owners and public agencies for a whole drift sector (net shore drift cell) or reach where feasible, particularly those that cross jurisdictional boundaries, to address ecological and geohydraulic processes, sediment conveyance and beach management issues. Where beach erosion threatens existing development, a comprehensive program for shoreline management should be established.~~
- ~~2. In addition to conformance with the regulations in this section, nonregulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for shore stabilization. Nonregulatory methods may include public facility and resource planning, technical assistance, education, voluntary enhancement and restoration projects, or other incentive programs.~~
- ~~2. Shore stabilization should be located, designed, and maintained to protect and maintain shoreline ecological functions, ongoing shore processes, and the integrity of shore features. Ongoing stream, lake or marine processes and the probable effects of proposed shore stabilization on other properties and shore features should be considered. Shore stabilization should not be developed for the purpose of filling shorelines.~~
- ~~2. Failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological functions and processes should be restored using nonstructural methods or less harmful long-term stabilization measures.~~
- ~~2. Structural shoreline stabilization measures should only be used when more natural, flexible, nonstructural methods such as vegetative stabilization, beach nourishment and bioengineering have been determined infeasible. Alternatives for shoreline stabilization should be based on the following hierarchy of preference:~~
  - ~~a. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.~~
  - ~~a. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach nourishment, protective berms, or vegetative stabilization.~~
  - ~~a. Rigid works constructed of artificial materials such as riprap or concrete.~~
- ~~Materials used for construction of shoreline stabilization should be selected for long-term durability, ease of maintenance, compatibility with local shore features, including aesthetic values and flexibility for future uses.~~

~~3.—Larger works such as jetties, breakwaters, weirs or groin systems should be permitted only for water dependent uses when the benefits to the region outweigh resource losses from such works, and only where mitigated to provide no net loss of shoreline ecological functions and processes.~~

~~3.—Alternative structures, including floating, portable or submerged breakwater structures, or several smaller discontinuous structures, should be considered where physical conditions make such alternatives with less impact feasible.~~

~~A.—Regulations.~~

~~3.—Allowed Use.~~

~~— New or expanded structural shore stabilization for existing primary structures, including roads, railroads, public facilities, etc., is prohibited unless there is conclusive evidence documented by a geotechnical analysis that there is a significant possibility that the structure will be damaged within three years as a result of shoreline erosion caused by stream processes, tidal action or waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.~~

~~— New shore stabilization for new development is prohibited unless it can be demonstrated that the proposed use cannot be developed without shore protection, and a geotechnical analysis documents that alternative solutions are not feasible or do not provide sufficient protection. The need for shore stabilization shall be considered in the determination of whether to approve new water dependent uses. Proposed designs for new or expanded shore stabilization shall be designed in accordance with applicable Department of Ecology and Department of Fish and Wildlife guidelines and certified by a qualified professional.~~

~~— Shoreline stabilization is prohibited for new non-water oriented development; provided, that such stabilization may be approved as a conditional use where a geotechnical analysis demonstrates that shore stabilization is necessary to facilitate reasonable use of a property and documents that alternative solutions, including location outside of the shoreline, are not feasible or do not provide sufficient protection, and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.~~

~~— Where shore stabilization is allowed, it shall consist of “soft,” flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are infeasible.~~

~~— Replacement of an existing shore stabilization structure with a similar structure is permitted if there is a demonstrated need to protect primary uses, structures or public facilities including roads, bridges, railways, and utility systems from erosion caused by stream undercutting or tidal action; provided, that the existing shore stabilization structure is removed from the shoreline as part of the replacement activity. A geotechnical analysis may be required to document that alternative solutions such as those listed in subsections (A)(12)(a) and (b) of this section are not feasible or do not provide sufficient protection.~~

- Existing shoreline stabilization structures that are being replaced shall be removed from the shoreline unless removal of such structures will cause significant damage to shoreline ecological functions or processes. Replacement walls, bulkheads or revetments shall not encroach waterward of the ordinary high water mark or the existing shore defense structure unless the primary use being protected is a residence that was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- Groins are prohibited except as a component of a professionally designed community or public beach management program that encompasses an entire drift sector or reach for which alternatives are infeasible, or where installed to protect or restore shoreline ecological functions or processes.
- a. Jetties and breakwaters are prohibited except as an integral component of a professionally designed harbor, marina, or port. Where permitted, floating, portable or submerged breakwater structures, or smaller discontinuous structures, are preferred where physical conditions make such alternatives with less impact feasible. Defense works that substantially reduce or block littoral drift and cause erosion of downdrift shores, shall not be allowed unless an adequate long term professionally engineered beach nourishment program is established and maintained.
- a. New or expanded shore stabilization may be permitted to protect projects with the primary purpose of enhancing or restoring ecological functions, or projects for hazardous substance remediation pursuant to Chapter 70.105D RCW when nonstructural approaches, such as vegetation planting, and/or on-site drainage improvements are not feasible or do not provide sufficient protection.
- a. Proposed designs for new or expanded shore stabilization shall be designed and certified by a qualified professional.
- a. No motor vehicles, appliances, other similar structures nor parts thereof, nor structure demolition debris, nor any other solid waste shall be used for shore stabilization.
- a. The size of shore stabilization measures shall be limited to the minimum necessary to provide protection for the primary structure or use it is intended to protect.
3. Marine Shorelines and Lakes. In those limited cases where a proposed bulkhead meets the criteria in this section for a shoreline permit or the exemption criteria under WCC 23.60.022, and to assure that such bulkheads will be consistent with the provisions of this program, the administrator shall review the proposed design as it relates to local physical conditions and issue written findings that the location and design meet all criteria of this program, subject to the following:
  - a. Bulkheads and other similar hard structures are prohibited on marine or lake accretion shoreforms, except as a conditional use where exposure to storm waves and driftwood battering seriously threaten other similar existing structures and no feasible alternatives exist. Such bulkheads shall be set back a minimum of 20 feet landward from the OHWM.
  - a. Bulkheads and other similar hard structures are prohibited on marine feeder bluff and estuarine shores, and on wetland and rock shores; provided, that such structures may be

- permitted as a conditional use where valuable primary structure(s) are at risk and no feasible alternatives exist and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided. [CES220]
- Bulkheads and other similar hard structures shall be located within one foot of the bank toe, and shall generally parallel the shoreline.
  - b. Bulkheads and other similar hard structures shall be designed and constructed with gravel backfill and weep holes so that natural downward movement of surface or ground water may continue without ponding or saturation.
  - b. Bulkheads exposed to significant wave action shall be designed to dissipate wave energy and scouring.
  - b. Walls, revetments or other similar hard structures within 10 feet of the OHWM shall be considered bulkheads; provided, that on accretion shoreforms walls or revetments or other similar hard structures within 20 feet of the OHWM shall be considered bulkheads.
3. ~~Shore Stabilization on Streams.~~ In those limited cases where a proposed bulkhead, revetment or other similar structure meets the criteria in this section for a shoreline permit or an exemption under WCC 23.60.022, and to assure that such revetment or similar structure will be consistent with this program, the administrator shall review the proposed design for consistency with state guidelines for stream bank protection as it relates to local physical conditions and issue written findings that the location and design meet all criteria of this program, subject to the following:
- ~~Revetments or similar hard structures are prohibited on estuarine shores, in wetlands, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.~~
  - ~~Revetments or similar hard structures shall be placed landward of associated wetlands unless it can be demonstrated that placement waterward of such features would not adversely affect ecological functions.~~
  - ~~A geotechnical analysis of stream geomorphology both upstream and downstream shall be performed to assess the physical character and hydraulic energy potential of the specific stream reach and adjacent reaches upstream or down, and assure that the physical integrity of the stream corridor is maintained, that stream processes are not adversely affected, and that the revetment will not cause significant damage to other properties or valuable shoreline resources. In addition:~~
    - i. ~~Revetments or similar structures shall not be developed on the low, innermost channel banks in a stream except to protect public works, railways and existing commercial farmsteads.~~
    - i. ~~Where revetments or similar structures are proposed, analysis shall assure that localized shore stabilization will be effective, as compared to more extensive cooperative measures to address reach scale processes. Revetments shall be set back at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Where revetments or similar structures have already cut off point bars from the stream, consideration should be given to their relocation.~~

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- 1       a. ~~Groins, breakwaters and jetties may be permitted as a conditional use.~~
- 2       ~~— Gabions are prohibited.~~
- 3       3. ~~Urban Resort.~~
- 4       a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies~~
- 5       ~~and regulations of this program.~~
- 6       a. ~~Groins, breakwaters and jetties may be permitted as a conditional use.~~
- 7       a. ~~Gabions are prohibited.~~
- 8       3. ~~Urban Conservancy.~~
- 9       ~~— Bulkheads, revetments, and bioengineering approaches are permitted subject to policies~~
- 10      ~~and regulations of this program.~~
- 11      ~~— Breakwaters and jetties may be permitted as a conditional use if accessory to a water-~~
- 12      ~~dependent use and littoral sediment transport is not significantly disrupted.~~
- 13      ~~— Groins and gabions are prohibited.~~
- 14      3. ~~Shoreline Residential.~~
- 15      ~~— Bulkheads, revetments, and bioengineering approaches are permitted subject to policies~~
- 16      ~~and regulations of this program.~~
- 17      ~~— Groins, breakwaters and jetties may be permitted as a conditional use.~~
- 18      ~~— Gabions are prohibited.~~
- 19      3. ~~Rural.~~
- 20      ~~— Bulkheads, revetments, and bioengineering approaches are permitted subject to policies~~
- 21      ~~and regulations of this program.~~
- 22      ~~— Groins, breakwaters and jetties may be permitted as a conditional use.~~
- 23      ~~— Gabions are prohibited.~~
- 24      3. ~~Resource.~~
- 25      ~~— Bulkheads, revetments, and bioengineering approaches are permitted subject to policies~~
- 26      ~~and regulations of this program.~~
- 27      ~~— Groins, breakwaters and jetties may be permitted as a conditional use.~~
- 28      ~~— Gabions are prohibited.~~
- 29      3. ~~Conservancy.~~
- 30      ~~— Bulkheads, revetments, and bioengineering approaches are permitted subject to policies~~
- 31      ~~and regulations of this program.~~
- 32      ~~— Breakwaters and jetties may be permitted as a conditional use if accessory to a water-~~
- 33      ~~dependent use and littoral sediment transport is not significantly disrupted.~~
- 34      ~~— Groins and gabions are prohibited.~~
- 35      3. ~~Natural. Shoreline stabilization is prohibited; except that bioengineering approaches may be~~
- 36      ~~permitted as a conditional use when necessary to restore an eroding accretion shoreform or to~~
- 37      ~~retard erosion elsewhere.~~
- 38      3. ~~Aquatic.~~
- 39      a. ~~Bioengineering approaches are permitted on tidelands and shorelands when necessary to~~
- 40      ~~restore an eroding accretion shoreform or to retard erosion elsewhere subject to policies~~
- 41      ~~and regulations of this program.~~

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~~a. Groins, breakwaters, and jetties may be permitted as a conditional use if such development is permitted in the abutting upland shoreline area designation.~~

~~a. Bulkheads or revetments are prohibited except for an approved water dependent development subject to policies and regulations of this program.~~

~~a. Gabions are prohibited~~

### **23.4100.180-200 Signs.**

~~Signs in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

#### ~~A. Policies.~~

~~C. Whatcom County recognizes the constitutional right for property owners to communicate using signs on their property. These policies are intended to ensure that signage within shoreline areas is consistent with the purpose and intent of the Act and this program by addressing impacts to ecological functions, public safety and visual aesthetics.~~

~~D. Signs should be located, designed and maintained to be visually compatible with local shoreline scenery as seen from both land and water, especially on shorelines of statewide significance.~~

~~E. Sign location and design should not significantly impair shoreline views.~~

~~F. As a preferable alternative to continued proliferation of single-purpose signs, communities, districts, and/or multiuse or multitenant commercial developments are encouraged to erect single, common use gateway signs to identify and give directions to local premises and public facilities.~~

~~G. Signs of a commercial or industrial nature should be limited to those areas or premises to which the sign messages refer.~~

~~H. Billboards and other off-premises signs are not water dependent, reduce public enjoyment of or access to shorelines, and often lower values of nearby properties. Such signs should not be located on shorelines except for approved community gateway or directional signs.~~

~~I. Signs near scenic vistas and view points should be restricted in number, location, and height so that enjoyment of these limited and scarce areas is not impaired.~~

~~J. Freestanding signs should be located to avoid blocking scenic views and be located on the landward side of public transportation routes which generally parallel the shoreline.~~

~~K. To minimize negative visual impacts and obstructions to shoreline access and use, low profile, on-premises wall signs are strongly preferred over freestanding signs or off-premises wall signs.~~

~~L. Signs should be designed mainly to identify the premises and nature of enterprise without unduly distracting uninterested passersby. Moving or flashing signs should be prohibited on shorelines.~~

#### ~~A. Regulations.~~

##### A. General.

1. These provisions do not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, No Trespass, and temporary signs such as For Sale, Rent and campaign signs; provided, that no such sign exceeds four square feet in area.

2. In addition to the regulations in this section, signs are subject to WCC 20.80.400, et seq. (Signs)

1.3. Unless otherwise prohibited by zoning regulations or this program, shoreline developments are permitted to maintain a total of three on-premises signs. Only one may be a freestanding, roof,



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~~or projecting sign; provided, that if this sign is double faced, then only one other wall sign is permitted. This provision does not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, home occupation signs, No Trespass, and temporary signs such as For Sale, Rent and campaign signs; provided, no sign exceeds four square feet in area.~~ All signs proposed for a development requiring a substantial development permit shall be designated on application and approval documents.

~~2. Multiuse or multitenant commercial developments shall erect no more than one sign at each street gateway.~~

~~3. Communities, neighborhoods and districts shall erect no more than one sign at each street gateway identifying the name of the community or neighborhood and give directions to local premises and public facilities.~~

~~4. Exception. Signs required by law and signs posted for legitimate safety purposes shall not be subject to limitations with respect to the number, location, and/or size; provided, that they are the minimum necessary to achieve the intended purpose. Such signs include but are not limited to official or legal notices issued and posted by any public agency or court, or traffic directional or warning signs.~~

~~5. All building signs shall be integrated with building design. Roof signs shall be designed to occupy a design feature of the roof such as a dormer or gable and may not be placed above the peak of a pitched roof or the eave of a flat roof. Projecting signs shall be incorporated in a marquee, canopy, or other architectural feature.~~

~~6. Applications for substantial development permits shall include a conceptual sign package addressing the size and location of all signs and shall include design standards to assure that all signs in a development are consistent in terms of material, color, height, size, and illumination.~~

~~7. Sign permits not associated with a substantial development permit shall demonstrate compliance with all provisions of this code and shall be similar to and compatible with other signs in a development under a single ownership or approved as an integrated development.~~

~~8.4.~~ Sign illumination shall be indirect, incorporating exterior lighting shining on the sign, or shadow illumination behind nontransparent materials. Internally illuminated signs are prohibited.

~~9.5.~~ Distracting Devices. Any signs or other devices which flash, blink, flutter, rotate, oscillate, or otherwise purposely fluctuate in lighting or position, in order to attract attention through their distractive character, are prohibited on shorelines; provided, that searchlights, pennants, banners and other devices of seasonal, holiday, or special event character may be ~~utilize~~used for up to 90 days in one year.

~~10.6.~~ Freestanding signs other than those private informational signs described in subsection ~~(BA)~~(1) of this section are prohibited between a public right-of-way and the water where the water-body is visible from the public right-of-way.

~~11.7.~~ To protect views from the water or publicly accessible beaches or lands adjacent to the water, freestanding signs other than those private informational signs described in subsection ~~(BA)~~(1) of this section are prohibited between buildings and OHWM, and waterward of a line drawn from the nearest point of the building parallel to the shoreline; provided, that where a

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public road or path separates said building from the OHWM, up to one freestanding sign not to exceed 12 square feet is permitted between the road or path and said building.

~~12.8.~~ Signs may not be located in critical areas or buffers as established by WCC Chapter 16.16 except as otherwise provided for ~~therein~~ Chapter 16.16 WCC; provided, that pursuant to subsections (B)(1) and (4) of this section, signs may be permitted within critical area buffers where the placement of such signs does not require the removal of vegetation.

~~13.9.~~ Unless specifically exempted from setback requirements in WCC 23.40.020, the minimum required setbacks for permanent freestanding signs ~~are~~ is 50 feet ~~from~~ the ordinary high water mark, ~~where not subject to critical areas or buffers:~~ 50 feet.

~~a. From side property lines: 10 feet.~~

~~a. Maximum height: 15 feet.~~

~~M. Building mounted signs are subject to setbacks applicable to buildings. Height of wall signs may be measured from the floor elevation of the uppermost finished story; provided, the sign does not project above the roof of the building. Roof signs shall not extend higher than the maximum height of the primary building.~~

~~M. Sign Area Limit.~~

~~a. The maximum area of individual sign faces shall be consistent with applicable zoning standards; provided, that the combined area of sign faces per premises shall not exceed 60 square feet with a maximum face area of freestanding signs not to exceed 12 square feet in all shoreline designations where signs are permitted, except on aquatic, urban conservancy, and conservancy shorelines and shorelines of statewide significance where the total sign area shall not exceed 24 square feet per premises and freestanding signs shall not exceed 4 square feet.~~

~~a. The size of individual building or tenant signs shall be governed in accordance with the following table:~~

**Table 3. Sign Area Limits**

Relevant building wall vertical surface area or facade area for a specific tenant <sup>(1)</sup>	Maximum sign surface area for that facade	Maximum sign area <sup>(2)</sup>
Below 100 sq. ft.	4 sq. ft.	4 sq. ft.
100 – 199 sq. ft.	4 sq. ft. + 4% of the facade area over 100 sq. ft.	8 sq. ft.
200 – 499 sq. ft.	10 sq. ft. + 3% of the facade area over 200 sq. ft.	20 sq. ft.
500 sq. ft. or greater	26 sq. ft. + 2% of the facade area over 500 sq. ft. up to a maximum of 40 sq. ft.	40 sq. ft.

~~41. (1) Includes only vertical building walls, excludes all roof area above the eaves and any dormers or other vertical areas above roof eaves. For building tenants, includes the area of the projection of the interior partitions onto the exterior wall.~~

~~42. (2) On aquatic and conservancy shorelines and shorelines of statewide significance, no sign visible from a public right of way, the water, or publicly accessible beaches or lands adjacent to the water, shall exceed 24 square feet, and freestanding signs shall not exceed four square feet.~~ [CES222]

~~43.10.~~ Freestanding signs shall be entirely self-supporting and structurally sound without permanent use of guy wires or cables.

~~44.11.~~ Signs shall comply with the standards in this section at any time a change in use or modification of structures requiring a substantial development permit is approved. Abandoned or derelict signs should either be properly restored or completely removed within a reasonable period of time by the sign owner or property owner as necessary.

**B. Regulations for Specific Shoreline Environment Designations.**

1. In the Natural shoreline environment, sign development is prohibited, except for trail marking, hazard warnings, or interpretive scientific or educational purposes and personal signs provided for in this section. Such permitted signs shall be limited in size and number to those required to affect their purpose.

2. In the Aquatic shoreline area environment, only wall signs and low-profile freestanding signs less than 30 inches in height for water-dependent uses are permitted, except as provided for in this section, and no premise may have more than two signs. [AP223]

~~B. Shoreline Area Regulations.~~ [CES224]

~~— Urban. Sign development is permitted subject to policies and regulations of this program.~~

~~A. Urban Resort. Sign development is permitted subject to policies and regulations of this program.~~

~~A. Shoreline Residential. Sign development is permitted subject to policies and regulations of this program.~~

~~A. Urban Conservancy. Sign development is permitted subject to policies and regulations of this program.~~

~~A. Rural. Sign development is permitted subject to policies and regulations of this program.~~

~~A. Resource. Sign development is permitted subject to policies and regulations of this program.~~

~~A. Conservancy. Sign development is permitted subject to policies and regulations of this program.~~

~~A. Natural. Sign development is prohibited, except for trail marking, hazard warnings, or interpretive scientific or educational purposes and personal signs provided for in subsection (B)(1) of this section. Such permitted signs shall be limited in size and number to those required to affect their purpose.~~

~~A. Aquatic. Only wall signs and low profile freestanding signs under 30 inches in height for water-dependent uses are permitted, except as provided for in subsections (B)(1) and (4) of this section. No one premises may maintain more than two signs in an aquatic shoreline area.~~

**23.4100.190-210 Transportation.**

These regulations apply to both public and private transportation projects.

~~A. General. Roads, railways, and other transportation developments in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. These policies and regulations apply to both public transportation projects and private transportation projects.~~

~~B. Policies.~~

~~C. New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:~~

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- ~~D.—Perpendicular water crossings are required for access to authorized uses consistent with this program; or~~
- ~~E.—Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with policies and regulations for ecological protection in WCC 23.90.030.~~
- ~~F.—Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural sites.~~
- ~~G.—Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.~~
- ~~H.—New or expanded public transportation facility route selection and development should be coordinated with related local and state government land use and circulation planning.~~
- ~~I.—Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or view points, or recreational trails.~~
- ~~J.—Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where appropriate, and should be considered when rights-of-way are being vacated or abandoned.~~
- ~~K.—Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.~~
- ~~L.—Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.~~

### ~~M.—Regulations.~~

#### A. General.

1. RCW 36.87.130 prohibits the County from vacating any county road that abuts a body of saltwater or freshwater except for port, recreational, educational, or industrial purposes. Therefore, development, abandonment, or alteration of undeveloped county road ends within SMP jurisdiction is prohibited unless approved in accordance with this program.
2. Transportation development shall be carried out in a manner that maintains or improves state water quality standards for affected waters.
3. Maintenance activity including vegetation control and erosion control shall be carried out consistent with this program. Necessary minor resurfacing of existing roadways and replacement of culverts that improve shoreline ecological functions may be exempt from substantial development permit requirements as provided by WCC 23.60.020 Title 22 (Land Use and Development).
4. Transportation facilities must meet the following criteria:

- a. ~~Documentation that the~~ proposed facilities cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of alternatives may be required. ~~New or expanded public or private transportation facilities~~ should be located inland from the land/water interface, preferably out of the shoreline.
- b. ~~Documentation that the~~ proposed facilities are primarily oriented to pedestrian use and provide an opportunity for a substantial number of people to enjoy shoreline areas.
- c. ~~Documentation that the proposed facilities comply with critical area regulations in WCC Chapter 16.16. [PDS225]~~
- d.c. ~~Documentation of how the~~ proposed facilities achieve no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with WCC ~~23.30.020~~ 23.30.010 (Ecological Protection).
- d. ~~Documentation that~~ The proposed facilities avoid public recreation areas and significant natural, ~~historic, archaeological~~ or cultural resources, or ~~that~~ no alternative is feasible outside of the shoreline and ~~that~~ all feasible measures to minimize adverse impacts have been incorporated into the proposal.

B. Site Design and Operation.

- 4.1. Transportation facilities on shorelines shall be designed to generally follow natural topography, to minimize cuts and/or fills, to avoid cutting off meander bends or point bars, and to avoid adverse impacts to shoreline ecological functions and processes. Wherever such roads or railway embankments cross depressions remaining from remnant channels and oxbow bends, crossings of ample cross-section shall be provided to span the remnant feature.
- 5.2. Raised arterial roads or railways shall be built outside the floodway except for necessary crossings. If built in the floodway fringe, such routes should be aligned generally parallel to outside stream bends so they will also act as setback dikes. Any parking areas required along such roads shall be sited at the base of the embankment and at the downstream corner of large accretion beaches, thus requiring no or minimal flood ~~hazard reduction control~~ works or shoreline stabilization. Local access roads in floodplains shall be built at valley floor grade level so that floodwaters are not abnormally obstructed nor diverted. Transportation facilities shall be designed so that no significant loss of floodway capacity or measurable increase in predictable flood levels will result. If transportation facilities are intended to secondarily provide flood ~~hazard reduction control~~, they shall comply with policies of the Comprehensive Plan and regulations for flood ~~hazard reduction control~~ works under WCC ~~23.40.080~~ 23.40.100 (Flood Hazard Reduction and Instream Structures).
- 6.3. If a road is demonstrated to be necessary along an accretion shoreform, the waterward road shoulder shall be set back far enough from the primary berm so that the berm may absorb the high energy of storm tide breakers, as well as prevent road bed erosion and allow optimum recreational use of these scarce shore features.
- 7.4. Spans on rivers shall avoid placing structures within the channel migration zone or other dynamic, shifting channel elements such as bends.
- 8.5. Earth cut slopes and other exposed soils shall be placed, compacted, and planted or otherwise stabilized and protected from surface runoff with native vegetation. Transportation facilities

sited close to water, wetlands, or other sensitive features shall incorporate the maximum feasible buffer of native vegetation in accordance with critical area regulations in WCC Chapter 16.16.

~~9-6.~~ Bridges or bottomless culverts or other similar structures shall be used in accordance with WDFW guidance to protect shoreline ecological functions and processes. Bridge approaches in floodways shall be constructed on open piling, support piers, or other similar measures to preserve hydraulic processes.

~~10-7.~~ Bridge supports and abutments shall be designed and spaced so they do not act as walls baffling or blocking flood waters, or interrupting stream channel processes or littoral drift.

~~11-8.~~ Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials are prohibited. Preferred materials are concrete and steel.

~~12-9.~~ Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Elevated walkways should be ~~utilize~~used to cross wetlands.[DN226]

~~10.~~ Nonemergency construction and repair work shall be scheduled for that time of year when seasonal conditions (weather, streamflow) permit optimum feasible protection of shoreline ecological functions and processes.

#### ~~N.C.~~ Additional Standards for Parking Facilities.

~~1.~~ Parking facilities are not a water-dependent use and shall only be permitted in the shoreline to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline. Parking facilities shall be buffered from the water's edge and less intense adjacent land uses by vegetation ~~screening~~, undeveloped space, or structures developed for the authorized primary use.

~~1-2.~~ Parking areas shall be developed ~~utilizing~~using low impact development techniques whenever possible including, but not limited to, the use of permeable surfacing materials.

~~2-3.~~ Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the ~~most current~~ Low Impact Development Technical Guidance Manual for Puget Sound, or as amended.

~~1. Minimum required setbacks from shorelines are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers, setbacks, height, open space and impervious surface coverage.~~

#### D. Supplemental Application Requirements.

~~1. In addition to the application requirements specified in WCC Title 22 (Land Use and Development), A~~all applications for ~~new or expanded~~ transportation facilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this program, including ~~but not limited to:~~subsection (A)(4) of this section.

- ~~1. Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of alternatives may be required. New or expanded public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline.~~
- ~~1. Documentation that the facilities are primarily oriented to pedestrian use and provide an opportunity for a substantial number of people to enjoy shoreline areas.~~
- ~~1. Documentation that the proposed facilities comply with critical area regulations in Chapter 16.16 WCC.~~
- ~~1. Documentation of how the location, design, and use achieves no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with WCC 23.90.030.~~
- ~~1. Documentation that facilities avoid public recreation areas and significant natural, historic, archaeological or cultural resources, or that no alternative is feasible outside of the shoreline and that all feasible measures to minimize adverse impacts have been incorporated into the proposal.~~

E. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Conservancy and Conservancy shoreline [area environments](#), transportation facilities are permitted only for access to approved development.
2. In the Natural shoreline [area environment](#), transportation facilities are prohibited, except to access approved recreational development.
3. In the Aquatic shoreline [area environment](#), access to water-dependent or water-related uses, such as ferry terminals, is permitted. Bridge crossings for non-water-dependent or non-water-related uses may be permitted as a [shoreline](#) conditional use. [AP227]

A. Shoreline Area Regulations: [CES228]

- ~~— Urban. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.~~
- ~~1. Urban Resort. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.~~
- ~~1. Urban Conservancy. Transportation facilities are permitted only for access to approved development, subject to policies and regulations of this program.~~
- ~~1. Shoreline Residential. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.~~
- ~~1. Rural. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.~~



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1. ~~Resource. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.~~
1. ~~Conservancy. Transportation facilities are permitted only for access to approved development, subject to policies and regulations of this program.~~
1. ~~Natural. Transportation facilities are prohibited, except to access approved recreational development.~~
1. ~~Aquatic. Access to water-dependent or water-related uses, such as ferry terminals, is permitted subject to policies and regulations of this program. New or expanded bridge crossings for non-water-dependent or non-water-related uses may be permitted as a conditional use.~~

### **23.4100.200-220 Utilities.**

~~Utility development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. These policies and regulations apply to both local and regional, both public and private utilities.~~ This section applies to regional and local utilities, both public and private, but not to accessory utilities (see definitions in WCC Chapter 23.60); however, there are regulations regarding septic systems located in WCC 23.30.020 (Water Quality and Quantity). [AP229]

#### ~~A. Policies.~~

~~B. New public or private utilities should be located inland from the land/water interface, preferably out of the shoreline jurisdiction, unless:~~

- ~~— Perpendicular water crossings are unavoidable; or~~
- ~~— Utilities are required for authorized shoreline uses consistent with this program.~~

~~E. Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural resources.~~

~~F. Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in WCC 23.90.030.~~

~~G. All utility development should be consistent with and coordinated with all local government and state planning, including comprehensive plans and single purpose plans to meet the needs of future populations in areas planned to accommodate growth. Site planning and rights-of-way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of-way acquisition should also be coordinated with transportation and recreation planning.~~

~~H. Utilities should be located in existing rights-of-way and corridors whenever possible.~~

~~I. Utilities serving new development should be located underground, wherever possible.~~

~~J. Development of pipelines and cables on aquatic lands and tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.~~

#### ~~A. Regulations.~~

A. General Design and Operation.

1. ~~Components of water systems~~ Utilities ~~which that~~ are not water-dependent shall be located away from shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant adverse impacts to other shoreline resources and values such as parks and recreation facilities, public access, and ~~archaeological, historic, and cultural resources, and or~~ aesthetic resources.
2. ~~Fire Protection Facilities.~~ Storage and handling facilities for water-borne firefighting or rescue equipment may be permitted on shoreline jurisdiction at locations which are suitable considering the purpose of the proposal and the policies of the Comprehensive Plan.
3. Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible. [CES230]
- 3.4. ~~New and expanded~~ Utilities must meet the following criteria:
  - a. ~~Documentation that t~~The proposed facilities ~~y~~ cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to cross shorelands to connect specific end points. An analysis of alternatives may be required. ~~New or expanded public or private~~ ~~u~~Utilities should be located inland from the land/water interface, preferably out of shoreline jurisdiction.
  - b. ~~Documentation that the proposed facilities comply with critical area regulations in WCC Chapter 16.16.~~ [PDS231]
  - c. ~~Documentation of how t~~The location, design, and use of the proposed facility achieves no net loss of shoreline ecological functions and incorporates appropriate mitigation in accordance with WCC ~~23.30.02~~23.30.010 (Ecological Protection).
  - d. ~~Documentation that~~The proposed facilities will avoid public recreation areas and significant natural, ~~historic, archaeological~~ or cultural ~~resources~~ites, and that all feasible measures to minimize adverse impacts to such resources have been incorporated into the proposal.
  - d. ~~Applications must demonstrate~~The proposal includes adequate provisions for preventing spills or leaks, as well as procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.
  - e. If the proposal is for oil, gas, and natural gas utilities and pipelines or electrical energy and communications utilities~~Application materials, it shall~~ includes an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.

B. Additional Standards for Specific Utilities~~Water Systems.~~

1. Desalinization facilities shall be located consistent with critical area regulations and buffers, except for water-dependent components such as water intakes.
2. Solid Waste Facilities.
  - a. ~~Private and public intake facilities, and wells on shorelines, should be located where there will be no net loss in ecological functions or adverse impacts upon shoreline resources, values, natural features, or other users.~~

- ~~b. Desalinization facilities shall be located consistent with critical area regulations and buffers, except for water dependent components such as water intakes.~~
    - ~~c. Sewage Systems.~~
    - ~~d. Sewage trunk lines, interceptors, pump stations, treatment plants and other components that are not water dependent shall be located away from shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant impacts to other shoreline resources and values such as parks and recreation facilities, public access and archaeological, historic, and cultural resources, and aesthetic resources.~~
    - ~~e. Outfall pipelines and diffusers are water dependent, but should be located only where there will be no net loss in shoreline ecological functions and processes or adverse impacts upon shoreline resources and values.~~
    - ~~f. Septic tanks and drainfields are prohibited where public sewer is reasonably available.~~~~[DN232]~~
    - ~~g.a. Solid Waste Facilities.~~Facilities for processing, storage and disposal of solid waste are not normally water-dependent. Components that are not water-dependent shall not be permitted ~~on~~in shoreline jurisdiction.
    - ~~h.b.~~ Disposal of solid waste on shorelines or in water-bodies has potential for severe adverse effects upon ecological processes and functions, property values, public health, natural resources, and local aesthetic values and shall not be permitted.
    - ~~i.c.~~ Temporary storage of solid waste in suitable receptacles is permitted as an accessory use to a primary permitted use, or for litter control.
  - ~~2.3.~~ Oil, Gas and Natural Gas Transmission.
    - ~~a. Regional~~ Oil, gas, and natural gas utility pipelines, ~~except local service lines,~~ shall not be located in shoreline jurisdiction unless alternatives are demonstrated to be infeasible ~~and shall include analysis of alternative routes avoiding aquatic lands and including alternative technology.~~
    - ~~b. Local~~ Natural gas ~~local~~ service lines ~~utilities~~ shall not be located in ~~shoreline area~~ shoreline environment unless serving approved shoreline uses. Crossings of shorelines shall not be approved unless alternatives are demonstrated to be infeasible. ~~Application materials shall include an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.~~
  - ~~L. Developers and operators of pipelines and related appurtenances for gas and oil shall be required to demonstrate adequate provisions for preventing spills or leaks, as well as established procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.~~~~[AP233]~~
  4. Electrical Energy and Communication Systems.
    - ~~4. Energy and communication systems including substations, towers, transmission and distribution lines have critical location requirements, but are not normally water dependent. Systems components that are not water dependent shall not be located on shoreline jurisdiction unless~~

~~alternatives are infeasible. Application materials for such facilities shall include an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.~~

~~b.a.~~ Underground placement of lines shall be required on shorelines for new or replacement lines that are parallel to the shoreline, and do not cross water or other critical areas ~~defined in WCC Chapter 16.16~~; provided, that maintenance of existing aerial lines above 35kv may be permitted above ground where alternatives are demonstrated to be impractical and/or infeasible. New or replacement lines that cross water or other critical areas ~~defined in Chapter 16.16 WCC~~ may be required to be placed underground depending on impacts on ecological functions and processes and visual impacts; provided, that maintenance of existing aerial lines above 35 kv may be permitted above ground where alternatives are demonstrated to be impractical and/or infeasible. Poles or supports treated with creosote or other wood preservatives that may be mobile in water shall not be used along shorelines or associated wetlands. Where road rights-of-way or easements are within 150 feet and also are parallel to the shoreline for more than 500 feet, no new overhead wiring shall be installed between the road and OHWM.

~~c.b.~~ Utilities for ~~new~~ development within the shoreline shall be installed underground.

~~Other Utility Production and Processing Facilities. Other utility processing facilities, such as power plants, that are non-water oriented shall not be allowed in shoreline jurisdiction unless no other feasible alternative is available. [AP234]~~

~~Minimum required setbacks from shorelines and side property lines and maximum height limits are contained in WCC 23.90.130, Shoreline bulk provisions — Buffers, setbacks, height, open space and impervious surface coverage.~~

~~Site Coverage. Maximum site coverage for utility development including parking and storage areas shall not exceed standards in the underlying zoning in WCC Title 20 and shall not exceed 50 percent on urban, urban resort and shoreline residential shorelines, 35 percent on rural and resource shorelines and 20 percent on urban conservancy and conservancy shorelines.~~

5. Hydropower Development. In addition to the general requirements, above, hydropower facilities shall be located, designed, and operated to:

a. Minimize impacts to fish and wildlife resources including spawning, nesting, rearing habitat, migratory routes, and critical areas. Mitigation measures to achieve no net loss of shoreline ecological functions and processes shall be implemented in accordance with WCC 23.30.010 (Ecological Protection).

b. Minimize impacts to geohydraulic processes; waterfalls; erosion and accretion shoreforms; agricultural land; scenic vistas; recreation sites; and sites having significant historical, cultural, scientific, or educational value.

c. Accommodate public access to, and multiple use of, the shoreline.

d. Comply with the instream structure regulations of 23.40.100 (Flood Hazard Reduction and Instream Structures).

C. Supplemental Application Requirements.

1. In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), All applications for ~~new or expanded~~ utilities shall be accompanied by adequate

documentation that the proposal meets the policies and regulations of this program, ~~including but not limited to subsection (1)(b) of this section.~~

D. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Conservancy and Conservancy shoreline [environments](#), local utility development is permitted; provided, that sewage outfalls and treatment plants, over-water communication or power-lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a [shoreline](#) conditional use, provided there is no feasible location outside the shoreline.
2. In the Natural shoreline [environment](#), utility development is prohibited. Maintenance of existing utilities is permitted and shall take extraordinary measures in protecting the natural features therein.
3. In the Aquatic shoreline [environment](#):
  - a. Submarine electrical or communications cables, over-water public utility lines consisting of local distribution facilities if adequately flood-proofed, water intakes, and desalinization facility intakes are permitted.
  - b. Submarine water and sewer lines, fuel pipelines, sewer, and desalinization outfalls may be permitted as [shoreline](#) conditional uses.
  - c. Crossings of water-bodies by over-water transmission or distribution lines and on-site electrical communication wiring may be permitted within 100 feet of the OHWM and wetlands and over bodies of water as a [shoreline](#) conditional use. All other utility development is prohibited. [AP235]

~~B. Shoreline Area Regulations. [CES236]~~

- ~~— Urban. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~
- ~~— Urban Resort. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~
- ~~— Urban Conservancy. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program; provided, that sewage outfalls and treatment plants, over-water communication or power lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Freestanding communication towers are prohibited. Desalinization facilities may be permitted as a conditional use.~~
- ~~— Shoreline Residential. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission~~

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1 facilities serving customers outside of Whatcom County, may be permitted as a conditional use,  
2 provided there is no feasible location outside the shoreline. Desalinization facilities may be  
3 permitted as a conditional use.

4 ~~— Rural. Utility development consisting of local distribution facilities is permitted subject to~~  
5 ~~policies and regulations of this program. Regional facilities, including transmission facilities~~  
6 ~~serving customers outside of Whatcom County, may be permitted as a conditional use, provided~~  
7 ~~there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a~~  
8 ~~conditional use.~~

9 ~~— Resource. Utility development consisting of local distribution facilities is permitted subject to~~  
10 ~~policies and regulations of this program. Regional facilities, including transmission facilities~~  
11 ~~serving customers outside of Whatcom County, may be permitted as a conditional use, provided~~  
12 ~~there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a~~  
13 ~~conditional use.~~

14 ~~— Conservancy. Utility development consisting of local distribution facilities is permitted subject to~~  
15 ~~policies and regulations of this program; provided, that sewage outfalls and treatment plants,~~  
16 ~~over water communication or power lines, fuel pipelines, and other types of hazardous material~~  
17 ~~pipelines may be permitted as a conditional use, provided there is no feasible location outside~~  
18 ~~the shoreline. Regional facilities, including transmission facilities serving customers outside of~~  
19 ~~Whatcom County, may be permitted as a conditional use, provided there is no feasible location~~  
20 ~~outside the shoreline. Freestanding communication towers are prohibited. Desalinization~~  
21 ~~facilities may be permitted as a conditional use.~~

22 ~~— Natural.~~

23 ~~a. Utility development is prohibited.~~

24 ~~a. Maintenance of existing utilities is permitted and shall take extraordinary measures in~~  
25 ~~protecting the natural features therein.~~

26 ~~— Aquatic.~~

27 ~~— Submarine electrical or communications cables, over water public utility lines consisting of~~  
28 ~~local distribution facilities if adequately flood-proofed, water intakes, and desalinization~~  
29 ~~facility intakes are permitted subject to policies and regulations of this program.~~

30 ~~— Submarine water and sewer lines, fuel pipelines, sewer, and desalination outfalls may be~~  
31 ~~permitted as conditional uses.~~

32 ~~— Crossings of water bodies by over water transmission or distribution lines and on-site~~  
33 ~~electrical communication wiring may be permitted within 100 feet of the OHWM and~~  
34 ~~wetlands and over bodies of water as a conditional use. All other utility development is~~  
35 ~~prohibited.~~

## Chapter 23.50 ~~Applicability~~<sup>[AP237]</sup> and Nonconforming Uses, Structures, and Lots

### ~~23.50.010 Application to persons and development.~~<sup>[AP238]</sup>

~~— This program shall apply to any person as defined in Chapter 23.110 WCC.~~

~~C. This program shall apply to any use or development as defined in Chapter 23.110 WCC. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 23.60 WCC.~~

~~C. No substantial development as defined in Chapter 23.110 WCC shall be undertaken within shorelines by any person on shorelines without first obtaining a substantial development permit from Whatcom County; provided, that such a permit shall not be required for the exempt activities listed in WCC 23.60.022.~~

### ~~23.50.020 Relationship to other local regulations.~~<sup>[AP239]</sup>

~~A. In the case of development subject to the shoreline permit requirement of this program, the county building official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the building official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.~~

~~A. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single-family residences, a building permit reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. The building official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).~~

~~A. In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the county decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program in consideration of recommendations from the administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this program.~~

~~A. In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.~~

~~A. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:~~



1. ~~Building, plumbing, mechanical, and fire codes.~~
- ~~Boating and swimming, WCC Title 11.~~
2. ~~On-site sewage system regulations, Chapter 24.05 WCC.~~
2. ~~Solid waste rules and regulations, Chapter 24.06 WCC.~~
2. ~~Zoning, WCC Title 20.~~
2. ~~Land division regulations, WCC Title 21.~~
2. ~~Development standards.~~

**~~23.50.030 Relationship to other state and federal laws.~~** [AP240]

- ~~A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional or federal statutes or regulations applicable to such development or use.~~
- ~~A. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.~~
- ~~A. Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~
- ~~2. Flood Control Zone Act, Chapter 86.16 RCW.~~
  - ~~2. Forest Practices Act, Chapter 76.09 RCW.~~
  - ~~2. Fish and Wildlife, RCW Title 77.~~
  - ~~2. Water Pollution Control Act, Chapter 90.48 RCW.~~
  - ~~2. Land Subdivision Act, Chapter 58.17 RCW.~~
  - ~~2. Surface Mining Act, Chapter 78.44 RCW.~~
  - ~~2. Washington Clean Air Act, Chapter 70.94 RCW.~~
  - ~~2. State Environmental Policy Act (SEPA), Chapter 43.21C RCW.~~
  - ~~2. Camping Resorts Act, Chapter 19.105 RCW.~~
  - ~~2. Water Resources Act of 1971, Chapter 90.54 RCW.~~
  - ~~2. Growth Management Act, Chapter 36.70A RCW.~~
  - ~~2. State Hydraulic Code, Chapter 77.55 RCW.~~
- ~~A. Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:~~
- ~~2. Northwest Clean Air Agency regulations.~~
  - ~~2. Puget Sound Water Quality Management Plan.~~
- ~~A. Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~
- ~~2. Rivers and Harbors Act of 1899.~~
  - ~~2. Fish and Wildlife Coordination Act of 1958.~~
  - ~~2. National Environmental Policy Act of 1969 (NEPA).~~

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2. ~~Coastal Zone Management Act of 1972, as amended.~~

2. ~~Federal Water Pollution Control Act, as amended.~~

2. ~~Flood Insurance Act of 1968, as amended.~~

2. ~~Clean Air Act, as amended.~~

2. ~~Endangered Species Act (ESA).~~

### **23.50.040 Application within federal reserves.** [AP241]

~~The shoreline permit procedures, policies and regulations established in this program shall apply to development or use of shorelines of the state within national forests, national parks and national recreation areas by persons other than federal agencies.~~

~~As recognized by RCW 90.58.350, the provisions of this program shall not apply to lands held in trust by the United States for Indian nations, tribes or individuals.~~

### **23.50.050 Program effects on property values.** [AP242]

~~B. As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this program shall be duly considered by the county assessor and the county board of equalization in establishing the fair market value of such properties.~~

~~B. Designation of private property as a natural or conservancy shoreline area pursuant to Chapter 23.30 WCC shall qualify the property as meeting the definition of "open space land" under the Open Space Taxation Act of 1970, as amended (RCW 84.34.020(1)) and shall qualify such land for application for open space taxation in accordance with RCW 84.34.037 and Chapter 3.28 WCC.~~

### **23.50.060 Hazardous substance remedial actions.**

~~The procedural requirements of Chapter 90.58 RCW shall not apply to a project for which a consent decree, order, or agreed order has been issued pursuant to Chapter 70.105D RCW or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW. The Department of Ecology shall, in consultation with the administrator, assure that such projects comply with the substantive requirements of Chapter 90.58 RCW, Chapter 173-26 WAC and this program. (Ord. 2009-13 § 1 (Exh. 1)).~~ [AP243]

### **23.50.070 Nonconforming development.** [MD244]

~~The following provisions shall apply to lawfully established uses, buildings and/or structures that do not meet the specific standards of this program.~~

~~B. The lawfully established use of any building, structure, land or premises existing on the effective date of initial adoption of the program (August 27, 1976), or any subsequent amendment thereto or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of initial adoption of the program or any subsequent amendment thereafter shall be considered nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC 16.16.290; provided further, that bulkheads shall conform to WCC 23.100.130.~~

~~B. Nonconforming structures may be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased; provided, that~~

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1 a nonconforming development that is moved any distance must be brought into conformance with  
2 this program and the Act; provided further, that as a conditional use a nonconforming dock may be  
3 modified, reoriented or altered within the same general location to be more consistent with the  
4 provisions of this SMP.

5 ~~—Nonconforming structures, other than single-family residences and their appurtenances that are~~  
6 ~~expanded or enlarged must obtain a variance or be brought into conformance with this program and~~  
7 ~~the Act; provided, that nonconforming structures with conforming uses may be expanded or~~  
8 ~~enlarged within the existing building footprint as a conditional use pursuant to WCC~~  
9 ~~23.100.050(B)(1)(e).~~

10 ~~A. Nonconforming structures (including accessory structures) that are damaged or destroyed by fire,~~  
11 ~~explosion, flood, or other casualty may be restored or replaced in kind; provided, that:~~

12 ~~0. Structures containing conforming uses, such as a single-family residence or accessory structure,~~  
13 ~~that are located within a hazardous area shall be redeveloped consistent with the requirements~~  
14 ~~of Chapter 16.16 WCC, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently~~  
15 ~~Flooded Areas); provided, that the permit process is commenced within 18 months of the date~~  
16 ~~of such damage; and the reconstruction does not expand, enlarge, or otherwise increase the~~  
17 ~~nonconformity, except as provided for in subsections H and I of this section.~~

18 ~~0. Structures containing nonconforming uses can be replaced in kind if there is no feasible~~  
19 ~~alternative that allows for compliance with the provisions of this program, and the permit~~  
20 ~~process is commenced within 18 months of the date of such damage, and the reconstruction~~  
21 ~~does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in~~  
22 ~~subsection E or H of this section.~~

23 ~~A. If a nonagricultural nonconforming use is intentionally abandoned for a period of 12 months or~~  
24 ~~more, then any future use of the nonconforming building, land or premises shall be consistent with~~  
25 ~~the provisions of this program.~~

26 ~~A. Replacement of any nonconforming structures or buildings or portions thereof within the aquatic~~  
27 ~~shoreline area shall comply with program requirements for materials that come in contact with the~~  
28 ~~water pursuant to WCC 23.90.040(B)(5); provided, that replacement of existing wood pilings with~~  
29 ~~chemically treated wood is allowed for maintenance purposes where use of a different material~~  
30 ~~such as steel or concrete would result in unreasonable or unsafe structural complications; further~~  
31 ~~provided, that where such replacement exceeds 20 percent of the existing pilings over a 10-year~~  
32 ~~period, such pilings shall conform to the standard provisions of this section.~~

33 ~~A. Enlargement or expansion of single-family residences by the addition of space to the main structure~~  
34 ~~or by the addition of normal appurtenances as defined in Chapter 23.110 WCC that extend~~  
35 ~~waterward of the existing primary residential foundation walls further into a critical area (excluding~~  
36 ~~the buffers of the critical areas), further into the minimum required side yard setback, or that~~  
37 ~~increase the structure height above the limits established by this program shall require a variance;~~  
38 ~~provided, that expansion of nonconforming single-family residences other than that specified in this~~  
39 ~~subsection I may be expanded without a variance where the provisions of subsection J or K of this~~  
40 ~~section apply.~~

- ~~B. The enlargement or expansion of single-family residences by the addition of space to the exterior of the main structure or normal appurtenances is permitted without a conditional use permit or variance once during the life of the structure (100 years). The structure shall be located landward of the ordinary high water mark, and any expansion of the footprint is landward of the existing building footprint (not the side yard), and any vertical expansion is within the existing building footprint; provided, that the following conditions are met:  
— Enlargements, expansions, or additions that increase the existing primary structure or normal appurtenances by up to 250 square feet of gross floor area as defined by Chapter 23.110 WCC shall be allowed provided the expansion or addition will occur on a previously impacted impervious surface and the expansion is not waterward of the common-line setback as illustrated in Appendix F.  
1. Enlargements, expansions, or additions that increase the total footprint of the existing primary structure or normal appurtenances by 250 to 500 square feet of gross floor area as defined by Chapter 23.110 WCC shall be allowed; provided, that the addition will occur on a previously impacted impervious surface and the expansion is not waterward of the common-line setback as illustrated in Appendix F; further provided, that the shoreline is enhanced by the equivalent area of a building footprint that is expanded. If enhanced through planting, the administrator shall require a vegetation management plan consistent with WCC 23.90.060(B)(2).~~
- ~~B. The administrator shall require a conditional use permit if the enlargement or expansion of single-family residences by the addition of space to the exterior of the main structure or normal appurtenances is in excess of those allowances provided in subsection J of this section.~~
- ~~B. A structure that is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. In addition to the conditional use criteria of WCC 23.60.040, before approving a conditional use for a change in nonconforming use, the hearing examiner shall also find that:  
1. No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;  
1. The proposed use will be at least as consistent with the policies and provisions of the Act and this program and as compatible with the uses in the area as the preexisting use;  
1. The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;  
1. The structure(s) associated with the nonconforming use shall not be expanded in a manner that increases the extent of the nonconformity including encroachment into areas, such as setbacks, and any critical areas and/or associated buffers established by Chapter 16.16 WCC, where new structures, development or use would not be allowed;  
1. The vegetation conservation standards of WCC 23.90.060(B)(3) are met;  
1. The change in use, remodel or expansion will not create adverse impacts to shoreline ecological functions and/or processes; and  
1. Uses which are specifically prohibited or which would thwart the intent of the Act or this program shall not be authorized.~~

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- ~~C. Nonconforming lots are those that have a building area of less than 2,500 square feet available for a single-family residence and normal appurtenances that is unrestricted by setbacks or buffers from shorelines.~~
- ~~—Where permitted according to shoreline areas designations (WCC Table 23.100.010), new single-family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the required shoreline buffer standards may be allowed without a shoreline variance when all of the following criteria are met:~~
- ~~0. The depth of the lot (the distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard buffer as indicated in Chapter 16.16 WCC; and~~
  - ~~0. The building area lying landward of the shoreline buffer and interior to required side yard setbacks is 2,500 square feet or less; provided, that consideration shall be given to view impacts and all single-family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with Appendix F. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping; and~~
  - ~~0. The lot is not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal erosion hazard areas or associated buffers as provided in WCC 16.16.310; and~~
  - ~~0. The nonconforming lot was created prior to August 8, 2008; and~~
  - ~~0. Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline and any critical areas; and provided, that all administrative reductions to side yard and/or frontage setbacks are pursued, when doing so will not create a hazardous condition or a condition that is inconsistent with this program and WCC Title 20; and~~
  - ~~0. There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity; and~~
  - ~~0. The area between the structure and the shoreline and/or critical area shall comply with the vegetation conservation standards of WCC 23.90.060(B)(3); and~~
  - ~~0. Development may not take place waterward of the ordinary high water mark; and~~
  - ~~0. Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, except wetlands and buffers, outside of the building area specified above, subject to specific criteria in Chapter 16.16 WCC.~~
- ~~D. Redevelopment of nonconforming rights-of-way and associated transportation structures, such as railroad trestles, may be permitted for purposes of facilitating the development of public trails and/or public shoreline access; provided, that such redevelopment shall be otherwise consistent with the provisions of this program, including but not limited to the provisions for public access and no net loss of shoreline ecological functions and processes, except as provided for in subsections E and H of this section.~~

**23.50.010 Nonconforming Uses.**

- A. The lawfully established use of any building, structure, land, or premises existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but which does not conform to present use regulations due to subsequent changes to the master program, shall be considered legally nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC Chapter 16.16, Article 8 (Conservation Program on Agricultural Lands).
- B. The expansion, alteration, and/or intensification of a nonconforming use is prohibited.
- C. An existing use designated as a shoreline conditional use under present use regulations that lawfully existed prior to the effective date of the initial adoption of this program (August 27, 1976) or any applicable amendment thereafter and that has not obtained a shoreline conditional use permit shall be considered a legal use and may be continued subject to the provisions of this section without obtaining a shoreline conditional use permit.
- D. Other than agricultural uses complying with WCC 16.16.800, if a use is discontinued for a period of 12 consecutive months or more, then any subsequent use, if allowed, shall be consistent with the provisions of this program and the Act.
- E. The change of a nonconforming use to another type of nonconforming use is prohibited. [P/C245] may only occur upon the approval of a shoreline conditional use permit. In addition to the shoreline conditional use criteria of WCC Title 22 (Land Use and Development), before approving a shoreline conditional use for a change in nonconforming use, the Hearing Examiner shall also find that:
  - No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;
  - The proposed use will be consistent with the policies and provisions of the Act and this program and as compatible with the uses in the area as the preexisting use;
  - The vegetation conservation management standards of WCC 23.30.050 are met;
  - The change in use or remodel will not create adverse impacts to shoreline ecological functions and/or processes; and
  - Uses that are specifically prohibited or that would thwart the intent of the Act or this program shall not be authorized.
  - Public Access is provided as required by this program.
  - Vegetation screening and/or view protection is provided as required by this program. [P/C246]

**23.50.011020 Nonconforming Structures.**

- A. A lawfully established structure existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but is no longer fully consistent with present regulations due to subsequent changes to the master program, shall be considered legally nonconforming and may be continued, subject to the provisions of this section; provided that:
  1. Shoreline stabilization structures shall conform to WCC 23.40.190 (Shoreline Stabilization).

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2. When maintenance and repair of a nonconforming structure has lapsed such that the structure or activity area is not in a usable condition, the structure or activity shall be considered to be abandoned or derelict and may no longer be continued.
3. For structures where the ordinary high water mark establishes landward of the structure, this structure shall be considered to be abandoned or derelict and may no longer be continued.
4. Non-overwater nonconforming structures may be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased, provided that a nonconforming structure that is moved any distance must be brought into conformance with this program and the Act, except as provided in subsection (C) and (D) of this section;
5. Overwater nonconforming structures may be maintained or repaired to the extent that nonconformance with the standards and regulations of this program is not increased; provided that when replacement is the common method of repair, the replaced components shall meet the construction and materials standards of WCC 23.40.150 (Moorage Structures).
- B. Nonconforming structures (including accessory structures) that are damaged or destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind; provided, that:
  1. Intentional demolition or removal is not a casualty.
  2. Damaged or destroyed nonconforming structures containing conforming uses that are located within a geologically hazardous area or frequently flooded area shall be reconstructed consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas); provided, that the permit process is commenced within 18 months of the date of such damage; and the reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in this section.
  3. Damaged or destroyed nonconforming structures containing nonconforming uses can be replaced in kind if:
    - a. There is no feasible alternative that allows for compliance with the provisions of this program;
    - b. The structure is reconstructed consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas);
    - c. The permit process is commenced within 12 months of the date of such damage; and,
    - d. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity.
- C. Nonconforming structures that do not meet the criteria of subsection (A)(2) but are intentionally demolished or removed with a valid demolition permit may be replaced with the same bulk dimensions provided that: [CES247]
  1. The permit process is commenced within 12 months of the date of such demolition or removal; and
  2. Such structures that are located within a geologically hazardous area or frequently flooded area shall be reconstructed consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas).



- D. Replacement of any nonconforming structures or buildings or portions thereof within the aquatic shoreline environment shall comply with program requirements for construction design and materials; provided, that replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 20% of the existing pilings over a 10-year period, such pilings shall conform to the standard provisions of this section.
- E. Other than for single-family residences and their appurtenances, nonconforming structures that are shall not be altered, expanded or enlarged, or expanded without must be brought into conformance with this program and the Act or obtain a variance [MD248] unless such alteration, enlargement or expansion would bring the structure into conformance with this program and the Act; provided, that nonconforming structures with conforming uses may be enlarged or expanded within the existing building footprint as a shoreline conditional use pursuant to WCC Title 22 (Land Use and Development) 23.100.050(B)(1)(e) when the following criteria are met:-
1. The enlargement or expansion is within the existing building footprint;
  2. The enlargement or expansion is in conformance with the bulk dimensional standards; and
  3. Public access is provided and/or the shoreline environment is enhanced.
- F. Single-family residences nonconforming to the shoreline buffer.
1. Enlargement or expansion of a primary single-family structure may be approved when either of the following are met:
    - a. When the vertical expansion or enlargement is within the existing building footprint and is in conformance with the bulk dimensional standards; or
    - b. When the enlargement or expansion meets all of the following.
      - i. The enlargement or expansion will not extend waterward of the building footprint of the existing primary structure or the enlargement or expansion is consistent with the constrained lot provisions in WCC 23.40.170 (Standards for Single-Family Residential Use on Constrained Lots).
      - ii. The enlargement or expansion is not within a critical area or critical area buffer in a manner inconsistent with this program.
      - iii. The enlargement or expansion is in conformance with the bulk dimensional standards.
  2. The enlargement or expansion of single-family residences or normal appurtenances greater than the constrained lot provisions of WCC 23.40.170(C) may be approved once during the life of the structure (100 years); provided, that the following conditions are met:-
    - a. The existing structure must be located landward of the ordinary high water mark.
    - b. Building footprint enlargement or expansion:
      - i. Shall not increase the total building footprint by more than 500 square feet.
      - ii. Shall be landward or lateral of the existing footprint.
      - iii. Shall occur on a previously impacted impervious surface.
      - iii. Shall not occur waterward of the common line setback as described in WCC 23.40.020 (Shoreline Bulk Provisions).

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iv. Shall be accompanied by enhancement of an area equivalent to the enlargement or expansion if the total building footprint increases by more than 250 square feet. If enhanced through planting, the Director shall require a vegetation management plan consistent with WCC 23.30.0540 (Vegetation Management).

c. The property has not previously received a shoreline exemption under the provisions for a nonconforming or constrained lot.

G. Redevelopment of nonconforming rights-of-way and associated transportation structures, such as railroad trestles, may be permitted for purposes of facilitating the development of public trails and/or public shoreline access; provided, that such redevelopment shall be otherwise consistent with the provisions of this program, including but not limited to the provisions for public access and no net loss of shoreline ecological functions and processes, except as provided for in this section.

### **23.50.012030 Nonconforming Lots.**

A lawfully established lot existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but which does not conform to present lot standards, shall be considered a legally nonconforming lot and may be developed subject to the provisions of this program.

Where permitted by the shoreline areas designation (WCC Table 23.100.010), new single-family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the required shoreline setback standards may be allowed without a shoreline variance when the following criteria are met:

— The depth of the lot (the distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard buffer as indicated in Chapter 16.16 WCC;

— The building area lying landward of the shoreline buffer and interior to required side yard setbacks is 2,500 square feet or less. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping, including any lawn, turf, ornamental vegetation, or gardens located in the outer management zone of the buffer pursuant to WCC 23.30.060(B)(2);

— Consideration shall be given to view impacts. Any single-family residences approved under this section shall not extend waterward of fifteen (15) feet landward of the OHWM, or the common-line setback as measured in accordance with WCC 23.30.060(A)(2)(b), whichever is further landward.

— The lot is not subject to landslide hazard areas or riverine and coastal erosion hazard areas or associated buffers as defined in WCC 16.16.310;

— The nonconforming lot was created prior to the effective date of this program (August 8, 2008);

— Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline and any critical areas, that all administrative reductions to side yard and/or frontage setbacks are pursued; and when doing so will not create a hazardous condition or a condition that is inconsistent with this program and WCC Title 20. The standard front yard setback may be reduced to 20 feet pursuant to WCC 20.80.230(2). The standard side yard setbacks may be

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1 ~~reduced to 5 feet of the total required side yard setbacks on one side and the balance on the~~  
2 ~~other side pursuant to WCC 23.90.130.B.4; provided, that if the side yard setback reductions~~  
3 ~~pursuant WCC 23.90.130.B.4 are insufficient, both side yard setbacks may be reduced to 5 feet.~~  
4 ~~— There is no opportunity to consolidate lots under common ownership that will alleviate the~~  
5 ~~nonconformity;~~  
6 ~~— The area between the structure and the shoreline and/or critical area shall comply with the~~  
7 ~~vegetation conservation standards of WCC 23. 30.050(B);~~  
8 ~~— Development may not take place waterward of the ordinary high water mark; and~~  
9 ~~— Facilities such as a conventional drainfield system may be allowed within critical areas or their~~  
10 ~~buffers, except wetlands and buffers, outside of the building area specified above, subject to~~  
11 ~~specific criteria in Chapter 16.16 WCC.~~ [RCE249]

### ~~23.50.080 Property rights.~~ [AP250]

- 12  
13 ~~— Decisions on shoreline permits and/or approvals shall recognize all relevant constitutional and other~~  
14 ~~legal limitations on the regulation of private property. Findings shall assure that conditions imposed~~  
15 ~~relate to the governmental authority and responsibility to protect the public health, safety, and~~  
16 ~~welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected~~  
17 ~~impact.~~  
18 ~~— This program does not alter existing law on access to or trespass on private property and does not~~  
19 ~~give the general public any right to enter private property without the owner's permission.~~  
20 ~~— Consistent with Whatcom County's high standard of staff conduct, county staff observe all~~  
21 ~~applicable federal and state laws regarding entry onto privately owned property.~~

## **Chapter 23.60 Shoreline Permits and Exemptions** [MD251]

### **23.60.005 General requirements.**

- To be authorized, all uses and developments shall be planned and carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required. [RCE252]

### **23.60.010 Substantial development permits criteria.**

- A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to WCC 23.60.022.
- In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:
  - 0. All regulations of this program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under WCC 23.60.030.
  - 0. All policies of this program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.
  - 0. For projects located on shorelines of statewide significance, the policies of Chapter 23.40 WCC shall also be adhered to.
- In the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users. [RE253]

### **23.60.020 Exemptions from Shoreline Substantial Development Permits process.**

- **23.60.021 Application and interpretation.**
  - 1. An exemption from the substantial development permit process is not an exemption from compliance with the Act, or this program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this program and the Act. A statement of exemption shall be obtained for exempt activities consistent with the provisions of WCC 23.60.020.
  - 1. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
  - 1. The burden of proof that a development, or use is exempt is on the applicant/proponent of the exempt development action.
  - 1. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.

- ~~1. A development or use that is listed as a conditional use pursuant to this program or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.~~
- ~~1. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.~~
- ~~1. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the administrator, including compliance with bulk and dimensional standards and policies and regulations of this program. The administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the program.~~

~~23.60.022 Exemptions listed.~~

- ~~0. The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit. A statement of exemption, as provided for in WCC 23.60.023 of this program shall be required for those activities listed in WCC 23.60.023(B) and (C).~~
  - ~~Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,718, or as amended by the state office of financial management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.~~
  - ~~Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or the environment.~~
  - ~~Construction of the normal protective bulkhead common to single-family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the~~

- ~~purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used for backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife.~~
- ~~— Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC or this program, shall be obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.~~
  - ~~— Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels; provided, that this exemption shall not apply to agricultural activities proposed on land not in agricultural use on December 17, 2003; and further provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, or alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.~~
  - ~~— Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.~~
  - ~~— Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level and that meets all requirements of the state agency or local government having jurisdiction thereof. Single family residence means a~~

- ~~detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance as defined in WCC 23.110.010.~~
- ~~Construction of a dock, including a shared moorage, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single-family or multifamily residence. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. The private dock exemption applies if either:~~
  - ~~In saltwater, the fair market value of the dock does not exceed \$2,500;~~
  - ~~In fresh waters the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of the completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this program. For the purpose of this section, saltwater shall include the tidally influenced marine and estuarine water areas of the state including the Strait of Georgia, local marine waters and all associated bays, inlets and estuaries.~~
- ~~Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters including return flow and artificially stored ground water for the irrigation of lands; provided, that this exemption shall not apply to construction of new irrigation facilities proposed after December 17, 2003.~~
- ~~The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.~~
- ~~Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on June 4, 1975, that were created, developed or utilized, primarily as a part of an agricultural drainage or diking system.~~
- ~~Any project with a certification from the governor pursuant to Chapter 80.50 RCW.~~
- ~~Site exploration and investigation activities that are prerequisite to preparation of a development application for authorization under this program, if:~~
  - ~~The activity does not interfere with the normal public use of surface waters;~~
  - ~~The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;~~
  - ~~The activity does not involve the installation of any structure and, upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;~~
  - ~~A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the administrator to ensure that the site is restored to preexisting conditions; and~~
  - ~~The activity is not subject to the permit requirements of RCW 90.58.550.~~
- ~~The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that~~



~~is recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW.~~

~~—Watershed restoration projects as defined in Chapter 23.110 WCC and by RCW 89.08.460. The administrator shall review the projects for consistency with the program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving a complete application form from the applicant/proponent. No fee may be charged for accepting and processing applications for watershed restoration projects as defined in Chapter 23.110 WCC.~~

- ~~a. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:~~
- ~~— The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;~~
  - ~~— The project received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and~~
  - ~~— The administrator has determined that the project is consistent with this program. The administrator shall make such determination in a timely manner and provide it by letter to the project proponent.~~

~~— 23.60.023 **Statements of Exemption.**~~

- ~~1. The administrator is hereby authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in WCC 23.60.022. Such statements shall be applied for on forms provided by the administrator. The statement shall be in writing and shall indicate the specific exemption of this program that is being applied to the development, and shall provide a summary of the administrator's analysis of the consistency of the project with this program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to WCC 23.60.150.~~
- ~~1. Exempt activities related to any of the following shall not be conducted until a statement of exemption has been obtained from the administrator: dredging, flood control works and instream structures, development within an archaeological or historic site, clearing and ground disturbing activities such as landfill or excavation, dock, shore stabilization, freestanding signs, or any development within an aquatic or natural shoreline designation; provided, that no separate written statement of exemption is required for the construction of a single-family residence when a county building permit application has been reviewed and approved by the administrator; provided further, that no statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d).~~

- ~~1. No statement of exemption shall be required for other uses or developments exempt pursuant to WCC 23.60.022 unless the administrator has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption or the administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.~~
- ~~— Whether or not a written statement of exemption is issued, all permits issued within the area of shorelines shall include a record of review actions prepared by the administrator, including compliance with bulk and dimensional standards and policies and regulations of this program. The administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this program.~~
- ~~2. A notice of decision for shoreline statements of exemption shall be provided to the applicant/proponent and any party of record. Such notices shall also be filed with the Department of Ecology, pursuant to the requirements of WAC 173-27-050 when the project is subject to one or more of the following federal permitting requirements:~~
  - ~~— A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899. (The provisions of Section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or~~
  - ~~— A Section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions of Section 404 of the Federal Water Pollution Control Act generally apply to any project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)~~
- ~~2. Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-27-050.~~

## **~~23.60.030 Variance permit criteria:~~**

- ~~— The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this program and any associated standards appended to this program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. Use restrictions may not be varied.~~
- ~~— Variances will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.~~
- ~~— Proposals that would otherwise qualify as a reasonable use pursuant to WCC 16.16.270(A) shall require a shoreline variance and shall meet the variance criteria in this section.~~
- ~~— Variances may be authorized, provided the applicant/proponent can demonstrate all of the following:~~

- ~~1. That the strict application of the bulk or dimensional criteria set forth in this program precludes or significantly interferes with reasonable permitted use of the property;~~
- ~~1. That the hardship described in subsection A of this section is specifically related to the property, and is the result of conditions such as irregular lot shape, size, or natural features and the application of this program, and not, for example, from deed restrictions or the applicant's/proponent's own actions;~~
- ~~1. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects on adjacent properties or the shoreline environment;~~
- ~~1. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;~~
- ~~1. That the public interest will suffer no substantial detrimental effect;~~
- ~~1. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and~~
- ~~1. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.~~
- ~~— Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined herein, or within any wetland as defined herein, may be authorized, provided the applicant can demonstrate all of the following:~~
  - ~~0. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes all reasonable use of the property; and~~
  - ~~0. That the proposal is consistent with the criteria established under subsections (D)(1) through (7) of this section; and~~
  - ~~0. That the public rights of navigation and use of the shorelines will not be adversely affected.~~
- ~~— Other factors that may be considered in the review of variance requests include the conservation of valuable natural resources and the protection of views from nearby roads, surrounding properties and public areas; provided, the criteria of subsection D of this section are first met. In addition, variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted;~~
- ~~— where there are no likely detrimental effects to existing or future users, other features, or shoreline ecological functions and/or processes, and~~
- ~~— where reasonable alternatives of equal or greater consistency with this program are not available.~~
  - ~~0. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area.~~
- ~~— In the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.~~
- ~~— Permits and/or variances applied for or approved under other county codes such as WCC Title 20 or 21 shall not be construed as shoreline permits under this program.~~

## ~~23.60.040 Conditional use permits criteria.~~

- ~~— The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of this program in a manner consistent with the policy of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the county or the Department of Ecology to control any undesirable effects of the proposed use.~~
- ~~— Uses specifically classified or set forth in this program as conditional uses and unlisted uses may be authorized, provided the applicant/proponent can demonstrate all of the following:~~
  - ~~0. That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.~~
  - ~~0. That the proposed use will not interfere with normal public use of public shorelines.~~
  - ~~0. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.~~
  - ~~0. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.~~
  - ~~0. That the public interest suffers no substantial detrimental effect.~~
- ~~— Other uses not specifically classified or set forth in this program, including the expansion or resumption of a nonconforming use pursuant to WCC 23.50.070, may be authorized as conditional uses, provided the applicant/proponent can demonstrate that the proposal will satisfy the criteria set forth in subsection B of this section, and that the use clearly requires a specific site location on the shoreline not provided for under the program, and extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this program. Uses that are prohibited cannot be authorized by a conditional use permit.~~
- ~~— In the granting of all conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.~~
- ~~— Permits and/or variances applied for or approved under county zoning or subdivision code requirements shall not be construed as shoreline variances under this program.~~

## ~~23.60.050 Minimum application requirements.~~

~~Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this program.~~

~~A complete application for a substantial development, conditional use, or variance permit shall contain all materials required in the Department's administrative manual; provided, that the administrator may vary or waive these requirements as provided in the manual and may vary or waive these requirements on a case-by-case basis. The administrator may require additional specific information depending on the~~

~~nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.~~

**~~23.60.060 Pre-application conference.~~**

~~A. Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision.~~

~~B. The applicant shall contact the County to schedule a pre-application conference, which shall be held prior to filing the application; provided, that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single-family residence.~~

**~~23.60.070 Fees.~~**

~~— Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required reviews and/or approvals shall be paid to the county at the time of application in accordance with the Whatcom County Unified Fee Schedule in effect at that time and Chapter 22.05 WCC.~~

~~A. When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced pursuant to WCC 22.25.030:~~

~~0. Preliminary plat application.~~

~~0. Rezone application.~~

~~0. Major development permit.~~

~~0. Planned unit development.~~

~~0. Binding site plan.~~

~~A. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.~~

~~A. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the county. The cost shall be in accordance with the adopted fee schedule.~~

~~A. If an application is withdrawn within 30 days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than 50 percent of the shoreline fees paid may be granted by the administrator. This amount may be reduced where staff time, public notice and other costs exceed 50 percent of the fees paid.~~

**~~23.60.080 Notice of application.~~**

~~A. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application the County shall issue a notice of application for a proposed land use action in the manner set forth in WCC 22.05.070.~~

- A. ~~The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.~~ [RCE254]

## **~~23.60.090 Permit application review.~~**

- ~~— All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this program that are in effect at the time of application.~~
- ~~— To facilitate review of an application the decision maker shall consider any or all of the following:~~
  - ~~0. The application and attached information;~~
  - ~~0. The SEPA checklist, threshold determination, environmental impact statement, or other environmental studies and/or documentation;~~
  - ~~0. Written comments from interested persons;~~
  - ~~0. Information and recommendations from any public agency and from the administrator in cases where the administrator is not the decision maker;~~
  - ~~0. Information or comment presented at a public hearing, if held, on the application; and~~
  - ~~0. The policy and provisions of the Act and this program including the criteria enumerated in WCC 23.60.010, 23.60.030 and 23.60.040, as applicable.~~
- ~~— The decision maker shall process project permit applications for shoreline substantial development permits, shoreline variance, and shoreline conditional use permits in compliance with the provisions of Chapter 22.05 WCC.~~
- ~~— The decision maker shall process project permit applications for shoreline statements of exemption in accordance with the provisions of Chapter 22.05 WCC and WCC 23.60.023(A).~~
- ~~— Any application for a shoreline permit or approval that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.~~
- ~~— If a shoreline permit is denied, no reapplication for the same or essentially similar development may be made until one year from the date of denial.~~

## **~~23.60.100 Consolidated Permit Review.~~**

- ~~— Whenever an application for a project permit under the program requires a project permit or approval under another County permit authority, such as zoning or subdivision, the shoreline project permit application, time requirements, and notice provisions for processing the shoreline permit shall apply, in addition to those of other regulatory programs.~~
- ~~— The provisions of Chapter 22.05 WCC shall apply to the consolidated application, review, and approval of applications that require an open record hearing.~~
- ~~— Any shoreline use or development that is subject to other approvals or permits that requires an open record hearing under another permit authority, such as zoning or subdivision, shall be subject~~

to consolidated review and the decision maker designated for the open record hearing shall be the decision maker for the consolidated review.

**~~23.60.110 State Environmental Policy Act (SEPA) compliance.~~**

- ~~— Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the rules and regulations of SEPA (Chapter 43.21C RCW), the review requirements of SEPA, including time limitations, shall apply, where applicable.~~
- ~~A. Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the responsible official of Whatcom County pursuant to the State Environmental Policy Act (Chapter 197-11 WAC).~~
- ~~A. As part of SEPA review, the Responsible Official may require additional information regarding the proposed development in accordance with Chapter 197-11 WAC.~~
- ~~A. Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the Responsible Official to determine the application incomplete.~~ [RCE255]

**~~23.60.120 Burden of proof.~~**

~~Permit applicants/proponents have the burden of proving that the proposed development is consistent with the criteria set forth in the Act and this program.~~ [CES256]

**~~23.60.130 Public Hearings.~~** [CES257]

- ~~A. The administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than 15 days after the minimum public comment period provided by WCC 23.60.080. An open record public hearing shall be required for all of the following:~~
  - ~~0. The proposal has a cost or market value in excess of \$100,000 except for single family residences, agriculture, commercial forestry, and ecological restoration projects; or~~
  - ~~0. The proposal would result in development of an area larger than five acres; or~~
  - ~~0. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or~~
  - ~~0. The administrator has reason to believe the proposal would be controversial based on public response to the notice of receipt of application and other information; or~~
  - ~~0. The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; or~~
  - ~~0. The proposal requires a variance and/or conditional use approval pursuant to this program; or~~
  - ~~0. The use or development requires an open record public hearing for other Whatcom County approvals or permits.~~
- ~~A. An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of Chapter 22.05 WCC, unless a continuance is granted pursuant to the rules and procedures of the Hearing Examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.~~



~~A. Repealed by Ord. 2018-032.~~

~~A. Repealed by Ord. 2018-032.~~

~~A. Public hearing requirements for permit appeals shall be processed according to WCC 23.60.150.~~

## **23.60.140 Permit conditions.**

~~In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this program as well as the supplemental authority provided in Chapter 43.21C RCW as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with the Act and this program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with WCC 23.60.180.~~

~~[CES258]~~

## **23.60.XXX Filing with Department of Ecology** ~~[CES259]~~

- ~~— After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the County will hand deliver or mail or hand deliver the permit using return receipt requested mail to the Department of Ecology regional office.~~
- ~~— Projectsposals that require both Shoreline Conditional Use Permits and or Variances shall be hand delivered or mailed simultaneously with any shoreline permit for the project.~~
- ~~— The permit and documentation of final local decision will be mailed together the following information:~~
  - ~~— A copy of the complete application;~~
  - ~~— Findings and conclusions that establish the basis for the decision, including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations, and the consistency of the project with appropriate review criteria for the type of permit(s);~~
  - ~~— The final decision of the local government;~~
  - ~~— A completed permit data sheet (WAC Reference); and~~
  - ~~— Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.~~
  - ~~— When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.~~
- ~~— Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.~~

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### ~~23.60.150 Notice of Decision, Reconsideration and Appeal.~~ [CES260]

- ~~— A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of record in accordance with the review procedures of Chapter 22.05 WCC, and at least 10 days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain the following information:~~
- ~~— After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the County will mail or hand deliver the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General.~~
- ~~— Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permitsshoreline permit for the project.~~
- ~~— The permit and documentation of final local decision will be mailed together the following information:~~
  - ~~— A copy of the complete application;~~
  - ~~1. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);~~
  - ~~1. The final decision of the local government;~~
  - ~~1. A completed permit data sheet (see Appendix A of this title); and~~
  - ~~1. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.~~
  - ~~1. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.~~
- ~~A. Notice of decision for shoreline statements of exemption shall comply with WCC 22.05.110(1) and 23.60.023(E).~~
- ~~— Any person with standing may appeal any order, final permit decision, or final administrative determination made by the director or designee in the administration of this program.~~
- ~~— Administrative Appeal Procedures:~~
  - ~~— Administrative appeals are processed in accordance with WCC 22.05.160.~~
  - ~~— After the issuance of the appeal determination, a party with standing may Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of the “date of filing,” as defined in this program and RCW 90.58.140(6). The appeal to the Shorelines Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~
- ~~— Appeals of a decision of the Department of Ecology shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~

- ~~A. This program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this program for exempt actions pursuant to WCC 23.60.022; provided, that in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.~~
- ~~— The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within 10 days of notice of the decision. Such requests shall be filed on forms supplied by the county. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not preempt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within 10 days of a final action.~~
- ~~A. Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing the final decision by Whatcom County with the Department of Ecology.~~
- ~~A. Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the Shorelines Hearings Board. Such waivers shall be filed with the county in writing concurrent with a notice of appeal within 10 days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.~~
- ~~A. Any order, requirement or administrative permit decision, or determination by the administrator based on a provision of this program, except a shoreline substantial development permit, may be the subject of an appeal to the office of the hearing examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.~~
- ~~A. Appeal Procedures.~~
- ~~1. Appeals shall be filed on forms supplied by the county within 10 calendar days of the issuance of a substantial development permit, shoreline variance or shoreline conditional use permit and within 20 calendar days of any other action of the administrator being appealed.~~
- ~~1. A public hearing on the appeal shall be held within 45 working days following receipt of the application for appeal.~~
- ~~1. Legal notice of the public hearing shall be made by mailing notice of time, date, and location of the hearing to the appellant, any parties of record, the Washington Department of Ecology, and the administrator at least 15 days prior to the hearing.~~
- ~~1. A decision by the hearing examiner shall be mailed within 10 working days of the public hearing to all parties of record unless otherwise mutually agreed to by all parties to the appeal.~~

- ~~1. Any party of record may request a closed record review of the hearing examiner's decision issued under subsection (H)(4) of this section by the county council. Such an appeal shall be filed with the county council on forms supplied by the county within 10 calendar days of the written decision. If appeal is made to the county council, notice of appeal shall be provided to all parties of record at least 15 days prior to consideration by the county council. The council shall meet to review the hearing examiner's decision within 21 days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner.~~
- ~~1. The time period for appeal to the Shorelines Hearings Board shall begin after the decision maker has filed the final county decision with the Department of Ecology.~~

## **~~23.60.160 Initiation of development.~~**

- ~~—Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until 21 days after the “date of filing” or until all review proceedings before the Shorelines Hearings Board have terminated.~~

## **~~Date of Filing.~~**

- ~~1. “Date of filing” of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.~~
- ~~1. The “date of filing” for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the county and the applicant/proponent.~~

## **~~23.60.170 Revisions.~~**

- ~~B. A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this program, or the Act. Changes that are not substantive in effect do not require a revision.~~
- ~~B. An application for a revision to a shoreline permit shall be submitted to the administrator~~director~~. The application shall include detailed plans and text describing the proposed changes. The County decision maker that approved the original permit may approve the request upon a finding that the proposed changes are within the scope and intent of the original approval, and are consistent with this program and the Act.~~
- ~~B. “Within the scope and intent of the original approval” means all of the following:~~
- ~~1. No additional over-water construction is involved except that a pier, dock, or floating structure may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is lesser over that approved under the original approval;~~
  - ~~1. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setbacks, or any other requirements of this program except as authorized under a variance granted for the original development;~~

- ~~— The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;~~
- ~~— Additional or revised mitigation and/or landscaping is consistent with any conditions attached to the original approval and with this program;~~
- ~~1. The use authorized pursuant to the original approval is not changed; and~~
- ~~1. The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.~~
- ~~— Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required.~~
- ~~A. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.~~
- ~~A. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval as set forth in subsection C of this section.~~
- ~~B. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.~~
- ~~— If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection.~~
- ~~— Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.~~
- ~~C. Appeals of a decision of the Department shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~

## **~~23.60.180 Rescission and modification.~~**

- ~~— Any shoreline permit granted pursuant to this program may be rescinded or modified upon a finding by the Hearing Examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. If the results of a monitoring plan show a development to be out of compliance with specific performance standards, such results may be the basis for findings of noncompliance.~~
- ~~— The Administrator shall initiate rescission or modification proceedings by issuing written notice of noncompliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.~~

- ~~—The Hearing Examiner shall hold a public hearing no sooner than 15 days following such issuance of notice, unless the applicant/proponent files notice of intent to comply and the Administrator grants a specific schedule for compliance. If compliance is not achieved, the Administrator shall schedule a public hearing before the Hearing Examiner. Upon considering written and oral testimony taken at the hearing, the Hearing Examiner shall make a decision in accordance with the above procedure for shoreline permits.~~
- ~~A. These provisions do not limit the Administrator, the Prosecuting Attorney, the Department of Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.~~

## **~~23.60.190 Expiration.~~**

- ~~—The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit, or statement of exemption:~~
  - ~~1. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit or exemption or the permit shall expire; provided, that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause if a request for extension has been filed with the hearing examiner or administrator as appropriate before the expiration date of the shoreline permit or exemption, and notice of the proposed extension is given to parties of record and the Department of Ecology.~~
  - ~~1. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit or exemption; provided, that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause, if a request for extension has been filed with the hearing examiner or administrator, as appropriate, before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and the Department of Ecology.~~
- ~~—The effective date of a shoreline permit or exemption shall be the date of filling as provided in RCW 90.58.140(6).~~
- ~~—Tolling. The effective date does not include The time periods in (1) and (2) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the which the issued shoreline permit authorizes, development that authorize the development to proceed, including the pendency of all reasonably related administrative appeals or legal appeal actions on any such permits or approval. last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval.~~
- ~~—The applicant/ proponent shall be responsible for informing the County of the of such pendency, of other permit applications filed with agencies other than the County and of any related administrative and legal actions on any permit or approval.~~

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1. ~~If no notice of the pendency of other permits or approvals is given to the County prior to the date of the last action by the County to grant County permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the county, and actions under other County development regulations, the date of the last action by the County shall be the effective date.~~
- ~~Notwithstanding the time limits established in subsections (A)(1) and (2) of this section, upon a finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this program and the Act, the Hearing Examiner or Administrator, as appropriate, may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The Hearing Examiner may also set different time limits on specific conditional use permits or variances with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established in subsections (A)(1) and (2) of this section but shall be appropriate to the shoreline development or use under review. "Good cause based on the requirements and circumstances of the proposed project" shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.~~
- ~~When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity; provided, that different time limits for compliance may be specified in the conditions of approval as appropriate.~~
- ~~The Hearing Examiner or Administrator, as appropriate, shall notify the Department of Ecology in writing of any change to the effective date of a permit, authorized by subsections A through C of this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by the sections of this program previously listed shall require a new permit application.~~



## Chapter 23.70 Administration [MD261]

### ~~23.70.010 Administrator.~~

- ~~—The Administrator, as defined in WCC 23.110.010, is hereby vested with the authority to:~~
- ~~0. Overall administrative responsibility for this program.~~
  - ~~0. Determine if a public hearing should be held on a shoreline permit application by the Hearing Examiner pursuant to WCC 23.60.130.~~
  - ~~0. Grant or deny statements of exemption.~~
  - ~~0. Authorize, approve or deny shoreline substantial development permits, except for those for which the Hearing Examiner or County Council is the designated decision maker.~~
  - ~~0. Issue a stop work order pursuant to the procedure set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of Chapter 90.58 RCW or this program; and seek remedies for alleged violations of this program's regulations, or of the provisions of the Act, or of conditions attached to a shoreline permit issued by Whatcom County.~~
  - ~~0. Decide whether or not a proposal is subject to the consolidated review process of Chapter 22.05 WCC and determine what other permits are required to be included in the consolidated review.~~
  - ~~0. Make field inspections as needed, and prepare or require reports on shoreline permit applications.~~
  - ~~0. Make written recommendations to the County Council or Hearing Examiner as appropriate and, insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter.~~
  - ~~0. Propose amendments to the Planning Commission deemed necessary to more effectively or equitably achieve the purposes and goals of this program.~~
  - ~~0. The Administrator shall perform the following administrative responsibilities:~~
  - ~~0. Advise interested persons and prospective applicants/proponents as to the administrative procedures and related components of this program;~~
  - ~~0. Collect fees as provided for in WCC 23.60.070; and~~
  - ~~0. Assure that proper notice is given to interested persons and the public through news media, posting or mailing of notice.~~
  - ~~0. Review administrative and management policies, regulations, plans and ordinances relative to lands under county jurisdiction that are adjacent to shorelines so as to achieve a use policy on such lands that is consistent with the Act and this program.~~
  - ~~0. Review and evaluate the records of project review actions in shoreline areashoreline environments and report on the cumulative effects of authorized development of shoreline conditions. The AdministratorDirector shall coordinate such review with the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe, and other interested parties.~~
  - ~~0. Make recommendations to the Planning Commission for open space tax designations pursuant to Chapter 84.34 RCW.~~

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1 ~~E. The Director of Planning and Development Services shall have the authority to develop~~  
2 ~~administrative guidance materials related to the interpretations of principles and terms in this~~  
3 ~~program as required to provide for consistent and equitable implementation of this program. Such~~  
4 ~~administrative guidance documents shall be developed in consultation with the Washington State~~  
5 ~~Department of Ecology to ensure that any formal written interpretations are consistent with the~~  
6 ~~purpose and intent of Chapter 90.58 RCW, the applicable guidelines, and the goals and objectives of~~  
7 ~~this program.~~ [RCE262]

### ~~23.70.020 SEPA official.~~

8 ~~The Whatcom County SEPA responsible official is designated by WCC 16.08.040. The responsible official~~  
9 ~~or his/her designee is hereby authorized to conduct environmental review of all use and development~~  
10 ~~activities subject to this program, pursuant to Chapter 197-11 WAC and Chapter 43.21C RCW.~~ [CES263]

### ~~23.70.030 Hearing Examiner.~~

12 ~~The Whatcom County Hearing Examiner is hereby vested with the authority to conduct open record~~  
13 ~~hearings and prepare a record thereof pursuant to WCC 2.11.210.~~

### ~~23.70.040 Planning Commission.~~

14 ~~The Whatcom County Planning Commission is hereby vested with the responsibility to review the~~  
15 ~~program from time to time as a major element of the County's planning and regulatory program, and~~  
16 ~~make recommendations for amendments thereof to the County Council.~~

### ~~23.70.050 County Council.~~

17 ~~The Whatcom County Council is hereby vested with authority to:~~

- 18 ~~— Initiate an amendment to this program according to the procedures prescribed in WAC 173-26-100.~~
- 19 ~~— Adopt all amendments to this program, after consideration of the recommendation of the Planning~~  
20 ~~Commission and pursuant to the procedural requirements of Chapter 2.02 WCC; provided, that~~  
21 ~~substantive amendments shall become effective immediately upon adoption by the Department of~~  
22 ~~Ecology.~~
- 23 ~~— Make final decisions with regard to shoreline permit, shoreline variance or shoreline conditional use~~  
24 ~~applications that require County Council action on a consolidated review as provided by Chapter~~  
25 ~~22.05 WCC.~~
- 26 ~~— Review and decide appeals to Hearing Examiner decisions pursuant to the procedures of WCC~~  
27 ~~23.60.150.~~

## Chapter 23.80 Legal Provisions [MD264]

### **23.80.010 Amendments.**

~~—The County Council or the Planning Commission may initiate an amendment to this program according to the procedures prescribed in WAC 173-26-100. The Planning Commission shall conduct a public hearing on any amendment proposed by the county council.~~

~~B. Any person may petition the County Council or Planning Commission to amend this program. Petitions shall specify the changes requested and any and all reasons therefor. The County Council or Planning Commission may schedule a public hearing on said petition(s) if it deems the proposed amendment would make this program more consistent with the Act and/or any applicable Department of Ecology Guidelines, or more equitable in its application to persons or property due to changed conditions in an area.~~

~~B. After approval or disapproval of a program amendment by the Department of Ecology as provided in RCW 90.58.090, the County shall publish a notice that the program amendment has been approved or disapproved by the Department of Ecology. For the purposes of RCW 36.70A.290, the date of publication for the amendment of a program is the date the County publishes notice that the program amendment has been approved or disapproved by the Department of Ecology.~~

~~B. The administrator shall submit an annual report to the County Council reviewing the effectiveness of the program in achieving its stated purpose, goals, and objectives. Such report may also include any proposed amendments deemed necessary to increase its effectiveness or equity. If said report contains proposed amendments, the Council may schedule a public hearing to consider such matter in accordance with the procedure described in subsection A of this section. Said report shall also include a determination of whether or not the goal of no net loss of shoreline ecological function is being achieved and provide recommendations for achieving and maintaining the goal.~~

~~B. Upon County Council adoption of a detailed community or subarea plan under the Whatcom County Comprehensive Plan, the Planning and Development Services Department shall prepare amendments, as appropriate, for the purpose of incorporating the goals, objectives, and standards of the community or subarea plan into this program. The Planning Commission shall schedule a public hearing upon receipt of such proposals, and shall give due consideration to the community objectives so expressed.~~

### **23.80.020 Violations and Penalties.**

~~A. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a nonemergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 calendar days following the receipt of the correction notice, and provide for an administrative predeprivation hearing within 10 calendar days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative predeprivation hearing within 72 hours following receipt of the stop work order.~~

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~~A. In addition to incurring civil liability under WCC 23.80.030 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the Act or of this program, or other regulations adopted pursuant thereto shall be punished by:~~

~~0. A fine of not less than \$25.00 or more than \$1,000;~~

~~0. Imprisonment in the county jail for not more than 90 days; or~~

~~0. Both such fine and imprisonment;~~

~~provided, that the fine for the third and all subsequent violations in any five-year period shall not be less than \$500.00 nor more than \$10,000. Provided further, that fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.~~

~~A. The penalty provided in subsection B of this section shall be assessed and may be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.~~

~~A. Within 30 calendar days after the notice is received, the person incurring the penalty may apply in writing to the county for remission or mitigation of such penalty. Upon receipt of the application, the county may remit or mitigate the penalty upon whatever terms the county in its discretion deems proper. The county's final decision on mitigation or revisions may be reviewed by the hearing examiner if the aggrieved party files a written appeal therewith of said decision within 10 calendar days of its issuance.~~

~~A. If work activity has occurred on a site in violation of this program, prompt corrective action, restoration or mitigation of the site will be required when appropriate. If this provision is not complied with, the county may restore or mitigate the site and charge the responsible person for the full cost of such an activity. Additionally, any and all permits or approvals issued by the county may be denied for that site for a period of up to six years.~~

~~A. The county may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.~~

~~A. Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.~~

### **~~23.80.030 Remedies.~~**

~~— The Whatcom County prosecuting attorney or administrator, where authorized, shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state located within Whatcom County in conflict with the provisions of this program, the Act, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this program.~~

~~— Any person subject to the regulatory provisions of this program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all~~

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1 damage to public or private property arising from such violation, including the cost of restoring the  
2 affected area to its condition prior to violation. The Whatcom County prosecuting attorney shall  
3 bring suit for damages under this section on their own behalf and on the behalf of all persons  
4 similarly situated. If liability has been established for the cost of restoring an area affected by a  
5 violation, the court shall make provision to assure that restoration will be accomplished within a  
6 reasonable time at the expense of the violator. In addition to such relief, including money damages,  
7 the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.  
8 ~~— A person who fails to conform to the terms of a substantial development permit, conditional use~~  
9 ~~permit or variance issued under RCW 90.58.140, who undertakes a development or use on~~  
10 ~~shoreslines of the state without first obtaining any required permit or authorization, or who fails to~~  
11 ~~comply with a stop work order may be subject to a civil penalty. The penalty shall be imposed~~  
12 ~~pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth~~  
13 ~~in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the shoreline~~  
14 ~~hearings board or the county council pursuant to WAC 173-27-290(1) and (2).~~  
15 ~~— Any order, requirement or determination by the administrator pursuant to WCC 23.80.020 may be~~  
16 ~~appealed in accordance with the provisions of WCC 23.60.150(G) and (H).~~

### **23.80.040 Abatement.**

17 Structures or development on shoreslines considered by the administrator to present a hazard or other  
18 public nuisance to persons, properties or natural features may be abated by the County under the  
19 provisions of the applicable provisions of the Uniform Code for the Abatement of Dangerous Buildings,  
20 1997 Edition, or successor as adopted by Whatcom County, or by other appropriate means.  
21

## Chapter 23.11060 Definitions

### 23.1160.005 General.

The terms used throughout this program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular. Any words not defined herein shall be defined pursuant to WWC Chapter 16.16 (Critical Areas) or Titles 20 (Zoning) or 22 (Land Use and Development), or their common meanings when not defined in code.

### 23.1160.010 “A” definitions.

~~1. “Accessory development” [CES265] means any development incidental to and subordinate to a primary use of a shoreline site and located adjacent thereto.~~

2.1. “Accessory structure” means a structure that is incidental and subordinate to a primary use and located on the same lot as the primary use, such as barns, garages, storage sheds, and similar structures. Structures that share a common wall with a primary residential structure shall be considered an extension of the primary structure, rather than an accessory structure. [AP266]

~~— “Accessory use” means a use customarily incidental to a permitted use; provided, that such use shall be located on the same lot as the permitted use except where specifically permitted elsewhere in zoning district regulations. [AP267]~~

3.2. “Accretion shoreform” means a shoreline with a relatively stable berm and backshore that has been built up by long-term deposition of sand and gravel transported by wind and/or water from a feeder bluff or other material source. Such shoreforms are scarce locally and Examples include, but are not limited to, barrier beaches, points, spits, tombolos, pocket beaches, and point and channel bars on streams.

4.3. “Act” means the Shoreline Management Act of 1971 (Chapter 90.58 RCW) as amended.

~~5. “Activity” [CES268] means human activity associated with the use of land or resources.~~

~~6. “Administrator” [CES269] or “Shoreline Administrator” means the director of the department of planning and development services who is to carry out the administrative duties enumerated in this program, or his/her designated representative.~~

7.4. “Adverse impact” means an impact that can be measured or is tangible and has a reasonable likelihood of causing moderate or greater harm to ecological functions or processes or other elements of the shoreline environment.

8.5. “Agricultural activities” means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; and maintaining agricultural lands under production or cultivation. The construction of new structures or activities

~~that bring a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.~~<sup>[CES270]</sup>

~~9-6.~~ “Agricultural equipment” and “agricultural facilities” include, but are not limited to:

- a. The following used in agricultural operations: equipment; machinery; constructed shelters, buildings, and ponds; fences; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;
- b. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
- c. Farm residences and associated equipment, lands, and facilities; and
- d. Roadside stands and on-farm markets for marketing fruit or vegetables.

~~10-7.~~ “Agricultural land” means areas on which agricultural activities are conducted as of the date of adoption of this program pursuant to the State Shoreline Guidelines as evidenced by aerial photography or other documentation. After the effective date of this program, land converted to agricultural use is subject to compliance with the requirements herein.

~~11-8.~~ “Agricultural products” includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within 20 years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, poultry and poultry products, and dairy products.

~~12-.~~ “Alluvial fan” means a fan-shaped deposit of sediment and organic debris formed where a stream flows or has flowed out of a mountainous upland onto a level plain or valley floor because of a sudden change in sediment transport capacity (e.g., significant change in slope or confinement).<sup>[CES271]</sup>

~~13-9.~~ “Alteration” means any human-induced change in an existing condition of a shoreline, critical area and/or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the area.

~~14-.~~ “Anadromous fish” means fish species that spend most of their lifecycle in saltwater, but return to freshwater to reproduce.<sup>[CES272]</sup>

~~15-10.~~ “Appurtenance” means development that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and/or the perimeter of a wetland. ~~For the purposes of single-family residential exemptions, normal Appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which that~~ does not exceed 250 cubic yards (except to construct a conventional drainfield) ~~and that does not involve placement of fill in any wetland or waterward of the ordinary high water mark.~~

~~16-11.~~ “Aquaculture<sup>[CES273]</sup>” means the ~~culture or farming or culture of food~~ fish, shellfish, or other aquatic plants or animals ~~in freshwater or saltwater areas, and may require development such as fish hatcheries, rearing pens and structures, and shellfish rafts, as well as use of natural spawning and rearing areas.~~ Aquaculture does not include the harvest of ~~wild geoduck associated with the state managed wildstock geoduck fishery-free swimming fish or the harvest of shellfish not~~



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~~artificially planted or maintained, including the harvest of wild stock geoducks on DNR-managed lands.~~

~~17. “Aquaculture practices”<sup>[CES274]</sup> means any activity directly pertaining to growing, handling, or harvesting of aquaculture produce including, but not limited to, propagation, stocking, feeding, disease treatment, waste disposal, water use, development of habitat and structures. Excluded from this definition are related commercial or industrial uses such as wholesale and retail sales, or final processing and freezing.~~

~~18-12.~~ “Aquatic shoreline areaenvironment” means an area designated pursuant to WCC Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).

~~19. “Archaeological object” means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological byproducts.~~

~~20. “Archaeological resource/site” means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains archaeological objects. “Significant” is that quality in American history, architecture, archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and;~~<sup>[AP275]</sup>

~~a. That are associated with events that have made a significant contribution to the broad patterns of our history; or~~

~~a. That are associated with the lives of significant persons in our past; or~~

~~a. That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or~~

~~a. That have yielded or may be likely to yield information important in history or prehistory.~~

~~25-13.~~ “Archaeologist” means a person who has designed and executed an archaeological study as evidenced by a thesis or dissertation and has been awarded an advanced degree such as an M.A., M.S. or Ph.D. from an accredited institution of higher education in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology; has a minimum of one year of field experience with at least 24 weeks of field work under the supervision of a professional archaeologist, including no less than 12 weeks of survey or reconnaissance work, and at least eight weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity must be documentable with a report produced by the individual on the field work.

~~26. “Archaeology”<sup>[CES276]</sup> means systematic, scientific study of the human past through material remains.~~

~~27-14.~~ “Associated wetlands” means wetlands that are in proximity to tidal waters, lakes, rivers, or streams that are subject to the Shoreline Management Act and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are not limited to: location contiguous to a shoreline waterbody, formation by tidally influenced geohydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

~~28-15.~~ “Average grade level” means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property that will be directly under a proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure. on that part of the lot to be occupied by the building or structure as measured by averaging the elevations at the center of all exterior walls of the proposed structure.

**23.1160.020 “B” definitions.**

1. “Backshore” means the accretion or erosion zone, located landward of the line of ordinary high water, which is normally wetted only by storm tides. A backshore may take the form of a more or less narrow storm berm (ridge of wave-heaped sand and/or gravel) under a bluff, or it may constitute a broader complex of berms, marshes, meadows, or dunes landward of the line of ordinary high water. It is part of the littoral drift process along its waterward boundary. a zone of accretion or erosion lying landward of the average high tide mark, wetted by tides during storm events.

2. “Barrier beach<sup>[CES277]</sup>” means a linear ridge of sand or gravel extending above high tide, built by wave action and sediment deposition seaward of the original coastline; includes a variety of depositional coastal landforms. accretion shoreform of sand and/or gravel berm(s) accreted waterward of bluffs, bays, marshes or estuaries by littoral drift; the berm acts as a natural dike and seawall to its backshore or marsh hinterland.

3. “Beach nourishment” means a restoration or shoreline stabilization activity in which selected beach material is deposited at one or several locations in the updrift portion of a drift sector. The material is then naturally transported by waves or currents downdrift to stabilize or restore accretion shoreforms and other berms, which may be eroding due to artificial obstructions in the shore process corridor.

4. “Bed and Breakfast” means a privately owned dwelling that is the primary residence(s) of the owner in which, for compensation, one to five rooms are used as sleeping units to house or lodge individuals or families for periods of less than 30 days as transient visitors with or without limited food service. The use of the dwelling unit for the bed and breakfast shall be clearly incidental and subordinate to its use for residential purposes and the purpose of the applicable zoning district. At least one owner shall be present overnight when a guest room is rented.<sup>[CES278]</sup>

~~3-5.~~ “Bedlands” means those submerged lands below the line of extreme low tide in marine waters and below the line of navigability or navigable lakes and rivers. Where the line of navigability has not been established, bedlands would be those submerged lands below the OHWM in lakes and rivers.

~~4-6.~~ “Bedrock” means a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.

~~5-7.~~ “Berm” or “protective berm” means one or several accreted linear mounds of sand and gravel generally paralleling the shore at or landward of OHWM; berms are normally stable because of material size or vegetation, and are naturally formed by littoral drift.

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- 6-8. “Best management practices” means conservation practices or systems of practices and management measures that:
- Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
  - Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitats;
  - Control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.
7. ~~“Bioengineered shoreline stabilization” means biostructural and biotechnical alternatives to hardened structures (bulkheads, walls) for protecting slopes or other erosive features. Bioengineered stabilization uses vegetation, geotextiles, geosynthetics and similar materials. An example is vegetated reinforced soil slopes (VRSS), which uses vegetation arranged and embedded in the ground to prevent shallow mass movement and surficial erosion.~~ [CES279]
9. “Boathouse.” See “Moorage Structure.”
10. ~~“Boat lift” or “lift.” See Moorage Structure.” means an in-water structure used for the dry berthing of vessels above the water level and lowering of vessels into the water. A boat lift as herein defined is used to berth and launch a single vessel suspended over the water’s surface. A boat lift is generally a manufactured unit without a canopy cover and may be placed in the water adjacent to a dock or as stand-alone structure. A boat lift may be designed either for boats or personal watercraft. A boat lift is to be differentiated from a hoist or crane used for the launching of vessels. A boat lift with a canopy cover shall be considered a covered moorage for the purposes of this program.~~
- 8-11. “Bog” means a type of wetland dominated by mosses that form peat. Bogs are very acidic, nutrient poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.
- 9-12. “Breakwater” means an offshore structure that is generally built parallel to shore that may or may not be connected to land, and may be floating or stationary. Their primary purpose is to protect harbors, moorages and navigation activity from wave and wind action by creating stillwater areas along shore. A secondary purpose is to protect shorelines from wave-caused erosion.
- 10-13. “Buffer (buffer zone)” means the area adjacent to a shoreline and/or critical area that separates and protects the area from adverse impacts associated with adjacent land uses.
- 11-14. “Building” means any structure used or intended for supporting or sheltering any use or occupancy as defined in the International Building Code.
- 12-15. “Building area” means the entire area that will be disturbed to construct the home, normal appurtenances (except on-site sewage systems), and landscaping.
- 13-16. “Building footprint” means, for the purposes of this program, the ground area contained by the exterior walls of a building.
- 14-17. “Bulkhead” means a wall-like structure ~~such as a revetment or seawall~~ that is placed parallel to shore primarily for retaining uplands and fills prone to sliding or sheet erosion, and to protect uplands and fills from erosion by wave action.
- 23.1160.030 **“C” definitions.**
1. “Canopy.” See “Moorage Structure.”

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1. ~~“Channel migration zone (CMZ)” means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses that area of current and historic lateral stream channel movement that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are susceptible to channel erosion. There are three components of the channel migration zone: (a) the historical migration zone (HMZ) — the collective area the channel occupied in the historical record; (b) the avulsion hazard zone (AHZ) — the area not included in the HMZ that is at risk of avulsion over the timeline of the CMZ; and (c) the erosion hazard area (EHA) — the area not included in the HMZ or the AHZ that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration zone may not include the area behind a lawfully constructed flood protection device. Channel migration zones shall be identified in accordance with guidelines established by the Washington State Department of Ecology.~~ [CES280]
2. “Channelization” means the straightening, relocation, deepening or lining of stream channels, including construction of continuous revetments or levees for the purpose of preventing gradual, natural meander progression.
3. ~~“Cherry Point management area” means a geographic area defined as all the shoreline areas within the jurisdiction of the Whatcom County shoreline management program lying between the eastern property boundary of Tax Lots 2-27 and 2-28 within the SE 1/4 of Section 11, Township 39 North, Range 1 West, as it existed on June 18, 1987, and the southern boundary of Section 32, Township 39 North, Range 1 East, extending waterward a distance of 5,000 feet and extending landward for 200 feet as measured on a horizontal plane from the OHWM.~~ [CES281]
3. ~~“Clearing” means the removal destruction of vegetation or plant cover by manual, chemical, or mechanical means and that may result in exposed soils. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.~~ [CES282]
4. “Coastal high hazard area” means the area subject to high velocity waters, including, but not limited to, storm surge or tsunamis. The area is designated on the Flood Insurance Rate Map as Zone V1-V30, VE or V.
5. “Commercial development” means those developments whose primary use is for retail, service or other commercial business activities. Included in this definition are developments such as hotels, motels, ~~bed and breakfast establishments~~, shops, restaurants, banks, professional offices, grocery stores, laundromats, recreational vehicle parks, commercial rental campgrounds and cabins, whether public or private, and indoor or intensive outdoor commercial recreation facilities. Not included are private camping clubs, marinas, signs, utilities, ~~bed and breakfasts, short-term rentals~~, and other development. [CES283]
6. ~~“Commercial fish” means those species of fish that are classified under the Washington Department of Fish and Wildlife Food Fish Classification as commercial fish (WAC 220-12-010).~~ [CES284]
7. ~~“Compensatory mitigation” means a project for the purpose of mitigating, at an equivalent or greater level, unavoidable impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not~~

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~~limited to, wetland creation, restoration, enhancement, and preservation; stream restoration and relocation, rehabilitation; and buffer enhancement.~~ [CES285]

~~8. “Conditional use” for the purposes of this program means a use, development or substantial development listed in the regulations as being permitted only as a conditional use, or not classified in this program. Conditional uses are subject to review and approval pursuant to the criteria in Chapter 23.60 WCC regardless of whether or not the proposal requires a substantial development permit.~~ [AP286]

~~9.6. “Conservancy shoreline areaenvironment” means an area so designated in WCC Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).~~

~~10. “Conservation” means the prudent management of rivers, streams, wetlands, wildlife and other environmental resources in order to preserve and protect them. This includes the careful use of natural resources to prevent depletion or harm to the environment.~~ [CES287]

~~11. “Conservation easement” means a legal agreement that the property owner enters into to restrict uses of the land for purposes of natural resources conservation. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property.~~ [CES288]

~~12. “Contaminant” means any chemical, physical, biological, or radiological substance that does not occur naturally in ground water, air, or soil or that occurs at concentrations greater than those in the natural levels (Chapter 173-200 WAC).~~ [CES289]

~~13.7. “County” means Whatcom County, Washington.~~

~~14.8. “Covered moorage” means a roofed floating or fixed offshore structure without walls, other than a minimal structural framework needed to support the roof, for moorage of water craft or float planes.~~

~~15. “Critical aquifer recharge area” means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(2).~~ [CES290]

~~16.9. “Critical areas” means the following areas as designated in WCC Chapter 16.16:~~

- ~~a. Critical aquifer recharge areas.~~
- ~~b. Wetlands.~~
- ~~c. Geologically hazardous areas.~~
- ~~d. Frequently flooded areas.~~
- ~~e. Fish and wildlife habitat conservation areas.~~

~~10. “Critical habitat” means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified in WCC Chapter 16.16 with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.~~

~~17.11. “Critical saltwater habitat” includes all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sandlance; subsistence, commercial and~~

recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association. [AP291]

~~29.16. “Archaeological object”~~ Cultural resource “refers to any archaeological, historic, cemetery, or other cultural sites or artifacts; as well as those traditional food, medicine, fibers, and objects that sustain the religious, ceremonial, and social activities of affected Native American tribes that may be regulated under state or federal laws administered by the Washington State Department of Archaeologic and Historic Preservation (DAHP). [CES292] means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological byproducts.

~~29.~~ “Archaeological resource/site” Cultural resource site “means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains ~~archaeological objects~~ cultural resources. ~~“Significant” is that quality in American history, architecture, archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:~~

- ~~— That are associated with events that have made a significant contribution to the broad patterns of our history; or~~
- ~~— That are associated with the lives of significant persons in our past; or~~
- ~~— That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or~~
- ~~— That have yielded or may be likely to yield information important in history or prehistory. [CES293]~~

~~23.12.~~ “Current deflector” means an angled “stub-dike,” groin, or sheet-pile structure which projects into a stream channel to divert flood currents from specific areas, or to control downstream current alignment.

#### ~~23.11~~ 60.040 “D” definitions.

1. “Dam” means a barrier across a stream or river to confine or regulate flow or raise water levels for purposes such as flood or irrigation water storage, erosion control, power generation, or collection of sediment or debris.

2. “Date of filing” refers to the beginning of the state Shorelines Hearings Board’s 21 day appeal period. Consistent with RCW 90.58.140(6), “date of filing” is defined as follows:

- a. For projects that only require a substantial development permit: the date that Ecology receives the County’s decision.
- b. For a shoreline conditional use permit or variance: the date the Ecology’s decision on the shoreline conditional use permit or variance is transmitted to the applicant and the County.
- c. For substantial development permits simultaneously mailed with a shoreline conditional use permit or variance: the date that Ecology’s decision on the shoreline conditional use permit or variance is transmitted to the applicant and the County. [AP294]



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- 1 — ~~“Debris flow” means a moving mass of rock fragments, soil, and mud; more than half of the~~  
2 ~~particles being larger than sand size; a general term that describes a mass movement of sediment~~  
3 ~~mixed with water and air that flows readily on low slopes.~~ [CES295]
- 4 3. “Department” means the Whatcom County Department of Planning and Development Services.
- 5 ~~2.4.~~ “Department of Ecology” or “Ecology” means the Washington State Department of Ecology. [AP296]
- 6 ~~3.5.~~ “Development” [CES297] means any land use activity, action, or manmade change to improved or  
7 unimproved real estate, including but not limited to buildings or other structures, site work, and  
8 installation of utilities; land division, binding site plans, and planned unit developments; dredging,  
9 drilling, dumping, filling, grading, clearing, or removal of any sand, gravel, or minerals; shoreline  
10 stabilization works, driving of piling, placing of obstructions; or any project of a permanent or  
11 temporary nature that interferes with the normal public use of the surface of the waters overlying  
12 lands subject to the act at any stage of water level. “Development” does not include dismantling or  
13 removing structures if there is no other associated development or redevelopment. ~~a use consisting~~  
14 ~~of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal~~  
15 ~~of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project~~  
16 ~~of a permanent or temporary nature that interferes with the normal public use of the surface of the~~  
17 ~~waters overlying lands subject to the Act at any state of water level. This term may include activities~~  
18 ~~related to subdivision and short subdivisions; binding site plans; planned unit developments;~~  
19 ~~clearing activity; fill and grade work; building or construction; and activities that are exempt from~~  
20 ~~the substantial development permit process or that require a shoreline variance or conditional use.~~
- 21 ~~4.6.~~ “Dike” means an artificial embankment placed at a stream mouth or delta area to hold back sea  
22 water for purposes of creating and/or protecting arable land from flooding.
- 23 ~~7.~~ “Dock.” See “Moorage Structure.” means all platform structures or anchored devices in or floating  
24 upon water bodies to provide moorage for pleasure craft or landing for water dependent recreation  
25 including, but not limited to, floats, swim floats, float plane moorages, and water ski jumps.  
26 Excluded are launch ramps. [CES298]
- 27 ~~5.8.~~ “Director” means the Whatcom County Planning and Development Services director, or his/her  
28 designee. The Director is the Shoreline Administrator and is authorized to carry out the  
29 administrative duties enumerated in his program.
- 30 ~~6.9.~~ “Ditch” or “drainage ditch” means an artificially created watercourse constructed to ~~drain~~ convey  
31 surface or ground water. Ditches are graded (manmade) channels installed to collect and convey  
32 runoff from fields and roadways. Ditches may include irrigation ditches, waste ways, drains, outfalls,  
33 operational spillways, channels, stormwater runoff facilities or other wholly artificial watercourses,  
34 except those that directly result from the modification to a natural watercourse. Ditched channels  
35 that support fish are considered to be streams.
- 36 ~~7.10.~~ “Dredge spoil” means the material removed by dredging.
- 37 ~~8.11.~~ “Dredging” means the removal, displacement, and disposal of unconsolidated earth material  
38 such as silt, sand, gravel, or other submerged material from ~~the bottom~~ waterward of the OHWM of  
39 water-bodies or from wetlands. With the exception of regular maintenance of an approved barge  
40 landing site, maintenance dredging and other support activities are included in this definition.



12. “Drift sector” or “drift cell” means a particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources of such drift, and also any accretion shoreform(s) accreted by such drift. Each normal drift sector contains these shore process elements: feeder bluff or estuary, driftway, littoral drift, and accretion shoreform.

9-13. “Drift sill” means a low elevation groin, typically constructed of rock, installed along with beach nourishment filled up to height of sill, that is sometimes used to hold or slow littoral transport of placed sediment without blocking longshore drift.

10-14. “Driftway” means that portion of the marine shore process corridor, primarily the upper foreshore, through which sand and gravel are transported by littoral drift. The driftway is the essential component between the feeder bluff(s) and accretion shoreform(s) of an integral drift sector. Driftways are also characterized by intermittent, narrow berm beaches.

## 23.1160.050 “E” definitions.

1. “Ecological functions” or “shoreline functions” means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem. See WAC 173-26-201(2)(c). Functions include, but are not limited to, habitat diversity and food chain support for fish and wildlife, ground water recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.

2. “Ecology” or “Department of Ecology” means the Washington State Department of Ecology. [AP299]

3. “Ecosystem processes” or “ecosystem-wide processes” means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

2-4. “Ells.” See “Moorage Structure.”

3-5. “Emergency activities” means an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements and does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Director to be the appropriate means to address the emergency situation, upon abatement of the emergency, pursuant to the master program and RCW 90.58.030(3)(e)(iii), WAC 173-27-040(2)(d), or their successors. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not considered an emergency. these activities that require immediate action within a time too short to allow full compliance with this program due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

~~4-6.~~ “Enhancement” means actions performed within an existing degraded shoreline, critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing area. Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible erosion controls, or removing nonindigenous plant or animal species.

~~5.—~~ “Erosion” means the wearing away of land by the action of natural forces, such as wind, rain, water and other natural agents that mobilize, transport, and deposit soil particles; on a beach, the carrying away of beach material by wave actions, tidal currents, or littoral currents. a process whereby wind, rain, water and other natural agents mobilize, and transport, and deposit soil particles.

~~6-7.~~ “Erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having “severe” or “very severe” erosion hazards and areas subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat.

~~7-8.~~ “Essential public facility” means those facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, ~~and~~ group homes, and secure community transition facilities as defined in RCW 71.09.020 (RCW 36.70A.200, Siting of essential public facilities).

~~8-9.~~ “Excavation” means the disturbance, displacement and/or disposal of unconsolidated earth material such as silt, sand, gravel, soil, rock or other material from all areas landward of OHWM.

~~9-10.~~ “Exempt development” means a use or development activity that is not a substantial development and that is specifically listed as exempt from the substantial development permit requirement in WAC 173-27-040 and WCC ~~Chapter 23.60~~ Title 22 (Land Use and Development).

~~10-11.~~ “Extreme high water level” means the highest tide level reached in a 19-year tidal cycle, or on lakes, the highest water level reached in the past 10 years.

~~11-12.~~ “Extreme low tide” means the lowest line on the land reached by a receding tide.

**~~23.1160.060~~ “F” definitions.**

1. “Fair market value” of a development means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
2. “Farm pond” means an open water depression created from a non-wetland site in connection with agricultural activities.
3. “Feasible” means an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:

- a. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
  - b. The action provides a reasonable likelihood of achieving its intended purpose; and
  - c. The action does not physically preclude achieving the project’s primary intended legal use.
- In cases where this program requires certain actions, unless they are infeasible, the burden of proving infeasibility is on the applicant/proponent. In determining an action’s infeasibility, the County may weigh the action’s relative costs and public benefits, considered in the short- and long-term time frames.
4. “Feasible alternative” means an action, such as development, mitigation, or restoration, that meets all of the following conditions: (a) the action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b) the action provides a reasonable likelihood of achieving its intended purpose; and (c) the action does not physically preclude achieving the project’s primary intended legal use. Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and benefits.
  5. “Feasible location” means a location that accommodates a development in a manner that achieves its intended purpose consistent with the constraints of the applicable land use regulations and characteristics of the property, including but not limited to lot size, configuration, presence/absence of critical areas and compatibility with adjacent land use/development. Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and benefits.
  6. “Feeder bluff” or “erosional bluff” means any bluff (or cliff) experiencing periodic erosion from waves, sliding or slumping, and/or whose eroded sand or gravel material is naturally transported (littoral drift) via a driftway to an accretion shoreform; these natural sources of beach material are limited and vital for the long-term stability of driftways and accretion shoreforms.
  7. “Feeder bluff exceptional” means relatively rapidly eroding bluff segments identified by the presence of landslide scarps, bluff toe erosion, and a general absence of vegetative cover and/or portions of bluff face fully exposed. Other indicators included the presence of colluvium (slide debris), boulder or cobble lag deposits, and fallen trees across the beachface. Feeder bluff exceptional segments lack a backshore, old or rotten logs, and coniferous bluff vegetation.
  8. “Feedlot” means a concentrated, confined animal or poultry operation for production of meat, milk or eggs; or stabling in yards, barns, pens or houses wherein animals or poultry are fed at the place of confinement; and crop or forage growth or production is not sustained within the place of confinement.
  9. “Filling” means the ~~act of transporting~~ or ~~placing~~ by any manual or mechanical means of fill material from, to, or on an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land~~any soil surface~~, including temporary stockpiling of fill material.<sup>[CES300]</sup>
  10. “Fill material” means any solid or semi-solid material, including rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and

- 1 materials used to create any structure or infrastructure that, when placed, changes the grade or
- 2 elevation of the receiving site.
- 3 11. “Fish and wildlife habitat conservation areas” means those areas as defined in WCC Chapter 16.16
- 4 (Critical Areas) important for maintaining species in suitable habitats within their natural geographic
- 5 distribution so that isolated populations are not created, as designated in Chapter 16.16 WCC.
- 6 12. “Fish habitat” means a complex of physical, chemical, and biological conditions that provide the life-
- 7 supporting and reproductive needs of a species or life stage of fish. Although the habitat
- 8 requirements of a species depend on its age and activity, the basic components of fish habitat in
- 9 rivers, streams, ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not
- 10 limited to, the following:
- 11 a. Clean water and appropriate temperatures for spawning, rearing, and holding.
- 12 b. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-
- 13 channel habitat.
- 14 c. Abundance of bank and instream structures to provide hiding and resting areas and stabilize
- 15 stream banks and beds.
- 16 d. Appropriate substrates for spawning and embryonic development. For stream- and lake-
- 17 dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged
- 18 rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand.
- 19 e. Presence of riparian vegetation as defined in this program. Riparian vegetation creates a
- 20 transition zone, which provides shade, and food sources of aquatic and terrestrial insects for
- 21 fish.
- 22 f. Unimpeded passage (i.e., due to suitable gradient and lack of barriers) for upstream and
- 23 downstream migrating juveniles and adults.
- 24 13. “Fisheries” means all species of fish and shellfish commonly or regularly originating or harvested
- 25 commercially or for sport in Puget Sound and its tributary freshwater bodies, together with the
- 26 aquatic plants and animals and habitat needed for continued propagation and growth of such
- 27 species.
- 28 14. “Fisheries enhancement” means actions taken to rehabilitate, maintain or create fisheries habitat,
- 29 including but not limited to hatcheries, spawning channels, lake rehabilitation, and planting of
- 30 fisheries stocks. Fisheries enhancement differs from aquaculture in that the increase in fisheries
- 31 stocks eventually becomes available for public harvest.
- 32 15. “Float” means an anchored (not directly to the shore) floating platform that is free to rise and fall
- 33 with water levels and is used for water-dependent recreational activities such as boat mooring,
- 34 swimming or diving. Floats may stand alone with no over-water connection to shore or may be
- 35 located at the end of a pier or ramp. a floating platform similar to a dock that is anchored or
- 36 attached to pilings.
- 37 16. “Flood” or “flooding” means a general and temporary condition of partial or complete inundation of
- 38 normally dry land areas from the overflow of inland waters and/or the unusual and rapid
- 39 accumulation of runoff of surface waters from any source.
- 40 17. “Flood control works” means all development on rivers and streams designed to retard bank
- 41 erosion, to reduce flooding of adjacent lands, to control or divert stream flow, or to create a

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- 1 reservoir, including but not limited to revetments, dikes, levees, channelization, dams, vegetative  
2 stabilization, weirs, flood and tidal gates. Excluded are water pump apparatus.
- 3 18. "Flood management" means a long-term program to reduce flood damages to life and property and  
4 to minimize public expenses due to floods through a comprehensive system of planning,  
5 development regulations, building standards, structural works, and monitoring and warning  
6 systems.
- 7 19. "Flood-proofing" means structural provisions, changes, adjustments or a combination thereof, to  
8 buildings, structures, and works in areas subject to flooding in order to reduce or eliminate damages  
9 from flooding to such development and its contents, as well as related water supplies and utility  
10 facilities.
- 11 ~~20. "Floodplain, 100-year" means all lands along a river or stream that may be inundated by the base~~  
12 ~~flood of such river or stream. [AP301]~~
- 13 ~~21. "Floodway" means those portions of the area of a river valley lying streamward from the outer~~  
14 ~~limits of a watercourse upon which flood waters are carried during periods of flooding that occur~~  
15 ~~with reasonable regularity, although not necessarily annually; said floodway being identified, under~~  
16 ~~normal conditions, by changes in surface soil conditions or changes in types or quality of vegetation~~  
17 ~~ground cover condition, topography, or other indicators of flooding that occurs with reasonable~~  
18 ~~regularity, although not necessarily annually. The floodway shall not include those lands that can~~  
19 ~~reasonably be expected to be protected from flood waters by flood control devices maintained by or~~  
20 ~~maintained under license from the federal government, the state, or the County. The limit of the~~  
21 ~~floodway is that which has been established in the program and approved by the Department of~~  
22 ~~Ecology. [AP302] [CES303]~~
- 23 ~~22-20.~~ "Floodway fringe" means that fringe of land in the floodplain outside the floodway, which is  
24 subject to inundation by the base flood. Flooding in the fringe is limited to flood surge storage of  
25 water currents moving at a negligible velocity of less than one-half mile per hour.
- 26 ~~23-21.~~ "Food chain" means the hierarchy of feeding relationships between species in a biotic  
27 community. The food chain represents the transfer of material and energy from one species to  
28 another within an ecosystem.
- 29 ~~24-22.~~ "Foreshore" means the intertidal area between mean higher high water and mean low water.
- 30 ~~23. "Fossil fuels [P/C304]" include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands,~~  
31 ~~propane, butane, and heavy oils. All contain carbon and were formed as a result of geologic~~  
32 ~~processes acting on the remains of organic matter. Renewable fuels are not fossil fuels.~~
- 33 ~~25-24. "Fossil Fuel Transshipment Facility" is a facility engaging primarily in the process of off-loading of~~  
34 ~~fossil fuels materials, refined or unrefined, refinery feedstocks, products or by-products from one~~  
35 ~~transportation method (such as a ship, truck, or railcar) facility and loading it onto another~~  
36 ~~transportation facility method for the purposes of transporting the fossil fuel such products into or~~  
37 ~~and out of Whatcom County. Examples of transportation facilities include ship, truck, or freight car.~~  
38 ~~Fossil fuel transshipment facilities may also include pump and compressor stations and associated~~  
39 ~~facilities. This definition shall include bulk storage or transfer facilities for the shipment of crude oil~~  
40 ~~without refining or consuming within the Cherry Point Industrial District and shall excludes Small~~  
41 ~~Fossil or Renewable Fuel Storage and Distribution Facilities.~~

26. “Fossil Fuel Refinery” means a facility that converts crude oil and other liquids into petroleum products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels or by products. This definition excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities[DN305]. “Forest land” means all land that is capable of supporting a merchantable stand of timber and is not being actively used, developed, or converted in a manner that is incompatible with timber production.[AP306]
27. “Forest practices” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing of timber; including, but not limited to: (a) road and trail construction, (b) fertilization, (c) prevention and suppression of diseases and insects; or other activities that qualify as a use or development subject to the Act.
- 28.25. Excluded from this definition is preparatory work such as tree marking, surveying and removal of incidental vegetation such as berries, greenery, or other natural products whose removal cannot normally be expected to result in damage to shoreline natural features. Also excluded from this definition is preparatory work associated with the conversion of land for non-forestry uses and developments. Log storage away from forest land is considered industrial.[AP307]
29. “Freestanding sign” means a self-supporting sign placed off and away from the building to which it is related.[AP308]
- 30.26. “Frequently flooded areas” means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the County in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain “special flood hazard area” designations of the Federal Emergency Management Agency and the National Flood Insurance Program, as designated in WCC Chapter 16.16 (Critical Areas).
- 23.1160.070 “G” definitions.**
1. “Gabions” means works composed of masses of rock, rubble, or masonry tightly enclosed usually by wire mesh so as to form massive blocks. They are used to form walls on beaches to retard wave erosion or as foundations for breakwaters or jetties.
2. “Gangway.” See “Moorage Structure.”
- 2.3. “Geologically hazardous areas” means areas designated in WCC Chapter 16.16 that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to commercial, residential, or industrial development.
- 3.4. “Geotechnical report” or “geotechnical analysisassessment” is an umbrella term used for the evaluation completed by a qualified professional to meet the requirements of WCC 16.16.255 (Critical areas assessment reports) and WCC 16.16, Article 3 (Geologically Hazardous Areas). means a scientific study or evaluation conducted by a qualified professional that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations



~~regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards.~~

4-5. "Gradient" means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth's surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio (vertical to horizontal), a fraction (such as meters/kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).

5-6. "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

6-7. "Groins" means wall-like structures extending on an angle waterward from the shore into the intertidal zone. Their purpose is to build or preserve an accretion shoreform or berm on their updrift side by trapping littoral drift. Groins are relatively narrow in width but vary greatly in length. Groins are sometimes built in series as a system, and may be permeable or impermeable, high or low, and fixed or adjustable.

~~7. "Gross floor area" means, for the purposes of WCC 23.50.070(J), the sum total of the area included within the surrounding exterior walls of a building. [MD309]~~

8. "Ground water" means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (Chapter 90.44 RCW).

9. "Growth Management Act" means Chapters 36.70A and 36.70B RCW, as amended.

## **23.1160.080 "H" definitions.**

1. "Habitat conservation areas." See "Fish and wildlife habitat conservation areas."

1-2. "Harbor area" means the navigable waters between inner and outer harbor lines as established by the State Harbor Lines Commission waterward of and within one mile of an incorporated city. Harbor areas have been established offshore of Bellingham and Blaine.

~~2. Repealed by Ord. 2019-013.~~

3. "Hazard tree" See WCC Chapter 16.16 (Critical Areas).

3-4. "Hazardous area" means any shoreline ~~area~~ environment which is hazardous for intensive human use or structural development due to inherent and/or predictable physical conditions, such as, but not limited to, geologically hazardous areas, frequently flooded areas, and coastal high hazard areas.

4-5. "Hazardous materials" means any substance containing such elements or compounds which, when discharged in any quantity in shorelines, present an imminent and/or substantial danger to public health or welfare, including, but not limited to: fish, shellfish, wildlife, water quality, and other shoreline features and property.

5-6. "Hazardous substance" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.



- 1 ~~6.7.~~ “Hearings board” means the State Shorelines Hearings Board referenced in RCW 90.58.170.
- 2 ~~7.8.~~ “Height (building)” means the distance measured from the average grade level to the highest point
- 3 of a structure. Television antennas, chimneys, and similar structures or appurtenances shall not be
- 4 used in calculating height except where they obstruct the view of residences adjoining such
- 5 shorelines. Temporary construction equipment is excluded in this calculation (WAC 173-27-030(9) or
- 6 its successor). For all moorage structures, height shall be measured from the ordinary high water
- 7 mark the vertical dimension measured from average grade to the highest point of a structure;
- 8 provided, that antennas, chimneys, and similar appurtenances shall not be used in calculating
- 9 height, unless such appurtenance obstructs the view of a substantial number of adjacent residences.
- 10 ~~8.9.~~ “High intensity land use” means land use that includes the following uses or activities: commercial,
- 11 urban, industrial, institutional, retail sales, residential (more than one unit/acre), high intensity ~~new~~
- 12 agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling,
- 13 raising and maintaining animals), high intensity recreation (golf courses, ball fields), and hobby
- 14 farms.
- 15 ~~9.10.~~ “Historic preservation professional” means those individuals who hold a graduate degree in
- 16 architectural history, art history, historic preservation, or closely related field, with coursework in
- 17 American architectural history, or a bachelor’s degree in architectural history, art history, historic
- 18 preservation or closely related field plus one of the following:
- 19 a. At least two years of full-time experience in research, writing, or teaching in American
- 20 architectural history or restoration architecture with an academic institution, historical
- 21 organization or agency, museum, or other professional institution; or
- 22 b. Substantial contribution through research and publication to the body of scholarly knowledge in
- 23 the field of American architectural history.
- 24 ~~10.11.~~ “Historic site” means those sites that are eligible or listed on the Washington Heritage Register,
- 25 National Register of Historic Places, or any locally developed historic registry formally adopted by
- 26 the Whatcom County Council.
- 27 ~~11.12.~~ “Hydraulic project approval (HPA)” means a permit issued by the State Department of Fish and
- 28 Wildlife for modifications to waters of the state in accordance with Chapter 77.55 RCW.
- 29 ~~12.13.~~ “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing
- 30 season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be
- 31 determined following the methods described in the NRCS “Field Indicators of Hydric Soils” Version 7,
- 32 and/or the Corps of Engineers Wetlands Delineation Manual, as amended. Washington State
- 33 Wetland Identification and Delineation Manual (RCW 36.70A.175). [AP310]
- 34 ~~13.14.~~ “Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that
- 35 is at least periodically deficient in oxygen as a result of excessive water content.
- 36 ~~14.15.~~ “Hyporheic zone” means the saturated zone located beneath and adjacent to streams that
- 37 contain some proportion of surface water from the surface channel mixed with shallow ground
- 38 water. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production
- 39 important in fish nutrition, and provides other functions related to maintaining water quality.

**23.1160.090 “I” definitions.**

~~1. “Impervious surface” means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Natural surface water and open, uncovered detention/retention facilities shall not be calculated when determining total impervious surfaces. Impervious surfaces do not include surfaces created through proven low impact development techniques.~~ [AP311]

~~2.1.~~ “In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.

~~3.2.~~ “Instream structure” means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. Instream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

~~4.3.~~ “Industrial development” means facilities for processing, manufacturing, and storage of finished or semi-finished goods, including but not limited to ~~oil~~, metal or mineral product refining, power generating facilities, including hydropower, ship building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of fuels, commercial storage and repair of fishing gear, warehousing, construction contractors’ offices and material/equipment storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an agricultural use. This definition excludes fossil or renewable fuel refineries or transshipment facilities. [DN312]

~~5.4.~~ “Infiltration” means the downward entry of water into the immediate surface of soil.

~~6.5.~~ “Institutional development” means those public and/or private facilities including, but not limited to, police and fire stations, libraries, activity centers, schools, educational and religious training centers, water-oriented research facilities, and similar noncommercial uses, excluding essential public facilities.

~~7.6.~~ “Intertidal zone” means the substratum from extreme low water of spring tides to the upper limit of spray or influence from ocean-derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.

~~8.7.~~ “Invasive species” means a species that is (a) nonnative (or alien) to Whatcom County and (b) whose introduction causes or is likely to cause economic or environmental harm, or harm to human health.

Invasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

**23.1160.100 “J” definitions.**

1. “Jetties” means structures that are generally perpendicular to shore extending through or past the intertidal zone. They are built singly or in pairs at harbor entrances or river mouths mainly to prevent shoaling or accretion from littoral drift in entrance channels, which may or may not be dredged. Jetties also serve to protect channels from storm waves or cross currents, and stabilize inlets through barrier beaches. On the West Coast and in this region, most jetties are of riprap mound construction.

**23.1160.110 “K” definitions.**

Reserved.

**23.1160.120 “L” definitions.**

1. ~~“Lake.” See WCC Chapter 16.16 (Critical Areas). means a body of standing water in a depression of land or expanded part of a stream, of 20 acres or greater in total area. A lake is bounded by the OHWM or, where a stream enters the lake, the extension of the lake’s OHWM within the stream. Wetland areas occurring within the standing water of a lake are to be included in the acreage calculation of a lake.~~ [AP313]
2. “Landslide” means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material *en masse*; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.
3. “Landslide hazard areas” means areas that, due to a combination of site conditions, like slope inclination and relative soil permeability, are susceptible to mass wasting, as designated in WCC Chapter 16.16 (Critical Areas).
- ~~3-4. “Launch Rail.” See “Moorage Structure.”~~
- ~~4-5. “Launch Ramp” or “Boat Ramp.” See “Moorage Structure.” means an inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or by hand.~~
- ~~5-6. “Levee” means a natural or artificial embankment on the bank of a stream for the purpose of keeping floodwaters from inundating adjacent land. Some levees have revetments on their sides.~~
- ~~6-7. “Liberal construction” means an interpretation that applies in writing in light of the situation presented that tends to effectuate the spirit and purpose of the writing.~~
- ~~7-8. “Littoral drift” means the natural movement of sediment, particularly sand and gravel, along shorelines by wave action in response to prevailing winds or by stream currents (see also “drift sector,” “driftway”).~~
- ~~8-9. “Live-aboard” means any noncommercial habitation of a vessel, as defined in WCC 23.110.220(3), when any one of the following applies:~~
  - a. Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of 30 days in any 40-day period or on more than a total of 90 days in any 365-day period. “In the same area” means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A

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- 1 vessel that is occupied and is moored or anchored in the same area, but not for the number of
- 2 days described in this subsection, is considered used as a recreational or transient vessel;
- 3 b. The city or county jurisdiction, through local ordinance or policy, defines the use as a residential
- 4 use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is
- 5 moored;
- 6 c. The operator of the facility where the vessel is moored, through the moorage agreement, billing
- 7 statement, or facility rules, defines the use as a residential use or identifies the occupant of the
- 8 vessel as a resident of the vessel or of the facility; or
- 9 d. The occupant or occupants identify the vessel or the facility where it is moored as their
- 10 residence for voting, mail, tax, or similar purposes.

11 ~~9.10.~~ “Log booming” means assembling and disassembling rafts of logs for water-borne  
12 transportation.

13 ~~10.11.~~ “Log storage” means the holding of logs in the water for more than 60 days.

14 ~~—“Lot” means land described by final plat, short plat or metes and bounds description and is~~  
15 ~~established pursuant to applicable state and local regulations in effect at the date a legal instrument~~  
16 ~~creating the lot is recorded at the Whatcom County auditor’s office. A lot bisected by a public or~~  
17 ~~private road, railroad, trail or other feature is considered a single building site unless the portion of~~  
18 ~~the parcel on each side of the bisecting road or other feature separately meets all dimensional,~~  
19 ~~buffer and other requirements established by local and state regulations.~~ [AP314]

20 ~~12. “Lot area” or “lot size” [CES315] means the portion of a total parcel determined to be usable for the~~  
21 ~~purpose of creating a building lot, pursuant to all applicable regulations. The area below the~~  
22 ~~ordinary high water mark shall not be considered a part of the lot area. Lot area shall exclude any~~  
23 ~~portion included within the lot description used as a public road or as an access easement for~~  
24 ~~another parcel; provided, that the area of parcels of five acres or greater may be regarded as~~  
25 ~~nominal and may be measured to the center of bounding roads. Easements or restrictions that~~  
26 ~~preclude use to the present or future surface owner of the parcel shall be excluded from lot area.~~

### 27 ~~23.11~~ **60.130 “M” definitions.**

- 28 1. “Maintenance or repair” means those usual activities required to prevent a decline, lapse or
- 29 cessation from a lawfully established condition or to restore the character, scope, size, and design of
- 30 a serviceable area, structure, or land use to a state comparable to its previously authorized and
- 31 undamaged condition. This does not include any activities that change the character, scope, or size
- 32 of the original structure, facility, utility or improved area beyond the original design.

33 ~~2. “Major development” means any project for which a major project permit is required pursuant to~~  
34 ~~Chapter 20.88 WCC. For the purposes of this program, “major development” shall also mean any~~  
35 ~~project associated with an existing development for which a major development permit has been~~  
36 ~~required or other existing legal nonconforming development for which a major development permit~~  
37 ~~would otherwise be required if developed under the current land use regulations outlined in WCC~~  
38 ~~Title 20.~~ [AP316]

39 ~~3.2.~~ “Marina” means a facility that provides wet moorage ~~and/or~~ dry storage facility for pleasure ~~craft~~  
40 ~~and/or~~ commercial craft where goods, moorage or services related to boating may be sold

commercially or provided for a fee, e.g., yacht club, etc. Launching facilities and covered moorage may also be provided. Marinas may be open to the general public or restricted on the basis of property ownership or membership. Manufacturing of watercraft is considered industrial. Shared moorage of 5 or more residential units is considered a marina.

4-3. “Marsh” means a low flat wetland area on which the vegetation consists mainly of herbaceous plants such as cattails, bulrushes, tules, sedges, skunk cabbage or other hydrophytic plants. Shallow water usually stands on a marsh at least during part of the year.

5-4. “Mass wasting” means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.

6-5. “May” means the action is allowable, provided it conforms to the provisions of this program.

7-6. “Mean annual flow” means the average flow of a river, or stream (measured in cubic feet per second) from measurements taken throughout the year. If available, flow data for the previous 10 years should be used in determining mean annual flow.

8-7. “Mean higher high water” or “MHHW” means the mean elevation of all higher tides, generally occurring twice each day in Whatcom County at any given location on the marine shoreline.

9-8. “Mean lower low water” or “MLLW” means the mean elevation of all lower tides, generally occurring twice each day in Whatcom County at any given location on the marine shoreline.

10-9. “Mining” means the removal of naturally occurring metallic and nonmetallic minerals or other materials from the earth for economic-commercial and other uses.

11-10. “Mitigation” means individual actions that may include a combination of the following measures, listed in order of preference:

- a. Avoiding an impact altogether by not taking a certain action or parts of actions;
- b. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
- c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- d. Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action;
- e. Compensating for an impact by replacing or providing substitute resources or environments; and
- f. Monitoring the mitigation and taking remedial action when necessary.

12-11. “Mitigation plan” means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

13-12. “Mixed use” means a combination of uses within the same building or site as a part of an integrated development project with functional interrelationships and coherent physical design.

13. “Monitoring” means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of ecosystem functions and processes and/or assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features compared to baseline or pre-project conditions and/or reference sites.

14. “Moorage Buoy.” See “Moorage Structure.”

15. “Boat Lift” or lift. See “Moorage Structure.”

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16. “Mooring Pile” or piling. See “Moorage Structure.”

17. “Moorage Structure” means any in- or overwater structures, used for mooring, launching, or storing vessels and may contain any one or combination of the following:

a. Piers and docks adjoin the shoreline, extend over the water, and serve as a landing or moorage place for commercial, industrial and pleasure watercraft.

i. Piers are built on fixed platforms and sit above the water.

ii. Docks are anchored to the land, substrate or the pier with pilings or anchors and float on the water.

b. Gangways are walkways that connect the pier to the dock. Gangways are often used in areas where the water level changes due to tides or seasonal variations.

c. Ells are extensions of piers, often in a U-shape or L shape, that provide additional watercraft moorage.

d. Recreational floats are platforms that float on the water’s surface. They are anchored offshore and are used for swimming and fishing. Some floats have components such as slides and trampolines.

e. Boathouses basically serve as garages for boats. They have walls and a roof, and are situated on the water or just above the water’s edge.

f. Mooring buoys typically include an anchoring system with an anchor and anchor line, a float marking its location, and a fitting for a vessel’s mooring chain or hawser. Washington laws establish two categories for mooring buoys -- commercial and recreational [RCW 79.105.430]. Commercial buoys are typically used for temporary moorage of a vessel that is awaiting transit or loading or offloading. Recreational buoys are used as semi-permanent moorage for recreational vessels.

g. Mooring piles or pilings are fixed poles or groups of poles set in the substrate and extending above the water line.

h. Lifts or boat lifts raise watercraft out of the water for launching or storing. They may be attached to the substrate, a pier or dock, bulkhead or float or be located upland.

i. Canopies are covers that protect watercraft from the sun and rain.

j. Boat or launch ramps are solid or relatively solid surfaces that bridge land and water and are used for moving watercraft into and out of the water.

k. Railways are rails attached to the substrate used for launching and retrieving watercraft, usually with a cradle and winch system.

a-l. Others such as Jet Ski floats and boat dry docks provide storage of watercraft out of the water. Some floats serve as helicopter pads, while others are used for docking seaplanes. [CES317]

14. “Multifamily dwelling” means a single building, or portion thereof, designed for or occupied by three or more families living independently of each other in separate dwelling units on one lot of record and, for the purpose of this code, includes triplexes, fourplexes, apartment buildings, and residential condominiums. [AP318]

15-18. “Must” means a mandate; the action is required.



**23.1160.140 “N” definitions.**

1. ~~“Native vegetation” means plant species that are indigenous to the Whatcom County and the local area.~~ [AP319]

2.1. ~~“Natural shoreline area environment” means an area designated pursuant to WCC Chapter 23.320 (Shoreline Jurisdiction and Environment Designations).~~

3.2. ~~“Navigable waters” means a waterbody that in its ordinary condition, or by being united with other water-bodies, forms a continued route or area over which commerce or recreational activities are or may be carried on in the customary modes in which such commerce or recreation is conducted on water.~~

4.3. ~~“Nearshore habitat” or “nearshore zone” means the area of marine and estuarine shoreline, generally extending from the top of the shoreline bank or bluff to the depth offshore where light penetrating the water falls below a level supporting plant growth, and upstream in estuaries to the head of the tidal influence. It includes bluffs, beaches, mudflats, kelp and eelgrass beds, salt marshes, gravel spits, and estuaries. zone that extends waterward from the marine shoreline (OHWM) to a water depth of approximately 20 meters (66 feet). Nearshore habitat is biologically rich, providing important habitat for a diversity of plant and animal species.~~

4. ~~“No net loss” as a public policy goal~~ means the maintenance of the aggregate total of the county’s shoreline ecological ~~and/or critical area~~ functions ~~and values~~ at its current level of environmental resource productivity. As a development and/or mitigation standard, no net loss requires that the impacts of a particular shoreline development and/or use, whether permitted or exempt, be identified and prevented or mitigated, such that it has no resulting adverse impacts on shoreline ecological functions or ~~processes~~ values. Each project shall be evaluated based on its ability to meet the no net loss standard commensurate with its scale and character.

5. ~~“Nonconforming lot” means, for the purposes of WCC 23.50.070(K) and 23.90.060(B)(3), a vacant lot under contiguous ownership and with less than a total of 20,000 square feet, including within shoreline jurisdiction, a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.~~

~~that was lawfully established prior to the effective date of this program (August 27, 1976) or amendments hereto, but which does not conform to the setback or buffer standards of this program.~~

6. ~~“Nonconforming structure” means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.~~

7. ~~“Nonconforming use,” “nonconforming development” or “nonconforming structure” means an existing shoreline use, development or structure that was lawfully constructed or established prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendments thereafter hereto, but which does not conform to present use regulations due to subsequent changes to or standards of the master program.~~ [AP320]

8. ~~“Non-water-oriented use” means uses that are not water-dependent, water-related or water-enjoyment. Non-water-oriented uses have little or no relationship to the shoreline and are not~~



considered priority uses under the Shoreline Management Act except single-family residences. Any use that does not meet the definition of water-dependent, water-related or water-enjoyment is classified as non-water-oriented.

**23.1160.150 “O” definitions.**

~~0. “Off-premises sign” means a sign situated on premises other than those premises to which the sign’s message is related.~~ [AP321]

~~2.1.~~ “Oil” means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to, crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. ~~See Fossil Fuels.~~ [DN322]

~~3.2.~~ “Ongoing agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

~~4. “On-premises sign” means a sign situated on the premises to which the sign’s message is related.~~ [AP323]

~~5.3.~~ “Open space” means any parcel or area of land or water not covered by structures, hard surfacing, parking areas and other impervious surfaces except for pedestrian or bicycle pathways, or where otherwise provided by this title or other County ordinance and set aside ~~or~~ dedicated, for active or passive recreation, visual enjoyment, or critical area development buffers as established in WCC Chapter 16.16. Submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations. Required open space percentages, as applicable, are not to be used for purposes of calculating total impervious surface.

~~6.4.~~ “Ordinary high water mark (OHWM)” ~~or “OHWM” means the mark or line~~ on all lakes, ~~rivers,~~ streams, and tidal water ~~means that mark~~ that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with approved development; provided, that in any area where the OHWM cannot be found, the OHWM adjoining saltwater shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water. For braided streams, the OHWM is found on the banks forming the outer limits of the depression within which the braiding occurs.

**23.1160.160 “P” definitions.**

1. “Party of record” means all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on an application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.
2. “Permit or approval” means any form or permission required under this program prior to undertaking activity on shorelines of the state, including substantial development permits, variance permits, shoreline conditional use permits, permit revisions, and shoreline exemptions from the substantial development permit process.
3. “Person” means any individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity, either public or private, acting as a unit~~an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, state agency or local governmental unit, however designated, or Indian nation or tribe.~~
4. “Pier.” See “Moorage Structure.” ~~means any platform structure, fill, or anchored device in or floating upon waterbodies and extending waterward from ordinary high water to provide moorage for industrial, commercial, and/or pleasure watercraft engaged in commerce, including, but not limited to: wharves, mono-buoys, sea islands, quays, ferry terminals, and fish weighing stations.~~
5. “Planned unit development (PUD)” means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits. [AP324]
- 6.5. “Pocket beach” means an isolated beach existing usually without benefit of littoral drift from sources elsewhere. Pocket beaches are produced by erosion of immediately adjacent bluffs or banks and are relatively scarce and therefore valuable shoreforms in Whatcom County; they are most common between rock headlands and may or may not have a backshore.
- 7.6. “Point” means a low profile shore promontory that may be either the wave-cut shelf remaining from an ancient bluff or the final accretional phase of a hooked spit that closed the leeward side gap. Points are accretion shoreforms characterized by converging berms accreted by storm waves that enclose a lagoon, marsh, or meadow, depending on the point’s development stage.
- 8.7. “Point bar” means an accretion shoreform created by deposition of sand and gravel on the inside, convex side of a meander bend. Most material is transported downstream as sediment and bedload at times of high current velocity, or flood stage, from eroding banks or other bars upstream.
- 9.8. “Pond” means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than 30 percent aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds are excluded from this definition. Beaver ponds that are two years old or less are excluded from this definition. For the purpose of this program, any pond whose surface water extends into the OHWM of any shoreline of the state shall be considered part of that shoreline of the state.

~~10.9.~~ “Port development” means public or private facilities for transfer of cargo or passengers from water-borne craft to land and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil or renewable fuel transshipment facilities<sup>[DN325]</sup>.

~~11.10.~~ “Potable” means water that is suitable for drinking by the public (Chapter 246-290 WAC).

~~12.11.~~ “Preservation” means actions taken to ensure the permanent protection of existing, ecologically important areas that the County has deemed worthy of long-term protection.

~~13.12.~~ “Primary association” means the use of a habitat area by a listed or priority species for breeding/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s), as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding, nesting, or spawning.

~~14.13.~~ “Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife (WAC 173-26-020(24)).

~~15.14.~~ “Priority species” means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington Department of Fish and Wildlife.

~~16.15.~~ “Private dock” means a dock and/or float for pleasure craft moorage or water recreation for exclusive use by one waterfront lot owner.

~~17.16.~~ “Private sign” means a sign used on a private residence to indicate only the owner’s name or address, that the premises are for rent or sale, or for other reasonable purposes related to residential use including permitted home occupations.

~~18.17.~~ “Project” means any proposed or existing activity regulated by Whatcom County.

~~19.~~ “Project permit” or “project permit application” means any land use or environmental permit or approval required by Whatcom County, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development

permits, variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive plan or subarea plan. [AP326]

~~20. “Projecting sign” means a sign that is attached to and projects at an angle from a building’s exterior wall. [CES327]~~

~~21.18.~~ “Public access” means the public’s right to get to and use the state’s public waters, both saltwater and freshwater, the water/land interface and associated shoreline [area environment](#). It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and/or visual access facilitated by means such as scenic roads and overlooks, viewing towers and other public sites or facilities.

~~22.19.~~ “Public interest” means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from adverse effects of a use or development.

~~22.~~ “Public utility” means a use owned or operated by a public or publicly licensed or franchised agency that provides essential public services such as telephone exchanges, electric substations, radio and television stations, wireless communications services, gas and water regulation stations, and other facilities of this nature. [AP328]

## ~~23.11~~**60.170 “Q” definitions.**

~~1.~~ “Qualified professional” or “qualified consultant.” ~~See WCC 16.16 (Critical Areas).~~ means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related field, and related work experience and meet the following criteria:

- ~~— A qualified professional for wetlands must have a degree in biology, ecology, soil science, botany, or a closely related field and a minimum of three years of professional experience in wetland identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems.~~
- ~~— A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or closely related field and a minimum of three years’ professional experience related to the subject species/habitat type.~~
- ~~— A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.~~

~~5.1. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.~~

## ~~23.11~~**60.180 “R” definitions.**

1. “Recharge” means the process involved in the absorption and addition of water from the unsaturated zone to ground water.
2. “Recreation” means an experience or activity in which an individual engages for personal enjoyment and satisfaction. Most shore-based recreation includes outdoor recreation such as: fishing, hunting, clamming, beach combing, and rock climbing; various forms of boating, swimming, hiking, bicycling,

- horseback riding, camping, picnicking, watching or recording activities such as photography, painting, bird watching or viewing of water or shorelines, nature study and related activities.
3. “Recreational development” means the modification of the natural or existing environment to accommodate recreation. This includes clearing land, earth modifications, structures and other facilities such as parks, camps, camping clubs, launch ramps, golf courses, viewpoints, trails, public access facilities, public parks and athletic fields, hunting blinds, wildlife enhancement (wildlife ponds are considered excavation), and other low intensity use outdoor recreation areas. Recreational homes/condominiums and related subdivisions of land are considered residential; resorts, motels, hotels, recreational vehicle parks, intensive commercial outdoor or indoor recreation, and other commercial enterprises are considered commercial.
4. “Recreational Float.” See “Moorage Structure.”
- 4.5. “Reestablishment” means measures taken to intentionally restore an altered or damaged natural feature or process including:
  - a. Active steps taken to restore damaged wetlands, streams, protected habitat, and/or their buffers to the functioning condition that existed prior to an unauthorized alteration;
  - b. Actions performed to reestablish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or other events; and
  - c. Restoration can include restoration of wetland functions and values on a site where wetlands previous existed, but are no longer present due to lack of water or hydric soils.
5. “Rehabilitation” means a type of restoration action intended to repair natural or historic functions and processes. Activities could involve breaching a dike to reconnect wetlands to a floodplain or other activities that restore the natural water regime.
6. “Renewable biomass” includes but is not limited to the following:
  - a. Planted crops and crop residue harvested from agricultural land.
  - b. Planted trees and tree residue from a tree plantation.
  - c. Animal waste material and animal byproducts.
  - d. Slash and pre-commercial thinnings.
  - e. Organic matter that is available on a renewable or recurring basis.
  - f. Algae.
  - g. Separated yard waste or food waste, including recycled cooking and trap grease.
  - a.h. Items a through g including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport.
7. “Renewable Fuel” means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels. Common renewable fuels include ethanol and biodiesel:
  - a. “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.
  - b. “Renewable diesel” means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for

fuels and fuel additives established by the federal environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 (2008) [P/C329] and meets the requirements of American society of testing and materials specification D 975.

c. 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.

5.8. “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities. [DN330]

6.9. “Renovate” means to restore to an earlier condition as by repairing or remodeling. Renovation shall include any interior changes to a building and those exterior changes that do not substantially change the character of an existing structure.

7.10. “Residential development” means ~~buildings, earth modifications, development subdivision~~ and use of land primarily for human residence, including, but not limited to: single-family and multifamily dwellings, condominiums, mobile homes and mobile home parks, boarding homes, family daycare homes, adult family homes, retirement and convalescent homes, ~~bed and breakfasts, and vacation rental units~~ [CES331], together with accessory uses common to normal residential use. Camping sites or clubs, recreational vehicle parks, motels, ~~and~~ hotels, ~~and other transient housing~~ are not included in this definition.

11. “Resource shoreline ~~area environment~~” means an area designated pursuant to WCC Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).

8.12. “Responsible Party” or “Party Responsible.” The “responsible party” shall be assumed, in singular or plural, to be any individual, business, organization, or entity, property owner, or person having control of a property who has created or allowed to exist a violation of any applicable regulations, whether or not the violation is known to that person at the time the violation occurred or is occurring. A responsible party includes any person who aids, assists, or perpetuates a violation.

9.13. “Restore,” “restoration” or “ecological restoration” means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline ~~area environment~~ to aboriginal or pre-European settlement conditions.

10.14. “Revetment” means a ~~sloped wall means a sloping structure built to protect a scarp, embankment, or shore against erosion by waves or currents. Usually built of riprap, with heavy armor layer, one or more filter layers of smaller rock or filter cloth, and “toe” protection. A revetment slopes shoreward and has a rough or jagged face. Its sloping face absorbs wave energy and differentiates it from a bulkhead, which is a near vertical structure constructed of riprap or other suitable material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement.~~ [CES332]



- ~~11-15.~~ “Riprap” means dense, hard, angular rock free from cracks or other defects conducive to weathering used for revetments or other flood control works.
  - ~~12-16.~~ “Riparian zone” means the area adjacent to a waterbody (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.
  - ~~13-17.~~ “Riparian vegetation” means vegetation that tolerates and/or requires moist conditions and periodic free-flowing water, thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilizes stream banks, attenuates high water flows, provides wildlife habitat and travel corridors, and provides a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.
  - ~~14-18.~~ “River delta” means those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels.
  - ~~15-19.~~ “Rock shore” means those shorelines whose bluffs and banks are typically composed of natural rock formations.
  - ~~16-20.~~ “Roof sign” means a sign erected upon, against, or directly above a roof, or on top of or above the parapet of a building; signs on mansard roofs shall be considered wall signs.
  - ~~17-21.~~ “Rural shoreline ~~area~~ environment” means an area designated pursuant to WCC Chapter 23.~~230~~ ([Shoreline Jurisdiction and Environment Designations](#)).
- ~~23.1160.190~~ “S” definitions.**
1. “Seismic hazard areas” means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.
  2. “Shall” means a mandate; the action must be done.
  3. “Shared moorage” means moorage for pleasure craft and/or landing for water sports for use in common by shoreline residents of a certain subdivision or community within shoreline jurisdiction or for use by patrons of a public park or quasi-public recreation area, including rental of non-powered craft. If a shared moorage provides commercial services or is of a large scale (~~more than~~ four ~~or more~~ slips), it shall be considered a marina. Shared moorage proposed to be leased to upland property owners shall also be considered as a marina. If a proposal includes covered moorage, commercial sale of goods or services, or a means of launching other than a ramp, swinging boom, or davit style hoist, it shall be considered a marina.
  4. “Shellfish” means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.
  5. “Shellfish habitat conservation areas” means all public and private tidelands suitable for shellfish, as identified by the Washington Department of Health classification of commercial growing areas, and



- those recreational harvest areas as identified by the Washington Department of Ecology are designated as shellfish habitat conservation areas pursuant to WAC 365-190-080. Any area that is or has been designated as a shellfish protection district created under Chapter 90.72 RCW is also a shellfish habitat conservation area.
6. “Shellfish protection district” means the Drayton Harbor shellfish protection district (DHSPD) (Ordinance 95-036) and the Portage Bay shellfish protection district (PBSPD) (Ordinance 98-069), or other area formed by the County based on RCW Title 90, in response to State Department of Health (DOH) closures or downgrades of a commercial shellfish growing area due to a degradation of water quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the shellfish habitat conservation area.
  7. “Shorelands” or “shoreland areas” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58RCW.
  8. “Shorelines” means all of the water areas of the state as defined in RCW 90.58.030, including reservoirs and their associated shorelands, together with the lands underlying them except:
    - a. Shorelines of statewide significance;
    - b. Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
    - c. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.
  9. “Shoreline Administrator” means the Director of the Department of Planning and Development Services-Department, or his/her designee, who is authorized to carry out the administrative duties enumerated in this program~~or staff member designated by the director to perform the review functions required in this program.~~
  10. “Shoreline Conditional Use” for the purposes of this program means a use, development or substantial development listed in the regulations as being permitted only as a shoreline conditional use, or not classified in this program. Shoreline Conditional uses are subject to review and approval pursuant to the criteria in WCC Chapter 23.60 Title 22 (Land Use and Development) regardless of whether or not the proposal requires a substantial development permit.<sup>[AP333]</sup>
  11. “Shoreline jurisdiction” means all “shorelines of the state” and “shorelands.”
  12. “Shoreline permit” means a shoreline substantial development permit, a shoreline conditional use, or a shoreline variance, or any combination thereof issued by Whatcom County pursuant to Chapter 90.58 RCW.
  13. “Shoreline residential ~~area~~environment” means an area designated pursuant to WCC Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).
  14. “Shoreline stabilization” means structural or nonstructural modifications to the existing shoreline intended to reduce or prevent erosion of uplands or beaches. They are generally located parallel to the shoreline at or near the OHWM. Other construction classified as shore defense works include groins, jetties and breakwaters, which are intended to influence wave action, currents and/or the natural transport of sediments along the shoreline.

15. “Shoreline stabilization<sup>[CES334]</sup>, bioengineered” means biostructural and biotechnical alternatives to hardened structures (bulkheads, walls) for protecting slopes or other erosive features including soft-treatment techniques. Bioengineered stabilization uses vegetation reinforced soil slopes (VRSS), which uses vegetation arranged embedded in the ground to prevent shallow mass-movements and surficial erosion.
16. “Shoreline stabilization, nonstructural” means a soft treatment which does not use driftwood, logs, geotextile fabric, or other organic or nonorganic structural materials. Examples include:
  - a. Addressing upland drainage issues;
  - b. Planting stabilization vegetation without fill, grading, or use of nonbiodegradable geotextile fabric, gabions or other stabilizing structures to provide temporary erosion control.
17. “Shoreline stabilization, replacement” means the construction of a new structure to perform a shoreline stabilization function of an existing legally established shoreline stabilization structure which can no longer adequately serve its purpose. Where ordinary high water has established behind the structure replacement is considered a new shoreline stabilization.
18. “Shoreline stabilization, soft-treatment” means shore erosion control and restoration practices using only plantings or organic materials to restore, protect or enhance the natural shoreline environment. This technique mimics natural conditions for ecological functions and ecosystem-wide processes. When used, organic/biodegradable structural components are to be placed to avoid significant disruption of sediment recruitment, transportation, and accretion. Examples include:
  - a. Bioengineered shoreline stabilization;
  - b. Beach nourishment/replenishment;
  - c. Vegetated soil stabilization retention methods;
  - d. Driftwood;
  - e. Coir fiber logs or other natural materials;
  - f. Nonstructural shoreline stabilization;
  - g. Beach berm.
19. “Shoreline stabilization, hard structure” means shore erosion control practices using hardened structures that armor and stabilize the shoreline landward of the structure from further erosion.
20. “Shoreline stabilization, hybrid structure” means an approach to erosion control that combines soft-treatment shoreline treatment placed waterward of more conventional structural shoreline stabilization elements. The soft treatment preserves natural beach contours and mimics habitat structure in order to preserve ecological functions. The hard structure provides long-term stability to the upland site, but is located sufficiently landward of the OHWM as not to impair ecological processes.
21. Shoreline Stabilization, New. Placement of shoreline stabilization where no such structure previously existed, including additions to or increases in size of existing shoreline stabilization measures, are considered new structures.
22. “Shoreline stabilization, structural” means shoreline stabilization which includes a footing, foundation, or anchors. Materials are typically hardened structures which armor the shoreline. See also “shoreline stabilization, hard structure” and “shoreline stabilization, hybrid structure.”
- 15-23. “Shoreline view area” means any area looking waterward within the jurisdiction of this program between the OHWM and a public road, park, pathway, or other public area that is undeveloped or

developed with accessory uses only; and that does not obstruct the view of the shoreline or would not obstruct the view if natural vegetation, fences, walls, antennas or similar obstructions were removed.

~~16-24.~~ “Shorelines of statewide significance” means the following shorelines in Whatcom County:

- a. Those areas of Puget Sound and adjacent saltwaters between the ordinary high water mark and the line of extreme low tide as follows: Birch Bay from Point Whitehorn to Birch Point; and
- b. Those areas of Puget Sound and adjacent saltwaters north to the Canadian line and lying waterward from the line of extreme low tide; and
- c. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of 1,000 acres or more measured at the ordinary high water mark including Lakes Whatcom, Baker and Ross; and
- d. Those natural rivers or segments thereof as follows: any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second or more; including the Nooksack River’s mainstream, the North Fork upstream to its confluence with Glacier Creek in Section 6, Township 39 North, Range 7 East, W.M.; and the South Fork upstream to its confluence with Hutchinson Creek in Section 9, Township 37 North, Range 5 East, W.M.
- e. Shoreline jurisdiction associated with subsections ~~(15)~~(a), (c), and (d) of this section.

~~25.~~ “Shorelines of the state” means the total of all “shorelines” and “shorelines of statewide significance” within the state.

~~17-26.~~ “Short-term rental” means a dwelling unit where the owner is not present on site during the rental period, which, for compensation, is used to lodge individuals or families for a period of less than 30 days.~~[CES335]~~

~~18-27.~~ “Should” means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Act and this chapter, against taking the action.

~~19-28.~~ “Sign” means any placard, billboard, display, message, design, letters, symbol, light, figure, illustration, set of pennants, or other device intended to identify, inform, advertise, or attract attention to any private or public premises, and placed mainly outdoors so as to be seen from any public or quasi-public place. Double-faced signs are counted as two signs. Excluded from this definition are official traffic, directional or warning devices, other official public notices, signs required by law, or flag of a government or other noncommercial institution.

~~20-29.~~ “Significant vegetation removal” means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant impacts to ecological functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

~~21-30.~~ “Single-family development” means the development of a single-family residence permanently installed and served with utilities on a lot of record.

## Planning Commission Approved Draft

SMP Update – Title 23 Amendments

May 13, 2021

22-31. “Site” means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant’s/proponent’s ownership or control that is the subject of a development proposal or change in use.

23-32. “Slope” means:

- a. Gradient.
- b. The inclined surface of any part of the earth’s surface delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

33. “Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

- a. Equipment and buildings [P/C336] used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or
- b. 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 or renewable refinery or transshipment facilities [DN337]

24-34. “Soil” means all unconsolidated materials above bedrock described in the Soil Conservation Service Classification System or by the Unified Soils Classification System.

25-35. “Solid waste” means all putrescible and non-putrescible solid and semi-solid waste including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles and parts thereof, and any other discarded commodities.

36. “Spit” means an accretion shoreform that is narrow in relation to length and extends parallel to or curves outward from shore; spits are also characterized by a substantial wave-built sand and gravel berm on the windward side, and a more gently sloping silt or marsh shore on the lagoon or leeward side; curved spits are called hooks.

37. “Standing” is the status required for a person, agency, or other entity to bring an action before an appeal body. A person has standing per RCW 36.70C.060 if they are:

- a. The applicant and the owner of property to which the land use decision is directed; or
- b. Another person, county department, and/or public agency aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
  - i. The land use decision has prejudiced or is likely to prejudice that person;
  - ii. That person’s asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
  - iii. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
  - iv. The petitioner has exhausted his or her administrative remedies to the extent required by law.

26-38. “Statement of exemption” means a written statement by the ~~administrator~~ Director that a particular development proposal is exempt from the substantial development permit requirement and is generally consistent with this program including the policy of the Act (RCW 90.58.020), pursuant to WCC-~~23.60.020~~ Title 22 (Land Use and Development).

~~27-39.~~ “Streams” means those areas where surface waters produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the annual passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition includes drainage ditches or other artificial water courses where natural streams existed prior to human alteration, and/or the waterway is used by anadromous or resident salmonid or other fish populations or flows directly into shellfish habitat conservation areas.

~~28-40.~~ “Strict construction” means an interpretation that considers only the literal words of a writing.

~~29-41.~~ “Structure” means a permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite matter whether installed on, above, or below the surface of the ground or water, except for vessels ~~(after~~ [International Building Code](#)).

~~30-42.~~ “Substantial development” means any development of which the total cost or fair market value exceeds \$5,718 or as amended by the State Office of Financial Management, or any development ~~which~~[that](#) materially interferes with the normal public use of the water or shorelines of the state; except the classes of development, listed in ~~WCC 23.60.022(A) through (P).~~ [WAC 173-27-040.](#) [AP338]

~~31-43.~~ “Substantially degrade” means to cause significant ecological impact.

~~32.~~ [“Surface mining” means all or any part of the processes involved in mining by removing the soil or rock overburden and mining directly from deposits thereby exposed, including also open-pit mining, gravel bar scalping and mining of deposits naturally exposed at earth’s surface, and including production of surface mining refuse.](#) [AP339]

~~33-44.~~ “Sustained yield” means the continuing yield of a biological resource, such as timber from a forest, by controlled and periodic harvesting.

~~34-45.~~ “Swamp” means a wetland that is often inundated and composed of woody vegetation.

**~~23.1160.200~~ “T” definitions.**

1. “Tideland” means the land on the shore of marine water-bodies between OHWM and the line of extreme low tide which is submerged daily by tides.
2. “Timber” means forest trees, standing or down, of a commercial species, including Christmas trees.
3. “Toe” means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.
4. “Tombolo” means an accretion shoreform that began as a spit and accreted into a causeway-like connection to an island or offshore rock; tombolos normally develop from offshore bars (submarine berms) that build up in a low energy “wave-shadow” zone between the offshore, wave barrier element and an active driftway.
5. “Top” means the top of a slope; or in this program it may be used as the highest point of contact above a landslide hazard area.
6. “Transportation” means roads and railways, related bridges and culverts, fills, embankments, causeways, parking areas, truck terminals and rail switchyards, sidings, spurs, and air fields. Not included are recreational trails, highway rest areas, ship terminals, seaplane moorages, nor logging roads; they are included respectively under “recreation,” “pier,” “dock,” “residential,” and “forest practices.”

**23.1160.210 “U” definitions.**

1. “Unavoidable” means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.
2. “Upland” means dry lands landward of OHWM.
3. “Urban conservancy shoreline ~~area~~ environment” means an area designated pursuant to WCC Chapter ~~23.30~~ 23.20 (Shoreline Jurisdiction and Environment Designations).
4. “Urban resort shoreline ~~area~~ environment” means an area designated pursuant to WCC Chapter ~~23.30~~ 23.20 (Shoreline Jurisdiction and Environment Designations).
5. “Urban shoreline ~~area~~ environment” means an area designated pursuant to WCC Chapter ~~23.30~~ 23.20 (Shoreline Jurisdiction and Environment Designations).
6. “Utilities” means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.
  - a. “Accessory utilities” means on-site utility features such as a water, sewer, septic, electrical, or gas lines serving a primary use. Accessory utilities shall be considered part of the primary use.
  - b. “Local utilities” means utilities that serve adjacent properties and include, but are not limited to, powerlines, water, sewer, and stormwater facilities, fiber optic cable, pump stations and hydrants, switching boxes, and other structures normally found in a street right-of-way.
  - c. “Regional utilities” means utilities that serve more than one community or major attractions; examples include, but are not limited to, two hundred thirty (230) kv power transmission lines, natural gas transmission lines, and regional water storage tanks and reservoirs, regional water transmission lines or regional sewer collectors and interceptors. Regional utilities may also include facilities serving an entire community, such as subregional switching stations (one hundred fifteen (115) kv and smaller), and municipal sewer, water, and storm water facilities. Regional utilities include regional transmission pipelines for the bulk conveyance of natural gas, or pipelines termed a distribution pipeline but having characteristics that fit the definition of a transmission pipeline. Natural gas pipelines which are owned and operated by a gas utility company regulated by the State Utilities and Transportation Commission and which are distribution lines owned by the utility that provide natural gas service directly to county citizens and businesses shall not be considered regional transmission lines.[AP340][CES341]
- 6.7. “Utility development” means development including, but not limited to, facilities for distributing, processing, or storage of water, sewage, solid waste, storm drainage, electrical energy including electronic communications, and their administrative structures, as well as pipelines for petroleum products, and fire-fighting facilities. Power plants are considered industrial.

**23.1160.220 “V” definitions.-**

1. “Vacation Rental Unit” means a single-family dwelling unit, detached accessory dwelling unit, or accessory apartment that, for compensation, is rented as a single unit used to lodge individuals or families for a period of less than 30 days and where the owner is not present in the rented unit during the rental period. Individual sleeping rooms shall not be rented individually.[CES342]
- 1.2. “Variance” means an adjustment in the application of this program’s bulk and dimensional regulations to a particular site pursuant to WCC ~~Chapter 23.60~~ Title 22 (Land Use and Development).



~~2-3.~~ “Vegetative stabilization” means planting of vegetation to retain soil and retard erosion, reduce wave action, and retain bottom materials. It also means ~~utilization~~ use of temporary structures or netting to enable plants to establish themselves in unstable areas.

~~3-4.~~ “Vessel” means a floating structure that is designed primarily for navigation, is normally capable of self-propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency. -

**~~23.1160.230~~ “W” definitions.**

~~1.~~ “Wall sign” means a sign placed upon and parallel to the exterior of a building. [AP343]

~~2-1.~~ “Waterbody” means a body of still or flowing water, fresh or marine, bounded by the OHWM.

~~3-2.~~ “Water-dependent use” means a use or portion of a use that requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations.

~~4-3.~~ “Water-enjoyment use” means a recreational use, or other use facilitating public access to the shoreline as the primary character of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and that through the location, design and operation assure the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the water-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

~~5-4.~~ “Water-oriented use” means any one or a combination of water-dependent, water-related or water-enjoyment uses and serves as an all-encompassing definition, together with single-family residences, for priority uses under the Act.

~~6-5.~~ “Water quality” means the characteristics of water, including flow or amount, and related physical, chemical, aesthetic, recreation-related, and biological characteristics.

~~7-6.~~ “Water-related use” means a use or portion of a use that is not intrinsically dependent on a waterfront location but depends upon a waterfront location for economic viability. These uses have a functional relationship to the water, or the use provides a necessary support service for a water-dependent use and physical separation is not feasible.

~~8-7.~~ “Watershed” means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g., Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and WRIA 3. These are nested within approximately 14 sub-basins (e.g., North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within four basins (e.g., Nooksack River, Fraser River, Samish River, Coastal).

~~9-8.~~ “Watershed restoration plan” means a plan developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, recreation, or enhancement of the natural resource character and ecology of a stream, stream segment, drainage area or watershed for which agency and public review have been conducted pursuant to Chapter 43.21C RCW, the State Environmental Policy Act.



~~10.9.~~ “Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or part of the plan and consists of one or more of the following activities:

- a. A project that involves less than 10 miles of stream reach, in which less than 25 cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
- b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control erosive forces of flowing water; or
- c. A project primarily designated to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state; provided, that any structures, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than 200 square feet in floor area and is located above the ordinary high water mark.

~~11.10.~~ “Weir” means a structure in a stream or river for measuring or regulating stream flow.

~~12.11.~~ “Wet season” means the period generally between November 1st and March 30th of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

~~13.12.~~ “Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created for non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

~~14.13.~~ “Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in [WCC this eChapter 16.16 \(Critical Areas\)](#).

~~15.14.~~ “Wood waste” means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

~~23.1160.240~~ **“X” definitions.**  
Reserved.

~~23.1160.250~~ **“Y” definitions.**  
Reserved.

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- 1 **~~23.11~~60.260 “Z” definitions.**
- 2 Reserved.
- 3

Planning Commission Approved Draft,  
May 13, 2021

## Exhibit E: Proposed Amendments to WCC Title 22

Shoreline Management  
Program Periodic Update  
2020

Whatcom County Planning and Development  
Services

Chapter <sup>[P/C1]</sup> 22.05 Project Permit ~~Procedures~~ <sup>[CES2]</sup>

**22.05.010 Purpose and Applicability.**

- (1) The purpose of this chapter is to combine and consolidate the application, review, and approval processes for project permits and appeals as defined in WCC 20.97-~~321~~ (Definitions). It is further intended for this chapter to comply with the provisions of Chapter 36.70B RCW. These procedures provide for a consolidated land use permit process and integrate the environmental review process with the procedures for review of land use decisions.
- (2) This chapter applies to the processing of project permit applications for development and appeals related to the provisions of WCC Title 15, Buildings and Construction; WCC Title 16, Environment; WCC Title 17, Flood Damage Prevention; WCC Title 20, Zoning; WCC Title 21, Land Division Regulations; and WCC Title 23, Shoreline Management Program. The provisions of this chapter shall apply to all project permit applications as defined in RCW 36.70B.020, and other administrative decisions, as listed in ~~the table in~~ WCC 22.05.020 Table 1.
- (3) The meaning of words used in this chapter shall be as defined in WCC Chapters 20.97 (Definitions) or 23.60 (Definitions), as appropriate to the permit being applied for.

**22.05.020 Project Permit Processing Table.**

- (1) Table 1. Project Permit Processing Table ~~Marked boxes in the table below~~ indicates the required general steps for processing all project permit applications or administrative actions. Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section. The requirements for each step listed in the top row of the table are provided in WCC 22.05.040 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in the table.

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1 **Table 1. Project Permit Processing Table**

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see <a href="#">22.05.040</a> )	Determination of Completeness Required (see <a href="#">22.05.050</a> )	Notice of Application Required (see <a href="#">22.05.070</a> )	Site Posting Required (see <a href="#">22.05.080</a> )	Notice of Open Record Hearing Required (see <a href="#">22.05.090</a> )	Open Record Hearing Held By: (see <a href="#">22.05.090</a> )	County Decision Maker (see <a href="#">2.11.210</a> , <a href="#">22.05.120</a> )	Appeal Body (see <a href="#">2.11.210</a> , <a href="#">2.05.160</a> , <del><a href="#">23.60.150(H)</a></del> )
<b>Type I Applications (Administrative Decision with No Public Notice or Hearing)</b>									
Boundary Line Adjustment	<a href="#">21.03</a>		✓					Director	Hearing Examiner
Building Permit	<a href="#">15.04</a>	✓ ( <del>fd</del> )	✓					Director	Hearing Examiner ( <del>ig</del> )
Natural Resource Assessment	Title <a href="#">16</a>		✓					Director	Hearing Examiner
Commercial Site Plan Review			✓					Director	Hearing Examiner
Exempt Land Division	<a href="#">21.03</a>		✓					Director	Hearing Examiner
Floodplain Development Permit	Title <a href="#">17</a>							Director	Hearing Examiner
Land Disturbance Permit	<a href="#">15.04</a> and <a href="#">20.80</a>		✓					Director	Hearing Examiner
Lot of Record/Lot Consolidation	<a href="#">20.83</a> and <a href="#">20.97.220</a>		✓					Director	Hearing Examiner
Nonconforming Use	<a href="#">20.83</a>		✓					Director	Hearing Examiner
Removal of <del>Forest Practices</del> Development Moratorium	<a href="#">20.80.738</a> (3)							<del>Director</del>	<del>Hearing Examiner</del>
Shoreline Exemption	<del><a href="#">23.60</a></del> <a href="#">22.05 &amp; 07</a>	✓ ( <del>a</del> )	✓					Director	Hearing Examiner

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Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see <a href="#">22.05.040</a> )	Determination of Completeness Required (see <a href="#">22.05.050</a> )	Notice of Application Required (see <a href="#">22.05.070</a> )	Site Posting Required (see <a href="#">22.05.080</a> )	Notice of Open Record Hearing Required (see <a href="#">22.05.090</a> )	Open Record Hearing Held By: (see <a href="#">22.05.090</a> )	County Decision Maker (see <a href="#">2.11.210</a> , <a href="#">22.05.120</a> )	Appeal Body (see <a href="#">2.11.210</a> , <a href="#">2.05.160</a> , <a href="#">23.60.150</a> <del>(H)</del> )
Zoning Interpretation	<a href="#">22.20</a>							Director	Hearing Examiner
<b>Type II Applications (Administrative Decision with Public Notice; No Public Hearing)</b>									
Administrative Use	<a href="#">20.84.235</a>	✓	✓	✓	✓			Director	Hearing Examiner
Lot Consolidation Relief	<a href="#">20.83.070</a>		✓	✓	✓			Director	Hearing Examiner
<del>Reasonable Use (b)</del>	<del>16.16</del>	<del>✓</del>	<del>✓</del>	<del>✓</del>	<del>✓</del>			<del>Director</del>	<del>Hearing Examiner (ccs3)</del>
Shoreline Substantial ( <del>ea</del> )	<del>23.60</del> <a href="#">22.05 &amp; .07</a>	✓ ( <del>a</del> )	✓	✓	✓			Director ( <del>eb</del> )	Shorelines Hearings Board ( <del>hf</del> )
Shoreline Conditional Use <del>for single-family development, uses, and activities (ea)</del>	<del>23.60</del> <a href="#">22.05 &amp; .07</a>	✓ ( <del>a</del> )	✓	✓	✓			Director ( <del>eb</del> )	Hearing Examiner
Zoning or Critical Areas <del>Minor Variance, Minor</del>	22.05.024	✓	✓	✓	✓			Director	Hearing Examiner
Short Subdivision	<a href="#">21.04</a>	✓	✓	✓	✓			Director	Hearing Examiner
<b>Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)</b>									
Conditional Use	<a href="#">20.84.200</a>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court

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Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see <a href="#">22.05.040</a> )	Determination of Completeness Required (see <a href="#">22.05.050</a> )	Notice of Application Required (see <a href="#">22.05.070</a> )	Site Posting Required (see <a href="#">22.05.080</a> )	Notice of Open Record Hearing Required (see <a href="#">22.05.090</a> )	Open Record Hearing Held By: (see <a href="#">22.05.090</a> )	County Decision Maker (see <a href="#">2.11.210</a> , <a href="#">22.05.120</a> )	Appeal Body (see <a href="#">2.11.210</a> , <a href="#">2.05.160</a> , <a href="#">23.60.150(H)</a> )
Floodplain Development Variance	Title <a href="#">17</a>		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	<a href="#">21.05</a>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ( <del>ge</del> )	Superior Court
Binding Site Plan	<a href="#">21.07</a>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ( <del>ge</del> )	Superior Court
Reasonable Use ( <del>ec</del> )	<a href="#">16.16</a>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	<a href="#">20.80.738</a> (2)		✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	<del>22.05 &amp; 0723.60</del>	✓ ( <del>a</del> )	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ( <del>db</del> )	Shorelines Hearings Board ( <del>hf</del> )
Shoreline Substantial	<del>22.05 &amp; 0723.60</del>	✓ ( <del>a</del> )	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ( <del>db</del> )	Shorelines Hearings Board ( <del>hf</del> )
Shoreline Variance	<del>22.05 &amp; 0723.60</del>	✓ ( <del>a</del> )	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner ( <del>db</del> )	Shorelines Hearings Board ( <del>hf</del> )
Zoning or Critical Areas <del>Major</del> Variance, <del>Major</del>	<a href="#">22.05.024</a> or <a href="#">16.16.273</a>	✓	✓	✓	✓	✓	Hearing Examiner	Hearing Examiner	Superior Court
<b>Type IV Applications (County Council Decision with Public Notice and Public Hearing)</b>									
Development Agreement	<a href="#">2.11.205</a>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court



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Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see <a href="#">22.05.040</a> )	Determination of Completeness Required (see <a href="#">22.05.050</a> )	Notice of Application Required (see <a href="#">22.05.070</a> )	Site Posting Required (see <a href="#">22.05.080</a> )	Notice of Open Record Hearing Required (see <a href="#">22.05.090</a> )	Open Record Hearing Held By: (see <a href="#">22.05.090</a> )	County Decision Maker (see <a href="#">2.11.210</a> , <a href="#">22.05.120</a> )	Appeal Body (see <a href="#">2.11.210</a> , <a href="#">2.05.160</a> , <del><a href="#">23.60.150(H)</a></del> )
Major Project Permit	<a href="#">20.88</a>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court
Planned Unit Development	<a href="#">20.85</a>	✓	✓	✓	✓	✓	Hearing Examiner	County Council	Superior Court

~~Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.~~

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- (2) **Project Permit Processing Table Notes.** As indicated in Table 1 ~~the table in subsection (1) of this section~~, project permits are subject to the following additional requirements:
- ~~(a) Pre-application conference subject to WCC Title 23, Shoreline Management Program.~~
- ~~(b) Single-family residential uses in critical areas or critical area buffers, except all uses in geological hazardous areas and setbacks.~~
- ~~(c)~~(a) Shoreline permit public hearing decision determined pursuant to 22.07.030(A) (Shoreline Substantial Development Permits) ~~WCC Title 23, Shoreline Management Program~~. If a public hearing is required the shoreline permit shall be processed as a Type III application.
- ~~(d)~~(b) Pursuant to ~~Chapters 23.60 and 23.70~~ WCC 22.07.060, final administrative determinations or decisions as appropriate shall be filed with, or approved by, the Washington State Department of Ecology.
- ~~(e)~~(c) All reasonable use exception applications in geological hazardous areas and setbacks and all non-single-family residential uses in critical areas or critical area buffers.
- ~~(f)~~(d) Building permit pre-application conference, subject to WCC 15.04.020(A)(3)(a).
- ~~(g)~~(e) The Hearing Examiner may choose to consult with the development standards technical advisory committee concerning technical matters relating to land division applications.
- ~~(h)~~(f) Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use only when the applicant waives his/her right to a single appeal to the Shorelines Hearings Board. When an applicant has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of section WCC 23.60.1560 ~~(H)~~ (Appeals).
- ~~(i)~~(g) Except that appeals of WCC Title 15 fire and building code requirements shall be made to the board of appeals per current building code, as adopted in WCC 15.04.010.

### 22.05.024 Variances.

- (1) Variances from the terms of Title 20 (Zoning) or Chapter 16.16 (Critical Areas Ordinance) may be authorized in specific cases that will not be contrary to the public interest, and where, due to special conditions, literal enforcement of the provisions of those codes would result in unnecessary hardship. Generally, variances shall only be considered for dimensional standards, unless otherwise specified in those codes. Under no circumstances shall a variance be granted that allows a use not permissible or otherwise prohibited in the zoning district in which the subject property is located.
- (2) There are two types of variances: Minor and Major Variances.
- (a) Minor variances include those that are unlikely to have impacts on surrounding properties or people. These shall be limited to variances for:
- i. A reduction of up to 10% of a front yard setback
- ii. A reduction in parking stall dimensions down to 9 feet by 18 feet.
- ~~iii. A 25% to 50% reduction of critical area buffers pursuant to 16.16.273 (Variances).~~
- (b) Major variances include all other variances.
- (3) The appropriate decision maker, as specified in 22.05.020 (Project permit processing table) shall have the authority to grant variances when the conditions set forth in subsection (4) have been

- found to exist. In such cases, a variance may be granted so that the spirit of the County's land use codes shall be observed, public safety and welfare secured, and substantial justice done.
- (4) Before any variance may be granted, it shall be shown that the following circumstances are found to apply:
- (a) That any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone;
  - (b) Because of special circumstances applicable to the subject property, including size, shape, topography, location, or surrounding, the strict application of Title 20 (Zoning) or Chapter 16.16 (Critical Areas Ordinance) is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in its zoning district. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section;
  - (c) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

**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) **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.

**22.05.028 Administrative Approval Uses.**

(1) Administrative approval applications shall be processed per the provisions of this Chapter.

(2) The Director of Planning and Development Services is authorized to approve, approve with conditions, or deny all administrative approval use applications.

(3) **Approval Criteria.** Decisions for all administrative approval use permits shall be based upon compliance with:

(a) The criteria established for the proposed use in the appropriate zone district;

(b) The Comprehensive Plan policies governing the associated land use designation;

(c) In rural areas, consideration will be given to the cumulative impacts of permitted uses in relation to the governing Comprehensive Plan policies and zoning district; and

(d) The criteria of WCC 22.05.026 (Conditional Use Permits), subsection (3) (Approval Criteria).

(e) Additionally, decisions for administrative approval use permits for adult businesses shall be based on the criteria in subsection (4) of this section.

(4) **Additional Approval Criteria for Adult Businesses.** Prior to granting administrative approval for an adult business, the Director shall find that the proposed use at the proposed location satisfies or will satisfy all the following criteria:

(a) The adult business will be consistent with WCC 20.66.131 (Light Impact Industrial District, Administrative Approval Uses).

(b) The adult business shall be closed from 2:00 a.m. to 10:00 a.m. if it contains:

(i) An adult eating or drinking establishment; or

- 1 (ii) An adult theater; or
- 2 (iii) Another adult commercial establishment; or
- 3 (iv) One or more viewing booths.
- 4 (c) If the adult business includes one or more viewing booths, the interior of the adult business will
- 5 incorporate all of the following measures:
- 6 (a) Each viewing booth shall have at least a three-foot wide opening where a customer enters
- 7 and exits the booth that is without doors, physical barriers, or visual barriers; and
- 8 (b) Each viewing booth shall have at least one 100-watt light bulb that is properly working and
- 9 turned on when business is open. The light bulb shall not be covered or otherwise shielded
- 10 except with a commercially available lighting fixture. A minimum of one 12-inch by 12-inch
- 11 durable metal sign shall be located at the entrance to each viewing booth area stating that
- 12 lights shall remain on; and
- 13 (c) Aisles or hallways adjacent to viewing booths shall be a minimum of five feet wide; and
- 14 (d) There shall be no holes or openings in common walls between viewing booths.
- 15 (d) Additionally for adult businesses containing one or more viewing booths, a condition of approval
- 16 shall allow an unannounced inspection by Whatcom County every six months during business
- 17 hours to ensure that measures in subsections (4)(c)(i) through (iv) of this section are being
- 18 implemented on an ongoing basis.
- 19 (5) **Revisions.** The Director may approve revisions to administrative approval use permits; provided,
- 20 that the proposed changes are within the scope and intent of the original permit. “Within the scope
- 21 and intent of the original permit” shall mean the following:
- 22 (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the
- 23 original permit; provided, that:
- 24 (i) revisions involving new structures not shown on the original site plan shall require a
- 25 new permit; and
- 26 (ii) any revisions shall not exceed height, lot coverage, setback, or any other requirements
- 27 of the regulations for the area in which the project is located; and
- 28 (iii) any revisions shall be reviewed for consistency with the Comprehensive Plan;
- 29 (b) Landscaping may be added to a project without necessitating an application for a new permit;
- 30 provided, that the landscaping is consistent with conditions (if any) attached to the original
- 31 permit and is consistent with the regulations for the area in which the project is located;
- 32 (c) The use authorized pursuant to the original permit is not changed;
- 33 (d) No additional over-water construction will be involved for shoreline conditional use permits;
- 34 (e) No substantial increase in adverse environmental impact will be caused by the project revision.

35 **22.05.030 Consolidated Permit Review.**

36 The County shall integrate and consolidate the review and decision on two or more project permits  
37 ~~subject to this chapter~~ that relate to the proposed project action unless the applicant requests  
38 otherwise. Consolidated Type I, II, III and IV permits shall be reviewed under the process required for the  
39 permit with the highest process type number per WCC [22.05.020](#). Level IV is considered the highest and  
40 Level I is considered the lowest process type.

**22.05.040 Pre-Application Conference.**

The purpose of a pre-application conference is to assist applicants in preparing development applications for submittal to the County by identifying applicable regulations and procedures. It is not intended to provide a staff recommendation on future permit decisions. Pre-application review does not constitute acceptance of an application by the County nor does it vest an application, unless otherwise indicated in Whatcom County Code.

- (1) A pre-application conference is required as indicated in WCC [22.05.020](#), unless the Director or designee grants a written waiver. For other permits, the applicant may request a pre-application conference.
- (2) The County shall charge the applicant a fee for a pre-application conference per the unified fee schedule. If the County makes a determination of completeness on a project permit submitted within one year of the notice of site-specific submittal requirements per subsection (6) of this section, the pre-application fee shall be applied to the application cost.
- (3) It is the responsibility of the applicant to initiate a pre-application conference through a written application. The application shall, at a minimum, include all items identified on the pre-application form and the department's administrative manual. The applicant may provide additional information to facilitate more detailed review.
- (4) A pre-application conference shall be scheduled as soon as possible and held no later than 30 calendar days from the date of the applicant's request, unless agreed upon by the applicant and the County.
- (5) The County shall invite the appropriate city to the pre-application meeting if the project is located within that city's urban growth area or which contemplates the use of any city utilities. Notice shall also be given to appropriate public agencies and public utilities, if within 500 feet of the area submitted in the application.
- (6) The County should provide the applicant with notice of site-specific submittal requirements for application no later than 14 calendar days from the date of the conference.
- (7) A new pre-application conference shall be required if an associated project permit application is not filed with the County within one year of the notice of site-specific submittal requirements per subsection (6) of this section or the application is substantially altered, unless waived per WCC [22.05.040](#)(1).

**22.05.050 Application and Determination of Completeness.**

- (1) Project permit applications shall be submitted using current forms provided by the review authority. The submittal shall include: all applicable fees per Chapter [22.25](#) WCC, all materials required by the department's administrative manual (unless waived pursuant to subsection (2), and all items identified in the pre-application notice of site-specific submittal requirements. **If a permit is denied, no reapplication for the same or essentially similar development may be made until one year from the date of denial.**
- (2) The Director may vary or waive the requirements provided in the department's administrative manual on a case-by-case basis, though may also require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements. [CES4]

~~(2)~~(3) Upon submittal by the applicant, the County will accept the application and note the date of receipt. Receipt of an application does not constitute approval of the project proposal.

~~(3)~~(4) Within 14 calendar days of receiving the application, the County shall provide to the applicant a written determination which states either that the application is complete or the application is incomplete. To the extent known by the County, other agencies of local, state, or federal government that may have jurisdiction shall be identified on the determination.

~~(4)~~(5) A project permit application is complete when it meets the submittal requirements of the department's administrative manual, includes items identified through the pre-application conference process and contains sufficient information to process the application even if additional information will be required. A determination of completeness shall not preclude the County from requiring additional information or studies at any time prior to permit approval. A project permit application shall be deemed complete under this section if the County does not issue a written determination to the applicant that the application is incomplete by the end of the fourteenth calendar day from the date of receipt.

~~(5)~~(6) If the application is determined to be incomplete, the following shall take place:

(a) The County will notify the applicant that the application is incomplete and indicate what is necessary to make the application complete.

(b) The applicant shall have 90 calendar days from the date that the notification was issued to submit the necessary information to the County. If the applicant does not submit the necessary information to the County in writing within the 90-day period, the application shall be rejected. The Director or designee may extend this period for an additional 90 calendar days upon written request by the applicant.

(c) Upon receipt of the necessary information, the County shall have 14 calendar days to make a determination and notify the applicant whether the application is complete or what additional information is necessary.

(7) A determination of an incomplete application is an appealable final administrative determination, subject to WCC [22.05.160](#)(1).

#### **22.05.060 Vesting.**

(1) **Complete Applications.** For a project permit application the department has determined to be complete per WCC [22.05.050](#)(4), the application shall be considered under the zoning or other land use control ordinances in effect on the date the application was submitted to the department.

(2) **Incomplete Applications.** For a project permit application the department has determined to be incomplete per WCC [22.05.050](#)(5), the application shall be considered under the zoning or other land use control ordinances in effect on the date the department determines the application to be complete based on the necessary information required by the department.

(3) **Applications Subject to Pre-Application Conference.** Notwithstanding the provisions of subsections (1) and (2) of this section, for a project permit application that is (a) subject to a pre-application conference per WCC [22.05.020](#) and [22.05.040](#), (b) submitted no more than 28 calendar days from the date the department issued its notice of site-specific submittal requirements, and (c) determined complete by the department, the application shall be considered under the zoning or



other land use control ordinances in effect on the date the pre-application conference request was submitted to the department.

(4) **Continuation of Vesting.** Building or land disturbance permit applications that are required to complete a valid (i.e., not expired) project permit approval for project permits identified in the following list (subsections (4)(a) through (m) of this section) shall vest to the zoning and land use control ordinances in effect at the time the project permit application identified below was determined complete:

- (a) Administrative use;
- (b) Commercial site plan review;
- (c) Conditional use;
- (d) Critical areas variance;
- (e) Major project permit;
- (f) Natural resource review;
- (g) Planned unit development;
- (h) Reasonable use ~~exceptions~~(Type II and III);
- (i) Shoreline conditional use permit;
- (j) Shoreline exemption;
- (k) Shoreline substantial;
- (l) Shoreline variance;
- (m) Zoning variance.

(5) **Building Permit Applications within Recorded Long and Short Subdivisions and Binding Site Plans.**

Building permit applications, including associated land disturbance permits, shall be governed by conditions of approval, statutes, and ordinances in effect at the time of final approval pursuant to RCW [58.17.170](#). Vesting duration for those building permit applications shall be governed by the time limits established for long subdivisions in RCW [58.17.170](#), unless the County finds that a change in conditions creates a serious threat to the public health or safety.

(6) **Building and Fire Code Requirements.** Building and fire code provisions adopted per WCC Title [15](#) vest at the time a building permit application is determined complete.

(7) **Duration.** Vesting status established through subsections (1) through (5) of this section runs with the application and expires upon denial of the application by the County, withdrawal of the application by the applicant, rejection of the application per WCC [22.05.050](#)(5), expiration of the application per WCC [22.05.130](#)(1)(a)(i), or expiration of the approved permit per WCC [22.05.140](#).

**22.05.070 Notice of Application.**

(1) For Type II, III, and IV applications per WCC [22.05.020](#), the County shall issue a notice of application within 14 calendar days of a determination of completeness. The date of notice shall be the date of mailing.

(2) If the County has made a State Environmental Policy Act (SEPA) threshold determination of significance concurrently with the notice of application, the County shall combine the determination of significance and scoping notice with the notice of application.

(3) Notice shall include:

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- 1 (a) The date of application, the date of determination of completeness for the application, and the  
2 date of the notice of application;
- 3 (b) A description of the proposed project action and a list of the project permits included in the  
4 application, and, if applicable, a list of any studies requested by the County;
- 5 (c) The identification of other permits not included in the application to the extent known by the  
6 County;
- 7 (d) The identification of environmental reviews conducted, including notice of existing  
8 environmental documents that evaluate the proposed project (including but not limited to  
9 reports, delineations, assessments and/or mitigation plans associated with critical area reviews)  
10 and, if not otherwise stated on the document providing notice of application, the location where  
11 the application and any studies can be reviewed;
- 12 (e) Any other information determined appropriate by the County;
- 13 (f) A statement indicating those development regulations that will be used for project mitigation or  
14 a determination of consistency if they have been identified at the time of notice;
- 15 (g) A statement of the minimum public comment period which shall be 14 calendar days for all  
16 project permits except for shoreline substantial development, shoreline conditional use,  
17 shoreline variance and major project permits for mitigation banks which shall have a minimum  
18 comment period of no more than 30 calendar days;
- 19 (h) A statement of the right of any person to comment on the application and receive notice of and  
20 participate in any hearings, request a copy of the decision once made and to appeal a decision  
21 when allowed by law. The department may accept public comments at any time prior to the  
22 close of the open record public hearing, or if there is no public hearing, prior to the decision on  
23 the project permit. In addition, the statement shall indicate that any person wishing to receive  
24 personal notice of any decisions or hearings must notify the department.
- 25 (4) The department shall issue a notice of application in the following manner:  
26 (a) The notice shall be published once in the official County newspaper and on the Whatcom  
27 County website. The applicant shall bear the responsibility of paying for such notice.  
28 (b) Additional notice shall be given using the following method:  
29 i. For sites within urban growth areas: Application notice shall be sent to all property owners  
30 within 300 feet of the external boundaries of the subject property as shown by the records  
31 of the County assessor;  
32 ii. For sites outside urban growth areas: Application notice shall be sent to all property owners  
33 within 1,000 feet of the external boundaries of the subject property as shown by the records  
34 of the County assessor.
- 35 (5) The County shall send notices of application to neighboring cities and other agencies or tribes that  
36 will potentially be affected, either directly or indirectly, by the proposed development. Notice shall  
37 also be given to public utilities, if within 500 feet of the area submitted in the application.
- 38 (6) All public comments received on the notice of application must be received by the department of  
39 planning and development services by 4:30 p.m. on or before the last day of the comment period.
- 40 (7) Except for a determination of significance, the County shall not issue its SEPA threshold  
41 determination or issue a decision or recommendation on a permit application until the end of the

public comment period on the notice of application. If an optional Determination of Nonsignificance (DNS) process is used, the notice of application and DNS comment period shall be combined.

(8) Public notice given for project permit applications, SEPA documents, project hearings, and appeals hearings as required by this chapter and other provisions of the County code may be combined when practical, where such combined notice will expedite the permit review process, and where provisions applicable to each individual notice are met through the combined notice.

**22.05.080 Posting of Application.**

Where posting of public notice is required per WCC [22.05.020](#), the department shall post public notices of the proposal on all road frontages of the subject property and adjacent shorelines on or before the notice of application date and shall be visible to adjacent property owners and to passing motorists. Said notices shall remain in place until three days after the comment period closes.

**22.05.090 Open Record ~~Public~~ Hearings.**

~~(1) As shown in~~ Pursuant to WCC [22.05.020](#) (Project Permit Processing Table), Type III and Type IV applications and appeals of Type I and Type II applications require an open record public hearing.

~~(2) These Open Record Hearing Notice. Public~~ hearings ~~are subject to the~~ shall be noticed as following:

~~(a)~~a. The Hearing Examiner shall publish a notice of open record hearing once in the official County newspaper and on the Whatcom County website at least 14 calendar days prior to the hearing. The notice shall consist of the date, time, place, and type of the hearing. In addition, personal notice shall be provided to any person who has requested such notice in a timely manner, consistent with WCC [22.05.070](#)~~(3)(h)~~ (Notice of Application).

~~(b)~~b. Within two days of the published notice the applicant shall be responsible for posting three copies of the notice in a conspicuous manner on the property upon which the use is proposed. Notices shall be provided by the Hearing Examiner.

~~(c)~~c. An affidavit verifying distribution of the notice must be submitted to the Hearing Examiner two working days prior to the open record hearing.

~~(d)~~d. The Hearing Examiner shall send notice of an open record hearing to neighboring cities and other agencies or tribes that will potentially be affected, either directly or indirectly by the proposed development. The Hearing Examiner shall be responsible for such notification.

~~(e)~~e. The applicant shall pay all costs associated with providing notice.

~~(2)~~[\(3\)](#) **One Open Record Hearing.** A project proposal subject to this chapter shall be provided with no more than one open record hearing and one closed record hearing pursuant to ~~RCW~~ Chapter [36.70B](#) ~~RCW~~. This restriction does not apply to an appeal of a determination of significance as provided in RCW [43.21C.075](#).

~~(3)~~[\(4\)](#) **Combined County and Agency Hearing.** Unless otherwise requested by an applicant, the County shall allow an open record hearing to be combined with a hearing that may be necessary by another local, state, regional, federal or other agency for the same project if the joint hearing can be held within the time periods specified in Chapter [22.05](#) WCC, or if the applicant agrees to waive such time periods in the event additional time is needed in order to combine the hearings. The combined hearing shall be conducted in Whatcom County pursuant to Chapter [36.70B](#) RCW.

~~(4)~~(5) Quasi-judicial actions, including applications listed as Type III and IV applications in WCC [22.05.020](#), are subject to the appearance of fairness doctrine, Chapter [42.36](#) RCW. The Hearing Examiner shall administer the open record hearing and issue decisions or recommendations in accordance with Chapter [42.36](#) RCW.

**22.05.100 Application Consistency Review and Recommendations.**

(1) During project permit review, the review authority shall determine if the project proposal is consistent with the County's comprehensive plan, other adopted plans, and existing regulations and development standards.

~~(1)~~(a) For Type I and II applications, the conclusions of a consistency determination made under this section shall be documented in the project permit decision.

~~(2)~~(b) For Type III and IV applications the department shall prepare a staff report on the proposed development or action. Staff shall file one consolidated report with the Hearing Examiner at least 10 calendar days prior to the scheduled open record hearing. The staff report shall:

~~(a)~~i. Summarize the comments and recommendations of County departments, affected agencies, special districts and public comments received within the 14-day or 30-day comment period as established in WCC [22.05.070](#)(6).

~~(b)~~ii. Provide an evaluation of the project proposal for consistency as indicated in this section.

~~(c)~~iii. Include recommended findings, conclusions, and actions regarding the proposal.

(2) **Additional Requirements.** For all project permit applications, if more information is required to determine consistency at any time in review of the application, the department may issue a notice of additional requirements. The ~~applicant notice of additional requirements shall have allow the applicant~~ 180 calendar days from the date of issuance of said notice to submit all required information.

(3) **Permit Inactivity.** Any application that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that ~~The Director or designee may grant a 1-year extension for good cause extend this period for no more than cumulative 24 months~~ upon written request by the applicant, provided the request is submitted before the end of the first 180-day period. A notice of additional requirements is not a final administrative determination. [CES5]

(4) **Burden of Proof.** Permit applicants/proponents have the burden of proving that the proposed development is consistent with all applicable policies and regulations [CES6]

~~(3)~~(5) **Permit conditions.** In granting, revising, or extending a permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the applicable policies and regulations (including the policies and provisions of the Shoreline Management Act for shoreline permits). In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be revoked in accordance with WCC 22.05.150 (Permit Revocation). [CES7]

**22.05.110 Final Decisions.**

- (1) The Director or designee's final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.
- (2) The Hearing Examiner's final decision on all Type III applications per WCC [22.05.020](#) or appeals per 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) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.
  - (c) The Hearing Examiner shall render a final decision within 14 calendar days following the conclusion of all testimony and hearings. Each final decision of the Hearing Examiner shall be in writing and shall include findings and conclusions based on the record to support the decision.
  - (d) No final decision of the Hearing Examiner shall be subject to administrative or quasi-judicial review, except as provided herein.
  - (e) The applicant, any 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](#).

**22.05.120 Recommended Decisions to County Council.**

- (1) For Type IV applications per WCC [22.05.020](#) the Hearing Examiner's recommendations to the County Council may be to grant, grant with conditions or deny an application. The Hearing Examiner's recommendation may include conditions, modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.
- (2) Each recommended decision of the Hearing Examiner for an application identified as a Type IV application per WCC [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.

(6) Any deliberation or decision of the County Council shall be based solely upon consideration of the record established by the Hearing Examiner, the recommendations of the Hearing Examiner and the criteria set forth in County code.

**22.05.130 Permit Review Time Frames.**

(1) The County shall issue a notice of final decision for all permit types, including procedures for administrative appeal and notice that affected property owners may request a change in valuation for property tax purposes, to the applicant, the Whatcom County assessor, and any person who requested notice or submitted substantive comments on the application within 120 calendar days of the date the department determined the application complete, except as provided below:

- (a) The following time periods shall be excluded from the calculation of the number of days elapsed:
- i. Any period during which the applicant has been required by the County to correct plans, perform required studies, or provide additional, required information through a notice of additional requirements, per WCC [22.05.100](#)(3). The period shall be calculated from the date the County issues a notice of additional requirements until the date the County receives all of the requested additional information;
  - ii. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter [43.21C](#) RCW and WCC Title [16](#);
  - iii. The period specified for administrative appeals of project permits as provided in Chapter [2.11](#) WCC;
  - iv. The period specified for administrative appeals of development standards as provided in WCC [12.08.035](#)(I);
  - v. Any period in which the applicant has not met public notification requirements;
  - vi. Any period of time mutually agreed upon in writing by the applicant and the County.
- (b) The time limits established by this section shall not apply to a project permit application that:
- i. Requires an amendment to the Whatcom County comprehensive plan or a development regulation in order to obtain approval.



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- 1 ii. Requires approval of a new fully contained community as provided in RCW [36.70A.350](#), a  
2 master planned resort as provided in RCW [36.70A.360](#), or the siting of an essential public  
3 facility as provided in RCW [36.70A.200](#).
- 4 iii. Is substantially revised by the applicant, including all redesigns of proposed land divisions, in  
5 which case a new time period shall start from the date at which the revised project  
6 application is determined to be complete.
- 7 (c) Additionally, for shoreline permits and exemptions, and pursuant to WAC 173-27-125, the  
8 following special procedures apply to Washington State Department of Transportation (WSDOT)  
9 projects:
- 10 i. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for  
11 local governments.
- 12 ~~ii.~~ Pursuant to RCW 90.58.140, WSDOT projects that address significant public safety risks may  
13 begin twenty-one days after the date of filing if all components of the project will achieve no  
14 net loss of shoreline ecological functions. [CES8]
- 15 ~~(c)(d)~~ The County may extend notice of final decision on the project if the County can  
16 document legitimate reasons for such a delay. In such a case the County shall provide written  
17 notice to the applicant at least 14 calendar days prior to the deadline for the original notice of  
18 final decision. The notice shall include a statement of reasons why the time limits have not been  
19 met and a date of issuance of a notice of final decision.
- 20 (2) If an applicant believes a project permit application has not been acted upon by the County in a  
21 timely manner or otherwise consistent with this chapter, the applicant or authorized representative  
22 may request a meeting with the Director to resolve the issue. Within 14 calendar days ~~of~~ after the  
23 meeting, the Director shall:
- 24 (a) Approve the permit if it is within the Director's authority to do so, provided the approval would  
25 not violate state or County regulations; or
- 26 (b) Deny the permit if it is within the Director's authority to do so; or
- 27 (c) Respond in writing with the department's position, or a mutually acceptable resolution of the  
28 issue, which may include a partial refund of application fees at the Director's discretion.
- 29 (3) Any final order, permit decision or determination issued by Whatcom County shall include a notice  
30 to the applicant of his or her appeal rights per WCC [22.05.160 \(Appeals\)](#).

### 22.05.140 Expiration of Project Permits.

- 31 (1) This section shall apply to non-shoreline project permits and shoreline statements of exemption.  
32 Expiration of shoreline permits shall be subject to the rules of WCC 22.07.080 (Expiration of  
33 Shoreline Permits).

- 34 ~~(1)(2)~~ Project permit approval status shall expire two years from the date of approval except where a  
35 different duration of approval is authorized by Whatcom County Code, or is established by a court  
36 decision or state law, or executed by a development agreement. The decision maker may extend  
37 this period up to one year from the date of original expiration upon written request by the  
38 applicant.  
39



- ~~(2)~~(3) Any complete project permit application for which no information has been submitted in response to the department's notice of additional requirements per WCC [22.05.100](#)(3) shall expire at the end of the time limit established in 22.05.100(3).
- ~~(3)~~(4) For projects that have received a SEPA determination of significance per Chapter [16.08](#) WCC, all underlying project permit applications shall expire when one of the following occurs:
- (a) The applicant has not in good faith maintained a contract with a person or firm to complete the environmental impact statement (EIS) as specified in the scoping document. The applicant is responsible for informing the County of the status of such contract. If there is no notice given to the County, all underlying project permit applications shall expire upon the end date of the contract; or
  - (b) The mutually agreed time frame to complete the draft EIS or final EIS has lapsed.
- (4) Project permits which received preliminary approval or a final decision prior to February 22, 2009, that did not include an expiration time frame in the conditions of approval shall expire on June 16, 2020.

**22.05.150 Permit Revocation-~~Procedure~~.**

- (1) Upon notification by the Director that a substantial violation of the terms and conditions of any previously granted zoning conditional use, shoreline substantial development, or shoreline conditional use permit exists, the Hearing Examiner shall issue a summons as per WCC [2.11.220](#) to the permit holder requiring said permit holder to appear and show cause why revocation of the permit should not be ordered. Failure of the permit holder to respond may be deemed good cause for revocation.
- (2) Upon issuance of a summons as set forth in subsection (1) of this section, the Hearing Examiner shall schedule an open record hearing to review the alleged violations. The summons shall include notice of the hearing and shall be sent to the permit holder and the Director of planning and development services no less than 12 calendar days prior to the date of the hearing. At the hearing the Hearing Examiner shall receive evidence of the alleged violations and the responses of the permit holder, as per the business rules of the Hearing Examiner's office. Testimony shall be limited to that of the division and the permit holder except where additional evidence would be of substantial value in determining if revocation should be ordered. The land use division's evidence may include the testimony of witnesses.
- (3) Upon a showing of violation by a preponderance of the evidence as alleged, the Hearing Examiner may revoke the permit or allow the permit holder a reasonable period of time to cure the violation. If the violation is not cured within the time set by the Hearing Examiner, the permit shall be revoked. Where a time to cure the violation has been set out, no further hearing shall be necessary prior to the revocation. The permit holder shall have the burden of proving that the violation has been cured within the time limit previously set. Such evidence as is necessary to demonstrate that the violation has been cured may be submitted to the Hearing Examiner by either the permit holder or the Director of planning and development services. Any revocation shall be accompanied by written findings of fact and conclusions of law. The permit holder shall be notified of any revocation within 14 calendar days of the revocation.

**22.05.160 Appeals.**

- (1) Any person with standing may appeal any order, final permit decision, or final administrative determination made by the Director or designee in the administration or enforcement of any chapter to the Hearing Examiner, who has the authority to hear and decide such appeals per WCC [2.11.210](#).
  - (a) To be valid, an appeal shall be filed, on a form provided by the department, with the department within 14 calendar days of the issuance of a final permit decision and shall be accompanied by a fee as specified in the Unified Fee Schedule. The written appeal shall include:
    - i. The action or decision being appealed and the date it was issued;
    - ii. Facts demonstrating that the person is adversely affected by the decision;
    - iii. A statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;
    - iv. The specific relief requested; and
    - v. Any other information reasonably necessary to make a decision on the appeal.
  - (b) The Hearing Examiner shall schedule an open record public hearing on the appeal to be held within 60 calendar days following the department's receipt of the application for appeal unless otherwise agreed upon by the County and the appellant.
  - (c) A party who fails to appeal within 14 calendar days is barred from appeal, per Chapter [2.11](#) WCC.
  - (d) The business rules of the Hearing Examiner shall govern appeal procedures. The Hearing Examiner shall have the authority granted in the business rules, and that authority is incorporated herein by reference. See also WCC [2.11.220](#).

~~(2) For non-shoreline permits, The applicant,~~ any person with standing, or any County department may appeal any final decision of the Hearing Examiner to superior court or other body as specified by WCC [22.05.020](#). The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the Hearing Examiner, as provided in RCW [36.70C.040](#).

~~(2)(3)~~ For shoreline permits, after the issuance of the appeal determination, a party with standing may appeal to the Shorelines Hearings Board a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use pursuant to RCW 90.58.180 within 21 days of the "date of filing" as defined in this program and RCW 90.58.140(6). [AP9]The appeal to the Shorelines Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C WAC. Appeals of a decision of the Department of Ecology shall be filed in accordance with the provisions of Chapter 461-08C WAC. [CES10]

**22.05.170 Annual Report.**

Staff shall prepare an annual report on the implementation of this chapter and submit it to the Council.

**22.05.180 Interpretation, Conflict and Severability.**

- (1) **Interpret to Protect Public Welfare.** In the event of any discrepancies between the requirements established herein and those contained in any other applicable regulation, code or program, the regulations which are more protective of the public health, safety, environment and welfare shall apply.

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- 1 (2) **Severability.** The provisions of this chapter are severable. If a section, sentence, clause, or phrase of
- 2 this title is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect
- 3 the remaining portions of this chapter.

## Chapter ~~23.60~~22.07 Additional Requirements for Shoreline Permits and Exemptions<sup>[CES11]</sup>

### ~~23.60.005~~22.07.010 General Requirements.

- A. In addition to the requirements of WCC Chapter 22.05 (Project Permits), shoreline permits shall be subject to the provisions of this chapter.
- B. To be authorized, all shoreline activities, uses, and developments shall be planned and carried out in a manner that is consistent with this program and the policy of the Shoreline Management Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.
- C. All final shoreline substantial development, variance, and conditional use permit decisions or recommendations shall be filed with the Department of Ecology pursuant to WCC 22.07.060.
- D. A development or use that is listed as a shoreline conditional use pursuant to this program or is an unlisted use must obtain a shoreline conditional use permit even if the development or use does not require a substantial development permit.
- E. When a development, use, or activity is proposed that does not comply with the bulk, dimensional and/or performance standards of the program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.
- F. All permits or statements of exemption issued for development, use, or activity within shoreline jurisdiction shall include written findings prepared by the Director, including compliance with bulk and dimensional standards and policies and regulations of this program. The Director may attach conditions to the approval to project permits as necessary to assure consistency of the project with the Act and the program. <sup>[CES12]</sup>
- G. Pursuant to WAC 173-27-044, requirements to obtain a substantial development permit, shoreline conditional use permit, shoreline variance, letter of exemption, or other review conducted by a local government to implement the Shoreline Management Program do not apply to:
  1. **Remedial Action.** Any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the Department of Ecology (Ecology) when it conducts a remedial action under chapter 70.105D RCW. Ecology must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the Ecology-conducted remedial action, through the procedures developed by Ecology pursuant to RCW 70.105D.090;
  2. **Boatyard Facilities.** Any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit. Ecology must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard stormwater treatment facilities; or

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3. Washington State Department of Transportation (WSDOT) facility maintenance and safety improvements. Any Washington State Department of Transportation (WSDOT) projects or activities that meet the conditions of RCW 90.58.356.[CES13]

A.H. All applications for shoreline substantial development permits or permit revisions shall be submitted to the Department of Ecology upon a final decision by local government pursuant to WAC 173-27-130. "Final decision by local government" shall mean the order of ruling, whether it be an approval or denial, that is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.

### **23.60.22.07.020 Exemptions from Shoreline Substantial Development Permits**~~process.~~

#### **A. 23.60.021 Application and interpretation.**

1. An exemption from the substantial development permit process is not an exemption from compliance with the Act, ~~or~~ this program, or from any other regulatory requirements. To be authorized, all uses, ~~and~~ developments, and activities must be consistent with the policies and regulatory provisions of this program and the Act. A statement of exemption shall be obtained for exempt activities consistent with the below provisions ~~of WCC 23.60.020~~.
2. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
3. The burden of proof that a development, ~~or use,~~ or activity is exempt is on the applicant/proponent of the exempt development action.
4. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.

~~0. A development or use that is listed as a conditional use pursuant to this program or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.~~

~~0. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.~~

~~0. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the administrator, including compliance with bulk and dimensional standards and policies and regulations of this program. The administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the program.~~[CES14]

#### **D. 23.60.022 Exemptions listed.**

~~5.B. The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit. A statement of exemption, as provided for in WCC 23.60.023 of this program shall be required for those activities listed in WCC 23.60.023(B) and (C). Certain developments, uses, or activities are exempt from the substantial development permit requirements of the Act and this program. These developments, uses, or activities are those set~~

forth in WAC 173-27-040 (or as amended), and do not meet the definition of substantial development under RCW 90.58.030(3)(e). A summary of exempt developments is listed below, the application of which shall be guided by WAC 173-27-040 (or as amended).

~~6.1.~~ Any development of which the total cost or fair market value, whichever is higher, does not exceed \$~~5,7187,047~~~~[CES15]~~, or as amended by the state Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

~~7.2.~~ Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or the environment.

~~8.3.~~ Construction of the normal protective bulkhead common to single-family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used for backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife.

~~9.4.~~ Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this program. Emergency construction does not include development of new permanent protective

structures where none previously existed. Where new protective structures are deemed by the ~~administrator~~Director to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC or this program, shall be obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

~~10.5.~~ Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels; provided, that this exemption shall not apply to agricultural activities proposed on land not in agricultural use on December 17, 2003; and further provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, or alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

~~11.6.~~ Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.

~~12.7.~~ Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level and that meets all requirements of the state agency or local government having jurisdiction thereof. Single-family residence means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance as defined in Chapter 23.60 WCC 23.110.010.

~~13.8.~~ Construction of a dock, including a shared moorage, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single-family or multifamily residence. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. The private dock exemption applies if either:

a. In salt waters, the fair market value of the dock does not exceed \$2,500; or

b. In fresh waters the fair market value of the dock does not exceed:

i. \$20,000 for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced

ii. \$10,000 for all other docks constructed in fresh waters,



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~~but-However,~~ if subsequent construction ~~having a fair market value exceeding \$2,500~~ occurs within five years of the completion of the prior construction, ~~and the combined fair market value of the subsequent and prior construction exceeds the amount specified above,~~ the subsequent construction shall be considered a substantial development for the purpose of this program. For the purpose of this section, saltwater shall include the tidally influenced marine and estuarine water areas of the state including the ~~Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia, and Puget Sound~~ ~~local marine waters~~ and all associated bays, inlets, and estuaries. [CES16]

~~14-9.~~ Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters including return flow and artificially stored ground water for the irrigation of lands; provided, that this exemption shall not apply to construction of new irrigation facilities proposed after December 17, 2003.

~~15-10.~~ The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.

~~16-11.~~ Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on June 4, 1975, that were created, developed or utilized, primarily as a part of an agricultural drainage or diking system.

~~17-12.~~ Any project with a certification from the governor pursuant to Chapter 80.50 RCW.

~~18-13.~~ Site exploration and investigation activities that are prerequisite to preparation of a development application for authorization under this program, if:

~~i-a.~~ The activity does not interfere with the normal public use of surface waters;

~~ii-b.~~ The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;

~~iii-c.~~ The activity does not involve the installation of any structure and, upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;

~~iv-d.~~ A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the

~~administrator~~ Director to ensure that the site is restored to preexisting conditions; and

~~v-e.~~ The activity is not subject to the permit requirements of RCW 90.58.550.

~~19-14.~~ The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that is recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW.

~~20-15.~~ Watershed restoration projects as defined in Chapter ~~23.60 23-110~~ WCC and ~~WAC 193-27-040(2)(o)~~ by RCW 89.08.460. The ~~administrator~~ Director shall review the projects for consistency with the program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving a complete application form from the applicant/proponent. No fee may be charged for accepting and processing applications for watershed restoration projects as defined in Chapter ~~23.60 23-110~~ WCC (Definitions).

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~~21-16.~~ A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, including restoring native kelp, eelgrass beds and native oysters, [CES17] when all of the following apply:

- ~~i.a.~~ The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
- ~~ii.b.~~ The project received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and
- ~~c.~~ The ~~administrator~~Director has determined that the project is consistent with this program. The ~~administrator~~Director shall make such determination in a timely manner and provide it by letter to the project proponent.

~~22-17.~~ The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 or to otherwise provide physical access to the structure by individuals with disabilities.

### ~~B-C. 23-60.023~~ Statements of Exemption.

~~1.~~ Statements of Exemption are considered Type I applications pursuant to WCC 22.05.020 (Project Permit Processing Table).

~~1-2.~~ The ~~administrator~~Director is hereby authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit ~~requirement process~~ for ~~developments, uses, or activities and developments~~ within shorelines that are specifically listed in ~~WCC 23-60.022~~in subsection (B). ~~Such statements shall be applied for on forms provided by the administrator. The statement shall be in writing and shall indicate the specific exemption of this program that is being applied to the development, and shall provide a summary of the administrator's analysis of the consistency of the project with this program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to WCC 23-60.150.~~ [CES18]

~~2-3.~~ Exempt activities ~~related to any of the following~~ shall not be conducted until a statement of exemption has been obtained from the ~~administrator~~Director: ~~dredging, flood control works and instream structures, development within an archaeological or historic site, clearing and ground disturbing activities such as landfill or excavation, dock, shore stabilization, freestanding signs, or any development within an aquatic or natural shoreline designation; provided, that no separate written statement of exemption is required for the construction of a single family residence when a county building permit application has been reviewed and approved by the administrator; provided further, that no statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d) and that other project permits (e.g., building permits), may serve as a statement of exemption when they contain a statement of review and compliance with the Shoreline Management Program.~~

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~~3.4. No statement of exemption shall be required for other uses or developments exempt pursuant to WCC 23.60.022 unless the administrator has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption or the administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.~~<sup>[CES19]</sup> Whether or not a written statement of exemption is issued, all permits issued within the area of shorelines shall include a record of review actions prepared by the ~~administrator~~ Director, including compliance with bulk and dimensional standards and policies and regulations of this program. ~~The administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this program.~~<sup>[CES20]</sup>

4.5. A notice of decision for shoreline statements of exemption shall be provided to the applicant/proponent and any party of record. Such notices shall also be filed with the Department of Ecology, pursuant to the requirements of WAC 173-27-050 when the project is subject to one or more of the following federal permitting requirements:

- a. A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899. (The provisions of Section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or
- b. A Section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions of Section 404 of the Federal Water Pollution Control Act generally apply to any project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)

~~Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-27-050.~~<sup>[CES21]</sup>

### **22.07.030 23.60.010 Shoreline Substantial Development Permits criteria.**

A. ~~A shoreline substantial development permit shall be required for all proposed uses, development, and activities within the shoreline jurisdiction unless the proposal is specifically exempt pursuant to WCC 22.07.020 (Exemptions).~~<sup>[CES22]</sup>

B. ~~All shoreline substantial development permits are considered Type II permits (see WCC 22.05.020, Project Permit Processing Table), except those the Director has determined meets the following criteria, in which case it shall be considered a Type III permit:~~

A. ~~The administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than 15 days after the minimum public comment period provided by WCC 23.60.080. An open record public hearing shall be required for all of the following:~~

~~2.1. The proposal has a cost or market value in excess of \$1500,000~~<sup>[CES23]</sup>, ~~except for single-family residences, agriculture, and commercial forestry, and ecological restoration projects;~~ or

~~3. The proposal would result in development of an area larger than five acres; or~~<sup>[CES24]</sup>

~~4. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or~~<sup>[CES25]</sup><sup>[CES26]</sup>

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~~5. The administrator has reason to believe the proposal would be controversial based on public response to the notice of receipt of application and other information; or~~ [CES27]

~~6.2.~~ The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; ~~or.~~

~~7.3.~~ The proposal requires a major variance and/or conditional use approval pursuant to this program; or

~~0. The use or development requires an open record public hearing for other Whatcom County approvals or permits.~~ [CES28]

~~C. A substantial development permit shall be required for all proposed uses, and development, and activities within the of shorelines jurisdiction unless the proposal is specifically exempt pursuant to WCC 23.60.0220.~~ [CES29]

~~D.C.~~ In order to be approved, the decision maker must find that the proposal is consistent with the Shoreline Management Act and the Shoreline Management Program. ~~following criteria:~~

~~0. All regulations of this program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under WCC 23.60.030.~~

~~0. All policies of this program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.~~

~~0. For pProjects located on shorelines of statewide significance, the policies of Chapter 23.40 WCC shall also be adhered to.~~

~~H.D.~~ In the granting of all shoreline substantial development permits, ~~consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.~~ [CES30]

### **22.07.040 23.60.040 Shoreline Conditional Use Permits criteria.**

A. The purpose of a shoreline conditional use permit is to allow greater flexibility in administering the use regulations of this program in a manner consistent with the policy of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the county or the Department of Ecology to control any undesirable effects of the proposed use.

B. Uses specifically classified or set forth in this program as shoreline conditional uses and unlisted uses may be authorized, provided the applicant/proponent can demonstrate all of the following:

1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.

2. That the proposed use will not interfere with normal public use of public shorelines.

3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.

4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.

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5. That the public interest suffers no substantial detrimental effect.

C. All shoreline conditional use permits are considered Type III permits (see WCC 22.05.020, Project Permit Processing Table), except those for single-family residential development, uses, or activities, which shall be processed as a Type II permit.

~~C.D.~~ Other uses not specifically classified or set forth in this program, including the ~~expansion or~~ resumption of a nonconforming use pursuant to WCC 23.50.0170 (Nonconforming Uses), may be authorized as shoreline conditional uses, provided the applicant/proponent can demonstrate that the proposal will satisfy the criteria set forth in subsection (B) of this section, and that the use clearly requires a specific site location on the shoreline not provided for under the program, and extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this program. Uses that are prohibited cannot be authorized by a shoreline conditional use permit.

~~D.E.~~ In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the shoreline conditional uses and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.

~~Permits and/or variances applied for or approved under county zoning or subdivision code requirements shall not be construed as shoreline variances under this program.~~ [CES31]

### ~~23.60.030~~ 22.07.050 Shoreline Variances ~~permit criteria.~~

A. The purpose of a shoreline variance is to grant relief to specific bulk or dimensional requirements set forth in ~~this the Shoreline Management~~ Program and any associated standards appended to this program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. Use restrictions may not be varied.

B. Shoreline variances are considered Type III applications pursuant to WCC 22.05.020 (Project Permit Processing Table).

~~B.C.~~ Shoreline ~~V~~variances will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

~~C. Proposals that would otherwise qualify as a reasonable use pursuant to WCC 16.16.270(A) shall require a shoreline variance and shall meet the variance criteria in this section.~~

D. ~~Shoreline variances for development and/or uses that will be located landward of the ordinary high water mark (OHWM) and/or landward of any wetland may be authorized provided the applicant can demonstrate all of the following~~ Variances may be authorized, provided the applicant/proponent can demonstrate all of the following: [CES32]

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1. That the strict application of the bulk or dimensional criteria set forth in ~~this program~~ the Shoreline Management Program precludes or significantly interferes with reasonable permitted use of the property;
  2. That the hardship described in subsection (A1) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this program, and not, for example, from deed restrictions or the applicant's/proponent's own actions;
  3. That the design of the project ~~will be~~ is compatible with other ~~permitted authorized uses activities within~~ the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse ~~effects on adjacent properties or impacts to~~ the shoreline environment;
  4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;
  5. That the public interest will suffer no substantial detrimental effect;
  6. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and
  7. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.
- E. ~~Shoreline Variances permits~~ for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), ~~as defined herein~~, or within any wetland ~~as defined herein~~, may be authorized, provided the applicant can demonstrate all of the following:
- ~~1. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes all reasonable use of the property; and~~ [CES33]
  - 2.1. That the proposal is consistent with the criteria established under subsections (D) ~~(1) through (7)~~ of this section; and
  - 3.2. That the public rights of navigation and use of the shorelines will not be adversely affected.
- ~~Other factors that may be considered in the review of variance requests include the conservation of valuable natural resources and the protection of views from nearby roads, surrounding properties and public areas; provided, the criteria of subsection D of this section are first met. In addition, variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted;~~
- ~~where there are no likely detrimental effects to existing or future users, other features, or shoreline ecological functions and/or processes, and~~
- ~~where reasonable alternatives of equal or greater consistency with this program are not available.~~
- ~~0. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area.~~ [AP34] [CES35] [CES36]
- G.F. In the granting of all shoreline variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policy of RCW 90.58.020 and should



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not produce significant adverse effects to the shoreline ecological functions and processes or other users.

~~Permits and/or variances applied for or approved under other county codes such as WCC Title 20 or 21 shall not be construed as shoreline permits under this program. [CES37]~~

### ~~23.60.050 Minimum application requirements.~~

~~Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this program. [RCE38]~~

~~A complete application for a substantial development, conditional use, or variance permit shall contain all materials required in the Department's administrative manual; provided, that the administrator may vary or waive these requirements as provided in the manual and may vary or waive these requirements on a case-by-case basis. The administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements. [CES39]~~

### ~~23.60.060 Pre application conference.~~ [CES40]

~~Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision.~~

~~The applicant shall contact the County to schedule a pre-application conference, which shall be held prior to filing the application; provided, that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single family residence.~~

### ~~23.60.070 Fees.~~ [CES41]

~~A. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required reviews and/or approvals shall be paid to the county at the time of application in accordance with the Whatcom County Unified Fee Schedule in effect at that time and Chapter 22.05 WCC.~~

~~A. When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced pursuant to WCC 22.25.030:~~

~~0. Preliminary plat application.~~

~~0. Rezone application.~~

~~0. Major development permit.~~

~~0. Planned unit development.~~

~~0. Binding site plan.~~

~~A. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.~~



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~~A. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the county. The cost shall be in accordance with the adopted fee schedule.~~

~~A. If an application is withdrawn within 30 days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than 50 percent of the shoreline fees paid may be granted by the administrator. This amount may be reduced where staff time, public notice and other costs exceed 50 percent of the fees paid.~~

### **23.60.080 Notice of application.**

~~Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application the County shall issue a notice of application for a proposed land use action in the manner set forth in WCC 22.05.070. [MD42]~~

~~(8) The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged. [RCE43]~~

### **23.60.090 Permit application review.**

~~All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this program that are in effect at the time of application. [CES44]~~

~~To facilitate review of an application the decision maker shall consider any or all of the following:~~

~~0. The application and attached information;~~

~~0. The SEPA checklist, threshold determination, environmental impact statement, or other environmental studies and/or documentation;~~

~~0. Written comments from interested persons;~~

~~0. Information and recommendations from any public agency and from the administrator or director in cases where the administrator or director is not the decision maker;~~

~~0. Information or comment presented at a public hearing, if held, on the application; and~~

~~0. The policy and provisions of the Act and this program including the criteria enumerated in WCC 23.60.010, 23.60.030 and 23.60.040, as applicable. [CES45]~~

~~The decision maker shall process project permit applications for shoreline substantial development permits, shoreline variance, and shoreline conditional use permits in compliance with the provisions of Chapter 22.05 WCC.~~

~~The decision maker shall process project permit applications for shoreline statements of exemption in accordance with the provisions of Chapter 22.05 WCC and WCC 23.60.023(A). [CES46]~~

~~Any application for a shoreline permit or approval that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.~~

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1 — If a shoreline permit is denied, no reapplication for the same or essentially similar development may  
2 be made until one year from the date of denial. [CES47]

### 3 ~~23.60.100 Consolidated Permit Review.~~ [CES48]

- 4 . Whenever an application for a project permit under the program requires a project permit or  
5 approval under another County permit authority, such as zoning or subdivision, the shoreline  
6 project permit application, time requirements, and notice provisions for processing the shoreline  
7 permit shall apply, in addition to those of other regulatory programs.  
8 — provisions of Chapter 22.05 WCC shall apply to the consolidated application, review, and approval of  
9 applications that require an open record hearing.  
10 . Any shoreline use or development that is subject to other approvals or permits that requires an  
11 open record hearing under another permit authority, such as zoning or subdivision, shall be subject  
12 to consolidated review and the decision maker designated for the open record hearing shall be the  
13 decision maker for the consolidated review.

### 14 ~~23.60.110 State Environmental Policy Act (SEPA) compliance.~~

- 15 . Whenever an application for shoreline substantial development permit, shoreline variance,  
16 shoreline conditional use permit, or statement of exemption is subject to the rules and regulations  
17 of SEPA (Chapter 43.21C RCW), the review requirements of SEPA, including time limitations, shall  
18 apply, where applicable.  
19 . Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA  
20 shall be subject to environmental review by the responsible official of Whatcom County pursuant to  
21 the State Environmental Policy Act (Chapter 197-11 WAC).  
22 . As part of SEPA review, the Responsible Official may require additional information regarding the  
23 proposed development in accordance with Chapter 197-11 WAC.  
24 . Failure of the applicant/proponent to submit sufficient information for a threshold determination to  
25 be made shall be grounds for the Responsible Official to determine the application incomplete. [RCE49]

### 26 ~~23.60.120 Burden of proof.~~

27 Permit applicants/proponents have the burden of proving that the proposed development is consistent  
28 with the criteria set forth in the Act and this program. [CES50]

### 29 ~~23.60.130 Public Hearings.~~ [CES51]

- 30 . An open record public hearing on shoreline permit applications shall be held in accordance with the  
31 provisions of Chapter 22.05 WCC, unless a continuance is granted pursuant to the rules and  
32 procedures of the Hearing Examiner or other hearing body and subject to time requirements for  
33 compliance with the State Environmental Policy Act.  
34 . Repealed by Ord. 2018-032.  
35 . Repealed by Ord. 2018-032.  
36 . Public hearing requirements for permit appeals shall be processed according to WCC 23.60.150.

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### ~~23.60.140 Permit conditions.~~ [CES52]

~~In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this program as well as the supplemental authority provided in Chapter 43.21C RCW as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with the Act and this program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with WCC 23.60.180.~~

### 22.07.060 Filing Shoreline Permits with the Department of Ecology

- A. After all local permit administrative appeals or reconsideration periods are complete, the County will deliver the final permit using return receipt requested mail or email to the Department of Ecology regional office and the attorney general.
- B. Proposals that require both shoreline conditional use permits and/or shoreline variances shall be delivered simultaneously with any shoreline permit for the project.
- C. The permit and documentation of final local decision will be delivered together the following information: [AP53]
1. A copy of the complete application;
  2. Findings and conclusions that establish the basis for the decision, including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations, and the consistency of the project with appropriate review criteria for the type of permit(s);
  3. The final decision of the local government;
  4. A completed permit data sheet (WAC 173-27-990, Appendix A); and
  5. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.
  6. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.
- F. Development pursuant to a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall not begin and shall not be authorized until 21 days after the "date of filing," as defined in this program Title 23 (Shoreline Management Program) and RCW 90.58.140(6), or until all review proceedings before the Shorelines Hearings Board have terminated. [AP54] [CES55]
- G. Upon approval of a permit revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.

### ~~23.60.150 Notice of Decision, Reconsideration and Appeal.~~

~~—A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of~~

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- 1 record in accordance with the review procedures of Chapter 22.05 WCC, and at least 10 days prior to  
2 filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed  
3 with the Department of Ecology shall contain the following information: [CES56]  
4 ~~After all local permit administrative appeals or reconsideration periods are complete and the permit~~  
5 ~~documents are amended to incorporate any resulting changes, the County will mail or hand deliver~~  
6 ~~the permit using return receipt requested mail to the Department of Ecology regional office and the~~  
7 ~~Office of the Attorney General.~~ [CES57]  
8 ~~Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously~~  
9 ~~with any Substantial Development Permit shoreline permit for the project.~~  
10 ~~The permit and documentation of final local decision will be mailed together the following~~  
11 ~~information:~~  
12 ~~— A copy of the complete application;~~  
13 ~~a. Findings and conclusions that establish the basis for the decision including but not limited to~~  
14 ~~identification of shoreline environment designation(s), applicable program policies and~~  
15 ~~regulations and the consistency of the project with appropriate review criteria for the type of~~  
16 ~~permit(s);~~  
17 ~~a. The final decision of the local government;~~  
18 ~~a. A completed permit data sheet (see Appendix A of this title); and~~  
19 ~~a. Where applicable, local government shall also file the applicable documents required by SEPA,~~  
20 ~~or in lieu thereof, a statement summarizing the actions and dates of such actions taken under~~  
21 ~~Chapter 43.21C RCW.~~  
22 ~~a. When the project has been modified in the course of the local review process, plans or text shall~~  
23 ~~be provided that clearly indicate the final approved plan.~~  
24 ~~Notice of decision for shoreline statements of exemption shall comply with WCC 22.05.110(1) and~~  
25 ~~23.60.023(E).~~ [CES58]  
26 ~~Any person with standing may appeal any order, final permit decision, or final administrative~~  
27 ~~determination made by the director or designee in the administration of this program.~~  
28 ~~Administrative Appeal Procedures.~~  
29 ~~Administrative appeals are processed in accordance with WCC 22.05.160.~~  
30 ~~After the issuance of the appeal determination, a party with standing may appeal to the~~  
31 ~~Shorelines Hearings Board of a decision on a shoreline substantial development permit,~~  
32 ~~shoreline variance, or shoreline conditional use pursuant to RCW 90.58.180 within 21 days of~~  
33 ~~the "date of filing," as defined in this program and RCW 90.58.140(6). The appeal to the~~  
34 ~~Shorelines Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C~~  
35 ~~WAC.~~ [CES59]  
36 ~~This program shall only establish standing for parties of record for shoreline substantial~~  
37 ~~development permits, shoreline variances, or shoreline conditional use permits. Standing as a party~~  
38 ~~of record is not established by this program for exempt actions pursuant to WCC 23.60.022;~~  
39 ~~provided, that in such cases standing may be established through an associated permit process that~~  
40 ~~provides for public notice and provisions for parties of record.~~  
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1 B. — The applicant/proponent or any party of record may request reconsideration of any final action  
2 by the decision maker within 10 days of notice of the decision. Such requests shall be filed on  
3 forms supplied by the county. Grounds for reconsideration must be based upon the content of  
4 the written decision. The decision maker is not required to provide a written response or modify  
5 his/her original decision. He/she may initiate such action as he/she deems appropriate. The  
6 procedure of reconsideration shall not preempt or extend the appeal period for a permit or  
7 affect the date of filing with the Department of Ecology, unless the applicant/proponent  
8 requests the abeyance of said permit appeal period in writing within 10 days of a final action.

9 B. — Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial  
10 development permit, shoreline variance or shoreline conditional use permit may be filed by the  
11 applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing  
12 the final decision by Whatcom County with the Department of Ecology.

13 ~~Whatcom County shall consider an appeal of a decision on a shoreline substantial development~~  
14 ~~permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives~~  
15 ~~his/her right to a single appeal to the Shorelines Hearings Board. Such waivers shall be filed with the~~  
16 ~~county in writing concurrent with a notice of appeal within 10 days of a final action. When an~~  
17 ~~applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in~~  
18 ~~accordance with the appeal procedures of subsection H of this section and shall be an open record~~  
19 ~~hearing before the hearing examiner. [AP60]~~

20 ~~B. With the exception of a shoreline substantial development permit, aAny order, requirement or~~  
21 ~~administrative permit decision, or determination by the administrator based on a provision of this~~  
22 ~~program, including the issuance of a statement of exemption or denial, except a shoreline~~  
23 ~~substantial development permit, may be the subject of an appeal to the office of the hearing~~  
24 ~~examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal~~  
25 ~~procedures of subsection H of this section and shall be an open record hearing before the hearing~~  
26 ~~examiner. [MD61]~~

27 ~~B. Appeal Procedures.~~

28 ~~0. Appeals shall be filed on forms supplied by the county within 10 calendar days of the issuance of~~  
29 ~~a substantial development permit, shoreline variance or shoreline conditional use permit and~~  
30 ~~within 20 calendar days of any other action of the administrator being appealed.~~

31 ~~0. A public hearing on the appeal shall be held within 45 working days following receipt of the~~  
32 ~~application for appeal.~~

33 ~~0. Legal notice of the public hearing shall be made by mailing notice of time, date, and location of~~  
34 ~~the hearing to the appellant, any parties of record, the Washington Department of Ecology, and~~  
35 ~~the administrator at least 15 days prior to the hearing.~~

36 ~~0. A decision by the hearing examiner shall be mailed within 10 working days of the public hearing~~  
37 ~~to all parties of record unless otherwise mutually agreed to by all parties to the appeal.~~

38 ~~0. Any party of record may request a closed record review of the hearing examiner's decision~~  
39 ~~issued under subsection (H)(4) of this section by the county council. Such an appeal shall be filed~~  
40 ~~with the county council on forms supplied by the county within 10 calendar days of the written~~  
41 ~~decision. If appeal is made to the county council, notice of appeal shall be provided to all parties~~

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of record at least 15 days prior to consideration by the county council. The council shall meet to review the hearing examiner's decision within 21 days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner. ~~The time period for appeal to the Shorelines Hearings Board shall begin after the decision maker has filed the final county decision with the Department of Ecology.~~

### **23.60.160 Initiation of development.** <sup>[CES62]</sup>

~~Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until 21 days after the "date of filing" or until all review proceedings before the Shorelines Hearings Board have terminated.~~ <sup>[AP63]</sup> <sup>[CES64]</sup>

#### **Date of Filing.**

0. ~~"Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.~~

0. ~~The "date of filing" for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the county and the applicant/proponent.~~ <sup>[AP65]</sup>

### **22.07.07023.60.170 Revisions to Shoreline Permits.**

A. A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this program, or the Act. ~~Changes that are not substantive in effect do not require a revision.~~

B. An application for a revision to a shoreline permit shall be submitted to the ~~administrator~~ Director. The application shall include detailed plans and text describing the proposed changes. The County decision maker that approved the original permit may approve the request upon a finding that the proposed changes are within the scope and intent of the original approval, and are consistent with this program and the Act.

C. "Within the scope and intent of the original approval" means all of the following <sup>[RCE66]</sup>:

1. No additional over-water construction is involved except that a pier, dock, or floating structure may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less over that approved under the original approval;

2. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; ~~provided, that the revised approval does not authorize development to exceed the height, impervious surface, setbacks, or any other requirements of this program except as authorized under a variance granted for the original development;~~

3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;

~~3.4.~~ Additional or revised mitigation and/or landscaping is consistent with any conditions attached to the original approval and with this program;

~~4.5.~~ The use authorized pursuant to the original approval is not changed; and



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5-6. The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.

D. Revisions to shoreline permits ~~and statements of exemption~~ may be authorized after the original authorization has expired pursuant to WCC 22.07.080 (Expiration of Shoreline Permits). Revisions made after the expiration of the original approval shall be limited to changes that are meet the definition of a shoreline exemption and are consistent with this program. ~~and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required.~~

~~D-E.~~ The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval; provided the revision approval shall expire within 1 year from the date of approval, tolling of expiration does not apply to revision approvals.

~~E-F.~~ A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval as set forth in subsection (C) of this section.

G. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the Department of Ecology pursuant to WCC 22.07.060 (Filing Shoreline Permits with the Department of Ecology). In addition, the County shall notify parties of record of their action.

~~F. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.~~

H. If the proposed revision is to a development for which a shoreline conditional use or shoreline variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection.

I. Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.

~~G-A. Appeals of a decision of the Department shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~

### ~~23.60.180 Rescission and modification~~[CES67]

~~Any shoreline permit granted pursuant to this program may be rescinded or modified upon a finding by the Hearing Examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. If the results of a monitoring plan show a development to be out of compliance with specific performance standards, such results may be the basis for findings of noncompliance.~~



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1 ~~A. The Administrator shall initiate rescission or modification proceedings by issuing written notice of~~  
2 ~~noncompliance to the permittee or his/her successors and notifying parties of record at the original~~  
3 ~~address provided in application review files.~~

4 ~~A. The Hearing Examiner shall hold a public hearing no sooner than 15 days following such issuance of~~  
5 ~~notice, unless the applicant/proponent files notice of intent to comply and the Administrator grants~~  
6 ~~a specific schedule for compliance. If compliance is not achieved, the Administrator shall schedule a~~  
7 ~~public hearing before the Hearing Examiner. Upon considering written and oral testimony taken at~~  
8 ~~the hearing, the Hearing Examiner shall make a decision in accordance with the above procedure for~~  
9 ~~shoreline permits.~~

10 ~~A. These provisions do not limit the Administrator, the Prosecuting Attorney, the Department of~~  
11 ~~Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies~~  
12 ~~provided by law, or from abatement or other remedies.~~

### 13 **22.07.08023.60.190 Expiration of Shoreline Permits.**

14 A. Expiration of shoreline statements of exemptions shall be in accordance with WCC 22.05.140  
15 (Expiration of Project Permits).

16 A.B. The following time requirements shall apply to all substantial development permits and to any  
17 development authorized pursuant to a shoreline variance, or shoreline conditional use permit, or  
18 statement of exemption:

19 1. Construction shall be commenced or, where no construction is involved, the use or activity shall  
20 be commenced, within two years of the effective date of a shoreline permit or exemption or the  
21 permit shall expire; provided, that the Hearing Examiner or ~~Administrator~~Director, as  
22 appropriate, may authorize a single extension for a period of not more than one year based on a  
23 showing of good cause if a request for extension has been filed with Planning and Development  
24 Services with the hearing examiner or administrator as appropriate before the expiration date of  
25 the shoreline permit or exemption, and The Director shall provide notice of the proposed  
26 extension is given to parties of record and the Department of Ecology.

27 2. Authorization to conduct development activities shall terminate five years after the effective  
28 date of a shoreline permit or exemption; provided, that the Hearing Examiner or  
29 ~~Administrator~~Director, as appropriate, may authorize a single extension for a period of not more  
30 than one year based on a showing of good cause, if a request for extension has been filed with  
31 Planning and Development Services with the hearing examiner or administrator, as appropriate,  
32 before the expiration date of the shoreline permit or exemption and The Director shall provide  
33 notice of the proposed extension is given to parties of record and the Department of Ecology.

34 3. The effective date of a shoreline permit or exemption shall be the date of filling as provided in  
35 RCW 90.58.140(6).

36 —Tolling. The effective date does not include the time during which a development, use, or  
37 activity was not actually pursued due to the need to obtain other government permits and  
38 approvals for which the issued shoreline permit authorizes, including the pendency of all  
39 reasonably related administrative appeals or legal actions on any such permits or approval. Last  
40 action required on the shoreline permit or exemption and all other government permits and

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- 1 ~~approvals that authorize the development to proceed, including administrative and legal actions~~  
2 ~~on any such permit or approval.~~
- 3 4. The applicant/ ~~proponent~~ shall be responsible for informing the County ~~of the~~ of such pendency.  
4 ~~of other permit applications filed with agencies other than the County and of any related~~  
5 ~~administrative and legal actions on any permit or approval.~~
- 6 ~~0. If no notice of the pendency of other permits or approvals is given to the County prior to the~~  
7 ~~date of the last action by the County to grant County permits and approvals necessary to~~  
8 ~~authorize the development to proceed, including administrative and legal actions of the county,~~  
9 ~~and actions under other County development regulations, the date of the last action by the~~  
10 ~~County shall be the effective date.~~
- 11 C. Notwithstanding the time limits established in subsections ~~(AB)(1) and (2)~~ of this section, upon a  
12 finding of good cause based on the requirements and circumstances of the proposed project and  
13 consistent with the policies and provisions of this program and the Act, the Hearing Examiner or  
14 ~~Administrator~~ Director, as appropriate, may set different time limits for a particular substantial  
15 development permit or exemption as part of the action to approve the permit or exemption. The  
16 Hearing Examiner may also set different time limits on specific shoreline conditional use permits or  
17 shoreline variances with the approval of the Department of Ecology. The different time limits may  
18 be longer or shorter than those established in subsections (A) ~~(1) and (2)~~ of this section but shall be  
19 appropriate to the shoreline development or use under review. “Good cause based on the  
20 requirements and circumstances of the proposed project” shall mean that the time limits  
21 established for the project are reasonably related to the time actually necessary to perform the  
22 development on the ground and complete the project that is being permitted, and/or are necessary  
23 for the protection of shoreline resources.
- 24 D. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or  
25 use of a structure or prior to the commencement of a nonstructural activity; provided, that different  
26 time limits for compliance may be specified in the conditions of approval as appropriate.
- 27 E. The Hearing Examiner or ~~Administrator~~ Director, as appropriate, shall notify the Department of  
28 Ecology in writing of any change to the effective date of a permit, ~~authorized by subsections A~~  
29 ~~through C of this section~~, with an explanation of the basis for approval of the change. Any change to  
30 the time limits of a permit other than those authorized ~~by the sections of this program previously~~  
31 ~~listed~~ shall require a new permit application.
- 32 E.F. All shoreline permits shall expire 8 years from the date of filing unless a different time period is  
33 granted by the outcome of an administrative appeal or legal action. [CES68]

1

2

# Shoreline Management Program Update Proposed Amendments to WCC Chapter 16.16 Critical Areas Planning Commission Approved Draft



Planning and Development Services  
Whatcom County  
5/13/2021

# Chapter 16.16

## CRITICAL AREAS

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## Article 1. Purpose and Intent

### 16.16.100 Purpose and Intent.

- A. The purposes of this chapter ~~is~~are to ~~help achieve~~~~carry out~~ the goals of the Whatcom County comprehensive plan and the State of Washington Growth Management Act (Chapter [36.70A](#) RCW) and its implementing rules by designating and classifying critical areas, and by protecting the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property. Critical areas regulated under this chapter include geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and habitat conservation areas. This chapter seeks to maintain harmonious relationships between human activity and the natural environment.
- B. The Growth Management Act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities. The Washington Department of Commerce has adopted minimum guidelines in Chapter [365-190](#)WAC detailing the process involved in establishing a program to protect critical areas. “Protection” in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety. Critical areas that must be protected include the following areas and ecosystems:
1. Wetlands;
  2. Areas of critical recharging effect on aquifers used for potable water;
  3. Fish and wildlife habitat conservation areas;
  4. Frequently flooded areas; and
  5. Geologically hazardous areas.
- C. By regulating development and minimizing critical area alterations, this chapter seeks to:
1. Reduce harm due to landslides, earthquakes, erosion, volcanic events, flooding, and other natural hazards.
  2. Minimize unnecessary maintenance of public facilities, and costs associated with property damage, emergency rescue relief operations, and environmental degradation.
  3. Protect against adverse impacts to water quality and quantity resources.
  4. Alert appraisers, assessors, real estate agents, owners, potential buyers or lessees, and other members of the public to natural conditions that pose a hazard or otherwise limit development.
  5. Protect wetlands, floodplains, critical aquifer recharge areas, and habitat conservation areas by applying the best available science to ensure no net loss of ecological functions and values.
  6. Protect species listed as threatened or endangered and their habitats.
  7. Protect unique, fragile, and/or valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, shellfish, and other fish and wildlife and their habitats.
  8. Provide County officials with information to approve, condition, or deny project proposals.
  9. Protect property rights, while allowing for economic development, including agriculture, and allowing for the development and maintenance of adequate and appropriate public services and essential public facilities.

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10. Prevent adverse and cumulative environmental impacts to critical areas and mitigate unavoidable impacts.
  11. Coordinate Whatcom County's critical areas protection activities and programs with those of other jurisdictions.
  12. Coordinate environmental reviews and permitting of proposals with other departments and agencies to avoid duplication and delay.
  13. Allow for reasonable use of property in accordance with the provisions of WCC [16.16.270](#).
  14. Establish critical areas protection standards and procedures that are consistent with state and federal regulations pertaining to critical areas.
- D. The goals, policies, and purposes set forth in this chapter serve as a basis for exercise of the County's substantive authority under the State Environmental Policy Act (SEPA) and the County's SEPA rules.
- E. The County's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.
- F. Nothing in this chapter is intended to preclude or discourage beneficial actions that protect, restore, and/or maintain critical areas or minimize risks associated with critical areas.
- G. Consistent with Whatcom County's high standard of staff conduct, County staff shall observe all applicable, County, state, and federal ~~and Washington~~ laws regarding entry onto privately owned property.

## Article 2. Administrative Provisions

### 16.16.200 Authority.

- A. This chapter is adopted under the authority of Chapter [36.70](#) RCW, which empowers a county to enact a critical area ordinance and provide for its administration, enforcement and amendment, and Chapter [36.70A](#) RCW and Article 11 of the Washington State Constitution.
- B. [The Director shall administer and enforce the provisions of this chapter and have the responsibility for reviewing development proposals for compliance with this chapter. Additionally, s/he shall also have the:](#)
- [1. Authority to approve, deny, or condition permits in accordance with the standards set forth herein.](#)
  - [2. Authority to convene an interdisciplinary team to assist in reviewing development proposals or to solicit review from outside experts in accordance with WCC \[16.16.220\\(C\\) \\(Interdisciplinary Team\\)\]\(#\).](#)
  - [3. Authority to post a stop work order pursuant to WCC \[16.16.285\]\(#\) upon a person undertaking activity within a critical area or buffer in violation of this chapter.](#)
  - [4. Any additional responsibility and/or authority specifically provided for in this chapter.](#)
  - [5. For project permits subject to consolidated review the Director's authority shall transfer to another County decision maker when another decision maker is specified for a separate project permit. In such cases, the Director shall ensure that all procedural requirements of this chapter are met and shall make a recommendation to the designated decision maker as to how the provisions of this chapter apply to the permit action, including project permits.](#)
- C. [The Whatcom County Hearing Examiner authority is provided in is hereby vested with responsibility and authority to perform the following duties:](#)
- [1. Those duties as assigned in \[WCC Chapter 2.11 \\(Hearing Examiner\\)\]\(#\).](#)
  - [2. Those duties as assigned in \[WCC Title 22 \\(Land Use and Development\\)\]\(#\)](#)
  - [3. To grant or deny variances to the standards of this Chapter pursuant to WCC \[16.16.275 \\(Variances\\)\]\(#\).](#)
  - [4. To grant, condition, or deny reasonable use exception permits for all developments affecting critical areas pursuant to WCC \[16.16.270 \\(Reasonable Use Exceptions\\)\]\(#\).](#)
  - [5. To decide on appeals of administrative decisions issued by the Director.](#)
- D. [In granting, revising, or extending a permit, the Director, or Hearing Examiner as applicable, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development is consistent with criteria set forth in this chapter. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with this chapter. The Director and/or Hearing Examiner shall render a final decision in accordance with the timelines established in \[WCC Chapter 22.05\]\(#\), as applicable. All decisions of the Director and Hearing Examiner may be appealed pursuant to WCC \[22.05.160\]\(#\). \[\\[CES1\\]\]\(#\)](#)

**16.16.205 Authorizations Required.**

- A. No action shall be taken by any person, ~~company, agency, governmental body (including Whatcom County), applicant, owner, or owner's agent, which [CES2]that~~ results in any alteration of a critical area or its setback or buffer without prior authorization by submitting an application ~~to the technical administrator on a form provided by Whatcom County~~ and obtaining either the required permit or an approval of a notice of activity, as specified herein.
- B. No land use ~~development-project~~ permit, construction permit, or land division approval required by County ordinance shall be granted until the County decision maker has determined that the applicant has complied with the applicable purposes, requirements, objectives, and goals of this chapter including the mitigation standards set forth in WCC [16.16.260](#).
- C. Project permits shall comply with all provisions of this chapter, WCC Title [22](#) and the department's administrative manual.
- D. The requirements of this chapter shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA) (RCW Chapter [43.21C](#)), as locally adopted (WCC Chapter [16.08](#)). Any conditions required pursuant to this chapter shall be coordinated with the SEPA review and threshold determination.
- E. Areas characterized by a particular critical area may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. When one critical area adjoins or overlaps another, the more restrictive standards shall apply.

**16.16.210 Applicability and Severability.**

This chapter shall be consistently applied to any alteration or development within geographical areas of unincorporated Whatcom County that meets the definition and criteria for critical areas and critical area buffers ~~or setbacks~~ as set forth in this chapter. No development shall be constructed, located, extended, modified, converted or altered, or land subdivided without full compliance with this chapter. Should any section or provision of this chapter be declared invalid, such decision shall not affect the validity of this chapter as a whole.

**16.16.215 Relationship to Other Jurisdictions.**

- A. Permit applicants are responsible for complying with all federal, state, tribal, and local regulations that may pertain to a proposed development. Compliance with the provisions of this chapter does not necessarily constitute compliance with other regulations and permit requirements.
- B. In cases where other agencies have jurisdiction over critical areas and the ~~technical administrator~~ [Director](#) determines that the permit conditions imposed by such agencies are no less protective and satisfy the requirements of this chapter, those permit conditions may be substituted as the conditions of approval for the requirements of this chapter. Such agencies may include, but are not limited to, the Lummi Nation; the Nooksack Tribe; the United States Army Corps of Engineers; the United States Environmental Protection Agency; the United States Fish and Wildlife Service; the National Marine Fisheries Service or NOAA Fisheries; and the Washington State Departments of Ecology, Natural Resources, and Fish and Wildlife.
- C. The County shall make detailed written findings required by WCC Chapter [22.05](#) and WCC [16.16.250](#) when adopting conditions of another jurisdiction's permit. Such requirements shall

be a condition of critical area approval and enforceable by the County. In the event that there is a conflict between permit requirements and the standards of this chapter, the more restrictive standards shall apply.

- D. The County shall notify the applicant in writing when adopting other agencies' conditions pursuant to this section.

**16.16.220 Identification ~~and mapping~~ of Critical Areas.**

- A. **Critical Area Maps.** The County has identified critical areas and areas where the conditions under which critical areas typically occur and/or have the potential to occur. The approximate location and extent of critical areas within the County's jurisdiction are shown on maps; however, this information is for increasing public awareness of critical areas. These "static" maps maybe too inexact for regulatory purposes. These maps which shall be available at the Department of Planning and Development Services ~~department~~ and online for public inspection.

1. Property owners, the ~~technical administrator~~ Director, and/or members of the public may use these maps as a general guide, but the maps do not provide a comprehensive accounting of areas subject to this chapter nor do they provide a definitive critical areas designation. Maps showing known critical areas are only for information or illustrative purposes. Critical area locations and boundaries shown on the County's maps are approximate and do not include buffers that may be associated with critical areas, and some critical areas may not be shown on the maps at all. It is also possible that some maps showing critical areas in certain areas may not be accurate.
2. Planning and Development Services has the authority to update critical areas maps and shall do so as new critical areas are identified and as new information becomes available.
3. The approximate location and extent of frequently flooded areas are shown on the County's critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as new hazard areas are identified and as new information becomes available. This article does not imply that land outside mapped frequently flooded areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Whatcom County, any officer or employee thereof, or the Federal Insurance and Mitigation Administration (FIMA), for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. <sup>[CES3]</sup>

- B. **Identification.** Field investigation, analysis by a qualified professional, and/or consideration of other sources of credible scientific information may be required to confirm the presence or absence of a critical area and its boundaries and buffers. <sup>[CES4]</sup> When County critical area maps, indicators, or other sources of credible information indicate that a site may be located in, contain, or abut critical areas or their buffers or setbacks, the Director shall require technical studies in accordance with the requirements for that critical area specified herein to determine the extent of critical areas on the property. <sup>[CES5]</sup>

C. **Interdisciplinary Team.** The **Director** may call upon outside expertise including an interdisciplinary team if s/he determines that additional technical assistance is required to assess a critical areas development proposal or ensure the application of best available science.

1. The **Director** will coordinate this effort and seek advice from the team.
2. The interdisciplinary team shall include the applicant and/or their technical representative, local, state, or federal agency or tribal representatives with expertise in the field, and/or independent qualified professionals with expertise relating to the critical area issue.
3. The functions of the interdisciplinary team are to field check and verify critical area determinations/boundaries and assess species/habitat presence by providing written peer review of the in-formation included with an application, identify areas of concern in the application of best available science, provide professional opinions and recommendations relevant to the provisions of this chapter, and help focus the preparation of subsequent reports and environmental documentation on the most relevant issues.
4. In lieu of convening an interdisciplinary team, the County may require third-party review by a qualified professional for any development proposal, mitigation plan, mitigation bank proposal, or other project for which additional technical expertise is needed. The cost of the third-party review shall be the permit applicant's responsibility.

~~C.A. Planning and Development Services has the authority to update critical areas maps and shall do so as new critical areas are identified and as new information becomes available.~~

**16.16.225 Regulated activitiesGeneral Regulations.**

- ~~A. The following activities shall be subject to the provisions of this chapter when they occur within critical areas or their buffers or will impair the functions and values of a critical area:~~
- ~~0. Clearing, grading, dumping, excavating, discharging, or filling with any material. This includes creating impervious surfaces.~~
  - ~~0. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, subject to the provisions for a nonconforming structure pursuant to WCC 16.16.275, Chapter 20.83 WCC, and WCC 23.50.070.~~
  - ~~0. Any other activity for which a county permit is required, excluding permits for interior remodeling.~~<sup>[RE6]</sup>

A. General regulations apply to all critical areas and critical area buffers. Specific critical area articles describe standards applied to authorized alterations.

~~E.B.~~ Alteration of critical areas and/or buffers is prohibited except when **any impacts are mitigated pursuant to this Chapter, and:**

1. Alteration is approved pursuant to the reasonable use or variance provisions of WCC 16.16.270 and 16.16.273, respectively; or
2. Alteration is necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility and the facility is located, designed, and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or

3. Alteration is necessary to accommodate an approved water-dependent use and ~~any~~ associated development, ~~use, or /activity and/or the development activities~~ listed in WCC ~~Title 23.90.130(B)(7)(a)~~ when permitted in accordance with the Whatcom County Shoreline Management Program (SMP); provided, that such development is operated, located, designed and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or
4. Alteration is part of an essential element of an activity allowed by this chapter and all feasible measures to avoid and minimize impacts have been employed. Such feasible measures shall include, but not be limited to, clustering where permitted by zoning and as appropriate to protect critical areas. The purposes of clustering shall be to minimize adverse effects of development on critical area functions and values, minimize land clearing, maintain soil stability, preserve native vegetation, provide for wildlife corridors, maintain hydrology, and mitigate risk to life and property; or
5. ~~Alteration is associated with an exempt activity under WCC 16.16.230, or is allowed pursuant to the notification provisions of WCC 16.16.235, or is allowed pursuant to the specific regulatory standards for each designated critical area, as enumerated in the subsequent articles of this chapter; or~~ [CES7]
- 6.5. Alteration is associated with an alternative mitigation plan or watershed-based management plan approved pursuant to WCC [16.16.261](#) or [16.16.262](#), respectively; or
6. Alteration is associated with a conservation farm plan pursuant to Article 8 of this chapter; or
7. ~~Alteration of Type III or IV wetlands that have a habitat area score of less than 6 when associated with an approved commercial development within an Urban Growth Area; or~~ [CES8]
8. ~~Alteration of a shoreline habitat conservation area buffers as allowed by Title 23 (Shoreline Management Program).~~ [CES9]
- C. ~~Development proposals shall seek to maintain ecological connectivity and habitat corridors whenever possible. Restoration of ecological connectivity and habitat corridors shall be considered a priority restoration and mitigation action.~~ [AP10]
- D. ~~In order to preserve native plant communities within shoreline jurisdiction and/or critical areas and their buffers, associated with marine, river, or lake shorelines and wetlands,~~ [P/C11] ~~mitigation sequencing shall be applied during site planning for uses and activities so that the design and location of the structure or development minimizes native vegetation removal. Development, uses, or activities that require vegetation clearing shall be designed to avoid the following, in order of preference:~~
  1. ~~Native trees;~~
  2. ~~Other native vegetation;~~
  3. ~~Nonnative trees; and~~
  4. ~~Other nonnative vegetation.~~ [CES12]

## 16.16.230 ~~Exempt~~ Activities ~~Allowed without Notification.~~

~~The following activities do not require authorization from Whatcom County. However, Exemptions from permit requirements of this chapter shall not be construed deemed to grant authorization for any work~~



to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction. ~~The following activities as specified are exempt from the requirements of this chapter:~~

- A. Class I, II, III, and IV special (not Class IV general) forest practices conducted in accordance with the applicable standards of the Washington State Forest Practices rules, WAC Title [222](#), except where the lands have been or are proposed to be converted to a use other than commercial forest product production.
- B. Maintenance of lawfully established vegetation, landscaping, and gardens within a regulated critical area or its buffer, ~~including, but not limited to, cutting, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species (excluding trees)~~ [P/C13] to maintain the general condition and extent of such areas; provided, that native growth protection areas, or other areas protected via conservation easements or similar restrictive covenants are not covered by this exception.
- C. Maintenance activities necessary to implement approved mitigation plans.
- D. Low impact activities, when the activity does not cause adverse impacts, such as hiking, canoeing, viewing, nature study, photography, hunting, fishing, education, or scientific research.
- E. Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act ~~(such as the Swift Creek Sediment Management Action Plan)~~, or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.
- F. Maintenance and/or repair of lawfully established single-family residences and appurtenant features; provided, that the activity does not further alter, impact, or encroach upon critical areas or buffers or further affect their functions. The maintenance activity shall not result in increased risk to life or property.
- G. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction and/or that meet the criteria of RCW [77.55.181](#)(1) and that are reviewed and approved according to the provisions of RCW [77.55.181](#).

## 16.16.235 Activities Allowed with Notification.

- A. The activities specified in subsection B of this section are authorized within critical areas and buffers; provided, that:
  1. The applicant provides a written notification to the ~~technical administrator~~ Director on a form provided by the Department. Activities within the shoreline jurisdiction (WCC 23.20.010) shall require a shoreline permit or statement of exception.
  2. The notification will provide a site plan (in a common scale), photos, and specific information describing the activity and the mitigation to be implemented, if required ~~by the technical administrator~~, to document that the activity will not result in increased risk to public health,

safety, and welfare; that adverse impacts to critical areas are minimized; and that disturbed areas are restored as soon as possible following the activity.

3. Notification shall be submitted ~~to the technical administrator~~ at least 10 full business days prior to initiating work.
4. Upon receipt of the notification, the ~~technical administrator~~ Director shall issue a decision within 10 days unless additional information is required from the applicant or other review processes necessitate additional time. Additionally, the ~~technical administrator~~ Director may provide guidance on best management practices for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and use of chemical applications to be used in the execution of the activities listed in subsection B of this section.
5. Unless otherwise specified, notification shall be valid for one year per activity; provided, that there is no change in the scope of the project including, but not limited to, the location and/or extent of the activity allowed under the notification process.

**B. Activities Allowed with Notification.**

1. **Emergency construction or activity** necessary for the immediate preservation of the public health, safety, and welfare as determined by the ~~technical administrator~~ Director; provided, that:
  - a. An emergency is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time period too short to allow full compliance with this chapter.
  - b. Emergency construction does not include development of new permanent protective structures where none previously existed. Where the ~~technical administrator~~ Director determines that new protective structures are the appropriate means to address an emergency situation, the project proponent shall either obtain any permits that would have been required absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC, or this chapter, or remove the structure upon abatement of the emergency situation.
  - c. Within the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23), all emergency construction shall be consistent with the policies and procedural requirements of WCC Title 23 and this chapter.
  - d. The applicant shall make a reasonable attempt to contact the ~~technical administrator~~ Director prior to activity; provided, that when prior notice is not feasible, notification of the action shall be submitted to the ~~technical administrator~~ Director as soon as the emergency is addressed and no later than 14 days following such action.
2. **Maintenance, operation, and/or repair of to existing infrastructure improvements**, including dikes and drainage ditches, rights-of-way, trails, roads, fences, and utilities or utility corridors; provided, that the activity does not further alter, impact, or encroach upon critical areas or buffers or further affect their functions. The maintenance or repair activity shall not result in increased risk to life or property. Maintenance or repair shall be allowed pursuant to the provisions set forth in this chapter; provided, that:

- a. The applicant shall submit to the ~~technical administrator~~ Director a written description of the maintenance activity with all of the following general information:
    - i. Type, timing, frequency, and sequence of maintenance activity to be conducted;
    - ii. Type of equipment to be used (hand or mechanical);
    - iii. Manner in which the equipment will be used; and
    - iv. Best management practices to be used.
  - b. The applicant's written description shall be valid for up to five years; provided, that there is no significant change in the type or extent of maintenance activity.
3. **Utility Installation** <sup>(CES14)</sup>. Construction of electrical, telecommunications, cable, water, sewer, and other utility lines and equipment within existing structures, facilities, infrastructure systems, development areas and uses, utility easements, and public and private rights-of-way, provided:
- a. There is no further intrusion into geologically hazardous areas, frequently flooded areas, wetlands, or fish and wildlife habitat conservation areas or their buffers;
  - b. Soil erosion is controlled;
  - c. Disturbed areas are promptly stabilized; and
  - d. Any adverse impacts to critical areas are mitigated in accordance with ~~this chapter~~.
- 3.4. **Select Removal or Pruning of Vegetation Management**. No vegetation shall be removed from a wetland, habitat conservation area, coastal or riverine erosion hazard area, or landslide hazard area, or their buffers, unless specifically listed in subsection (a) and meeting the conditions of subsection (b), below subject to the following:
- a. Exceptions. Vegetation removal or pruning will be done in a manner that minimizes disturbance and prevents adverse effects on soil stability, fish or wildlife habitat, water quality, or water quantity.
    - i. Except for lawn, pasture, ornamental vegetation, and similar introduced vegetation, provided all areas of vegetation removal are revegetated no vegetation shall be removed from a wetland, habitat conservation area, coastal or riverine erosion hazard area, or landslide hazard area or their buffers unless otherwise authorized by the technical administrator for safety reasons.
    - ii. Restoration projects.
    - iii. Maintenance of legally established views so long as the criteria subsection (B)(6) of this section are met.
    - iv. The felling of hazard trees within critical areas and buffers, with an approved tree risk assessment completed by a qualified professional.
    - v. To improve overall slope or bank stability selective vegetation limbing, clearing, and/or thinning may be allowed in landslide hazard areas and/or riverine and coastal erosion hazard areas and/or their buffers pursuant to an approved habitat management plan designed. The plan shall be prepared by a qualified professional and reviewed by a licensed geologist or geotechnical engineer.

b. Conditions.

- i. Vegetation removal or pruning will be done in a manner that minimizes disturbance and prevents adverse effects on soil stability, fish or wildlife habitat, water quality, or water quantity. Shrubs shall not be pruned to a height of less than 6 feet.
- ii. Cut vegetation shall be left within the critical area or buffer where practicable unless removal is warranted due to the presence of an established disease infestation, noxious weeds, environmental or other hazards, or because of access or maintenance needs if the area is a utility or access right-of-way.
- iii. All limb removal, crown thinning, or pruning shall meet the American National Standard Institute (ANSI) tree pruning standards. Pruning shall retain branches that overhang the water. No tree topping shall occur. In no circumstance shall removal of more than one-fourth (1/4) of the original crown be permitted within a three year period.
- iv. Hazard Tree Mitigation.
  - (A) The landowner shall replace any trees that are removed at a three to one ratio (3:1). When approved by the Director, a landowner may choose to convert a hazard tree proposed for removal to a wildlife snag as an alternative if recommended by a certified arborist.
  - (B) In addition to the requirements of WCC 20.80.300 through 20.80.380 (Landscaping), replacement trees shall meet the following criteria:
    - (1) Replacement trees shall be exclusively species native to the coastal region of the Pacific Northwest.
    - (2) At a minimum, 50% of replacement trees shall be evergreen species. If only one replacement tree is required, it shall be an evergreen species, unless otherwise approved by the Director. [AP15]
- ~~4. The felling of hazard trees within critical areas and buffers, with an approved tree risk assessment completed by a qualified professional.~~
5. View Corridors ~~[CES16]. Clearing and/or thinning for limited view corridors shall be allowed Except in landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, the clearing, pruning, and revegetation of buffer areas for view purposes where it does not adversely impact ecological and/or aesthetic values, and/or slope stability, provided; provided:~~
  - a. The proposed view corridor is not located in a landslide, riverine, or coastal erosion hazard areas hazard areas or their buffers.
  - b. Clearing shall only be allowed when the applicant can demonstrate that a limited view corridor cannot be achieved through limb removal, crown thinning, or pruning. With clearing, a combination such strategies may be required to establish a view shall be required.
- ~~a-c. A window or view opening is limited to the minimum necessary for view purposes and shall not exceed a cumulative total of 15% percent of buffer length, unless the applicant can demonstrate to the technical administrator's satisfaction that a larger dimension is warranted because of slope or other site considerations. Trees greater than 12 inches in diameter at breast height shall be preserved, but may be shaped, windowed/thinned or~~

- ~~pruned.~~ Whenever possible, view corridors shall be located in areas dominated with non-native vegetation and invasive species.
- ~~b.d.~~ Significant trees greater than 12 inches in diameter at breast height shall be preserved, but may be shaped, windowed/thinned or pruned.
- ~~c.e.~~ Low-growing native vegetation shall be retained and/or planted in the view corridor to provide habitat, stabilize the area, and achieve dense growth.
- ~~d.~~ This activity shall not be conducted more than once every 10 years for any individual residential property.
- ~~e.f.~~ Clearing shall not take place where increased risks or adverse impacts, including cumulative impacts, to critical area functions and values are likely to occur.
- ~~f.g.~~ This provision does not apply to open space set aside in a subdivision or other approval to which specific conditions are attached that prohibit clearing of vegetation without a written approval or permit.
- ~~g.h.~~ View areas established under this section shall be considered lawfully established and may be maintained as provided for in subsection (B)(~~34~~) of this section.
6. **Navigation Aids.** The installation of navigation aids and boundary markers in accordance with applicable state and federal laws or the installation of mooring buoys in accordance with the Department of Fish and Wildlife design guidelines and the Whatcom County Shoreline Management Program (WCC Title [23](#)).
  7. **Site Investigation.** Routine site investigation work in wetlands, landslide hazard areas, and riverine and coastal erosion hazard areas. This includes geotechnical soil borings, groundwater monitoring wells, percolation tests, sediment sampling, and similar or related activities required for land use application submittals or permit compliance. Land survey and shallow soil test pits dug in conjunction with wetland delineation studies do not require notification.
  8. **Household Garden Products.** ~~f~~Fertilizers or ~~household~~ herbicides to address noxious weed infestation may be used in critical area buffers, but not in critical areas. Either must be applied at times and rates specified on the label in accordance with Washington State Department of Agriculture and other applicable regulations.
  9. **Ditch Maintenance.** ~~Routine maintenance of ditches o~~On agricultural lands maintenance of ditches is allowed; provided, that all of the following are met:
    - a. The maintenance is necessary to support ongoing agricultural operations;
    - b. The maintenance activity does not expand the dimensions of the drainage channel beyond the original, lawfully established dimensions;
    - c. The agricultural activities are conducted pursuant to an approved conservation farm plan prepared pursuant to Article 8 of this chapter;
    - d. The farm operator obtains a hydraulic project approval (HPA), if required, from the Washington State Department of Fish and Wildlife (WDFW) prior to the maintenance activity; and
    - e. The farm operator provides a copy of the HPA to the ~~technical administrator~~ Director as part of the written notification.
  10. Alteration or removal of beaver-built structures two years old or less; provided, that:

- a. There is no adverse impact to wetland or river or stream functions.
- b. The property owner obtains an HPA from WDFW (if required) prior to the maintenance activity.
- c. The property owner provides a copy of the HPA to the ~~technical administrator~~ Director as part of the written notification.

**~~16.16.240 Technical administrator and hearing examiner authority.~~** [RE17]

~~The technical administrator is the Whatcom County director of planning and development services or his/her designee. The hearing examiner is appointed by the county council. The technical administrator and the county hearing examiner shall administer and enforce the provisions of this chapter pursuant to the following:~~

- ~~C. The technical administrator shall have the primary responsibility for reviewing development proposals for compliance with this chapter and is authorized to approve, deny, or condition permits in accordance with the standards set forth herein. The technical administrator shall also have the following authority:
  - ~~0. Authority to convene an interdisciplinary team to assist in reviewing development proposals or to solicit review from outside experts in accordance with WCC 16.16.245.~~
  - ~~0. Authority to grant, condition, or deny reasonable use permits for single-family residential building permits within critical areas and/or their buffers.~~
  - ~~0. Authority to grant, condition, or deny reasonable use permits for other development proposals that would affect critical area buffers, but not the critical areas themselves.~~
  - ~~0. Authority to serve a cease and desist order pursuant to WCC 16.16.285 upon a person undertaking activity within a critical area or buffer in violation of this chapter.~~
  - ~~0. Any additional responsibility and/or authority specifically provided for in the subsequent articles of this chapter.~~~~
- ~~I. The technical administrator's authority shall transfer to another county decision maker when another decision maker is specified for a separate project permit. In such cases, the technical administrator shall ensure that all procedural requirements of this chapter are met and shall make a recommendation to the designated decision maker as to how the provisions of this chapter apply to the permit action, including project permits.~~
- ~~J. The Whatcom County hearing examiner is hereby vested with responsibility and authority to hear appeals and perform the following duties:
  - ~~0. Authority to grant or deny variances.~~
  - ~~0. Authority to grant, condition, or deny reasonable use permits for all developments, except single-family building permits, affecting critical areas.~~
  - ~~0. Authority to decide on appeals of administrative decisions including, but not limited to, reasonable use permits issued by the technical administrator.~~
  - ~~0. Authority to hold public hearings pursuant to Chapter 22.05 WCC.~~~~
- ~~O.A. In granting, revising, or extending a permit, the technical administrator, or hearing examiner as applicable, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the~~

development is consistent with criteria set forth in this chapter. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with this chapter. The technical administrator and/or hearing examiner shall render a final decision in accordance with the timelines established in Chapter 22.05 WCC, as applicable. All decisions of the technical administrator and hearing examiner may be appealed pursuant to WCC 22.05.160.

**16.16.245 Interdisciplinary team.** [RE18]

The technical administrator may call upon outside expertise including an interdisciplinary team if the technical administrator determines that additional technical assistance is required to assess a critical areas development proposal or ensure the application of best available science:

- The interdisciplinary team shall include the applicant and/or their technical representative, local, state, or federal agency or tribal representatives with expertise in the field, and/or independent qualified professionals with expertise relating to the critical area issue.
- A. The functions of the interdisciplinary team are to field check and verify critical area determinations/boundaries and assess species/habitat presence by providing written peer review of the information included with an application, identify areas of concern in the application of best available science, provide professional opinions and recommendations relevant to the provisions of this chapter, and help focus the preparation of subsequent reports and environmental documentation on the most relevant issues.
- A. The technical administrator will coordinate this effort and seek advice from the team.
- A. In lieu of convening an interdisciplinary team, the county may require third-party review by a qualified professional for any development proposal, mitigation plan, mitigation bank proposal, or other project for which additional technical expertise is needed. The cost of the third-party review shall be the permit applicant's responsibility.

**16.16.250 Submittal requirements and Critical Areas Review Process.**

- A. All applicants shall complete a prescreening meeting with the ~~technical administrator~~ **Director** prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the requirements for a complete application; the critical area standards and procedures; to review conceptual site plans prepared by the applicant; to discuss appropriate investigative techniques and methods; and to determine reporting requirements.
- B. Review and approval of a proposed development within a critical area or its buffer may be initiated through the application for any project permit in Whatcom County on department-approved forms and containing the materials listed in the department's Administrative Manual.
- When County critical area maps, indicators, or other sources of credible information indicate that a site may be located in, contain, or abut critical areas or their buffers or setbacks, the shall require technical studies in accordance with the requirements for that critical area specified herein. [CES19]
- C. The ~~technical administrator~~ **Director** shall be responsible, in a timely manner, to make one of the following determinations regarding critical areas review:
  - 1. ~~Initial Determination. When county critical area maps or other sources of credible information indicate that a site may be located, contain or abut critical areas, critical area buffers or setbacks~~



~~the technical administrator shall require technical studies in accordance with that critical area's specific article.~~

**2.1. Determination of Impacts.** The ~~technical administrator~~ Director shall use best available science, including but not limited to the County's critical areas maps, his/her field investigation results, his/her own knowledge of the site, information from appropriate resource agencies, or documentation from a scientific or other credible source to determine if the project will more probably than not adversely impact a critical area or its buffer. Identified adverse impacts shall be fully mitigated in accordance with WCC 16.16.260.

**3.2. Determination of Compliance.** If the applicant demonstrates to the satisfaction of the ~~technical administrator~~ Director that the project meets the provisions of this chapter and is not likely to adversely affect the functions and values of critical areas or buffers or provides mitigation to reduce the adverse impact to meet no net loss of the function and values of critical areas or buffers, the ~~technical administrator~~ Director shall make the determination that the proposal complies with this chapter.

**4.3. Decision to Approve, Condition, or Deny.** The ~~technical administrator~~ Director shall review all pertinent information pertaining to the proposed development and shall approve, approve with conditions, or deny the permit based on their review, and shall provide a detailed written decision. This determination shall be included in the project review record for the project permit in accordance with WCC Chapter 22.05.

- D. The ~~technical administrator~~ Director may waive the requirement for critical areas review under this chapter when s/he determines that all of the following conditions are met:
1. The proposed development activity is located on a parcel that received approval of a previous critical areas review within the prior five years, site conditions have not changed, and the applicable regulations have not substantively changed;
  2. All critical areas within 300 feet of the new proposed development, use, or activity on the parcel have been identified and delineated and the effects of the pro-posed development activity have been thoroughly considered in accordance with the most current regulations and best available science;
  3. The activity is in compliance with all permit conditions including mitigating measures, as applicable, that were imposed as part of the prior review and there are no outstanding violations of conditions that were imposed as part of the previous review;
  4. The development activity involves a use that is equally or less intensive than the development activity that was subject to the prior permit. Land use intensity shall be based on factors including development density, critical areas impacts, impervious surface, noise, glare, dust, hours of operation, and traffic.

~~Submittal Materials.~~

~~0. Complete application.~~

~~0. A detailed site map drawn to a common scale, or survey, showing at least the following:~~

~~— Vicinity map.~~

~~— Topographic, hydrologic, and vegetative features.~~

- ~~a. The location and description of known wildlife and habitat features and all known critical areas.~~
- ~~a. Proposed development activity with dimensions.~~
- ~~1. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc. Structures shall be dimensioned.~~ [CES20]
- ~~E. Elements of a critical area assessment are encouraged to be submitted together for timely review. However, the technical administrator may allow the various components to be submitted independently at different phases of a project if s/he determines piecemeal review will benefit the review process or at the request of the applicant.~~ [CES21]

## 16.16.255 Critical Areas Assessment Reports.

- A. When the ~~technical administrator~~ Director determines a need for a critical area assessment pursuant to WCC 16.16.250, s/he shall have the authority to require a critical areas assessment report, to be prepared by a qualified professional and be consistent with best available science. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity. A critical area assessment shall have all of the following elements, unless determined by the ~~technical administrator~~ Director not to be needed:
  - 1. The requirements found in subsections ~~B-(C)~~ and ~~H-(I)~~ of this section;
  - 2. Geological hazard assessment;
  - 3. Critical aquifer recharge assessment;
  - 4. Frequently flooded area assessment;
  - 5. Wetland assessment;
  - 6. Fish and wildlife habitat conservation area assessment;
  - 7. A mitigation plan addressing all mitigation requirements of this title.
  - 8. Habitat Management Plan, when required by this chapter or Title 23.
- B. Elements of a critical area assessment are encouraged to be submitted together for timely review. However, at the request of the applicant the Director may allow the various components to be submitted independently at different phases of a project if s/he determines piecemeal review is reasonable and will benefit the review process. [CES22]
- ~~B-C.~~ The critical areas assessment report shall:
  - 1. Demonstrate that the submitted proposal is consistent with the purposes and specific standards of this chapter;
  - 2. Describe all relevant aspects of the development proposal and critical areas adversely affected by the proposal including any geological hazards and risks associated with the proposal, and assess impacts on the critical area from activities and uses proposed; and
  - 3. Identify impacts of the proposed use/development on habitat corridors, ecological connectivity, and habitat for salmon and forage fish as identified in WCC 16.16.710. [CES23] [P/C24]
  - 3-4. Where impacts are unavoidable, demonstrate through an alternatives analysis that no other feasible alternative exists. Such an analysis shall explore alternatives that might pose fewer impacts or better protect ecological functions, and address such issues as project design,

location on the property, and type and location of mitigation, as applicable to the proposed development.

~~4.5. Identify and evaluate the cumulative impacts of individual development proposals to assure that no net loss standards are achieved.~~ <sup>[CES25]</sup> ~~Consider the cumulative impacts of the proposed action that includes past, present, and reasonably foreseeable future actions to facilitate the goal of no net loss of critical areas.~~ Such impacts shall include those to wildlife, habitat, and migration corridors; water quality and quantity; and other watershed processes that relate to critical area condition, process, and/or service.

~~5.6.~~ Identify proposed mitigation and protective measures as required by this chapter.

~~G.D.~~ The ~~technical administrator~~ Director shall review the critical areas assessment report for completeness and accuracy and shall consider the recommendations and conclusions of the critical areas assessment report to assist in making administrative decisions concerning approval, conditional approval, or denial of the subject project and to resolve issues concerning critical areas jurisdiction and appropriate mitigation and protective measures.

~~E. The Director shall reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when s/he can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical areas impacts involved.~~

~~D.F.~~ Critical areas assessment reports shall generally be valid for a period of five years from the date the assessment is approved by the ~~technical administrator~~ Director. Future land use applications may re-quire preparation of new or supplemental critical area assessment reports unless it can be demonstrated to the satisfaction of the ~~technical administrator~~ Director that the previously prepared report is ad-equate for current analysis. The ~~technical administrator~~ Director may also require the preparation of a new critical area assessment report or a supplemental report when new information is found demonstrating that the initial assessment is in error. If the ~~technical administrator~~ Director requires more information in the report, s/he shall make the request in writing to the applicant stating what additional information is needed and why.

~~E.A. The technical administrator shall reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when s/he can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical areas impacts involved.~~

~~F.G.~~ To avoid duplication, the reporting requirements of this chapter shall be coordinated if more than one critical area assessment report is required for a site or development proposal. Similarly, where other agencies' assessments or reports are required pursuant to other state or federal laws, the applicant is encouraged to submit one report that satisfies all such agencies' requirements.

~~G.H.~~ In addition to a hard copy, applicants shall provide reports and maps to the County in an electronic format that allows site data to be incorporated into the County critical areas database; however, the County may waive the electronic format requirement for single-family building permits. Applicants shall follow Whatcom County electronic submittal guidelines. This requirement shall not be construed as a requirement to use specific computer software, though it must be in a format usable by the County.

~~H.I.~~ The intent of these provisions is to require a reasonable level of technical study and alternatives analysis pursuant to WCC 16.16.250 sufficient to assess potential project impacts and to protect

critical areas. At a minimum, a critical areas assessment report shall include the following information:

1. A site plan showing the proposed development footprint and clearing limits, all relevant critical areas and buffers within and abutting the site, a written description of the project, an examination of project on-site design alternatives, and an explanation of why the proposed activity requires a location on, or access across, a critical area and why alternatives are not feasible;
2. A written description of the critical areas and buffers on or in the vicinity of the site, including their size, type, classification or rating, condition, disturbance history, and functions and values. Projects in frequently flooded areas must comply with the reporting requirements of WCC Title [17](#). Projects on or adjacent to geologically hazardous areas shall identify the type of hazard and assess the associated risks posed by the development or that the development may be subject to;
3. An analysis of potential adverse critical area impacts associated with the proposed activity including, but not limited to, effects related to clearing, grading, noise, light/glare, drilling, damming, draining, creating impervious surface, managing stormwater, releasing hazardous materials, and other alterations, and including an explanation of critical area processes and functions that may be affected;
4. An analysis of how critical area impacts or risks will be avoided and/or minimized, and/or an analysis of the proposed measures to prevent or minimize hazards. When impacts cannot be avoided, the report shall include a plan describing mitigation that will be provided to replace critical area functions and values altered as a result of the proposal. The mitigation plan shall be consistent with the provisions of WCC [16.16.260](#) and provide written documentation showing what the applicant considered for each step in the mitigation sequencing and the other applicable articles of this chapter;
5. The dates, names, signatures, and qualifications of the persons preparing the report and documentation of analysis methods including any fieldwork performed on the site; and
6. Additional reasonable information requested by the ~~technical administrator~~ Director for the assessment of critical areas impacts or otherwise required by the subsequent articles of this chapter.

**16.16.260 General Mitigation Requirements.**

- A. ~~Developments permitted pursuant to this chapter~~ that adversely impacts or alters a critical area or buffer shall include mitigation sufficient to minimize risks associated with geologic hazards and/or ~~maintain~~ or replace or improve critical areas functions and values. Any proposed development that cannot adequately mitigate critical area impacts as determined by the ~~technical administrator~~ Director shall be denied.
- B. In determining the extent and type of mitigation required, the Director may consider all of the following:
  1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;

2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
  3. Observed or predicted trends regarding the gains or losses of specific habitats or species in the watershed, in light of natural and human processes;
  4. The likely success of the proposed mitigation measures;
  5. Effects of the mitigation actions on neighboring properties; and
  6. Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.<sup>[CES26]</sup>
- C. Though in general on-site mitigation is preferred, the County shall not risk mitigation success or bypass opportunities for improving ecological processes in a watershed by precluding other mitigation options when it is more effective and sustainable. In order to provide the greatest ecological benefit, a combination of mitigation options may be used to achieve no net loss of ecological functions. In some cases it may be necessary to mitigate at multiple sites or on-site and out-of-kind.<sup>[CES27]</sup> In determining the extent and type of mitigation required for impacts to critical areas, the Director may consider all of the following when applicable:
1. On-site and in-kind. Unless otherwise approved by the Director, all critical areas impacts shall be compensated by creation or restoration of replacement areas that are in-kind, on-site, and of similar critical area category.
  2. Off-site and in-kind. The Director may consider and approve off-site mitigation when the applicant demonstrates that greater biological and/or hydrological functions and values will be achieved. The mitigation may include restoration, creation, or enhancement of critical areas and/or their buffers. The process to determine the ratios of on-site mitigation shall apply to off-site ratios as well.
  3. On-site and out-of-kind. The Director may consider and approve out-of-kind mitigation when the applicant demonstrates an ecological uplift of biological and/or hydrological functions and values will be achieved. The mitigation may include restoration, creation, or enhancement of other types of critical areas and/or their buffers. The process to determine the ratios of out-of-kind mitigation shall be based on a habitat management plan with a functional replacement assessment.
  4. Alternative Mitigation Plans pursuant to 16.16.261 (Alternative Mitigation Plans)
  5. Use of Mitigation Bank Credits, pursuant to 16.16.263 (Mitigation Banking)
- D. Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas, critical areas or their buffers. In all other cases, mitigation shall be completed concurrently with development as quickly as possible following disturbance and prior to use or occupancy of the activity or development.
- E. Construction of mitigation projects shall be timed to reduce impacts; provided, that the Director may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).<sup>[CES28]</sup>

**A.F. Mitigation Sequence.**

1. When an alteration or impact to a critical area or buffer is proposed, the applicant shall conduct an alternatives/mitigation sequencing analysis and demonstrate that all reasonable efforts have been taken to mitigate adverse impacts in the following prioritized order:
  - ~~b.a.~~ Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
  - ~~c.b.~~ Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
  - ~~d.c.~~ Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.
  - ~~e.d.~~ Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
  - ~~f.e.~~ Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
2. Mitigation shall be provided for all unavoidable adverse alterations of a critical area or buffer. Mitigation for individual projects may include a sequenced combination of the above measures as needed to achieve the most effective protection, compensation for buffer functions and values, or mitigation for critical area functions and values.

**B.G. Mitigation Plan.**

1. A mitigation plan shall be developed in accordance with an approved critical areas assessment report and be consistent with best available science. Where appropriate, the mitigation plan should be compatible with watershed and recovery planning goals for Whatcom County. The intent of these provisions is to require a level of technical study and analysis sufficient to protect critical areas and/or protect developments and occupants from critical areas involving hazards. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.
2. The mitigation plan shall provide for construction, maintenance, monitoring, and contingencies as required by conditions of approval and consistent with the requirements of this chapter.
3. The mitigation plan shall demonstrate that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts and results in no net loss of shoreline and critical area ecological functions.<sup>[CES29]</sup>
- ~~3.4.~~ The mitigation plan shall be prepared by a qualified professional; provided, that the ~~technical administrator~~ Director may waive the requirement to hire a qualified professional to prepare a mitigation plan when the required mitigation involves standard planting or enhancement practices. The waiver shall not be granted for mitigation practices involving wetland creation, rehabilitation, and/or restoration.
- ~~4.5.~~ The mitigation plan shall contain the following information:
  - i. A description and scaled drawings of the activities proposed to reduce risks associated with geologic hazards and/or flooding, and/or to mitigate for impacts to critical area

functions and values. This shall include all clearing, grading/ excavation, drainage alterations, planting, invasive weed management, installation of habitat structures, construction sequencing, best management practices, site protection, irrigation, and other site treatments associated with the development activities.

- ii. Specific information on construction or the proposed mitigation activity including timing, sequence, equipment needs, best management practices, and responsible parties.
- iii. A description of the functions and values that the proposed mitigation area(s) shall provide, and/or a description of the level of hazard mitigation provided.
- iv. The goals, objectives, and performance standards that the proposed mitigation action(s) shall achieve or demonstrate consistency with.
- v. A description of how the mitigation area(s) will be evaluated and monitored to determine if the performance standards are being met.
- vi. A program and schedule for construction and post-construction performance monitoring of the mitigation project.
- vii. An evaluation of potential adverse impacts on adjacent property owners resulting from the proposed mitigation and measures to address such impacts. Mitigation projects shall not result in adverse impacts to adjacent property owners.
- viii. Identification of potential courses of action or contingencies, and any corrective measures to be taken if monitoring or evaluation indicates that project performance standards are not being met.
- ix. Plan sheets with scale identified, showing the edge of the critical area and buffer area. The affected critical area and buffer shall be clearly staked, flagged, and/or fenced prior to and during any site clearing and construction to ensure protection for the critical area and buffer during construction.
- x. A description of other permits and approvals being sought, including the need for permits from state and/or federal agencies.
- xi. Additional information as required by the subsequent articles of this chapter.

**C.H. Mitigation Monitoring and Maintenance.**

1. All mitigation areas shall be maintained and managed to prevent degradation and ensure protection of critical area functions and values subject to field verification by the Director.<sup>[CES30]</sup>
2. The ~~technical administrator~~ Director shall have the authority to require that ~~compensatory~~ mitigation projects be monitored annually for at least five years to establish that performance standards have been met. Required monitoring reports shall be submitted to the County annually during the monitoring period to document milestones, successes, problems, and contingency actions of the compensatory mitigation.
  - i. At year three, if the mitigation is meeting year 5 performance standards, the ~~technical administrator~~ Director may reduce the monitoring timeframe to three years for minor mitigation projects involving critical area or buffer revegetation or vegetation enhancement, but not for projects involving wetland creation, wetland restoration, stream restoration or other activities that require manipulation of soils or water. ~~All mitigation areas shall be~~



~~maintained and managed to prevent degradation and ensure protection of critical area functions and values subject to field verification by the technical administrator.~~ [CES31]

- ii. The ~~technical administrator~~ Director shall have the authority to extend the monitoring period, require corrective measures, and/or require additional monitoring reports beyond the initial monitoring period for any project that does not meet the performance standards identified in the mitigation plan, or does not provide adequate replacement for the functions and values of the impacted critical area.

~~2.3.~~ Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC [16.16.265](#).

**D.1. Mitigation Assurance.**

1. The applicant and his/her representatives shall demonstrate sufficient scientific expertise and capability to implement the mitigation, monitor the site, and make corrections if the project fails to meet projected goals. The ~~technical administrator~~ Director may require the following to ensure that the mitigation is fully functional:
  - i. The applicant shall post a mitigation surety in the amount of ~~125% percent~~ of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater. The surety shall be based on an itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring, and other costs.
  - ii. The surety shall be in the form of an assignment of funds or other means approved by the ~~technical administrator~~ Director.
  - iii. Surety authorized by this section shall remain in effect until the ~~technical administrator~~ Director determines, in writing, that the standards bonded for have been met. Surety shall generally be held by the County for a period of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary. Surety for construction may be reduced after initial completion in an amount not to exceed the cost of monitoring plus not less than ~~25% percent~~ of the construction cost.
  - iv. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.
  - v. Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, or monitoring.
  - vi. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default subject to the provisions of WCC [16.16.285](#), and the County may demand payment of any financial guarantees or require other action authorized by the County code or any other law.

- vii. Any funds recovered pursuant to this section shall be used to complete the required mitigation or equivalent.

**E.J. Permanent Protection.** All mitigation areas shall be protected and managed to prevent degradation and ensure protection of critical area functions and values in perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC [16.16.265](#). If additional development is proposed that impacts a mitigation area and those impacts are accounted for under a new, approved mitigation plan, such protection may be removed so long as the final plan meets the requirements of this chapter for all cumulative impacts.

**16.16.261 Alternative ~~or innovative~~ Mitigation Plans.**

- A. The County shall consider and may approve alternative ~~or innovative~~ mitigation plans for major developments (as defined in Article 9 of this chapter), planned unit developments (pursuant to WCC Chapter [20.85](#) ), and/or development agreements (pursuant to RCW [36.70B.170](#) through [36.70B.210](#)).
- B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:
  - 1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
  - 2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring will be adequately funded and effectively implemented;
  - 3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;
  - 4. In terms of functional value, the proposed mitigation plan results in equal or greater protection and conservation of critical areas functions, services, and values than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
  - 5. The plan is consistent with the general purpose and intent of this chapter, the Shoreline Management Program (WCC Title [23](#)), and the comprehensive plan;
  - 6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
  - 7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.
- C. Alternative mitigation plans shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process. The plan shall be reviewed by the ~~technical administrator~~ Director to ensure compliance with the general purpose and intent of this chapter and to ensure accuracy

of the data and effectiveness of proposed management strategies. In making this determination the ~~technical administrator~~ Director shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts. If the ~~technical administrator~~ Director finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision maker shall solicit comment pursuant to the public notice provisions of WCC Chapter [22.05](#) prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

**16.16.262 Watershed-Based Management Plans.**

- A. The County may consider watershed-based management plans sponsored by watershed improvement districts, other special purpose districts, or other government agencies.
- B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:
  - 1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
  - 2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;
  - 3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;
  - 4. In terms of functional value, the proposed mitigation plan results in equal or greater restoration, protection, and conservation of the impacted critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
  - 5. The plan is consistent with the general purpose and intent of this chapter, the comprehensive plan, and an approved watershed plan prepared pursuant to Chapter [90.82](#) RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter [90.82](#) RCW;
  - 6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
  - 7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.
- C. Watershed-based management plans shall be approved by the County Council by ordinance and appended to this chapter. The process for approval shall be as follows:
  - 1. The plan shall be reviewed by the ~~technical administrator~~ Director to ensure compliance with the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC

Title [23](#)), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the ~~technical administrator~~ Director shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.

2. If the ~~technical administrator~~ Director finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision maker shall solicit comments pursuant to the public notice provisions of WCC Chapter [22.05](#) prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.
3. The designated decision maker shall not approve watershed-based management plans that conflict with Chapter [90.82](#) RCW.

**16.16.263 Mitigation Banking.**

A. Mitigation Bank Credits. The County may approve the use of mitigation banking credits as a form of compensatory mitigation for wetland and habitat conservation area impacts when the provisions of this chapter require mitigation and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation; provided, that all of the following criteria are met:

1. Banks shall only be used when they provide significant ecological benefits including long-term conservation of critical areas, important species, habitats and/or habitat linkages, and when they are consistent with the County comprehensive plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals.
2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule, Chapter [173-700](#) WAC or as revised, and Chapter [90.84](#) RCW and the federal mitigation banking guidelines as outlined in the Federal Register, Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain state and federal certification.
3. Preference shall be given to mitigation banks that implement restoration actions that have been identified formally by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter [90.82](#) RCW, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

B. Establishing a Mitigation Banks. Establishing a mitigation bank shall require a major project permit in accordance with WCC Chapter [20.88](#) and shall be subject to a formal review process including public review as follows:

1. The bank sponsor shall submit a bank prospectus for County review. The prospectus shall identify the conceptual plan for the mitigation bank, including:
  - i. The ecological goals and objectives of the bank;
  - ii. The rationale for site selection, including a site map and legal description of the prospective bank site;

- iii. A narrative demonstrating compliance with the Whatcom County comprehensive plan, associated development standards and this chapter, shoreline restoration plan, watershed planning documents prepared and adopted pursuant to Chapter [90.82](#) RCW, and/or the salmonid recovery plan;
  - iv. A description of the existing site conditions and expected changes in site conditions as a result of the banking activity, including changes on neighboring lands;
  - v. A conceptual site design;
  - vi. A description of the proposed protective mechanism such as a conservation easement; and
  - vii. Demonstration of adequate financial resources to plan, implement, maintain, and administer the project.
2. The ~~technical administrator~~ Director shall review the bank prospectus either by participating in the state's Mitigation Bank Review Team (MBRT) process and/or by hiring independent, third-party expertise to assist in the review.
  3. If the ~~technical administrator~~ Director determines that the bank prospectus is complete, technically accurate, and consistent with the purpose and intent of this chapter, s/he shall forward the prospectus to the County Council for initial review. If the proposed bank involves conversion of agricultural land to nonagricultural uses, the County Council shall seek a recommendation from the agricultural advisory committee as to whether the conversion should be allowed. The committee's recommendation shall be nonbinding. The County Council may require mitigation for the loss of agricultural lands.
  4. If the County Council determines, based on the initial review, that the prospectus is valid, it shall issue a notice to proceed to the bank sponsor. Following receipt of the notice to proceed, the bank sponsor may submit application for a major project permit in accordance with WCC Chapter [20.88](#). The notice to proceed shall not be construed as final approval of the bank proposal, but shall indicate approval to proceed with the development of the mitigation bank instrument, which details all of the legal requirements for the bank.
  5. Upon receipt of a draft mitigation banking instrument from the bank sponsor and major project permit application, the ~~technical administrator~~ Director shall review the banking instrument and major project permit in consultation with the MBRT and/or other third-party expert. Following review of the mitigation banking instrument and major project permit, the ~~technical administrator~~ Director shall make a recommendation to certify and approve, conditionally certify and approve, or deny the bank proposal and major project permit in accordance with the provisions of WCC Chapters [20.88](#) and [22.05](#).
  6. Following receipt of the recommendation, the County Council shall proceed with review in accordance with the provisions outlined in WCC Chapters [20.88](#) and [22.05](#).
  7. The bank sponsor shall be responsible for the cost of any third-party review.
- C. Award of Bank Credits. The award of bank credits for an approved bank may be negotiated based on habitat acreage, habitat quality, and contribution to a regional conservation strategy that has been approved by the County and other appropriate regulatory agency(ies). Credit availability may vary in accordance with agreed-upon performance criteria for the development of the resource

value in question. Awarded bank credits, subject to the approval of the County and regulatory agency(ies), may be made transferable. Whether out-of-kind mitigation credit will be allowed at a particular bank will require a fact-specific inquiry on a case-by-case basis for the project creating the impacts.

**D. Use of Bank Credits.**

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
  - a. The bank is certified under state rules;
  - b. The administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
  - c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

**16.16.264 In-Lieu Fees.**

To aid in the implementation of off-site mitigation, the County may develop an in-lieu-fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu-fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu-fee program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved in-lieu-fee program may be used when subsections A through F of this section apply:

- A. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
- B. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.
- C. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
- D. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within five years of the credit sale.
- E. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.
- F. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

**16.16.265 Critical Areas Protective Measures.**

~~When an impact to critical area or a buffer will occur due to a proposed development, a standard buffer width has been altered, or mitigation is required, one or more of the following protective measures shall be applied:~~

**A. General measures (applicable to all projects)**

1. **Building Setbacks** <sup>[CES32]</sup>. ~~The County shall require b~~Buildings and other structures ~~shall to be set~~ back a minimum distance of 10 feet from the edge of geological hazard setback, a critical area buffer, or from the critical area where no buffer is required~~-, unless otherwise determined by the Director that a shorter distance will suffice. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. The following uses may be are allowed in the building set-back from the buffer if they do not cause damage to the critical root zone of trees in the buffer:~~
  - a. Landscaping;
  - b. Uncovered decks less than 30 inches in height;
  - c. Building overhangs 18 inches or less;
  - d. ~~Im~~Impervious surfaces, including such as driveways, parking lots, roads, and patios; provided, that such surfaces conform to the applicable water quality standards and that construction equipment does not enter or damage the buffer or critical area;
  - e. Clearing and grading;
  - f. Utilities, including ~~W~~wells, septic systems, and propane tanks with fuel capacities up to 500 gallons.
2. Temporary protection measures to identify location of critical areas and buffers such as construction fencing, erosion and sediment control, or similar shall be required during construction of the proposed project.

**B. Project Specific Measures.** Based on the specifics of the project, the Director will determine which of the following apply:

1. **Tree Protection** <sup>[CES33]</sup>. If significant trees are identified, such that their drip line extends beyond the reduced buffer edge, the following tree protection requirements must be followed:
  - a. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the dripline of the tree(s), unless otherwise approved by the department.
  - b. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
  - c. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
  - d. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.



- e. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
- f. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention in the tree protection area.
- g. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

**B-2. Deterrent Devices.** The ~~technical administrator~~ Director, as a condition of permit approval, may require that the outer boundary of a wetland or habitat conservation area and its buffer, a mitigation site, a designated open space, or a conservation easement be identified with signs, markers, and/or fencing to minimize potentially harmful intrusions from adjacent land uses, to alert citizens to a potential public health or safety risk associated with a critical area, or to accomplish other objectives specifically provided for elsewhere in this chapter. The ~~technical administrator~~ Director shall provide specifications on the type, content, and size of the signs prior to permit approval. The signs shall be posted near primary access points and approximately every 200 feet along the critical area boundary.

**3. Notice on Title.** The owner of any property containing any critical area or buffer ~~that are not altered by a proposed development for which a development permit is about to be issued~~ shall record a ~~notice document~~ with the County Auditor Real Estate Records, on a form at approved provided by the ~~technical administrator~~ Director, and provide a copy of the filed notice to the ~~Department of Planning and Development Services~~ department at the time prior to the project permit is being issued. This requirement may be waived by the Director for certain geologically hazardous areas if s/he finds that the risk is so low as to not warrant notification (e.g., old alluvial deposits). The notice on title shall provide notice of:

- a. ~~advise of~~ The presence of a critical area(s) or buffer(s) on the property, and that limitations on actions in or affecting the critical area or buffer exist.
- b. ~~The notice shall provide that That~~ restrictions on uses within the critical area apply exist until such time as the Technical Administrator Director approves a change in to the restriction(s) and such approval is filed.

~~This Such~~ notice on title shall not be required for a development proposal by a public agency or public or private utility within a right-of-way or easement for which they do not have fee-simple title. ~~This requirement shall be waived by the technical administrator for certain geologically hazardous areas if s/he finds that the risk is so low as to not warrant notification (e.g., old alluvial deposits).~~

**1-4. Tracts and Easements.** Prior to final approval of any ~~development project~~ permit, the ~~part of the critical areas~~ and required buffers that is located on the site within the review area (as specified in the Review & Reporting Requirements of each Article of this Chapter) shall be protected using ~~one of~~ the following mechanisms:

- a. For land divisions other than short plats, placed in a separate tract or tracts owned in common by all lots ~~within a subdivision, short subdivision, or binding site plan~~ or dedicated to a public or private land trust for conservation.

b. For all other project permit types, ~~Covered by~~ Placed in a protective conservation easement, on a form provided or approved by Whatcom County; ~~or~~

c. Mitigation areas shall be placed in a native growth protection area (NGPA) easement, on a form provided or approved by Whatcom County <sup>[CES34]</sup>.

~~public or private land trust dedication; or~~

~~Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the county technical administrator or hearing examiner.~~

~~E.A. Building Setback. The county shall require buildings and other structures to be set back a minimum distance of 10 feet from the edge of geological hazard setback, a critical area buffer, or from the critical area where no buffer is required. The following uses are allowed in the building set back:~~

~~0.1. Landscaping;~~

~~0.1. Uncovered decks;~~

~~0.1. Building overhangs 18 inches or less;~~

~~0.1. Impervious surfaces such as driveways, parking lots, roads, and patios; provided, that such surfaces conform to the applicable water quality standards and that construction equipment does not enter or damage the buffer or critical area;~~

~~0.1. Clearing and grading;~~

~~0.1. Wells.~~

~~E.C. Indemnification.~~ At the ~~technical administrator~~ Director's discretion, when a permit is granted for development or use within a geologic, flood, or other hazard area, the property owner shall sign an indemnification agreement acknowledging hazards posed to the development and absolving the County of all responsibility, to be recorded against the property prior to permit issuance.

~~M.A. Temporary protection measures to identify location of critical areas and buffers such as construction fencing, erosion and sediment control, or similar shall be required during construction of the proposed project.~~

#### **16.16.270 Reasonable Use Exceptions.** <sup>[CES35]</sup>

A. If the application of this Chapter would result in denial of all reasonable and economically viable use of a property, and if such reasonable and economically viable use of the property cannot be obtained by consideration of a variance pursuant to WCC 16.16.273 (Variances), then a landowner may seek a reasonable use exception from the standards of this Chapter. Reasonable use exceptions are intended as a last resort when no plan for mitigation and/or variance can meet the requirements of this Chapter and allow the applicant a reasonable and economically viable use of his or her property. The reasonable use exception shall follow the variance and public notification procedures of WCC Title 22 (Land Use and Development).

B. Requests for reasonable use exceptions shall be a Type III project permit application (See WCC Title 22, Land Use & Development).

C. The Hearing Examiner shall only grant a reasonable use exception under all of the following conditions: <sup>[CES36]</sup>

1. The proposed development is otherwise allowed under Whatcom County code.

2. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses.
3. The application of this Chapter would deny all reasonable and economically viable use of the property so that there is no reasonable and economically viable use with a lesser impact on the critical area than that proposed.
4. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that is under the ownership or control of the applicant, change in use, reduction in size, change in timing of activity, and/or revision of project design.
5. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area.
6. The proposed development does not pose a threat to the public health and safety.
7. The proposed activities comply with all state, local and federal laws, such as special flood hazard areas restrictions and on-site wastewater disposal.
8. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply.
9. Any proposed modification to a critical area will be evaluated by the Hearing Examiner through consideration of an approved critical area assessment report and habitat management plan and will be the minimum modification necessary to allow reasonable use of the property.
10. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or previous owners in segregating or dividing the property and/or creating the condition of lack of use after September 30, 2005.
11. The applicant has requested and been denied a variance under the provisions of WCC 16.16.273 (Variances).
12. For single-family residences, the maximum impact area shall not exceed 10% of the lot area or 2,500 square feet, whichever is greater; provided that in no instance shall it exceed ~~may be no larger than~~ 4,000 square feet. This impact area shall include the residential structure as well as appurtenant development that ~~are~~is necessarily connected to the use and enjoyment of a single-family residence. ~~These~~Such appurtenant developments includes garages, decks, driveways, parking, on-site septic systems, and all lawn and nonnative landscaping, with the following exceptions:
  - a. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 4,000-square-foot maximum impact area; provided, that the access road or driveway meets the standards of WCC 16.16.620(ED) or 16.16.720(ED), as applicable.

b. On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical areas and/or buffers, approval of those driveway portions shall be sought through a shoreline variance (WCC 23.60.030) and the applicant shall demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site. [P/C37]

A.D. The Hearing Examiner may issue conditions of approval including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. The Hearing Examiner may also specify mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible using best available science.

~~— Permit applicants for a property so encumbered by critical areas and/or buffers that application of this chapter, including buffer averaging, buffer reduction, or other mechanism, would deny all reasonable use may seek approval pursuant to the reasonable use standards and procedures provided in this section.~~

~~A. Reasonable Use Standards.~~

- ~~1. Nothing in this chapter is intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable economic use of the subject property, including agricultural use, use or development shall be allowed if it is consistent with the zoning code and the purposes of this chapter.~~
- ~~1. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:~~
  - ~~a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;~~
  - ~~a. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since September 30, 2005, change in use, reduction in size, change in timing of activity, and/or revision of project design;~~
  - ~~a. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;~~
  - ~~a. The proposed activities will not result in adverse effects on endangered or threatened species as listed by the federal government or the state of Washington, or be inconsistent with an adopted recovery plan;~~
  - ~~a. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply;~~
  - ~~a. The proposed activities comply with all state, local and federal laws, including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;~~
  - ~~a. The proposed activities will not cause damage to other properties;~~

- ~~a. The proposed activities will not increase risk to the health or safety of people on or off the site;~~
  - ~~— The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after September 30, 2005;~~
  - ~~b. The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter;~~
  - ~~c. a. For single family residences, the maximum impact area may be no larger than 4,000 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single family residence. These appurtenant developments include garages, decks, driveways, parking, on-site septic systems, and all lawn and nonnative landscaping, with the following exceptions:~~
    - ~~i. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 4,000 square foot maximum impact area; provided, that the access road meets the standards of WCC 16.16.620(E) or 16.16.720(C), as applicable;~~
    - ~~i. On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical areas and/or buffers, approval of those driveway portions shall be sought through a shoreline variance (WCC 23.60.030) and demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site.~~
- ~~A. Reasonable Use Procedures.~~
- ~~0. Procedural requirements for reasonable use exception applications shall be as follows:~~
    - ~~— Reasonable use exception applications shall be subject to an open record public hearing; except, that reasonable use exception applications for single family residential building permits, or for other development proposals that would affect critical area buffers, but not the critical areas themselves, shall be processed administratively by the technical administrator.~~
    - ~~— Reasonable use exception applications that require an open record hearing shall be processed in accordance with Chapter 22.05 WCC.~~
    - ~~— Reasonable use exception applications that are subject to administrative approval by the technical administrator shall be processed in accordance with Chapter 22.05 WCC.~~
    - ~~— The hearing examiner or technical administrator shall have the authority to set an expiration date for any or all reasonable use approvals. The development proposal must be completed before the approval expires.~~
    - ~~— Any person aggrieved by the granting, denying, or rescinding of a reasonable use exception by the technical administrator or any party of record may appeal the technical administrator's decision pursuant to WCC 16.16.280 or the hearing examiner decision pursuant to Chapter 22.05 WCC.~~

~~—Any application for a reasonable use exception or approval which remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.~~

~~1. All reasonable use exception applications or other approvals shall be subject to the provisions of this chapter, which are in effect at the time of application.~~

~~1. Each application for a reasonable use exception shall be accompanied by a fee as stated in the unified fee schedule.~~

~~1. In making reasonable use decisions, the technical administrator shall have the authority to require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).~~

## 16.16.273 Variances.

A. Where strict application of and compliance with the dimensional requirements of this chapter renders ~~compliance with these provisions~~ an undue hardship ~~and when no other feasible alternative exists~~, permit applicants may seek a variance for relief.

B. As described in WCC 22.05.024 (Variances) there are two types of variances pertaining to this Chapter: Minor and Major variances.

1. Minor variances shall be limited to variances for a 25% to 50% reduction of critical area buffers.

2. Major variances include all other variances.

~~A.C. pursuant to WCC 20.84.100. A v~~ Variance applications shall be processed pursuant to WCC 22.05.024 (Variances), or if in the shoreline jurisdiction WCC 22.07.050 (Shoreline Variances), Chapter 22.05 WCC and meet the criteria therein.

## 16.16.275 Nonconforming Uses, Structures, and Lots~~uses/buildings~~.

The following provisions shall apply to legally existing uses, ~~and/or buildings and/or~~ structures, or lots that do not meet the specific standards of this chapter:

A. The lawful use of any legal nonconforming building, structure, land, or premises existing on September 30, 2005, or authorized under a permit or approval issued, or otherwise vested, prior to that date may be continued, subject to this section and the provisions for a nonconforming structure in WCC Chapter 20.83; provided, that agricultural activities shall conform to Article 8 of this chapter (Conservation Program on Agriculture Lands).

~~A.B.~~ If a nonagricultural nonconforming use or structure is intentionally abandoned for a period of ~~five years~~ 12 months [CES38] or more, then any future use ~~of the nonconforming building, land, or premises~~ shall be consistent with the provisions of this chapter.

~~B.C.~~ Expansion, alteration, and/or intensification of a nonconforming use is prohibited.

~~C.D.~~ Expansion, alteration, and/or intensification of a legal nonconforming building, or structure (including normal maintenance and repair), is allowed unless such use will produce impacts that degrade the critical area, including but not limited to vegetation clearing; additional impervious surfaces; generation of surface water runoff; discharge, or risk of discharge of pollutants; increased noise, light or glare; or increased risk associated with geologically hazardous areas.

~~D.~~E. Nonconforming structures that are completely destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind if there is no alternative that allows for compliance with the standards of this chapter; provided, that:

1. ~~Intentional demolition or removal is not a casualty.~~ [CES39]

~~1.2.~~ The reconstruction process is commenced within ~~five years~~ 18 months [CES40] of the date of such damage; and

~~2.3.~~ The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection C of this section.

~~E.~~F. Nonconforming uses, ~~structures, and lots~~ in ~~the~~ shoreline ~~areas-jurisdiction~~ shall be governed by the shoreline management provisions of WCC Title 23.

~~F.~~G. When a ~~development project~~ permit is sought for a parcel containing a nonconforming ~~building or~~ structure that has been intentionally abandoned for a period of five years or more, the ~~technical administrator~~ Director may require removal of the nonconforming building and restoration of the critical area or buffer in accordance with this chapter as a condition of permit approval.

#### **16.16.280 Appeals.**

Final permit decisions shall be subject to appeal in accordance with the procedures of WCC Chapter 22.05.

#### **16.16.285 Penalties and Enforcement.**

- A. Any person who violates any of the provisions of this chapter shall be liable for a civil offense and may be fined a sum not to exceed \$1,000 for each offense. After a notice of violation has been given, each day of site work in conjunction with the notice of violation shall constitute a separate offense.
1. The penalty provided in subsection A of this section shall be assessed and may be imposed by a notice in writing either by certified mail with return receipt requested or by personal service to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.
  2. Within 30 business days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or revision shall be reviewed by the Hearing Examiner if the aggrieved party files a written appeal therewith of said decision within 10 business days of its issuance.
- B. If work activity has occurred on a site in violation of this chapter, prompt corrective action, restoration, or mitigation of the site will be required when appropriate. If this provision is not complied with, the County may restore or mitigate the site and charge the property owner for the full cost of such an activity. Additionally, any and all permits or approvals issued by the County may be denied for that site for a period of up to six years.
- C. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the



site. In a nonemergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 business days following the receipt of the correction notice, and provide for an administrative pre-deprivation hearing within 10 business days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative pre-deprivation hearing within 72 hours following receipt of the stop work order. Failure to comply with the order to stop work shall be a gross misdemeanor punishable upon conviction by a minimum fine of \$500.00 up to a maximum fine of \$1,000 or one year in jail, or both. Under no circumstance may the court defer or suspend any portion of the minimum \$500.00 fine for any conviction under this section. Each day or part thereof of noncompliance with said order to stop work shall constitute a separate offense.

- D. The County may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.
- E. The prosecuting attorney may enforce compliance with this chapter by such injunctive, declaratory, or other actions as deemed necessary to ensure that violations are prevented, ceased, or abated.
- F. Any person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
- G. After the Fact Permit Fee. After the fact permit application fees shall be double the amount established by the unified fee schedule.

#### **16.16.295 Open Space and Conservation.**

The following programs may be employed to ~~achieve the purposes of this chapter and~~ minimize the burden to individual property owners from application of the provisions of this chapter:

- A. Open Space. Any property owner whose property contains a critical area or buffer and who meets the applicable qualifying criteria may apply for open space taxation assessment pursuant to Chapter [84.34](#) RCW.
- B. ~~Native Growth Protection Area (NGPA) Conservation~~-Easement. Any person who owns an identified critical area or its associated buffer may place a ~~conservation-NGPA~~ easement over that portion of the property by naming the County or its qualified designee under RCW [64.04.130](#) as beneficiary of the conservation. This ~~conservation-NGPA~~ easement may be in lieu of separate critical areas tracts that qualify for open space tax assessment described in subsection A of this section. The purpose of the easement shall be to preserve, protect, maintain, and limit use of the affected property. The terms of the ~~conservation-NGPA~~ easement may include prohibitions or restrictions on access and shall be approved by the property owner and the County.
- C. Conservation Futures Fund. The County may consider using the conservation futures property tax fund as authorized by RCW [84.34.230](#) for the acquisition of properties containing significant critical areas and their associated buffers.

### Article 3. Geologically Hazardous Areas

#### 16.16.300 Purpose.

The purpose of this article is to reduce risks to human life and safety and reduce the risk of damage to structures and property from geologic hazards, to allow for natural geologic processes supportive of forming and maintaining fish and wildlife habitat, and to regulate and inform land use and planning decisions. It is recognized that the elimination of all risk from geologic hazards is not feasible to achieve but the purpose of this article is to reduce the risk to acceptable levels.

#### 16.16.310 Geologically Hazardous Areas – Designation, Mapping, and Classification.

- A. Designation. Lands determined to be landslide, seismic, alluvial fan, volcanic, erosion (including channel migration zones), tsunami, seiche and landslide generated waves or mine hazard areas are hereby designated as geologically hazardous areas. Development in these geologic hazard areas can put human life, safety, health, and development at risk, alter geologic processes, adversely affect natural resources, and put the development and surrounding developments and uses at risk.
- B. Mapping. The approximate location and extent of known potential geologically hazardous areas are shown on maps maintained by the County. These maps are useful as a guide for project applicants and/or property owners, and County review of development proposals. However, they do not provide a conclusive or definitive indication of geologically hazardous area presence or extent. Potential geologically hazardous areas may exist that do not appear on the maps, and some potential geologically hazardous areas that appear on the maps may not meet the geologically hazardous areas designation criteria. The County shall update the maps periodically as new information becomes available and may require additional studies during the development review process to supplement and/or confirm the mapping. This chapter does not imply that land outside mapped geologically hazardous areas or uses permitted within such areas will be without risk. This chapter shall not create liability on the part of Whatcom County or any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
- C. Classification. For purposes of this chapter, geologically hazardous areas shall include all of the following:
  1. Landslide Hazard Areas. Landslide hazard areas shall include areas potentially susceptible to landslides based on a combination of geologic, topographic, and hydrologic factors, as specified below. They include any areas susceptible to mass movement due to any combination of bedrock, soil, slope (gradient), slope aspect, slope form (concave, convex, planar), geological structure, surface and subsurface hydrology, or other factors. Landslide hazard areas shall also include areas along which landslide material may be routed or which may be subject to deposition of landslide-delivered material. Potential landslide hazard areas include but are not limited to the following areas:
    - a. Potential Landslide Hazard Areas. Potential landslide hazard areas exhibit one or more of the following characteristics:

- i. Areas designated as quaternary slumps, earthflows, mudflows, or landslides on maps published by the U.S. Geological Survey, Washington State Department of Natural Resources, or other reputable sources;
- ii. Areas with all three of the following characteristics:
  - (A) Slopes steeper than ~~15% percent~~;
  - (B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - (C) Springs or groundwater seepage;
- iii. Areas that have shown movement and/or are underlain or covered by mass wastage debris;
- iv. Potentially unstable slopes resulting from river or stream erosion or undercutting by wave erosion;
- v. Slopes having gradients steeper than ~~80% percent~~ subject to rockfall during seismic shaking;
- vi. Areas that show past sloughing or calving of sediment or rocks resulting in a steep slope that is poorly vegetated;
- vii. Slopes that are parallel or sub-parallel to planes of weakness (which may include but not be limited to bedding planes, soft clay layers, joint systems, and fault planes) in subsurface materials;
- viii. Areas that show evidence of, or are at risk from, snow avalanches;
- ix. Deep-seated landslide areas characterized by one or more of the following features: scalloped ridge crests at the top of the slope, crescent-shaped depressions, head scarps, side scarps, ponds or sag areas on midslopes, benches and scarps on midslope areas, hummocky ground, or linear fractures in the ground. These features may be evident in aerial images, topographic maps, LiDAR imagery or on the ground;
- x. Areas below unstable slopes that could be impacted by landslide run-out;
- xi. Areas above or adjacent to unstable slopes that could be impacted if the landslide area expands;
- xii. Any area with a slope of ~~40% percent~~ or steeper and with a vertical relief of 10 or more feet except areas composed of competent bedrock or properly engineered slopes designed and approved by a geotechnical engineer licensed in the state of Washington and experienced with the site;
- xiii. Areas within which land use activities could affect the slope stability, including but not limited to areas with subsurface hydrologic flow, groundwater recharge areas and surface water flow;
- xiv. Areas of historical landslide movement including coastal shoreline areas mapped by the Department of Ecology Coastal Zone Atlas or the Department of Natural Resources slope stability mapping as unstable (“U” or Class 3), unstable old slides (“UOS” or Class 4), or unstable recent slides (“URS” or Class 5).

- b. Active Landslide Hazard Areas. Active landslide hazard areas are areas that exhibit indicators noted in subsection (C)(1)(a) of this section that have been determined through geological assessment to be presently failing or very likely to fail in the near future.
- 2. Seismic Hazard Areas. Whatcom County is located in a seismically active area that will be subject to ground motion during local and regional earthquakes. Seismic hazards and risk are partially addressed in the International Building Code (IBC) or International Residential Code (IRC). Additional seismic hazard areas for the purpose of this chapter include:
  - a. Areas designated as having a “high” and “moderate to high” risk of liquefaction susceptibility as mapped on the Liquefaction Susceptibility Map by the Washington State Department of Natural Resources.
  - b. Areas that are identified as underlain by liquefiable soils and due to local topography are also subject to or interpreted as being potentially impacted by lateral spreading.
  - c. Areas located within 500 feet of quaternary fault zones with surface offsets.
- 3. Alluvial Fan Hazard Areas. Any area located at the base of a confined mountain channel and determined to be susceptible to clear water flooding, debris-laden flows and floods, and erosional impacts shall be designated as an alluvial fan hazard area. Watershed hydrology, geology, slope conditions, topography, current and historic land uses, roads and road drainage, valley bottom conditions, and channel conditions upstream of an alluvial fan area are all fundamental to potential hazards and risks on alluvial fans. Alluvial fan hazard areas shall include those areas on alluvial fans potentially impacted by:
  - a. Sediment-laden flows (e.g., debris flows and debris floods);
  - b. Clear water floods;
  - c. Stream channel changes (including channel avulsion, incision, aggradation or lateral erosion and migration);
  - d. Erosion.
- 4. Volcanic Hazard Areas. Volcanic hazard areas are those areas that have been affected, or have the potential to be affected, by pyroclastic flows, pyroclastic surges, lava flows, or ballistic projectiles, ash and tephra fall, volcanic gases, and volcanic landslides. Also included are areas that have been or have the potential to be affected by Case M, Case I, or Case II lahars, or by debris flows or sediment-laden events originating from the volcano or its associated deposits. In addition, volcanic hazards include secondary effects such as sedimentation and flooding due to the loss of flood conveyance as a result of river channel and flood plain aggradation. The implications of secondary effects may be observed at some distance from the initiating event, and may continue to impact affected drainages over many decades following the initiating event. Secondary effects may significantly alter existing stream and river channels, associated channel migration zones and floodplains due to stream and river bed aggradation and channel avulsion. Volcanic hazards include areas that have not been affected recently, but could be affected by future events. Volcanic hazard areas are classified into the following categories:
  - a. Pyroclastic Flow Hazard Areas. Areas that could be affected by pyroclastic flows, pyroclastic surges, lava flows, and ballistic projectiles in future eruptions. During any single eruption,

some drainages may be unaffected by any of these phenomena, while other drainages are affected by some or all phenomena. Recurrence interval is not known.

- b. Ash/Tephra Fall Hazard Areas. The location of ash/tephra fall hazards at Mount Baker is predominantly controlled by the prevailing westerly winds observed on the west coast of North America. However, easterly winds do occur in the region and direct ash/tephra fall impacts to Whatcom County population centers are certainly a possibility. Health hazards, power outages, negative impacts to machinery and aircraft, structural damage (e.g., roof collapse) and extensive disruption of daily activities are all potential hazards.
- c. Lateral Blast Hazard Areas. Lateral blast hazards result from low-angle, explosive volcanic eruptions that emanate from the flank of a volcano. The occurrence of a lateral blast is largely unpredictable, both with respect to timing and direction, and does not appear to be a common feature of eruptive activity at Mount Baker or at other volcanoes globally. Extensive destruction is likely within the lateral blast zone, and mitigation is generally considered unachievable.
- d. Volcanic Landslide Hazard Areas. Landslides are common on volcanoes due to their relative height, steepness, and weakness in both the underlying bedrock and the volcanic deposits due to magma movement and chemical weathering. Landslide size is highly variable depending on site conditions and type, but may achieve high velocity and momentum which can carry a landslide across valleys and ridgelines. Given the range of possible landslide types and sizes, specific hazards, risk zones and recurrence interval have not been delineated at Mount Baker. Volcanic landslide hazards are associated with lahar hazards as they pose the potential to generate small- to large-scale cohesive lahars.
- e. Lahar Hazard Areas.
  - a. Case M Lahar Hazard Areas. Areas that could be affected by cohesive lahars that originate as enormous avalanches of weak, chemically-altered rock from the volcano. Case M lahars can occur with or without eruptive activity. A single, post-glacial Case M lahar deposit is known to have traveled down the Middle Fork Nooksack River, and is postulated to have continued down the main stem of the Nooksack River, eventually reaching Bellingham Bay, and to have also flowed north to Canada along the prehistoric path of the Nooksack River. Case M lahars are thus interpreted to pose a threat to the Sumas River drainage due to the potential for bed aggradation and channel avulsion to overtop the low-lying drainage divide that exists between the Nooksack and Sumas River drainages. Case M lahars are considered high-consequence, low-probability events.
  - b. Case I Lahar Hazard Areas. Areas that could be affected by relatively large non-cohesive lahars, which most commonly are caused by the melting of snow and glacier ice by magmatic activity and associated processes, but which can also have a non-eruptive origin. The average recurrence interval for Case I lahars, based on deposits identified along the flanks of Mount Baker, is postulated to be 500 years or greater. However, renewed magmatic activity at Mount Baker would be indicative of greatly increased

- potential for Case I lahar generation; this may reduce the recurrence interval to approximate that of Case II lahars.
- c. Case II Lahar Hazard Areas. Areas that could be affected by moderately large debris avalanches or small cohesive lahars, or other types of debris flow generated on the east flank of Mount Baker at Sherman Crater or the upper Avalanche Gorge. Case II lahars impact the Baker Lake basin and drainage, and are considered correlative to Case I lahars that may impact the primary drainages on the west and north of Mount Baker, but with increased frequency and comparable volume. The postulated recurrence interval for Case II lahars at Mount Baker is less than 100 years.
5. Erosion Hazard Areas. Erosion hazard areas shall include:
    - a. Channel migration zones, also known as riverine erosion areas, are defined as the areas along a river or stream within which the channel(s) can be reasonably predicted to migrate over time. This is a result of natural and normally occurring geomorphic, hydrological, and related processes when considered with the characteristics of the river or stream and its surroundings, and in consideration of river and stream management plans. Channel migration hazard areas shall include potential channel migration, channel avulsion, bank erosion, and stability of slopes along the river or stream;
    - b. Coastal erosion areas that are subject to shoreline retreat from wind, wave, and tidal erosion.
  6. Tsunami Hazard Areas. Tsunami hazard areas include coastal areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of a tsunami generated by seismic events.
  7. Seiche and Landslide Generated Wave Hazard Areas. Seiche and landslide generated wave hazard areas include lake and marine shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of a seiche or landslide generated waves. No known best available science is currently available to characterize potential seiche hazards in Whatcom County.
  8. Mine Hazard Areas. Mine hazard areas shall include those lands in proximity to abandoned mines and associated underground mine workings where mine workings are less than 200 feet below ground level. Mine workings include adits (mine entrances), gangways (haulage tunnels), rooms and chutes (large voids), drifts, pillars (rock left for support) and air shafts. Mine hazards include subsidence, which is the uneven downward movement of the ground surface caused by underground workings caving in; sink holes; contamination of ground and surface water from tailings and underground workings; concentrations of lethal or noxious gases; and underground mine fires.

**16.16.320 Geologically Hazardous Areas – ~~Protective Measures~~General standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#), the following requirements shall apply to all activities in geologically hazardous areas:

- A. **General~~ly~~**. New developments shall be located and/or engineered and constructed to reduce risks to life, health, safety, and buildings, and not increase potential for landslides or erosion that could

impact either other properties, public resources, or other critical areas. The County may impose conditions on development activity in a geologically hazardous area as needed to:

1. Protect human life and safety;
2. Minimize the potential for property damage related to seismic events, erosion and/or land-slides;
3. Minimize the need for stream or riverbank or coastal bluff stabilization in the future;
4. Reduce public liabilities for damages associated with geologic hazards;
5. Protect slope stability and minimize erosion, seismic, and/or landslide hazard risks;
6. Maintain natural sediment and erosion processes that are integral to the health and sustainability of freshwater and marine ecosystems as well as minimizing impacts to stream, river, and coastal processes such as channel infill, channel migration, sediment transport, or flooding;

**B. Impact Avoidance.** Impact avoidance measures shall include, but not be limited to, locating the use/development outside of the hazard area, reducing the number, size or scale of buildings and appurtenant features; altering the configuration or layout of the proposed development; implementing special engineering methods for construction, drainage, runoff management, etc.; preserving native vegetation; and other feasible protective measures as determined by an alternatives analysis. For some geologic hazards (except for lahar hazards), impact avoidance may mean no development will be permitted on a property. So long as an applicant complies with WCC [16.16.350](#)(B), the County shall not require lahar hazard impact avoidance measures that reduce the number, size, or scale of buildings or appurtenant features; or prevent uses otherwise allowed per the property's zoning district based solely on the property's location within a lahar hazard zone.

**C. Stormwater Management.** Development shall manage on-site stormwater by developing a properly sized stormwater management system using appropriate stormwater techniques to protect geologically hazardous areas. Low Impact Development and Low Impact Development Best Management Practices are preferred, unless demonstrated to be infeasible.

~~C.D.~~ **Location of Alterations.** New development shall be directed toward portions of a parcel or parcels under contiguous ownership that are not subject to, or at risk from, geological hazards (except for lahar hazards) and/or are outside any setback or buffer established by this chapter.

~~D. Critical Facilities Prohibited.~~ Critical facilities as defined in WCC [16.16.900](#) shall not be constructed or located in geologically hazardous areas if there is a feasible alternative location outside geologically hazardous areas that would serve the intended service population. If allowed, the critical facility shall be designed and operated to minimize the risk and danger to public health and safety to the maximum extent practicable. [CES41]

**E. Review by Qualified Professional.** A geologist or other qualified professional, licensed in the state of Washington, shall review development proposals that occur in potentially geologically hazardous areas to determine the potential risk. If development takes place within an identified geologically hazardous area requiring design or structural elements to minimize the hazard, the mitigation shall be designed by a qualified professional licensed in the state of Washington with expertise in mitigation of geological hazards.



- F. **Life of Structure.** Proposed development shall be sited far enough from erosion and landslide hazard areas to ensure at least 100 years of useful life for the proposed structure(s) or infrastructure. The location ~~should~~shall be determined by a geologist or other qualified professional licensed in the state of Washington and ~~should~~ be based on site-specific evaluation of the landslide and/or erosion hazard.

**16.16.322 Geologically Hazardous Areas – General Use or Modification.**

- A. **Remodels and Additions.** Any proposed remodel or addition to an existing permitted or nonconforming structure that exceeds a valuation of greater than 50%~~percent~~ of the fair market value shall be required to ensure that the entire structure is improved in accordance with all Article 3 requirements.

- B. **Critical Facilities Prohibited.** Critical facilities as defined in WCC 16.16.900 shall not be constructed or located in geologically hazardous areas if there is a feasible alternative location outside geologically hazardous areas that would serve the intended service population. If allowed, the critical facility shall be designed and operated to minimize the risk and danger to public health and safety to the maximum extent practicable. [CES42]

- ~~B.C.~~ **Agricultural Activities.** Agricultural activities (uses and structures) may be allowed within geologically hazardous areas without a conservation farm plan as long as the activity does not increase the potential for landslides, channel migration, or alluvial fan hazards on or off the site; except, that a conservation farm plan shall be required for agricultural activities within landslide hazard areas and associated landslide hazard area setbacks (WCC 16.16.325(C)).

- ~~C.D.~~ **Land ~~Subd~~Division.** Land that is located wholly within a landslide hazard area, riverine or coastal erosion hazard area, alluvial fan hazard area, lahar hazard area, or mine hazard area or its buffer may not be subdivided to create buildable parcels entirely within the hazardous area. Land that is located partially within a hazard area or its setback may be divided; provided, that each resulting lot has sufficient buildable area outside of the hazardous area with provision for drainage, erosion control and related features that will not adversely affect the hazard area or its setback.

**16.16.325 Landslide Hazard Areas – Use and Modification Standards.**

- A. ~~General Standards.~~ **Allowed Uses and Modifications.** The following uses and modifications activities may be allowed in active landslide hazard areas when all reasonable measures have been taken to minimize risks and other adverse effects associated with landslide hazards, and when the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose:
1. **Reasonable Use.** Developments that will not increase the threat to the health or safety of people and will not increase potential for landslides on or off the site and meet the reasonable use standards as set forth in WCC 16.16.270.
  2. **Utilities.** Utility lines and pipes that are above ground, properly anchored and/or designed so that they will continue to function in the event of a slope failure or movement of the underlying materials and will not increase the risk or consequences of static or seismic slope instability or result in a risk of mass wasting. Such utility lines may be permitted only when the applicant demonstrates that no other feasible alternative is available to serve the affected population.

3. **Trails.** Trails shall be meet all of the following:

- a. The applicant demonstrates that no other feasible alternative exists.
- b. The trail engineering design and construction methods minimize the need for major repair or reconstruction.
- c. Specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required.
- d. Exceptions or deviations from technical standards for width or other dimensional measurements may require a variance.

4. **Development Access.** Access driveways and roads shall meet all of the following:

- a. The applicant demonstrates that no other feasible alternative exists, including through the provisions of Chapter 8.24 RCW.
- b. A qualified professional designs the driveway or access road to minimize the need for major repair or reconstruction. The design shall provide a greater level of protection than road or driveway standards outside of geological hazardous areas.
- c. Specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required.
- d. Exceptions or deviations from technical standards for width or other dimensional measurements may require a variance.

~~3. Access roads and trails that are engineered and built to standards that minimize the need for major repair or reconstruction beyond that which would be required in nonhazard areas. Access roads and trails may be permitted only if the applicant demonstrates that no other feasible alternative exists, including through the provisions of Chapter 8.24 RCW. If such access through critical areas is granted, exceptions or deviations from technical standards for width or other dimensions and specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required.~~

4.5. **Stormwater.** Stormwater conveyance through a properly designed stormwater pipe when no other storm-water conveyance alternative is ~~available~~feasible. The pipe shall be located above ground and be properly anchored and/or designed so that it will continue to function in the event of a slope failure or movement of the underlying materials and will not increase the risk or consequences of static or seismic slope instability or result in increased risk of mass wasting activity.

B. **Landslide Hazard Management Zone ~~Standards~~.** Alteration may be allowed within 300 feet of an active landslide hazard area when the ~~technical administrator~~ Director determines that the following standards are met:

1. The proposed alteration includes all appropriate measures to avoid, eliminate, reduce, or otherwise mitigate risks to health and safety.
2. The proposed alteration is located outside of a landslide hazard area and any required setback, as set forth in WCC 16.16.325(C).
3. The development will not decrease slope stability on adjacent properties. The development shall not increase the risk or frequency of landslide occurrences.

4. The removal and disturbance of vegetation, clearing, or grading shall be limited to the area of the approved development.
5. The development is outside of the area of potential upslope or downslope surface movement or potential deposition in the event of a slope failure.
6. The development will not increase or concentrate surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions.
7. The proposed alterations will not adversely impact other critical areas.
8. Structures and improvements shall minimize alterations to the slope contour, and shall be designed to minimize impervious lot coverage unless such alterations or impervious surfaces are needed to maintain slope stability.

C. **Landslide Hazard Area Setbacks.** ~~In addition to the applicable general protective measures found in WCC 16.16.265, the technical administrator shall have the authority to require s~~Setbacks shall be required from the edges of any identified landslide hazard area in accordance with the following:

1. The size of the setback shall be based on the findings of a qualified professional and shall minimize the risk of property damage, death, or injury resulting from landslides both on and off the property; provided, that the Director may require a minimum setback in accordance with International Building Codes adopted by Whatcom County.
2. The setback shall include consideration of the hydrologic contribution area to the potential landslide area and/or the area subject to the potential for mass movement, and the downhill area subject to potential deposition.
3. The setback shall include consideration of vegetation on the potential landslide area and in areas above and below the potential landslide area. The ~~technical administrator~~ Director shall have the authority to require vegetation or other measures to protect or improve slope stability and shall have the authority to require a mitigation plan developed in accordance with WCC 16.16.260, and a conservation easement in accordance with WCC 16.16.265(C) to ensure appropriate vegetation improvements are installed, maintained, and preserved.
4. Developments on sites that are directly adjacent to a wetland, marine shoreline, or other habitat conservation area as defined in Article 7 of this chapter may be subject to additional buffer requirements and standards as set forth in the subsequent articles of this chapter.

**16.16.340 Seismic Hazard Areas – Use and ModificationStandards.**

Development may be allowed in seismic hazard areas when all of the following apply:

- A. Structures in seismic hazard areas shall conform to applicable analysis and design criteria of the International Building Code.
- B. Public roads, bridges, utilities, and trails shall be allowed when there are no feasible alternative locations, and geotechnical analysis and design are provided that minimize potential damage to roadway, bridge, and utility structures, and facilities will not be susceptible to damage from seismically induced ground deformation. Mitigation measures shall be designed in accordance with the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) Manual or other appropriate document.

**16.16.345 Alluvial Fan Hazard Areas – Use and Modification Standards.**

The following uses and modifications activities may be allowed in alluvial fan hazard areas when all reasonable measures have been taken to minimize risks and other adverse effects associated with alluvial fan hazards, when the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose, and when the applicable general protective measures found in WCC 16.16.265 have been applied:

- A. Reasonable Use. Developments that will minimize the threat to the health or safety of people and will not increase the risks of alluvial fan hazards on or off the site and meet the reasonable use standards as set forth in WCC 16.16.270.
- B. Infrastructure. Roads, utilities, bridges, and other infrastructure that are located and designed to minimize adverse impacts on critical areas and avoid the need for channel dredging or diking or other maintenance activities that have the potential to substantially degrade river and stream functions.
- C. Permanent residential structures and commercial developments shall be allowed in alluvial fan hazard areas only if the fan has undergone a County-approved study to assess potential hazards, determine risks, and identify mitigation measures and is deemed suitable for development. The ~~technical administrator~~ Director shall make this determination based on a detailed assessment by a qualified professional that identifies the risks associated with a 500-year return period debris flow or the maximum credible event that could impact the alluvial fan.
- D. Accessory structures not involving human occupancy shall be allowed as long as the structure will not increase the alluvial fan hazards on or off the site.

**16.16.350 Volcanic Hazard Areas – Use and Modification Standards.**

- A. Ash/Tephra Fall and Lateral Blast Hazard Areas. Development may be allowed in these areas; provided, that all reasonable measures have been taken to minimize risks and adverse effects, and when the amount and degree of the alteration is limited to the minimum needed to accomplish the project purpose, and when the applicable general protective measures found in WCC 16.16.265 and the standards of WCC 16.16.320 have been applied.
- B. Lahar Hazard Zones.
  - 1. Subject to WCC 16.16.320(A) through (C) and WCC 16.16.265, the following uses are allowed in any volcanic hazard areas:
    - a. Single-family residences and duplexes.
    - b. Accessory structures not involving human occupancy.
    - c. Sewer collection facilities, communication facilities, and other utilities that are not likely to cause harm to people or the environment if inundated by a lahar. Underground utilities such as pipelines shall be allowed if demonstrated through a geotechnical analysis to be sufficiently buried as to not likely be damaged by scour caused by a lahar.
    - d. Agricultural and forestry uses not including human habitation.
  - 2. Subject to WCC 16.16.320(A) through (C) and WCC 16.16.265 (except subsection D when located wholly within a lahar hazard zone), the following uses are allowed in volcanic hazard areas subject to the submittal and approval of a volcanic hazard emergency management plan

meeting the requirements of subsection (B)(3) of this section; however, this requirement may be waived for properties located in an area with an estimated lahar arrival time of more than 60 minutes. The County will maintain travel time projection maps to estimate lahar approach times.

- a. Expansion of legal nonconforming uses meeting criteria of WCC [16.16.275](#) and WCC Chapter [20.83](#).
- b. All other uses allowed per the property's zoning district.
3. Where required by subsection (B)(2) of this section, a volcanic hazard emergency management plan shall be submitted for approval and meet the following requirements:
  - a. Is consistent with and integrated into a community emergency plan maintained by the sheriff's office of emergency management.
  - b. Includes an emergency evacuation plan.
  - c. Is required to be updated every five years.
  - d. Evacuation route maps must be posted on the premises.

**16.16.355 Erosion Hazard Areas – Use and Modification Standards.**

- A. General Standards. For coastal, riverine, and stream erosion hazard areas, the following activities shall be allowed when the applicable general protective measures found in WCC [16.16.265](#) have been applied and as follows:
  1. Developments that minimize the threat to the health or safety of people and will not increase the risks of erosion hazards on or off the site and meet the reasonable use or variance standards as set forth in WCC [16.16.270](#) or [16.16.273](#), respectively.
  2. Discharge of surface water drainage into a coastal or riverine erosion hazard area, provided there are no other alternatives for discharge, and the drainage is collected upland of the top of the active erosion hazard area and directed downhill in an appropriately designed stormwater pipe that includes an energy dissipating device at the base of the hazard area. The pipe shall be located on the surface of the ground and be properly anchored so that it will continue to function under erosion conditions and not create or contribute to adverse effects on downslope critical areas. The number of pipes ~~should~~ shall be minimized along the slope frontage.
  3. Stormwater retention and detention systems, such as dry wells and infiltration systems using buried pipe or French drains, provided they are located outside the identified channel migration zone, designed by a qualified professional and shall not affect the stability of the site.
  4. Utility lines when no feasible conveyance alternative is available. The line shall be located above ground and properly anchored and/or designed so that it will not preclude or interfere with channel migration and will continue to function under erosion conditions; provided, that utility lines may be located within channel migration zones if they are buried below the scour depth for the entire width of the Channel Migration Zone (CMZ).
  5. Public roads, bridges, and trails when no feasible alternative alignment is available. Facilities shall be designed such that the roadway prism and/or bridge structure will not be susceptible to damage from active erosion.

6. Access to private development sites may be allowed to provide access to portions of the site that are not critical areas if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter [8.24](#) RCW. Exceptions or deviations from technical standards for width or other dimensions and specific construction standards to minimize impacts may be specified.
7. Shoreline stabilization may be permitted when consistent with the shoreline stabilization regulations found in 23.40.190 (Shoreline Stabilization), regardless of whether the proposed project is within shoreline jurisdiction or not.~~Stream bank stabilization and shoreline protection may be permitted subject to all of the following standards:~~

- ~~— Shoreline protection measures located within coastal or riverine erosion areas shall use soft armoring techniques (bioengineering erosion control measures as identified by the State Department of Ecology and the Department of Fish and Wildlife guidance) unless the applicant provides a geotechnical analysis demonstrating that bioengineering approaches will not adequately protect the property.~~
- ~~— The armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply from feeder bluffs.~~
- ~~— The armoring will not adversely affect critical areas including habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.~~
- ~~— The proposal shall comply with WCC Title [23](#).~~
- ~~— Hard bank armoring is discouraged and may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline erosion caused by wave action or riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply.~~
- ~~— The erosion is not being caused by upland conditions, such as the removal of vegetation or human alteration of existing drainage.~~
- ~~— Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.~~

[15.8.](#) New residences shall be located outside of channel migration hazard areas or marine shoreline retreat areas. Accessory structures not involving human occupancy with a footprint equal to or less than 2,500 square feet shall be allowed; provided, that they are located at the outer edge of the migration zone as defined by this chapter; and provided, that the ~~technical administrator~~ Director may allow larger accessory structures where mitigating measures are feasible and provided for by the applicant.

[16.9.](#) New public flood protection measures and expansion of existing ones may be permitted, subject to WCC Title [17](#), Article 4 of this chapter, and a state hydraulic project approval; provided, that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection.

- B. Erosion Hazard Area Setbacks. In addition to the applicable general protective measures found in WCC [16.16.265](#), the ~~technical administrator~~ Director shall have the authority to require setbacks from the edges of any coastal, stream, or riverine hazard erosion area in accordance with the following:
1. The size of the setback shall be based on the findings of a qualified professional and shall protect critical areas and processes and minimize the risk of property damage, death or injury resulting from erosion over the life of the development, typically identified as 100 years; provided, that the Director may require a minimum setback in accordance with International Building Codes adopted by Whatcom County.
  2. The setback shall include the uphill area subject to potential erosion, the downhill area subject to potential deposition, and any area subject to landslide as a result of erosion.
  3. The setback shall include woody vegetation adequate to stabilize the soil and prevent soil movement. If the designated setback area lacks adequate woody vegetation, the ~~technical administrator~~ Director shall have the authority to require vegetation enhancement or other measures to improve slope stability.
  4. Developments on sites that are directly adjacent to a wetland or marine shoreline or other habitat conservation area as defined in Article 7 of this chapter may be subject to additional setback requirements and standards as set forth in the subsequent articles of this chapter.

**16.16.365 Tsunami Hazard Areas – Use and Modification Standards.**

The standards of WCC [16.16.320](#) shall apply. For development within tsunami hazard areas the proposed development shall be designed to provide protection from the tsunami hazard that meets the projected hazard on the Department of Natural Resources Tsunami Inundation Maps. For other low-lying coastal areas not included on the inundation maps, development shall be designed to provide protection for debris impact and an inundation as determined by current Department of Natural Resource modeling, unless other measures can be shown to provide equal or greater protection.

**16.16.367 Seiche and Landslide Generated Wave Hazard Areas – Use and Modification Standards.**

Standards for seiche and landslide generated wave hazards will only apply if the hazard area is mapped by the United States Geologic Survey or the Department of Natural Resources, Division of Geology and Earth Resources or other credible source approved by Whatcom County. If a mapped hazard is present, the standards of WCC [16.16.320](#) and [16.16.350](#) shall apply. For residential development within mapped seiche and landslide generated wave hazard areas, the proposed development ~~should~~ shall be designed to withstand the mapped hazard. If the risk of the event is less than 0.1% ~~percent~~ on a yearly basis, development standards may not be required, but notice on property title will be required.

**16.16.370 Mine Hazard Areas – Use and Modification Standards.**

The standards of WCC [16.16.320](#) and [16.16.350](#) shall apply.

**16.16.375 Geologically Hazardous Areas – Review and Reporting Requirements.**

- A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration is, or may be, located within an active or potential



geologically hazardous area, the ~~technical administrator~~ Director shall have the authority to require the submittal of a geological assessment report.

- B. A geologic hazards assessment report for a geologically hazardous area shall include a field investigation and contain an assessment of whether or not the type of potential geologic hazard identified is present or not present and if development of the site will increase the potential for landslides or erosion on or off the site. Geology hazard assessment reports shall be prepared, stamped, and signed by a qualified professional. The report should:
1. Be appropriate for the scale and scope of the project;
  2. Include a discussion of all geologically hazardous areas on the site and any geologically hazardous areas off site potentially impacted by or which could impact the proposed project. If the affected area extends beyond the subject property, the geology hazard assessment may utilize existing data sources pertaining to that area;
  3. Clearly state that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site and provide a rationale as to those conclusions based on geologic conditions and interpretations specific to the project;
  4. Provide a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, and other adequate information to determine compliance with the requirements of this article;
  5. Provide conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties.
  - ~~5-6.~~ Geotechnical reports shall conform to accepted technical standards and Generally follow the guidelines set forth in the Washington State Department of Licensing Guidelines for Preparing Engineering Geology Reports in Washington (2006). In some cases, such as when it is determined that no landslide or erosion risk is present, a full report may not be necessary to determine compliance with this article, and in those cases a stamped letter or abbreviated report may be provided;
  - ~~6-7.~~ If a landslide or erosion hazard is identified, provide minimum setback recommendations for avoiding the landslide or erosion hazard, recommendations on stormwater management and vegetation management and plantings, other recommendations for site development so that the frequency or magnitude of landsliding or erosion on or off the site is not altered, and recommendations are consistent with this article;
  - ~~7-8.~~ For projects in seismic hazard areas, the report shall also include a detailed engineering evaluation of expected ground displacements, amplified seismic shaking, or other liquefaction and/or dynamic settlement effects and proposed mitigation measures to ensure an acceptable level of risk for the proposed structure type or other development facilities such as access roads and utilities;
  - ~~8-9.~~ For projects in mine hazard areas, the report shall also include a description of historical data and remnant mine conditions, if available, dates of operation, years of abandonment, strength

of overlying rock strata, and other information needed to assess stability of the site together with analysis of surface displacement or foundation stress from collapse of workings.

- C. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period, the applicant may be required to submit an amendment to the geological assessment.

## Article 4. Frequently Flooded Areas

### 16.16.400 Purpose.

The purposes of this article are to:

- A. Reduce the risk to life and safety, public facilities, and public and private property that results from floods.
- B. Avoid or minimize impacts to fish and wildlife habitats that occur within frequently flooded areas.
- C. Protect and maintain the beneficial ecological functions and values of frequently flooded areas, including providing the necessary flow regime to form and maintain a full range of functional and accessible salmonid habitats both within and outside of frequently flooded areas.
- D. To ensure compliance with FEMA National Flood Insurance Program (NFIP) protection standards for critical habitats of species listed under the Endangered Species Act.
- E. In conjunction with the provisions of WCC Title [17](#), establish review procedures that provide an integrated approach to managing floodplain development and maintaining the capacity of the floodplain or floodway to convey and store flood waters.

### 16.16.410 ~~Frequently Flooded Areas – Designation and Mapping—Frequently Flooded Areas.~~

- A. Frequently flooded areas are areas located along major rivers, streams, and coastal areas where the depth, velocity, intensity and frequency of flood water during major events present a risk to human life and property. Areas susceptible to these types of hazards are hereby designated as frequently flooded areas and subject to the provisions of this article.

~~B. The approximate location and extent of frequently flooded areas are shown on the County's critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as new hazard areas are identified and as new information becomes available. This article does not imply that land outside mapped frequently flooded areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Whatcom County, any officer or employee thereof, or the Federal Insurance and Mitigation Administration (FIMA), for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. [CES43]~~

~~C. B.~~ Frequently flooded areas shall include, but not be limited to:

1. ~~Areas subject to a one percent recurrence interval of flood water inundation or a 100-year base flood~~ Special flood hazard areas [CES44] as mapped on the current effective Federal Emergency Management Agency's Flood Insurance Rate Maps (FIRM). This includes coastal high hazard areas as defined by this chapter and as identified and designated on the FIRM maps as Zone VE or V; provided, that tsunami hazard areas are designated as geologically hazardous areas and subject to the provisions of Article 3 of this chapter.
2. Other flood hazard areas identified by the County public works department based on review of historical data, high water marks, photographs of past flooding, or similar information from federal, state, county, or other valid sources when base flood elevation data from the Federal Insurance and Mitigation Administration has not been provided or is not accurate.

**16.16.420 Frequently Flooded Areas – General Standards.**

- A. All development shall conform to the provisions of WCC Title [17](#), Flood Damage Prevention, and the applicable provisions of this chapter.
- B. Development within frequently flooded areas shall be allowed only when it is consistent with all of the following:
  - 1. FEMA’s National Flood Insurance Program (NFIP), including the protection standards for critical habitats for listed species;
  - 2. The mitigation sequence in WCC [16.16.260](#);
  - 3. Article 7, Habitat Conservation Areas, of this chapter;
  - 4. The applicable general protective measures found in WCC [16.16.265](#).
- C. The ~~technical administrator~~ Director shall have the authority to require a habitat assessment and, if necessary, a mitigation plan prepared by a qualified professional, in accordance with the FEMA Regional Guidance for the Puget Sound Basin, and mitigate for adverse impacts to the ecological functions of frequently flooded areas; provided, that such mitigation shall be consistent and compatible with the goal of protecting health and safety and minimizing risks to property.

**16.16.430 Frequently Flooded Areas – Review and Report Requirements.**

- A. When County critical area maps or other sources of credible information indicate that a site proposed for development is or may be located within a frequently flooded area, the County public works department’s river and flood division and/or the ~~technical administrator~~ Director shall have the authority to require a critical area assessment report.
- B. The public works department shall have primary responsibility for reviewing and approving proposed developments for consistency with WCC Title [17](#). The ~~technical administrator~~ Director shall review development proposals for consistency with the standards provided in this chapter. Either may place conditions for approval and/or require mitigation in accordance with this chapter.
- C. In addition to the requirements of WCC [16.16.255](#), critical areas assessment reports for frequently flooded areas shall:
  - 1. Identify any federally listed species and associated habitats, and demonstrate that no harm will occur to such species or habitats as a result of development (inclusive of mitigation) within frequently flooded areas.
  - 2. Address adverse impacts to ecological functions and processes, including riparian vegetation. Positive impacts may also be discussed.
  - 3. Include mitigation for adverse effects on frequently flooded areas’ ecological functions, where applicable.
- D. The ~~technical administrator~~ Director shall have the authority to modify the requirements of subsection C of this section when s/he determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development.
- E. The ~~technical administrator~~ Director shall have the authority to require additional information to that required in subsection C of this section that discloses and describes the effects of proposed development on frequently flooded area functions, including, but not limited to, impacts on: storage and conveyance of flood water; channel migration; peak flows and flow velocities; redd scour and

displacement of rearing juvenile fish; sediment quality in streams; shear stress and bank erosion; water quality; wildlife habitat; fish access; and nutrients cycling or other hyporheic functions that link surface and groundwater systems.

- F. Critical areas assessment report requirements may be waived for single-family developments and structures accessory to agricultural uses when the ~~technical administrator~~ Director and the Public Works department determine that the development does not meet the FEMA requirements for a habitat assessment in FEMA Regional Guidance for the Puget Sound Basin ~~no adverse impacts or risks to life, property, or ecological functions will occur.~~

## Article 5. Critical Aquifer Recharge Areas

### 16.16.500 Purpose.

The purposes of this article are to:

- A. Preserve, protect, and conserve Whatcom County's groundwater resources and their functions and values for current and future generations by protecting critical aquifer recharge areas from contamination.
- B. Prevent adverse impacts on groundwater quantity by regulating development activities that could deplete aquifer storage, reduce groundwater levels, and/or diminish infiltration and replenishment of groundwater.
- C. Prioritize the management, protection, and conservation of groundwater recharge areas as sources of potable water supply.
- D. Establish review procedures for development activities that have the potential to adversely affect critical aquifer recharge areas.

### 16.16.510 ~~Critical Aquifer Recharge Areas – Designation, Classification and Mapping—Critical Aquifer Recharge Areas.~~

- A. Critical aquifer recharge areas play a crucial role in supplying potable water (as defined by WAC [365-190-030\(2\)](#)). These recharge areas have geologic conditions that allow high infiltration rates, which contribute significantly to the replenishment of groundwater. These conditions also create a high potential for groundwater contamination. These areas are hereby designated as critical areas and subject to the provisions of this chapter.
- B. The approximate location and extent of critical aquifer recharge areas are shown on the County's critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as recharge areas are identified and as new information becomes available.
- C. Critical aquifer recharge areas shall be designated and classified as follows:
  - 1. Low, Moderate, and High Susceptibility Aquifer Recharge Areas. Aquifer recharge areas susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the State Department of Ecology (Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances, July 2000, Publication No. 97-30, Version 4.0).
  - 2. Wellhead Protection Areas. The area defined by the boundaries of the 10-year time of groundwater travel, in accordance with WAC [246-290-135](#). For purposes of this chapter, all wellhead protection areas shall be designated as highly susceptible critical aquifer recharge areas.
- D. If special groundwater management areas or susceptible groundwater management areas are established in Whatcom County in accordance with WAC [173-200-090](#) or [173-100-010](#), respectively, then these areas shall be incorporated into the highly susceptible aquifer designation.

**16.16.520 Critical Aquifer Recharge Areas – General Standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#), all development in a critical aquifer recharge area shall meet the following standards:

- A. The proposed development will not cause contaminants to enter the aquifer and will not significantly affect the recharging of the aquifer in an adverse manner.
- B. The proposed development must comply with the water source protection requirements and recommendations of the Federal Environmental Protection Agency, State Department of Health, and the Whatcom County health department.
- C. The proposed development must be designed and constructed in accordance with the County stormwater management requirements or other applicable stormwater management standards (Whatcom County Development Standards Chapter 2, WCC Title [20](#)).

**16.16.525 ~~Critical Aquifer Recharge Areas – Use and Modification~~Activity Subject to Critical Areas Review.**

The following development activities, when proposed in moderate and high susceptibility critical aquifer recharge areas, have the potential to adversely affect groundwater quality and/or quantity and shall require submittal of a critical areas assessment report as defined in WCC [16.16.255](#) and [16.16.535](#):

- A. Any development with an on-site domestic septic system at a gross density greater than one system per residence per acre.
- B. All storage tanks and storage facilities for hazardous substances and/or hazardous wastes; provided, that:
  - 1. The tanks must comply with Department of Ecology regulations contained in Chapters [173-360](#) and [173-303](#) WAC as well as International Building Code requirements;
  - 2. All new underground tanks and facilities shall be designed and constructed so as to prevent releases due to corrosion or structural failure for the operational life of the tank, or have a secondary containment system to prevent the release of any stored substances;
  - 3. All new aboveground storage tanks and facilities shall be designed and constructed so as to prevent the release of a hazardous substance to the ground, groundwaters, or surface waters by having primary and secondary containment.
- C. Vehicle repair, servicing and salvaging facilities; provided, that the facility must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur. Dry wells shall not be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology prior to commencement of the proposed activity.
- D. Use of reclaimed wastewater must be in accordance with adopted water or sewer comprehensive plans that have been approved by the State Departments of Ecology and Health and the Whatcom County council per Chapter [57.16](#) RCW; provided, that:
  - 1. Surface spreading must meet the groundwater recharge criteria given in RCW [90.46.010](#)(10) and [90.46.080](#).



2. Direct injection must be in accordance with the standards developed by authority of RCW [90.46.042](#).
- E. Any other development activity that the ~~technical administrator~~ Director determines is likely to have a significant adverse impact on groundwater quality or quantity, or on the recharge of the aquifer. The determination must be made based on credible scientific information.
- F. Metals and hard rock mining and new sand and gravel mining subject to the provisions of the County's current mineral resource lands (MRL) review procedures in WCC Chapter [20.73](#); provided, that for new MRLs such activities shall be prohibited within the 10-year travel time zone of wellhead protection areas.

**16.16.530 Critical Aquifer Recharge Areas – Prohibited Uses.**

The following developments and uses are prohibited in critical aquifer recharge areas:

- A. New landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste of more than 2,000 cubic yards, and inert and demolition waste landfills.
- B. Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells.
- C. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
- D. Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).
- E. Facilities that store, process, or dispose of radioactive substances.
- F. Other activities that the ~~technical administrator~~ Director determines would significantly degrade groundwater quality and/or reduce the recharge to aquifers currently, or potentially used as a potable water source, or that may serve as a significant source of base flow to a regulated stream. The determination must be made based on credible scientific information.

**16.16.535 Critical Aquifer Recharge Areas – Review and Report Requirements.**

- A. When County critical area maps or other sources of credible information indicate that the proposed development activities listed in WCC [16.16.525](#) occur within a critical aquifer recharge area, the ~~technical administrator~~ Director shall have the authority to require a critical area assessment report and to regulate developments accordingly. Critical areas assessment reports for aquifer recharge areas shall meet the requirements of WCC [16.16.255](#) and this section. Assessment reports shall include the following site- and proposal-related information unless the ~~technical administrator~~ Director determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:
  1. Available information regarding geologic and hydrogeologic characteristics of the site, including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
  2. Groundwater depth, flow direction and gradient based on available information;
  3. Currently available data on wells and springs within 1,300 feet of the project area;
  4. The presence and approximate location of other critical areas, including surface waters, within 1,300 feet of the project area based on available data and maps;

5. Existing and available historic water quality data for the area to be affected by the proposed activity;
  6. Proposed best management practices;
  7. The effects of the proposed project on the groundwater quality and quantity, including:
    - a. Potential effects on stream flow, wetlands and/or other resources, and on ecosystem processes;
    - b. Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features; and
    - c. Predictive evaluation of contaminant transport based on potential releases to groundwater; and
  8. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for emergency response provisions as well as regular inspection, repair, and replacement of structures and equipment that could fail.
- B. If the applicant can demonstrate through a valid hydrogeological assessment that geologic and soil conditions underlying their property do not meet the criteria for low, moderate, or high susceptibility, the property shall not be considered a critical aquifer recharge area.

## Article 5.5. Areas within the Rural Residential District of Lummi Island

### 16.16.540 Areas within the Rural Residential District of Lummi Island.

#### 16.16.541 Exempt Wells.

Wells drilled as a replacement of an existing well are exempt from this article as long as the withdrawal rate is not increased by more than ~~20%-percent~~ of the existing well. If baseline withdrawal rate information is not available, this must be established by a licensed well driller prior to well replacement.

#### 16.16.542 Minimum Well Spacing for all New Wells.

Wells shall have a minimum of 200 feet distance between a new well and an existing operating well.

#### 16.16.543 Requirements for Public Water System Wells, Non-Group B Two Party Wells, and Non-Domestic Wells.

In addition to the minimum well spacing, the following measures are required for public water system wells, non-Group B two party wells, and nondomestic wells. (Includes “public water system” wells and non-Group B two party wells as defined under Whatcom County drinking water regulations and nondomestic use wells pumping greater than 250 gpd. “Public water system” is defined under WCC Chapter [24.11](#) as any water system providing piped water for consumption, excluding a system serving only one single-family residence and any system with four or fewer connections serving only residences on the same farm. A “non-Group B two party well” is defined in WCC Chapter [24.11](#) as a water system using one well to serve two single-family residences for which the director of health has waived all public water system requirements.)

##### A. Chloride Monitoring and Testing.

1. Monitoring. Well owners shall collect and have water samples analyzed for chloride concentration twice annually, in April and August, and submitted to the Whatcom County health department.
2. Chloride Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing a greater than ~~20%-percent~~ increase in groundwater withdrawals in an existing well re-quire a minimum 24-hour-duration pumping test at ~~100%-percent~~ of the proposed average daily demand, at the end of which a water sample will be collected for analysis of chloride concentration. Subdivisions using individual wells are required to test wells simultaneously or, alternatively, have a licensed hydrogeologist evaluate well interference and water quality changes. Subdivision wells shall remain accessible for future testing in the event of subdivision expansion.
3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than ~~20%-percent~~ if chloride concentrations measured at the end of the test specified in subsection (A)(2) of this section are

greater than 100 mg/L. For systems expanding ~~20%-percent~~ or less within one year, the highest chloride determination within the past year in subsection (A)(1) of this section cannot be greater than 100 mg/L.

4. Limit on Water Use by Existing Wells. Any increase (0 to ~~20%-percent~~) in water use will not be permitted if either semiannual analysis in the previous 12-month period indicates greater than 100 mg/L chloride concentration. If the semi-annual chloride determinations have not been submitted as required, then the pump testing requirement of subsection (A)(2) of this section shall apply.
5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

**B. Arsenic Monitoring and Testing in the Unconsolidated Aquifer.**

1. The following monitoring and testing is required unless the well is determined not to be located in the unconsolidated sandstone aquifer. A Washington State licensed hydrogeologist must make the determination in a submitted report.
2. Arsenic Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing a greater than ~~20%-percent~~ increase in groundwater withdrawals in an existing well require a minimum 24-hour-duration pumping test at ~~100%-percent~~ of the proposed average daily demand, at the end of which a water sample will be collected for analysis of arsenic concentration.
3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than ~~20%-percent~~ if arsenic concentrations measured at the end of the test specified in subsection (B)(2) of this section are greater than 10 µg/L.
4. Limit on Water Use by Existing Wells. Any increase (0 to ~~20%-percent~~) in water use will not be permitted if the most recent arsenic determination indicated greater than 10 µg/L arsenic concentration. If no arsenic concentration has been determined in the past three years, the pumping test requirement in subsection (B)(2) of this section shall apply.
5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

**16.16.544 Administrative Waiver.**

Administrative waivers may be granted to any section of these requirements by petition to the administering agency. Waiver request must demonstrate that the project is consistent with the intent of these requirements; no health hazard would result from this action; and must be stamped by a licensed Washington State hydrogeologist.

## Article 6. Wetlands

### 16.16.600 Purpose.

The purposes of this article are to:

- A. Recognize and protect the beneficial functions, values, and services performed by wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging groundwater; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, retention and transformation of sediments, nutrients, and toxicants.
- B. Regulate land use to avoid adverse effects on wetlands and maintain the functions, services, and values of freshwater and estuarine wetlands throughout Whatcom County.
- C. Establish review procedures for development proposals in and adjacent to wetlands.
- D. Establish minimum standards for identifying and delineating wetlands.

### 16.16.610 Wetlands – Designation, Rating, and Mapping.

- A. Wetlands shall be delineated in accordance with the requirements of RCW [36.70A.175](#). Unless otherwise provided for in this chapter, all areas within the county determined to be wetlands in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987 Edition, and the Western Mountains, Valleys, and Coast Region Supplement (Version 2.0), 2010 or as revised, are hereby designated critical areas and are subject to the provisions of this article.
- B. The approximate location and extent of wetlands are shown on the County's critical area maps. ~~However, this information has come from multiple sources over many years' time and is not precise, only general. Thus, these maps are to be used as a guide and do not provide a definitive critical area designation; a~~ A property-specific assessment is necessary ~~for that to determine the wetland boundary. The County shall update the maps as new wetlands are identified and as new information becomes available.~~ [CES45]
- C. Wetlands shall be rated based on categories that reflect the functions and values of each wetland. Wetland categories shall be based on the criteria provided in the Washington State Wetland Rating System for Western Washington, revised 2014, and as amended thereafter, as determined using the appropriate rating forms and associated figures contained in that publication. These categories are generally defined as follows:
  - 1. Category I. Category I wetlands are: (a) relatively undisturbed estuarine wetlands larger than one acre; (b) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (c) bogs; (d) mature and old-growth forested wetlands larger than one acre; (e) wetlands in coastal lagoons; (f) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (g) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (a) represent unique or rare wetland types; (b) are more sensitive to disturbance than most wetlands; (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions.

2. Category II. Category II wetlands are: (a) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (b) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (c) wetlands with a moderately high level of functions (scoring between 20 and 22 points).
3. Category III. Category III wetlands are: (a) wetlands with a moderate level of functions (scoring between 16 and 19 points); (b) can often be adequately replaced with a well-planned mitigation project; and (c) interdunal wetlands between 0.1 and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

**16.16.612 Exceptions to Regulation.**

- A. All wetlands shall be regulated regardless of size; provided, that the following wetlands may be exempt from the requirement to avoid impacts (WCC 16.16.225 General Regulations), and they may be filled if the impacts are fully mitigated based on the remaining actions in WCC 16.16.260 (General Mitigation Requirements). In order to verify the following conditions, a critical area report for wetlands meeting the requirements in WCC 16.16.255 (Critical Areas Assessment Reports) must be submitted. hydrologically isolated Category IV wetlands less than 1,000 square feet in size may be adversely impacted when all of the following criteria are met:
  1. All isolated Category IV wetlands less than 4,000 square feet that:
    - a. Are not associated with riparian areas or their buffers;
    - b. Are not associated with shorelines of the state or their associated buffers;
    - c. Are not part of a wetland mosaic;
    - d. Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology);
    - e. Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in WCC 16.16.710 (Habitat Conservation Areas – Designation, Mapping, and Classification).
  2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.
- The wetland does not provide significant suitable breeding habitat for native amphibian species. Suitable breeding habitat may be indicated by adequate and stable seasonal inundation, presence of thin-stemmed emergent vegetation, and clean water;

- ~~2. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices;~~
- ~~3. The wetland is not located within a habitat conservation area, as defined in WCC 16.16.710, or buffer;~~
- ~~— The wetland is not located within a floodplain and/or not associated with a shoreline of the state as defined by the County's shoreline master program (WCC Title 23);~~
- ~~4. The wetland is not part of a mosaic of wetlands and uplands. This criterion shall be determined using the guidance provided in Ecology's Wetland Rating System for Western Washington (Publication No. 14-06-029); and~~
- ~~4. The wetland is not identified as locally significant by a local watershed plan prepared pursuant to Chapter 400-12 WAC.~~ [CES46]

#### 16.16.620 Wetlands – ~~Use and Modification~~general standards.

The following ~~uses and modifications~~ activities may be permitted in wetlands and/or wetland buffers as specified when, ~~pursuant to WCC 16.16.255, 16.16.260, and 16.16.630~~, all reasonable measures have been taken to avoid adverse effects on wetland functions and values as documented through an alternatives analysis, the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose, and ~~compensatory~~ mitigation is provided for all adverse impacts to wetlands ~~and their buffers~~ that cannot be avoided:

A. **Reasonable Use.** Developments that meet the reasonable use ~~exception or variance~~ standards as set forth in WCC ~~16.16.270 and 16.16.273, respectively.~~

#### B. **Utilities.**

1. **Utility lines** in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible conveyance alternative is available shall be designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, and meet all of the following:
  - a. The utility line is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.
  - b. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation.
  - c. Buried utility lines shall be constructed in a manner that prevents adverse impacts to surface and subsurface drainage. This may include regrading to the approximate original contour or the use of trench plugs or other devices as needed to maintain hydrology.
  - ~~d.~~ Best management practices are used in maintaining said utility corridors such that maintenance activities do not expand the corridor further into the critical area.
  - ~~d-e.~~ The least impactful construction or installation method is used as demonstrated through an alternatives analysis.
2. **On-site sewage disposal systems (OSS)** may be permitted in wetland buffers when accessory to an approved ~~single-family residence residential structure~~when:
  - a. ~~When it~~ is not feasible to connect to a public sanitary sewer system; and
  - b. It is located as far as possible from the wetland; and



- c. ~~When it~~ is operated and maintained in accordance with WCC 24.05.160; provided, that adverse effects on water quality are avoided.

**B.C. Public Roads or Bridges.** New or expanded public roads or bridges in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible alternative alignment is available and the road or bridge is designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, including placement on elevated structures as an alternative to fill, where feasible.

**D. Private Access.** Access to private development sites may be permitted to cross Category II, III, or IV wetlands or their buffers, provided the access meets the following:

1. For direct wetland fill, there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW.
2. Design and construction methods ~~there are no feasible alternative alignments and measures are taken to~~ maintain preconstruction hydrologic connectivity across the access road or driveway. ~~Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW.~~
3. The access is designed to cause the least impact to the wetland and/or its buffer (which may require the applicant to apply for an ~~Exceptions or deviations from the technical Development Standards)~~ for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.
- ~~1.4. Access is not achievable through the administrative provisions of WCC 16.16.640 (Wetland Buffer Modification).~~

**D.E. Agricultural Uses** ~~as follows:~~

1. Construction of an appurtenant structure that is associated with a primary agricultural use; or the reconstruction, remodeling, or maintenance of such structures in wetland buffers, subject to all of the following specific criteria:
  1. The structure is located within an existing lot of record and is an ongoing agricultural use.
  2. There is no other feasible location with less impact to critical areas.
  3. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.
2. Ongoing agricultural activities, subject to the following:
  - a. The activities are conducted in accordance with all applicable provisions of this chapter and WCC Title 17; or
  - b. The agricultural activity is in compliance with the Conservation Program on Agricultural Lands (CPAL) as described in Article 8 of this chapter.

**E.F. Domestic wells** serving single-family developments (including plats, short plats, and individual single-family residences) and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, in wetland buffers when all of the following conditions are met:

1. There is no viable alternative to the well site outside of the buffer and the well is located as far back from the wetland edge as is feasible;
2. The well is more than 75 feet deep; and
3. Any impacts to the wetland and buffer from staging equipment and the well-drilling process are mitigated.

**F.G. Stormwater Management Facilities.**

1. Stormwater management facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, or bioretention cells (engineered or rain gardens) may be permitted within the outer 50%~~percent~~ of a Category II, III or IV wetland buffer; provided, that:
  - a. Construction of the stormwater facility does not displace or impact a forested buffer;
  - b. The width of the buffer between the stormwater facility and the wetland edge is not less than the low intensity land use buffer standards in WCC [16.16.630](#);
  - c. There is no other feasible location for the stormwater facility and the facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent critical areas;
  - d. The stormwater facility is designed to mimic and resemble natural wetlands and meets applicable county or state stormwater management standards and the discharge water meets state water quality standards; and
  - e. Low impact development approaches have been implemented to the maximum extent feasible per the Department of Ecology stormwater manual.
2. Surface water or stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted within a Category III or IV wetland buffer on a case-by-case basis when the ~~technical administrator~~ Director determines that all of the following are met:
  - a. Due to topographic or other physical constraints, there are no feasible alternative locations for these facilities in the outer buffer area or outside the buffer.
  - b. The discharge is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.
  - c. The discharge outlet is designed to prevent erosion and promote infiltration.
  - d. The dispersion outfall is within the outer 25%~~percent~~ of the buffer, unless a closer location is demonstrated to be the only feasible location. Alternative locations shall be the maximum distance from the wetland to alleviate the site constraint.
3. Phosphorus-reducing BMP structures approved and installed through the homeowners' improvement program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within the outer 50%~~percent~~ of a Category II, III or IV wetland buffer.

**G.H. Recreation.** Passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails; provided, that all of the following criteria are met:

1. There is no other feasible alternative route with less impact on the critical area.

2. The trail minimizes erosion and sedimentation, hydrologic alteration, and disruption of natural processes such as wood recruitment and natural wildlife movement patterns.
- ~~1-3.~~ Private trails shall not exceed ~~six-four~~ feet in width, and public trails shall not exceed 10 feet in width, though some portions may be wider to meet the requirements of the Americans with Disabilities Act.
- ~~2-4.~~ They shall be made of pervious material or elevated where feasible.
- ~~3-5.~~ They shall be designed to avoid removal of significant trees.
6. Trails may include limited viewing platforms that shall not exceed eight feet in width and shall be made of pervious materials where feasible.
- ~~4-7.~~ When located in the buffer, they should be located in the outer 25% ~~percent~~ of the buffer; except, that public trails may be permitted closer to the wetland when necessary to provide wetland educational opportunities or for public health and safety; provided, that when closer than the outer 25%, the trail width is the minimum necessary for the trail class. [CES47]
- ~~5-8.~~ They shall be constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.
- ~~6-9.~~ If they must cross a wetland, they shall be elevated, constructed to minimize supports, and be the minimum size necessary to accommodate the level of service.
- ~~G. Single family developments may be permitted to encroach into wetland buffers subject to the technical administrator's approval; provided, that all of the criteria in WCC 16.16.270(B) (Reasonable Use) are met.~~ [CES48]

#### 16.16.630 Wetland Buffer ~~s-widths~~.

To protect the integrity, functions, and values of wetlands, the ~~technical administrator~~ Director shall have the authority to require buffers from the edges of all wetlands, including reestablished or created wetlands, (in addition to the building setback required by WCC ~~16.16.265(DA)~~ (1)) in accordance with the following:

##### ~~A. Wetland buffers shall be established to protect the integrity, functions and values of the wetland.~~

Wetland buffers shall be measured horizontally from a perpendicular line established by the wetland boundary based on the base buffer width identified in Table 1.

##### ~~A.B. Wetland B~~ buffers shall not include areas that are functionally and effectively disconnected from the wetland by an existing, legally established road or other that are functionally and effectively disconnected from the wetland by an of existing, legally established road or other substantially developed surface. [P/C49]

##### ~~B.C.~~ The wetland buffer standards required by this Article presume the existence of a dense, multi-storied native vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the ~~technical administrator~~ Director may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.

##### ~~C.D.~~ The standard wetland buffer shall be based on a combination wetland category, habitat function score (from the wetland rating form), and land use intensity. The intensity of the land use shall be determined in accordance with the definitions found in Article 9 of this chapter unless the ~~technical~~

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~~administrator~~ Director determines that a lesser level of impact is appropriate based on information provided by the applicant demonstrating that the proposed land use will have a lesser impact on the wetland than that contemplated under the buffer standard otherwise appropriate for the land use, as specified in WCC 16.16.640.

~~D-E.~~ Standard buffer widths are shown in Table 1. However, for Category I or II wetlands with “special characteristics” as determined and defined through the Washington State Department of Ecology (2014) Wetland Rating System (including estuarine, coastal lagoons, wetlands of high conservation value, bogs, forested, and interdunal wetlands), only buffers in the highest habitat score (8 to 9) group are applied.

Table 1. Standard Wetland Buffer Widths [CES50]

Wetland Category	Habitat Function Score	Land Use Intensity*		
		High Buffer Width (feet)	Moderate Buffer Width (feet)	Low Buffer Width (feet)
Category I				
	8 – 9	300	225	150
	<del>5-6</del> – 7	150	110	75
	<del>&lt;3</del> – 5	100	75	50
Category II				
	8 – 9	<del>275</del> <u>300</u>	<del>150</del> <u>225</u>	<del>100</del> <u>150</u>
	<del>5-6</del> – 7	150	110	75
	<del>3</del> – <del>&lt;</del> 5	<del>80</del> <u>100</u>	<del>60</del> <u>75</u>	50
Category III				
	8 – 9	<del>150</del> <u>300</u>	<del>110</del> <u>225</u>	<del>75</del> <u>150</u>
	<del>5-6</del> – 7	150	<del>100</del> <u>110</u>	<del>60</del> <u>75</u>
	<del>3</del> – <del>&lt;</del> 5	80	60	<del>50</del> <u>40</u>
Category IV				
	<del>8-3</del> – <del>&lt;</del> <u>59</u>	50	40	25

\* Definitions for high, moderate, and low intensity land use are provided in Article 9 of this chapter.

## 16.16.640 Wetland Buffer Modification. [CES51]

Buffer widths may be increased, decreased, or averaged in accordance with the following provisions, which provide flexible approaches to maximize both ecological functions and allowed uses. All mitigation proposed shall be consistent with State and this Chapter.

A. **Buffer Width Increasing.** The Director may require the standard buffer width to be increased by the distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following:

- To protect the function and value of that wetland including, but not limited to, compensating for a poorly vegetated buffer or a buffer that has a steep slope (greater than 30% percent); or
- To prevent windthrow damage; or

3. To protect wetlands or other critical areas from landslides, erosion or other hazards. [CES52]

4. To maintain viable populations of existing species listed by the Federal or State government as endangered, threatened or sensitive; or

5. When a Category I or II wetland is located within 300 feet of:

a. Another Category I, II or III wetland; or

b. A fish and wildlife HCA; or

c. A Type S or F stream; or

d. A high impact land use that is likely to have additional impacts.

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect wetland and habitat functions. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

**B. Buffer Width Averaging.** Buffer width averaging allows limited reductions of buffer width in specified locations while requiring increases in others. The widths of buffers may be averaged if this will improve the protection of wetland functions.

1. Averaging of required buffer widths will be allowed only if the applicant demonstrates that all of the following criteria are met:

a. The area of the buffer proposed for averaging has not been reduced pursuant to subsection (C). Buffer averaging is not allowed if the buffer has been reduced.

b. Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available; and

c. Averaging width will not adversely impact the wetland functions and values; and

d. The wetland has significant differences in characteristics that affect its habitat functions; and

e. The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging; and

f. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower functioning or less sensitive portion; and

g. The buffer width of a Category I, II, or III wetland shall not be reduced below 75% of the standard buffer width.

2. Averaging of required buffer widths will be allowed for the following when the dimensional standards of subsection (B)(1) are met:

a. To protect a natural feature (e.g., a stand of trees or snags) that otherwise would fall outside of the standard buffer.

b. To provide connections with adjacent habitats or to address those situations where pre-existing development has reduced a buffer area to a width less than the required standard.

In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value. [CES53]

C. **Buffer Width Reduction.** [CES54] The Director shall have the authority to reduce the standard buffer widths identified in WCC 16.16.630 (Wetland Buffers) as follows:

1. The buffers of moderate and low impact land use projects may be reduced when all of the following apply: [CES55]
  - a. The area of the buffer proposed for reduction has not been averaged pursuant to subsection (B). Buffer reduction is not allowed if the buffer has been averaged.
  - b. The applicant demonstrates buffer averaging is not feasible.
  - c. The buffer shall not be reduced to less than 75% of the required buffer.
  - d. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in WCC 16.16.260 (General Mitigation Requirements).
  - e. To minimize impacts and provide equivalent functions and values as required by this section, the Director may require any or all of the following:
    - i. The use of alternative on-site wastewater systems in order to minimize site clearing, where appropriate;
    - ii. Using low impact development (LID) and LID best management practices where appropriate;
      - In order to offset habitat loss from buffer reduction, retaining existing native vegetation on other portions of the site equal to no more than the area impacted. [P/C56]
  - f. The buffer reduction shall not adversely affect the functions and values of the adjacent wetlands;
  - g. All buffer reduction impacts are mitigated and result in equal or greater protection of the wetland functions and values. This includes enhancement of existing degraded buffer area and provide mitigation for the disturbed buffer area.
2. High impact land use projects may apply moderate land use intensity buffers when:
  - a. For wetlands that score 3-5 habitat points, all applicable impact reduction measures from the following list are implemented (from Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Appendix 8C (as updated in 2018):
    - i. Directing lights away from the wetland and buffer.
    - ii. Locating activities that generate noise away from the wetland and buffer.
    - iii. Routing all new, untreated runoff away from wetland while ensuring wetland is not dewatered.
    - iv. Establishing covenants limiting use of pesticides within 150 feet of wetland.
    - v. Applying integrated pest management.
    - vi. Retrofitting stormwater detention and treatment for roads and existing adjacent development.
    - vii. Preventing channelized flow from lawns that directly enters the buffer.
    - viii. Infiltrating or treating, detaining, and dispersing into the buffer new runoff from impervious surfaces and new lawns.
    - ix. Posting signs at the outer edge of the critical area or buffer to clearly indicate the location of the critical area according to the direction of the County.

- x. Useing privacy fencing.
- xi. Planting with dense native vegetation appropriate for the County to delineate buffer edge and to discourage disturbance.
- xii. Using low impact development (LID) and LID best management practices where appropriate.
- xiii. Establishing a permanent conservation easement or tract to protect the wetland and the associated buffer.
- xiv. Useing best management practices to control dust. [CES57]
- b. For wetlands that score 6 points or more for habitat function:
  - i. All applicable impact reduction measures of subsection (C)(2)(a) are implemented, and;
  - ii. A relatively undisturbed, vegetated corridor at least 100 feet wide between the wetland and any other Priority Habitats is protected pursuant to WCC 16.16.260(I) (General Mitigation Requirements – Permanent Protection). If no option for providing such a corridor is available, then only subsection (i) applies.
- 3. In all circumstances when the buffer between the area of reduction and the wetland is degraded, this degraded portion of the buffer shall include replanting with native vegetation in order to achieve a dense vegetative community. [P/C58]
- 4. Any person who alters or proposes to alter regulated wetlands shall reestablish, create, rehabilitate, or enhance (or a combination thereof) areas of wetland in order to compensate for wetland losses at the ratios described in mitigation ratios for projects in Western Washington in Table 8C-11 (as updated in 2014) in Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Section 8C.2.3.
- D. **Buffer Width Variance.** Standard buffer widths may be reduced by more than 25% through a variance pursuant to WCC 16.16.273 (Variances); provided, that buffer averaging beyond that allowed in subsection (B) is prohibited.

**~~16.16.640 Wetland buffer reduction.~~**

~~The technical administrator shall have the authority to reduce the standard buffer widths identified in WCC 16.16.630; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply; and provided further, that all of the following apply:~~

~~—The buffer reduction shall not adversely affect the functions and values of the adjacent wetlands;~~

~~A.—The buffer of a Category I, II, or III wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater;~~

~~A.—The buffer of a Category IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater;~~

~~A.—The applicant implements all reasonable measures to minimize the adverse effects of adjacent land uses and ensure no net loss of buffer functions and values. Such measures may include, but are not limited to, the following:~~

~~1.—Direct lights away from the wetland and buffer.~~

~~1.—Locate activities that generate noise away from the wetland and buffer.~~

~~1.—Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.~~



- ~~1. Establish covenants limiting use of pesticides within 150 feet of wetland.~~
- ~~2.1. Apply integrated pest management.~~
- ~~2.1. Retrofit stormwater detention and treatment for roads and existing adjacent development.~~
- ~~2.1. Prevent channelized flow from lawns that directly enters the buffer.~~
- ~~2.1. Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.~~
- ~~2.1. Post signs at the outer edge of the critical area or buffer to clearly indicate the location of the critical area according to the direction of the County.~~
- ~~2.1. Use privacy fencing.~~
- ~~2.1. Plant with dense native vegetation appropriate for the County to delineate buffer edge and to discourage disturbance.~~
- ~~2.1. Use low impact development (LID) and LID best management practices where appropriate.~~
- ~~2.1. Establish a permanent conservation easement or tract to protect the wetland and the associated buffer.~~
- ~~2.1. Use best management practices to control dust.~~

**16.16.650 Wetland buffer averaging.**

The technical administrator shall have the authority to average wetland buffer widths on a case-by-case basis; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply, and when all of the following criteria are met:

- ~~A. The buffer averaging does not reduce the functions or values of the wetland;~~
- ~~A. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer, and all increases in buffer dimension for averaging must be generally parallel to the wetland boundary to avoid creating buffer “panhandles” unless it constitutes a wildlife corridor;~~
- ~~A. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;~~
- ~~A. The minimum buffer width of a Category I, II, or III wetland shall not be less than 75 percent of the widths established under WCC 16.16.630, or 50 feet, whichever is greater;~~
- ~~A. The minimum buffer width of a Category IV wetland shall not be less than 50 percent of the widths established under WCC 16.16.630, or 25 feet, whichever is greater; and~~
- ~~A. The buffer has not been reduced in accordance with WCC 16.16.640. Buffer averaging is not allowed if the buffer has been reduced.~~

**16.16.660 Wetland buffer increases.**

The technical administrator shall have the authority to increase the width of the standard buffer width on a case-by-case basis when there is sound evidence that a larger buffer is required by an approved habitat management plan as outlined in WCC 16.16.750, or such increase is necessary to:

- ~~A. Protect the function and value of that wetland including, but not limited to, compensating for a poorly vegetated buffer or a buffer that has a steep slope (greater than 30 percent); or~~
- ~~A. Prevent windthrow damage; or~~
- ~~A. Maintain viable populations of species such as herons and other priority fish and wildlife; or~~

~~A. Protect wetlands or other critical areas from landslides, erosion or other hazards.~~

**16.16.670 Wetlands – Review and Reporting Requirements.**

- A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration may contain [wetland indicators, contain](#) or abut wetlands or wetland buffers, the ~~technical administrator~~ [Director](#) may require a site evaluation (reconnaissance) or critical area assessment report by a qualified professional to determine whether or not a regulated wetland is present and, if so, its relative location in relation to the proposed project area or site. If no regulated wetlands are present, then wetland review will be considered complete.
- B. If the ~~technical administrator~~ [Director](#) determines that a wetland [indicator](#) is more likely than not present, ~~ts/he technical administrator~~ shall require a wetland assessment report pursuant to WCC [16.16.255](#) and sub-sections C and D of this section.
- C. A wetland assessment is an element of a critical area assessment report that describes the characteristics of the subject property and adjacent areas. The wetland assessment shall include the occurrence, distribution, delineation, and determination of the wetland category and standard wetland buffers as set forth in WCC [16.16.630](#), and may include analysis of historical aerial photos, and review of public records.
- D. A wetland assessment shall include the following site- and proposal-related information unless the ~~technical administrator~~ [Director](#) determines that any portion of these requirements is already required by Article 2, or unnecessary given the scope and/or scale of the proposed development:
1. Location information (legal description, parcel number, and address);
  2. A vicinity map;
  3. A site plan that includes scale and wetlands and associated buffers and proposed development if appropriate;
  4. A qualitative written assessment and accompanying maps of wetlands and buffers within 300 feet of the site and an estimate of the existing acreage for each. For on-site wetlands, the assessment shall include the dominant and subdominant plant species; soil type, color and texture; sources of hydrology (patterns of surface and subsurface water movement, precipitation, etc.); topography; and other pertinent information. The assessment of off-site wetlands shall be based on available information and shall not require accessing off-site properties;
  5. Wetland Analysis. An analysis of all wetlands and buffers (to the extent they can be legally accessed) including, at a minimum, the following information:
    - a. Wetland delineation conducted by a qualified professional and completed in accordance with WCC [16.16.610](#)(A).
    - b. The wetland boundary shall be marked in the field (with flagging left in the field for Whatcom County verification and placed high enough to allow line of sight with vegetation growth) and surveyed using a methodology appropriate to scale of development. The surveyed wetlands areas shall be mapped showing location and size of all wetlands.

- Methodology used shall be in the report with description of equipment (specs), accuracy, and pertinent description of how the coordinates were gathered.
- c. Determination of each wetland size.
  - d. Description of each wetland class and category.
  - e. Description of overall water sources and drainage patterns on site. Include all streams and drainages (Type S, F, Np, or Ns streams), shorelines, floodplains, flood-prone areas.
  - f. Description of vegetation, hydrologic conditions, and soil and substrate conditions.
  - g. Description of wildlife and habitat. Include all critical habitat for threatened and endangered species within 300 feet of the development footprint.
  - h. Topographic elevation, at two-foot contours provided by Whatcom County PDS for single-family proposals.
  - i. Functional assessment of the wetland and adjacent buffer using a local or state agency-recognized method and including the reference of the method and all data sheets.
  - j. Standard buffer requirements for each wetland. Copies of the wetland rating forms and associated figures from the Ecology Wetland Rating System for Western Washington, as amended.
- E. For single-family building permits, the applicant may hire a qualified professional to prepare the assessment report or may request that the County assess the regulated wetland(s) and buffers and determine the impacts associated with the project, subject to the following:
1. ~~Availability of Field investigation by~~ County staff shall be at the discretion of the ~~technical administrator~~ Director and subject to workload and scheduling constraints.
  2. Fees for County staff services shall be in accordance with the unified fee schedule.
- F. If a regulated wetland buffer from a neighboring property extends onto a proposed development site for which review under this chapter is required, the ~~technical administrator~~ Director shall have the authority to require that deterrent devices be placed at the edge of the buffer in accordance with WCC [16.16.265](#). The applicant shall provide ~~written~~ documentation that no buffer encroachment will occur. The documentation shall be on a form provided by the Department ~~in the form of a letter or similar affidavit.~~

#### **16.16.680 Wetlands – Mitigation Standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#), activities that adversely affect wetlands and/or wetland buffers shall include mitigation sufficient to achieve no net loss of wetland function and values in accordance with WCC [16.16.260](#) and this section.

- A. In determining the extent and type of mitigation required, the ~~technical administrator~~ Director may consider all of the following when applicable:
1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;
  2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
  3. Observed or predicted trends regarding the gains or losses of specific wetland types in the watershed, in light of natural and human processes;

4. The likely success of the proposed mitigation measures;
5. Effects of the mitigation actions on neighboring properties; and
6. Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter [90.82](#) RCW, a watershed plan prepared pursuant to Chapter [400-12](#) WAC, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement, a fully authorized mitigation bank (WCC [16.16.263](#)), or an in-lieu-fee program.

~~Compensatory mitigation shall be provided on site or off site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed or landscape-based analysis that mitigation within an alternative sub-basin of the same basin would have the greatest ecological benefit and the greatest likelihood of success; provided, that limiting functions shall not be removed from sensitive watersheds identified in WCC Title 20. Mitigation shall occur within WRIA 1 or 3.~~

~~All mitigation areas shall be protected and managed to prevent degradation and ensure permanent protection of critical area functions and values. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.~~

~~Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).~~ [CES59]

#### B. Type of Mitigation.

1. **Wetland Alterations.** Compensatory mitigation projects shall restore, create, rehabilitate, enhance, and/or preserve equivalent wetland functions and values pursuant to no net loss of function and area. Compensation for wetland alterations shall occur in the following order of preference:
  - a. Reestablishing (also referred to as restoring) wetlands on upland sites that were formerly wetlands.
  - b. Creating wetlands on disturbed upland sites such as those consisting primarily of nonnative, invasive plant species.
  - c. Rehabilitation of existing wetlands for the purposes of repairing or restoring natural and/or historic hydrologic functions.
  - d. Enhancing existing significantly degraded wetlands.
  - e. Preserving Category I or II wetlands that are under imminent threat; provided, that preservation shall only be allowed in combination with other forms of mitigation ~~and~~ when

the ~~technical administrator~~ Director determines that the overall mitigation package fully replaces the functions and values lost due to development.

2. **Buffer Alterations.** Compensatory mitigation for buffer impacts:
  - a. Shall be consistent with WCC [16.16.630](#) through [16.16.660](#); and
  - b. May include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers, and other measures to achieve equivalent or greater buffer functions.

**C. Mitigation Ratios.**

1. ~~Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio on an area basis.~~ Compensatory mitigation for wetland alterations shall be based on the wetland category and the type of mitigation activity proposed. The replacement ratio shall be determined according to the ratios provided in Table 2; provided, that the replacement ratio for preservation shall be 10 times the ratio for reestablishment or creation. The created, reestablished, rehabilitated, or enhanced wetland area shall, at a minimum, provide a level of function equivalent to the wetland being altered and shall be located in an appropriate landscape setting.
2. The mitigation ratios noted in Table 2 shall not apply to mitigation banks as defined by this chapter. Credit and debit procedures for mitigation banks shall be determined in accordance with the mitigation banking provisions outlined in WCC [16.16.263](#).
3. The ~~technical administrator~~ Director shall have the authority to adjust the ~~replacement mitigation~~ ratios in Table 2 when one or more of the following apply:
  - a. When a combination of mitigation approaches is proposed. In such cases, the area of altered wetland shall be replaced at a 1:1 ratio through reestablishment or creation, and the remainder of the area needed to meet the ratio can be replaced by enhancement or rehabilitation using Table 2.
  - b. When the project proponent has a demonstrated ability, based on past performance, to successfully design, construct, monitor and maintain wetland mitigation projects/sites.
  - c. When use of the guidance for Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington (Department of Ecology Publication No. 10-06-011, as amended) results in a lower mitigation ratio than the standard ratios.
4. For permanent impacts to wetland buffers, unless the Director approves a habitat management plan with different ratios, mitigation shall be provided at the following ratios:
  - a. Where the mitigation is in place and functional before the impact occurs (i.e., advanced mitigation), at a ratio determined by the functions, values, and goals of an advanced mitigation plan.
  - b. Where the mitigation is in place and functional before within 1 year of the impacts occur occurring (i.e., advanced mitigation), at a 1:1 ratio (area or function); and
  - c. Where the mitigation is placed after 1 year of the impact occurs occurring, at a 1.25:1 ratio (area or function); and.
  - d. For retroactive permits the Director may require the ratio to be up to shall be double the ratio in subsection (c) above. [P/C60]

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**Table 2. Compensatory Mitigation Ratios for Projects in Western Washington<sup>1</sup>**

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only	Reestablishment or Creation (R/C) and Rehabilitation (RH)	Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
All Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case
All other Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I	No alteration allowed unless an essential public facility				

(Ratios indicate mitigation area to area disturbed.)

~~Reestablished or created wetlands established pursuant to these mitigation provisions shall have adequate buffers to ensure their protection. The buffer shall be based on the category of the reestablished, created, rehabilitated, enhanced, or preserved wetland.~~

~~E.A. Compensatory mitigation shall be provided on site or off site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed or landscape-based analysis that mitigation within an alternative sub-basin of the same basin would have the greatest ecological benefit and the greatest likelihood of success; provided, that limiting functions shall not be removed from sensitive watersheds identified in WCC Title 20. Mitigation shall occur within WRIA 1 or 3.~~

~~E.A. All mitigation areas shall be protected and managed to prevent degradation and ensure permanent protection of critical area functions and values. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.~~

~~E.A. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).~~

<sup>1</sup> From Wetlands in Washington, Volume 2, Appendix 8C, Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System, Table 8C-11.

**16.16.690 ~~Wetland Compensatory Wetland~~ Mitigation Plan.**

- A. In addition to meeting the requirements of WCC [16.16.260](#)(B), a ~~compensatory~~ mitigation plan for wetland and wetland buffer impacts shall meet the following:
1. Provide an analysis of existing wetland functions and values and a detailed description of the effects of the proposed development on wetland and buffer function and value, including the area of direct wetland disturbance, area of buffer disturbance, area of buffer reduction, and area of buffer averaging, including documentation that the functions and values will be increased through reduction or average; effects of stormwater management; proposed hydrologic alteration including changes to natural drainage or infiltration patterns; effects on fish and wildlife species and their habitats; clearing and grading impacts; temporary construction impacts; and effects of increased noise, light, and human intrusion.
  2. The plan shall be based on applicable portions of the Washington State Department of Ecology's Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 2004, or other appropriate guidance document that is consistent with best available science.
  3. The plan shall contain sufficient information to demonstrate that the proposed activities are logistically feasible, constructible, ecologically sustainable, and likely to succeed. Specific information to be provided in the plan shall include:
    - a. The rationale for site selection;
    - b. General goals of the plan, including wetland function, value, and acreage;
    - c. Description of baseline (existing) site conditions including topography, vegetation, soils, hydrology, habitat features (e.g., snags), surrounding land use, and other pertinent information;
    - d. Field data confirming the presence of adequate hydrology (surface and/or groundwater) to support existing and ~~compensatory-mitigated~~ wetland area(s);
    - e. Nature of mitigation activities, including area of restored, created, enhanced, rehabilitated and preserved wetland, by wetland type;
    - f. Detailed grading and planting plans showing proposed post-construction topography; general hydrologic patterns; spacing and distribution of plant species; size and type of proposed planting stock; watering or irrigation plans; and other pertinent information;
    - g. To facilitate establishment of a stable community of native plants, A description of site treatment measures including ~~removal of noxious weeds and/or~~ invasive species ~~removal~~, use of mulch and fertilizer, placement of erosion and sediment control devices, and best management practices that will be used to protect existing wetlands and desirable vegetation;
    - g-h. A demonstration that the site will have adequate buffers sufficient to permanently protect the wetland functions.
- B. All ~~compensatory~~ mitigation projects shall be monitored in accordance with WCC [16.16.260](#)(C) for a period necessary to establish that performance standards have been met. The ~~technical administrator~~ Director shall have the authority to extend the monitoring period for up to 10 years and require additional monitoring reports when any of the following conditions apply:
1. The project does not meet the performance standards identified in the mitigation plan.



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- 2. The project does not provide adequate replacement for the functions and values of the impacted critical area.
- 3. The project involves establishment of forested plant communities, which require longer time for establishment.
- C. Reports shall be submitted annually for the first three years following construction and at the completion of years five, seven and 10 if applicable to document milestones, successes, problems, and contingency actions of the ~~compensatory~~ mitigation.

## **Article 7. Fish & Wildlife Habitat Conservation Areas (HCA)**

### **16.16.700 Purpose.**

The purposes of this article are to:

- A. Protect, restore, and maintain native fish and wildlife populations by protecting and conserving fish and wildlife habitat and protecting the ecological processes, functions and values, and biodiversity that sustain these resources.
- B. Protect marine shorelines, valuable terrestrial habitats, lakes, ponds, rivers, and streams and their associated riparian areas, and the ecosystem processes on which these areas depend.
- C. Regulate development so that isolated populations of species are not created and habitat degradation and fragmentation are minimized.
- D. Maintain the natural geographic distribution, connectivity, and quality of fish and wildlife habitat and ensure no net loss of such important habitats, including cumulative impacts.

### **16.16.710 Habitat Conservation Areas – Designation, Mapping, and Classification.**

- A. Habitat conservation areas, ~~as defined in Article 9 of this chapter,~~ are those areas identified as being of critical importance to the maintenance of certain fish, wildlife, and/or plant species. These areas are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the county meeting these criteria are hereby designated critical areas and are subject to the provisions of this article.
- B. The approximate location and extent of identified fish, wildlife, and sensitive plant habitat areas are shown on the County's critical area maps as well as state and federal maps. ~~However, these maps are to be used as a guide and do not provide a definitive critical area determination; each applicant is responsible for having a~~ A property-specific determination assessment is necessary to determine the extent of the HCA made pursuant to Article 2 of this chapter. The County shall update the maps as new habitat conservation areas are identified and/or more comprehensive information on function, condition, cover type, and resolution is developed. [CES61]
- C. Habitat conservation areas shall include all of the following:
  1. Surface Waters of the State~~Streams~~.
    - a. All ~~waterbodies streams which that~~ meet the criteria for Type S, F, Np, or Ns waters as set forth in WAC [222-16-030](#) of the Washington Department of Natural Resources' (DNR) Water Typing System, as now or hereafter amended.
      - i. Type S ~~streams~~ waters are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(1) as now or hereafter amended, as a Type S water and are inventoried as "shorelines of the state" under the Shoreline Management Master Program for Whatcom County, pursuant to Chapter [90.58](#) RCW. Type S waters contain salmonid fish habitat.
      - ii. Type F ~~waters~~ streams are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(2) as now or hereafter amended, as Type F water. Type F streams contain habitat for salmonid fish, game fish and other anadromous fish.

- iii. Type Np ~~waters streams~~ are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(3) as now or hereafter amended, as Type Np water. Type Np waters do not contain fish habitat.
  - iv. Type Ns ~~waters streams~~ are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(4) as now or hereafter amended, as a Type Ns water. These streams are areas of perennial or intermittent seepage, ponds, and drainage ways having short periods of spring or storm runoff. Type Ns waters do not contain fish.
- 2. Ditches or other artificial watercourses are considered streams for the purposes of this chapter when:
  - a. Used to convey natural streams existing prior to human alteration; and/or
  - b. The waterway is used by anadromous or resident salmonid or other resident fish populations; or
  - c. Flows directly into shellfish habitat conservation areas.<sup>[P/C62]</sup>
- 3. Areas in which federally listed species are found, have a primary association with, or contain suitable or federally defined critical habitat for said listed species, as listed in the U.S. Fish and Wildlife's Threatened and Endangered Species List or Critical Habitat List (<http://ecos.fws.gov/ecp/>) or the National Marine Fisheries Service (NMFS) (<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>), as amended.
- 4. Areas in which state-listed priority species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the Washington Department of Fish and Wildlife's Priority Habitats and Species List. (<http://wdfw.wa.gov/mapping/phs/> or <http://wdfw.wa.gov/conservation/phs/list/>), as amended.
- 5. State priority habitats and areas associated with state priority species as listed in Washington Department of Fish and Wildlife's Priority Habitats and Species List (<http://wdfw.wa.gov/mapping/phs/> or <http://wdfw.wa.gov/conservation/phs/list/>), as amended.
- 6. Areas in which state-listed rare plant species are found, or contain suitable habitat for said listed species, as listed in the Department of Natural Resources' Natural Heritage Program (<http://www1.dnr.wa.gov/nhp/refdesk/plants.html>), as amended.
- 7. Areas in which state-listed saltwater critical areas are found, as listed in WAC [173-26-221](#)(2)(c)(iii).
- 8. Areas in which state-listed freshwater critical areas are found, as listed in WAC 173-26-221(2)(c)(iv).
- ~~8-9.~~ Naturally occurring ~~ponds~~ or manmade ponds and lakes under 20 acres in size and created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities.
- ~~9-10.~~ All other waters defined as wWaters of the state, ~~including marine waters.~~<sup>[RE63]</sup>
- ~~10-11.~~ Natural area preserves, aquatic reserves, and natural resource conservation areas as defined by the Washington Department of Natural Resources.

- ~~11.12.~~ 12.12. Portions of the San Juan Islands National Monument within Whatcom County (including Chuckanut Rock, tip of Eliza Island, Eliza Island Rocks, Lummi Rocks, Baker's Reef, Carter Point, Carter Point Rock, and Seal Rock at the north end of Lummi Island, and subsequently designated areas).
- ~~12.13.~~ 13.13. Frequently flooded areas that are subject to the Federal Emergency Management Agency's National Flood Insurance Program Biological Opinion (FEMA BiOp).
- ~~13.14.~~ 14.14. Species and Habitats of Local Importance. Locally important species and habitats that have recreational, cultural, and/or economic value to citizens of Whatcom County, including the following:
- a. Species. The Department of Planning and Development Services shall maintain a current list of species of local importance as designated by the County Council.
  - b. Habitats.
    - i. The marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone. These areas support productive eelgrass beds, marine algal turf, and kelp beds that provide habitat for numerous priority fish and wildlife species including, but not limited to, forage fish, seabird and shorebird foraging and nesting sites, and harbor seal pupping and haulout sites. This designation applies to the area from the extreme low tide limit to the upper limits of the shoreline jurisdiction; provided, that reaches of the marine shoreline that were lawfully developed for commercial and industrial uses prior to the original adoption of this chapter may be excluded from this designation, but not otherwise exempt from this chapter.
    - ii. The Chuckanut wildlife corridor, which extends east from Chuckanut Bay and adjacent marine waters, including Chuckanut Mountain, Lookout Mountain, the northern portions of Anderson Mountain, and Stewart Mountain continuing along the southern Whatcom County border to Mount Baker/Snoqualmie National Forest boundary. This area represents the last remaining place in the Puget Trough where the natural land cover of the Cascades continues to the shore of Puget Sound.
    - iii. The Department of Planning and Development Services shall maintain a current list and map of habitats of local importance, as designated by the County Council.
- D. In addition to the species, habitats, and wildlife corridors identified in subsection (C)(12) of this section, the Council may designate additional species, habitats of local importance, and/or wildlife corridors as follows:
1. In order to nominate an area, species, or corridor to the category of "locally important," an individual or organization must:
    - a. Demonstrate a need for special consideration based on:
      - i. Identified species of declining population;
      - ii. Documented species sensitive to habitat manipulation and cumulative loss;
      - iii. Commercial, recreational, cultural, biological, or other special value; or
      - iv. Maintenance of connectivity between habitat areas;
    - b. Propose relevant management strategies considered effective and within the scope of this chapter;

- c. Identify effects on property ownership and use; and
- d. Provide a map showing the species or habitat location(s).
2. Submitted proposals shall be reviewed by the County and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.
3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter and the various goals and objectives of the Whatcom County comprehensive plan and the Growth Management Act, the County Council will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats, species, or corridors and will be subject to the provisions of this chapter.
4. The Council may remove species, habitats, or corridors from this list if it can be shown that there is no longer a need to provide protection beyond that afforded by WDFW management strategies. Species and habitats of local importance that are not regulated elsewhere in this chapter may be removed if sufficient evidence has been provided by qualified professionals that demonstrates that the species no longer meets any provisions of subsection (D)(1)(a) of this section.

**16.16.720 Habitat Conservation Areas** [CES64] ~~General standards~~ Use and Modification.

The following activities may be permitted in habitat conservation areas and/or their buffers when, pursuant to WCC ~~Chapter 16.16 (Critical Areas), 255 and 16.16.260,~~ all reasonable measures have been taken to avoid adverse effects on species and habitats, any applicable Washington Department of Fish and Wildlife management recommendations have been applied, mitigation is provided for all adverse impacts that cannot be avoided, and the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose; provided, that locally important species and habitats shall be subject to WCC 16.16.730 10(C)(12):

- A. **Reasonable Use.** Developments that meet the reasonable use ~~and or~~ variance standards set forth in WCC 16.16.270 and 16.16.273, respectively.

**B. Utilities.**

1. ~~New~~ Utility lines and facilities may be permitted when all of the following criteria are met:
  - a. The least impactful construction or installation methodology is used as demonstrated through an alternatives analysis.
  - ~~a-b.~~ Impacts to fish and wildlife habitat and/or corridors shall be avoided to the maximum extent possible.
  - ~~b-c.~~ Where feasible, installation shall be accomplished by boring beneath the scour depth of the stream or waterbody and the width of the channel migration zone where present.
  - ~~c-d.~~ Trenching of utilities across a stream channel shall be conducted as perpendicular to the channel centerline as possible whenever boring under the channel is not feasible. Utilities shall be installed below potential scour depth regardless of method.
  - ~~d-e.~~ Crossings shall be contained within the footprint of an existing road or utility crossing where possible.

~~e-f.~~ The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.

**2. On-site sewage disposal systems (OSS) may be permitted in FWHCA buffers when accessory to an approved single-family residence when:**

a. It is not feasible to connect to a public sanitary sewer system; and

b. It is located as far as possible from the FWHCA buffer; and

~~a-c.~~ It is operated and maintained in accordance with WCC 24.05.160; provided, that adverse effects on water quality are avoided.~~may be permitted in nonaquatic HCA buffers and in the outer 50 percent of streams or other aquatic HCA buffers when accessory to an approved residential structure for which there are no alternatives and when it is not feasible to connect to a public sanitary sewer system and when operated and maintained in accordance with WCC Chapter 24.05; provided, that adverse effects on water quality and slope stability are avoided.~~

**~~2-3.~~ Domestic wells** serving single-family developments (including plats, short plats, and individual single-family residences) and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, in HCA buffers when all of the following conditions are met:

- a. There is no viable alternative to the well site outside of the buffer and the well is located as far back from the wetland edge as is feasible;
- b. Any impacts to the HCA buffer from staging equipment and the well-drilling process are mitigated.

**~~B-C.~~ Stream crossings**, provided they meet all the following criteria:

**1. The stream crossing is for an allowed use.**

~~1-2.~~ There is no other feasible alternative route with less impact on critical areas.

~~2-3.~~ The crossing minimizes interruption of natural processes such as channel migration, the downstream movement of wood and gravel, and the movement of all fish and wildlife. Bridges are preferred for all stream crossings and should be designed to maintain the existing stream substrate and gradient, span the bankfull width, or be proven to not have an appreciable increase in backwater elevation at a minimum of a 100-year event and provide adequate vertical clearance for debris likely to be encountered at high water.

~~3-4.~~ Culverts shall be designed according to applicable state and federal guidance criteria for fish passage as identified in Water Crossing Design Guidelines, WDFW 2013, as amended, and/or the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000 (and subsequent revisions), and in accordance with a state hydraulic project approval. The applicant or property owner shall maintain fish passage through the bridge or culvert.

~~4-5.~~ The County may require that existing culverts be removed, replaced, or fish passage barrier status corrected as a condition of approval if the culvert is detrimental to fish passage or water quality.

~~5-6.~~ Roadway widths at culvert crossings shall be limited to the minimum width necessary to accommodate the roadway's classification. Culvert length shall be the minimum that is compatible with the roadway width.

~~6.7.~~ Shared common crossings are the preferred approach where multiple properties can be accessed by one crossing.

**D. Private Access.** Access to private development sites may be permitted to cross ~~habitat conservation areasFWHCAs and their buffers if: there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24RCW. Exceptions or deviations from technical standards may be considered by the technical administrator on a case by case basis where the resulting outcome reduces overall impacts to any identified critical area.~~

~~1.~~ ~~If there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW.~~

~~2.~~ ~~The access is designed to cause the least impact to the habitat conservation area and/or its buffer (which may require the applicant to apply for an exception or deviation from the Development Standards)~~

~~7.3.~~ ~~Access is not achievable through the administrative provisions of WCC 16.16.740 (Buffer Modification).~~ ~~[CES65]~~

**C.E. Agricultural Uses.** Construction or improvements, other than ~~a~~ buildings, that are associated with an agricultural use in the outer ~~25% percent~~ of the CPAL designated buffer; or the reconstruction, remodeling, or maintenance of such structures in a habitat conservation area buffer, subject to all of the following criteria:

1. The structure is located within an existing lot of record and is an ongoing agricultural use.
2. There is no other feasible location with less impact to critical areas. However, this provision does not apply to the reconstruction, maintenance and/or remodeling of preexisting structures.
3. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.
4. Unavoidable adverse effects on critical areas are mitigated in accordance with this chapter.

**F. Stormwater Management Facilities.**

~~D.1.~~ Stormwater management facilities limited to detention/retention/treatment ponds, media filtration, lagoons and infiltration basins may be permitted in a stream buffer, subject to all of the following standards:

~~1.a.~~ The facility is located in the outer ~~50% percent~~ of the standard stream buffer and does not displace or impact a forested riparian community;

~~2.b.~~ There is no other feasible location for the stormwater facility and the facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent critical areas;

~~3.c.~~ The stormwater facility meets applicable county or state stormwater management standards and the discharge water meets state water quality standards; and

~~4.d.~~ Low impact development approaches have been considered and implemented to the maximum extent feasible.



~~E-2.~~ Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted in a habitat conservation area buffer on a case-by-case basis when the ~~technical administrator~~ Director determines that all of the following are met:

~~1-a.~~ Due to topographic or other physical constraints, there are no feasible locations for these facilities outside the buffer;

~~2-b.~~ The discharge is located as far from the ordinary high water mark as possible and in a manner that minimizes disturbance of soils and vegetation, except on shoreline slopes where location shall be determined by site characteristics to minimize adverse impacts;

~~3-c.~~ The discharge outlet is designed to prevent erosion and promote infiltration;

~~4-d.~~ The discharge meets freshwater and marine state water quality standards, including the need to evaluate cumulative impacts to 303(d) impaired water bodies and total maximum daily load (TMDL) standards as appropriate at the point of discharge. Standards should include filtration through mechanical or biological means, vegetation retention, timely reseeding of disturbed areas, use of grass-lined bioswales for drainage, and other mechanisms as appropriate within approved stormwater “special districts”; and

~~5-e.~~ The discharge outlet is designed to exclude fish from entering or migrating into stormwater conveyance systems.

~~6-3.~~ Phosphorus-reducing BMP structures approved and installed through the homeowners’ improvement program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within fish and wildlife habitat conservation area buffers, provided that they are located the maximum feasible distance from the ordinary high water mark 25 feet of the lake shoreline.

#### **G. Recreation.**

~~F-1.~~ **Trails.** ~~[CES66]~~ Construction of trails ~~and roadways~~ may be permitted in a habitat conservation area buffer when not directly related to a crossing and are subject to all of the following standards:

~~1-a.~~ There is no other feasible alternative route with less impact on the critical area.

~~2-b.~~ The ~~road or~~ trail minimizes erosion and sedimentation, hydrologic alteration, and disruption of natural processes such as channel migration, wood recruitment and natural wildlife movement patterns.

~~3-c.~~ Private trails shall not exceed four feet in width, and public trails shall not exceed 10 feet in width, though some portions may be wider to meet the requirements of the Americans with Disabilities Act.

~~d. and They~~ shall be made of pervious material or ~~on an elevated structure~~ where feasible.

e. They shall be designed to avoid removal of significant trees.

~~a-f.~~ Trails may include limited viewing platforms that shall not exceed eight feet in width and shall be made of pervious materials where feasible.

~~4-g.~~ The ~~road or~~ trail through riparian (stream) buffer shall be located in the outer 25% ~~percent~~ of the standard buffer, unless necessary to provide educational opportunities.

~~5-h.~~ The ~~road or~~ trail is constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.

**G-2. Marinas and Launch Ramps.** Construction, reconstruction, repair, and maintenance of marinas and launch ramps may be permitted when consistent with the regulations found in WCC 23.40.060 (Marinas and Launch Ramps ), regardless of whether the proposed project is within shoreline jurisdiction or not.

**H-3. Docks.** Construction, ~~of docks and public launching ramps, and~~ reconstruction, repair, and maintenance of docks ~~and public or private launching ramps~~ may be permitted when consistent with the Army Corps of Engineers’ Regional General Permit 6 (Structures in Inland Marine Waters of Washington State) and the regulations found in WCC 23.40.150 (Mooring Structures), regardless of whether or not the proposed project is within shoreline jurisdiction. subject to the following:

- ~~1. The dock or ramp is located and oriented and constructed in a manner that minimizes adverse effects on navigation, wave action, water quality, movement of aquatic and terrestrial life, ecological processes, critical saltwater habitats, wetlands, or other critical areas.~~
- ~~2. Docks or ramps on shorelines of the state shall comply with WCC Title 23 and state hydraulic project approval requirements.~~
- ~~3. Natural shoreline processes will be maintained to the maximum extent practicable. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs.~~
- ~~4. No net loss to habitat conservation areas or associated wetlands will occur.~~
- ~~5. No net loss of juvenile fish migration corridors will occur.~~
- ~~6. No net loss of intertidal or riparian habitat function will occur.~~

**4. Accessory Uses.** When located in the shoreline jurisdiction, residential water-oriented accessory structures may be permitted in an HCA buffer; provided,

- a. They shall be limited to 10% of the buffer’s area or 500 square feet, whichever is less; and,
- b. No more than 20% of the linear length of shoreline is occupied by a building or structure; and
- c. The shoreline is 75% planted (or replanted) with native vegetation to a minimum depth of 15 feet landward from the ordinary high water mark.<sup>[CES67]</sup>

**H-4. Relocation of streams,** or portions of streams, when there is no other feasible alternative and when the relocation will result in equal or better habitat and water quality and quantity, and will not diminish the flow capacity of the stream or other natural stream processes; provided, that the relocation meets state Hydraulic Project Approval requirements and that relocation of shoreline streams shall be prohibited unless the relocation has been identified formally by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement or identified in watershed planning documents prepared and adopted pursuant to Chapter 90.82 RCW, the WRIA 1 Salmonid Recovery Plan, or the WRIA 1 Watershed Management Board Habitat Project List, or the County’s Shoreline Restoration Plan.

**J-1. Clearing and grading,** when allowed as part of an authorized activity or as otherwise allowed in these standards, may be permitted; provided, that the following shall apply:

1. Grading is allowed only during the designated dry season, which is typically regarded as May to October of each year; provided, that the County may extend or shorten the designated dry

season on a case-by-case basis, based on actual weather conditions. Special scrutiny shall be given to Lakes Samish, Padden, and Whatcom watersheds, and water resource special management areas as described in WCC [20.80.735](#).

2. Appropriate erosion and sediment control measures shall be used at all times, consistent with best management practices in the Department of Ecology's Stormwater Management Manual for Western Washington. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, disturbed topsoil shall be salvaged and/or redistributed to other areas of the site. Areas shall be revegetated as needed to stabilize the site.
3. The moisture-holding and infiltration capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

~~K.J. Shoreline Streambank Stabilization and shoreline protection~~ may be permitted when consistent with the shoreline stabilization regulations found in 23.40.190 (Shoreline Stabilization), regardless of whether the proposed project is within shoreline jurisdiction or not. subject to all of the following standards:

- ~~0. The stabilization or protection measures shall be designed in accordance with the techniques contained within the Washington Department of Fish and Wildlife's most recent Integrated Streambank Protection Guidelines. Deviation from these techniques requires written justification from a qualified professional/engineer.~~
- ~~0. Natural shoreline processes will be maintained to the maximum extent practicable.~~
- ~~0. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs.~~
- ~~0. Stream and shoreline protection and launching ramps on shorelines of the state shall comply with WCC Title 23 and with state hydraulic project approval requirements.~~
- ~~0. No net loss to habitat conservation areas or associated wetlands will occur.~~
- ~~0. No net loss of juvenile fish migration corridors will occur.~~
- ~~0. No net loss of intertidal or riparian habitat function will occur.~~
- ~~0. Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not practicable or not sufficient.~~
- ~~0. Stabilization is achieved through bioengineering or soft armoring techniques in accordance with an applicable hydraulic permit approval issued by the Washington State Department of Fish and Wildlife.~~
- ~~0. Hard bank armoring is discouraged and may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline erosion caused by wave action or riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply. An objective alternatives analysis, addressing upstream and downstream impacts, shall be conducted to demonstrate that there is no other less environmentally damaging alternative to the more impacting proposed action.~~

~~0. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not a demonstration of need.~~

~~0. The bank stabilization or shore protection will not adversely affect habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.~~

~~X.K. New Public Flood Protection Measures~~ and expansion of existing ones may be permitted, subject to WCC Title [17](#), Article 4 of this chapter and a state hydraulic project approval; provided, that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection.

**L. In-stream structures** such as, but not limited to, high-flow bypasses, dams, and weirs, shall be allowed only as part of a watershed restoration project as defined pursuant to WCC ~~Title 23.110.230(10)~~ or identified in watershed planning documents prepared and adopted under Chapter [90.82](#) RCW, the salmonid recovery plan or watershed management board habitat project list, and the County's shoreline restoration plan and upon acquisition of any required state or federal permits. The structure shall be designed to avoid adverse effects on stream flow, water quality, or other habitat functions and values.

~~Y. Single-family developments may be permitted to encroach into stream buffers subject to the technical administrator's approval; provided, that all of the criteria in WCC 16.16.270(B) are met.~~ [CES68]

**Z.M.** All other development may be allowed in shellfish protection districts outside of actual shellfish habitats with a valid ~~development project~~ permit and when the requirements of subsection O of this section are met.

**AA.N.** Alteration or removal of **beaver-built structures** more than two years old; provided, that:

1. The property owner can show that the beaver dam is harming or likely to harm his or her property.
2. It has been demonstrated that beaver deceivers or auto leveler devices cannot appropriately resolve ponding/backwatering that is negatively affecting adjacent land or property.
3. Impacts to wetland, river, or stream functions are minimized and mitigation is provided to compensate for lost ecological value.
4. The property owner obtains an HPA from WDFW prior to initiating alteration or removal of the beaver-built structure.
5. The property owner provides a copy of the HPA to the ~~technical administrator~~ **Director**.

~~BB.O.~~ On Eliza Island, applicants shall complete the U.S. Fish and Wildlife Service (USFWS) self-assessment (<https://www.fws.gov/pacific/eagle/>) to determine whether a USFWS bald eagle permit is needed and, if so, apply for one. Development activities near bald eagle habitat shall be carried out consistent with the National Bald Eagle Guidelines.

**P. Timber Removal.** [CES69]

1. To allow for greater flexibility in a development proposal when an application has been submitted for a Conversion Option Harvest Plan (COHP) or a Class IV General FPA, an applicant has the opportunity to remove timber within the standard buffers if the applicant's mitigation measures incorporate all of the performance standards based upon water type listed in Table 3. In conformance with professional standards used by the Washington Department of Natural

Resources for forest practices in sensitive areas, all removal of timber within HCA buffers shall be subject to conditions specified by the Director in conjunction with an on-site technical team review in which participation by representatives of the proponent, Ecology, WDFW, WDNR and natural resource representatives of affected Indian tribes is solicited.

2. The intent of this section is to provide an additional opportunity for an applicant to propose some level of timber removal within the riparian habitat zone, as long as it can be demonstrated that the function of the buffer can be maintained at the levels described below. If the buffer, in its current state, cannot meet these standards, then the Director will not be able to give its approval for any activity which would inhibit recovery of or degrade the current buffer.
3. The current performance of a given buffer area is compared to its potential performance as rated by the Soil Conservation Service's most recent Soil Survey of Whatcom County. In consultation with a representative from the Natural Resource Conservation Service, Soil Conservation District, or professional forester, the applicant will determine the capability of the site for woodland management, using the most suitable tree species according to the soil survey, and establish the stand characteristics that would be expected from a mature stand of those species established on site:
4. If the current stand can exceed the riparian protection that could be expected based on site potential, then additional activity may be allowed provided the following performance standards can be met. For Type S streams, an alternative method may be utilized to allow limited timber harvest within the outer 100 feet of a buffer:

**Table 3. Performance-Based Riparian Standards\***

<b><u>Watertype</u></b>	<b><u>Performance Standards</u></b>
<b><u>Type S</u></b>	<p><u>Maintain 95% of total LWD recruitment expected to enter freshwater stream(s) from a mature stand; and</u></p> <p><u>Maintain 85% of the trees which are greater than 24 inches DBH within 100 feet of the water(s); and</u></p> <p><u>Maintain an average of 75% canopy cover (based on canopy densitometer readings at the water(s) edge).</u></p> <p><u>The applicant may further request some limited timber harvest of up to 30% of the merchantable timber within the outer 100 feet of any 200-foot required buffer provided the harvest:</u></p> <p><u>(a) Does not reduce the LWD and canopy requirements; and</u></p> <p><u>(b) The applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50-foot buffer shall retain a minimum of 50% of the total number of trees with 25% of the total trees left having a diameter at breast height (DBH—4-1/2 feet) greater than 12 inches; and</u></p> <p><u>(c) No more than 50% of the dominant trees in the outer 100 feet may be harvested.</u></p>
<b><u>Type F</u></b>	<u>Maintain 85% of total LWD recruitment expected to enter freshwater stream(s) from a</u>

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SMP Update – WCC Ch. 16.16 Amendments

May 13, 2021

<u>Watertype</u>	<u>Performance Standards</u>
	<u>mature stand; and</u> <u>Maintain 85% of the trees which are greater than 18 inches DBH within 100 feet of the water(s); and</u> <u>Maintain an average of 75% canopy cover (based on canopy densitometer readings at the water(s) edge).</u>
<u>Types Np and Ns</u>	<u>Maintain 50% of total LWD recruitment expected to enter freshwater stream(s) from a mature stand; and</u> <u>Maintain 85% of the trees which are greater than 24 inches DBH within 50 feet of the water(s); and</u> <u>Maintain an average of 75% canopy cover (based on canopy densitometer readings at the water(s) edge).</u>

\* Note: These standards must be exceeded before additional activity can be permitted within the riparian zone. Applicants electing to employ performance-based mitigation in accordance with the above matrix shall include appropriate analysis and justification in their site assessment/habitat management plan.

## ~~16.16.730 Locally Important Habitats and Species – Standards.~~ [CES70]

~~Alterations that occur within a locally important habitat area or that may affect a locally important species as defined herein shall be subject to review on a case-by-case basis. The technical administrator shall have the authority to require an assessment of the effects of the alteration on species or habitats and may require mitigation to ensure that unmitigated adverse effects do not occur. This standard is intended to allow for flexibility and responsiveness with regard to locally important species and habitats.~~

## ~~16.16.740-730~~ **Habitat Conservation Area Buffers – Standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#) and [16.16.720](#), the ~~technical administrator~~ Director shall have the authority to require buffers from the edges of all habitat conservation areas ~~(in addition to the building setback required by 16.16.265(D))~~ in accordance with the following:

### A. General.

A.1. Buffers shall be established for activities adjacent to habitat conservation areas as necessary to protect the integrity, functions, and values of the resource. Buffer widths shall reflect the sensitivity of the species or habitat present and the type and intensity of the proposed adjacent human use or activity. Buffers shall not include areas that are functionally and effectively disconnected from the wetland by an existing, legally established road or other that are functionally and effectively disconnected from the habitat area by of an existing, legally established road or other substantially developed surface. [P/C71]

### B. Stream Buffers.

C.2. The standard buffer widths required by this Article are considered to be the minimum required and presume the existence of a dense vegetation community in the buffer zone adequate to protect the stream-ecological functions and values at the time of the proposed activity. When a buffer lacks adequate vegetation to protect critical area functions, the ~~technical administrator~~

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Director may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.

3. The standard buffer shall be measured landward horizontally from the edge of the ordinary high water mark as identified in the field. The required buffer shall be extended to include any abutting regulated wetland(s), landslide hazard areas, and/or erosion hazard areas and required buffers.

- 1-4. ~~For streams, the standard buffer is measured on both sides of the stream~~ from the ordinary high water on both sides of the stream ~~mark as identified in the field~~; provided, that for streams with identified channel migration zones, the buffer shall extend outward horizontally from the outer edge of the channel migration zone on both sides. ~~The required buffer shall be extended to include any abutting regulated wetland(s), landslide hazard areas and/or erosion hazard areas and required buffers, but shall not be extended across roads or other lawfully established structures or hardened surfaces.~~

2. The following standard buffer width requirements are established:

- Shoreline streams: 150 feet;
- Fish-bearing streams: 100 feet;
- Non fish-bearing streams: 50 feet. [CES72]

- 6-5. Portions of streams that flow underground may be exempt from these buffer standards at the ~~technical administrator~~ Director's discretion when it can be demonstrated that no adverse effects on aquatic species will occur.

## B. ~~Buffers for Other Habitat Conservation Areas~~ Buffer Widths.

1. Standard buffer widths for habitat conservation areas shall be as identified in Table 4.

- ~~D-2. For habitat conservation areas not listed in Table 4, including those of locally important habitats and species and State priority habitats and areas with which federally listed or state priority species have a primary association, minimum buffers shall be based on habitat a management plan prepared pursuant to WCC 16.16.750. The technical administrator shall determine appropriate buffer widths for other habitat conservation areas. The Director shall have the authority to require a critical area assessment report and/or habitat management plan (HMP) pursuant to WCC 16.16.750, and may require mitigation to ensure that unmitigated adverse effects do not occur. based on the best available information. Buffer widths for non-stream habitat conservation areas shall be as identified in Table 3:~~

Table 4. Buffer Requirements for HCAs

Habitat Conservation Area	Buffer Requirement
<u>Type S – Freshwater</u>	<u>200 feet</u> [CES73]
<u>Type S – Marine</u>	<u>150 feet</u>
<u>Type F – Lake</u>	<u>100 feet</u>
<u>Type F – Stream</u>	<u>150 feet</u>
<u>Type Np</u>	<u>50 feet</u>



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Habitat Conservation Area	Buffer Requirement
<u>Type Ns</u>	<u>50 feet</u>
<u>manmade ponds identified in 16.16.710(D)(10)</u>	<u>25 feet, unless otherwise approved through an Habitat Management Plan pursuant to subsection (B)(2), above, or a Conservation Farm Plan pursuant to Article 8</u>
<u>Areas with which federally listed species have a primary association</u> <u>State priority habitats and areas with which priority species have a primary association</u>	<u>Minimum buffers shall be based on recommendations provided by the Washington State Department of Fish and Wildlife PHS Program; provided, that local and site-specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise. When there are no state recommendations or species management guidelines then only the building setback (WCC 16.16.265) shall be applied.</u> <del>[CES74]</del>
<u>Critical saltwater habitats</u>	<u>Buffers shall extend 150 feet landward from ordinary high water mark of the marine shore. Buffers shall not be required adjacent to shellfish protection districts, but only in nearshore areas where shellfish reside.</u>
<u>Natural ponds and lakes</u>	<u>Ponds under 20 acres — Buffers shall extend 50 feet from the ordinary high water mark.</u> <u>Lakes 20 acres and larger (which are subject to WCC Title 23) — Buffers shall extend 100 feet from the ordinary high water mark; provided, that where vegetated wetlands are associated with the shoreline, the buffer shall be based on the wetland buffer requirements in WCC 16.16.630.</u> <del>[CES75]</del>
<u>Natural area preserves and natural resource conservation areas</u>	<u>Buffers shall not be required adjacent to these areas. These areas are assumed to encompass the land required for species preservation.</u>
<u>Locally important habitat areas</u>	<u>The buffer for marine nearshore habitats shall extend landward 150 feet from the ordinary high water mark.</u> <del>[CES76]</del> <u>The need for and dimensions of buffers for other locally important species or habitats shall be determined on a case-by-case basis, according to the needs of the specific species or habitat area of concern. Buffers shall not be required adjacent to the Chuckanut wildlife corridor. The technical administrator shall coordinate with the Washington State Department of Fish and Wildlife and other state, federal or tribal experts in these instances, and may use WDFW PHS management recommendations when available.</u> <del>[CES77]</del>

### 16.16.740 Habitat Conservation Area Buffer Modification.

Buffer widths may be increased, decreased, or averaged in accordance with the following provisions, which provide flexible approaches to maximize both ecological functions and allowed uses. All mitigation proposed shall be consistent this Chapter.

**A. Buffer Width Increasing.** The Director may require the standard buffer width to be increased or to establish a non-riparian buffer, when such buffers are necessary for one of the following:

1. To protect priority fish or wildlife using the HCA.
2. To provide connectivity when a Type S or F waterbody is located within 300 feet of:
  - a. Another Type S or F water body; or
  - b. A fish and wildlife HCA; or
  - c. A Category I, II or III wetland;
3. ~~€~~To comply with the requirements of a habitat management plan prepared pursuant to WCC 16.16.750.
4. ~~P~~To protect fish and wildlife habitat, maintain water quality, ensure adequate flow conveyance, provide adequate recruitment for large woody debris, maintain adequate streamwater temperatures, or maintain in-streamwater conditions.
5. ~~€~~To compensate for degraded vegetation communities, Clean Water Act 303(d) impaired water bodies, or steep slopes adjacent to the habitat conservation area.
6. ~~M~~To maintain areas for channel migration and/or frequently flooded areas.
7. ~~P~~To protect adjacent or downstream-gradient areas from erosion, landslides, or other hazards.
8. ~~P~~To protect streamswaters from high intensity adjacent land uses.

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions. Increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the habitat.

**B. Buffer Width Averaging.**

1. Buffer width averaging allows limited reductions of buffer width in specified locations while requiring increases in others. Averaging of required buffer widths shall be allowed only where the applicant demonstrates that all of the following criteria are met:
  - a. The buffer has not been reduced pursuant to subsection (C). Buffer averaging is not allowed if the buffer has been reduced.
  - b. Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available due to site constraints caused by existing physical characteristics such as slope, soils, or vegetation; and
  - c. The habitat contains variations in sensitivity due to existing physical characteristics; and
  - d. Averaging will not adversely impact the functions and values of fish and wildlife conservation areas; and
  - e. Averaging meets performance standards for protecting fish species; and
  - f. The total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging; and
  - g. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30%-percent; and,
  - h. The buffer width shall not be reduced below 75% of the standard buffer width.
2. In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.

**C. Buffer Width Reduction.**

1. The Director shall have the authority to reduce buffer widths on a case-by-case basis; provided, that the general standards for alternatives analysis and mitigation sequencing per WCC 16.16.260 have been applied, and when the applicant demonstrates to the satisfaction of the Director that all of the following criteria are met:
  - a. The buffer has not been averaged pursuant to subsection (B). Buffer reduction is not allowed if the buffer has been averaged.
  - b. The applicant demonstrates buffer averaging is not feasible.
  - c. The buffer shall not be reduced to less than 75% percent of the standard buffer specified in Table 4Table 3.
  - d. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30% percent (see Article 3 of this chapter).
  - e. The applicant has demonstrated application of mitigation sequencing as required in WCC 16.16.260 (General Mitigation Requirements).
  - f. To minimize impacts and provide equivalent functions and values as required by this section, the Director may require any or all of the following:
    - i. The use of alternative on-site wastewater systems in order to minimize site clearing, where appropriate;
    - ii. Using low impact development (LID) and LID best management practices where appropriate;  
~~In order to offset habitat loss from buffer reduction, retaining existing native vegetation on other portions of the site equal to no more than the area impacted.~~ [P/C78]
  - g. All buffer reduction impacts are mitigated and result in equal or greater protection of the HCA functions and values. This includes enhancement of existing degraded buffer area and provide mitigation for the disturbed buffer area.
2. In all circumstances when the buffer between the area of reduction and the wetland is degraded, this degraded portion of the buffer shall include replanting with native vegetation in order to achieve a dense vegetative community. [P/C79]

**D. Buffer Width Variance.** Standard buffer widths may be reduced by more than 25% through a variance pursuant to WCC 16.16.273 (Variances); provided, that buffer averaging beyond that allowed in subsection (B) is prohibited.

~~—The technical administrator shall have the authority to reduce buffer widths on a case-by-case basis; provided, that the general standards for alternatives analysis and mitigation sequencing per WCC 16.16.260 have been applied, and when the applicant demonstrates to the satisfaction of the technical administrator that all of the following criteria are met:~~

- ~~0. The buffer reduction shall not adversely affect the habitat functions and values of the adjacent habitat conservation area or other critical area.~~
- ~~1. The buffer shall not be reduced to less than 75 percent of the standard buffer specified in Table 3.~~
- ~~1. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30 percent (see Article 3 of this chapter).~~

- ~~—The area that has been reduced shall be mitigated at least at a ratio of 1:1, on an area basis.~~
- ~~E. The technical administrator shall have the authority to average buffer widths on a case-by-case basis; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply, and when the applicant demonstrates to the satisfaction of the technical administrator that all of the following criteria are met:~~
- ~~2. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer and all increases in buffer dimension are parallel to the habitat conservation area.~~
  - ~~2. The buffer averaging does not reduce the functions or values of the habitat conservation area or riparian habitat, or the buffer averaging, in conjunction with vegetation enhancement, increases the habitat function.~~
  - ~~2. The buffer averaging is necessary due to site constraints caused by existing physical characteristics such as slope, soils, or vegetation.~~
  - ~~2. The buffer width is not reduced to less than 75 percent of the standard width specified in Table 3.~~
  - ~~3.1. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30 percent.~~
  - ~~3. Where a buffer has been reduced, the technical administrator may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.~~
- ~~E. **Buffer Increases.** The technical administrator shall have the authority to increase the width of a habitat conservation area buffer on a case-by-case basis when there is clear evidence that such increase is necessary to achieve any of the following:~~
- ~~3.1. Comply with the requirements of a habitat management plan prepared pursuant to WCC 16.16.750.~~
  - ~~3.1. Protect fish and wildlife habitat, maintain water quality, ensure adequate flow conveyance, provide adequate recruitment for large woody debris, maintain adequate stream temperatures, or maintain in-stream conditions.~~
  - ~~3.1. Compensate for degraded vegetation communities, Clean Water Act 303(d) impaired water bodies, or steep slopes adjacent to the habitat conservation area.~~
  - ~~3.1. Maintain areas for channel migration and/or frequently flooded areas.~~
  - ~~3.1. Protect adjacent or downstream areas from erosion, landslides, or other hazards.~~
  - ~~3.1. Protect streams from high intensity adjacent land uses.~~

#### 16.16.750 Habitat Conservation Areas – Review and Reporting Requirements.

- A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration is more likely than not to contain habitat conservation areas or buffers, or could adversely affect a habitat area or buffer, the ~~technical administrator~~ Director shall require a site evaluation (field investigation) by a qualified professional or other measures to determine whether or not the species or habitat is present. If no habitat conservation areas are present, then review will be considered complete. If the site evaluation determines that the species

or habitat is present, the ~~technical administrator~~ Director shall require a critical areas assessment report or habitat management plan (HMP), except; provided, that

1. No report or evaluation shall be required for developments outside of buffers within the upland portions of shellfish conservation areas.
  2. The ~~technical administrator~~ Director shall have the authority to waive the report requirement when he/she determines that the project is a single-family building permit development that involves less than one-half acre of clearing and/or vegetation removal and will not directly disturb the species, or specific areas or habitat features that comprise the habitat conservation area (nest trees, breeding sites, etc.) as indicated by a site plan or scaled drawing of the proposed development.
- B. In addition to the reporting requirements of WCC [16.16.255](#), the habitat conservation area assessment report/HMP shall describe the characteristics of the subject property and adjacent areas, including condition, quality, function, and values of the habitat conservation area at a scale appropriate to the function being evaluated (see WAC [365-196-830](#)(6)). The assessment shall include determination of appropriate buffers as set forth in WCC [16.16.740](#). The assessment shall also include field identification and/or delineation of habitat areas, analysis of historical aerial photos, and review of public records as necessary to determine potential effects of the development action on critical areas. Assessment reports shall include the following site- and proposal-related information unless the ~~technical administrator~~ Director determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:
1. A map drawn to a common scale or survey showing the following information:
    - a. Topographic, hydrologic, and vegetative features.
    - b. The location and description of wildlife and habitat features, and all critical areas on or within 200 feet of the site, or farther, given the scale appropriate to the function being evaluated.
    - c. Proposed development activity.
    - d. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.
    - e. Surrounding land uses and zoning (to ensure appropriate buffer).
  2. An analysis, including an analysis of cumulative impacts, of how the proposed development activities will affect the fish and wildlife habitat conservation area and/or buffer, including the area of direct disturbance; effects of stormwater management; effects on any 303(d) impaired water bodies; proposed alteration to surface or subsurface hydrology; natural drainage or infiltration patterns; clearing and grading impact; temporary construction impacts; effects of increased intensity of use (including noise, light, human intrusion, etc.).
  3. Provisions to reduce or eliminate adverse impacts of the proposed development activities on the functions and values of the habitat conservation area including, but not limited to:
    - b. Buffering;
    - c. Clustering of development;
    - d. Retention of native vegetation;
    - e. Access limitations;

- f. Seasonal restrictions on construction activities in accordance with the guidelines developed by the Washington State Department of Fish and Wildlife, the U.S. Army Corps of Engineers, the salmonid recovery plan and/or other agency or tribe with expertise and jurisdiction over the subject species/habitat; and
- g. Other appropriate and proven low impact development techniques.
4. Management recommendations developed by WDFW through its Priority Habitat and Species program.
5. Additional information including, but not limited to, direct observations of species use or detailed physical and biological characteristics both on and off site at an appropriate scale (see WAC [365-196-830\(6\)](#)). The assessment of off-site conditions shall be based on available information and shall not require accessing off-site properties.
6. Applicants near a bald eagle nest shall complete the U.S. Fish and Wildlife Service (USFWS) self-assessment (<https://www.fws.gov/pacific/eagle>) to determine whether a USFWS bald eagle permit is needed, and if so, apply for one. Development activities near bald eagle habitat shall be carried out consistent with the National Bald Eagle Guidelines.
- C. All habitat management plans ~~shall~~ should be prepared in consultation with the State Department of Fish and Wildlife and/or other federal, state, local or tribal resource agencies with jurisdiction and expertise in the subject species/habitat, and shall contain a review of the most current best available science applicable to the subject species/habitat.
- D. For single-family building permits, the applicant may hire a qualified professional to prepare the assessment report or may request that the County assess the regulated wetland(s) and buffers and determine the impacts associated with the project, subject to the following: At the request of the applicant, the County may gather the required information in this section for applicants seeking to develop a single-family home; provided, that:
  1. Availability of County staff shall be at the discretion of the ~~technical administrator~~ Director and subject to workload and scheduling constraints.
  2. Fees for County staff services shall be in accordance with the unified fee schedule.

#### **16.16.760 Habitat Conservation Areas – Mitigation Standards.**

Activities that adversely affect habitat conservation areas and/or their buffers as determined by the ~~technical administrator~~ Director shall include mitigation sufficient to achieve no net loss of habitat functions and values or an ecological lift <sup>[PDS80]</sup> in accordance with WCC [16.16.260](#) and this section.

- A. ~~In determining the extent and type of mitigation required, the technical administrator may consider all of the following:~~
2. ~~The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;~~
3. ~~The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;~~
4. ~~Observed or predicted trends regarding the gains or losses of specific habitats or species in the watershed, in light of natural and human processes;~~
5. ~~The likely success of the proposed mitigation measures;~~

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6. ~~Effects of the mitigation actions on neighboring properties; and~~
7. ~~Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.~~ [CES81]
- A. ~~The following additional mitigation standards shall apply:~~
- I. ~~Mitigation for alterations to habitat areas shall achieve equivalent or greater biologic functions, and shall provide similar functions to those that are lost or altered.~~
- J.A. Mitigation in the form of habitat restoration or enhancement is required when a habitat is altered permanently as a result of an approved project. Alterations shall not result in net loss of habitat.
11. ~~Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).~~ [CES82]
12. ~~Mitigation shall be provided on-site whenever feasible. Off-site mitigation in a location that will provide a greater ecological benefit to the species and/or habitats affected and have a greater likelihood of success may be accepted at the discretion of the technical administrator. Mitigation shall occur as close to the impact site as possible. As mitigation is moved further away from the impacted habitat, the technical administrator may increase the amount of mitigation required. If off-site mitigation is proposed, the applicant must demonstrate through an alternatives/mitigation sequencing analysis (WCC 16.16.260) that the mitigation will have greater ecological benefit.~~ [CES83]
- M.B. All mitigation sites shall have buffers consistent with the buffer requirements established in WCC 16.16.740; provided, that the ~~technical administrator~~ Director shall have the authority to approve a smaller buffer when existing site constraints (such as a road) prohibit attainment of the standard buffer. Mitigation actions shall not create buffer encumbrances on adjoining properties.
14. ~~The technical administrator shall require annual monitoring of mitigation activities and submittal of annual monitoring reports in accordance with WCC 16.16.260(C) to ensure and document that the goals and objectives of the mitigation are met. Monitoring shall be for a period of up to five years.~~ [CES84]
- O.C. Mitigation projects involving in-~~stream water~~ work including, but not limited to, installation of large woody debris shall be designed to ensure there are no adverse hydraulic effects on ~~upstream up-~~ or ~~downstream downgradient~~ properties. The County Public Works River and Flood Division shall review any such mitigation projects for compliance with this provision.
- D. ~~As applicable, apply mitigation standards of the Army Corps of Engineer Regional General Permit 6 for inland marine waters as amended February 12, 2020.~~ [CES85]
- P.E. ~~On a case-by-case basis, the technical administrator shall have the authority to require mitigation~~ ~~For permanent impacts to a habitat conservation areas or their buffers, mitigation shall be provided at the following ratios, unless the Director approves a habitat management plan with greater ratios:~~



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1. Where the mitigation is in place and functional before the impacts occur (i.e., advanced mitigation), at a ratio determined by the functions, values, and goals of an advanced mitigation plan, at a 1:1 ratio (area or function).
2. Where the mitigation is in place within 1 year of the impact occurring, at a 1:1 ratio (area or function). Where the mitigation is placed after the impact occurs, at a 1.25:1 ratio (area or function); and
- 2.3. Where the mitigation is placed after 1 year of the impact occurring, at a 1.25:1 ratio (area or function).
4. For retroactive permits the Director may require the ratio shall be up to double the ratio in subsection (3) above. [P/C86]

**Article 8. Conservation Program on Agriculture Lands (CPAL)**

**16.16.800 Purpose.**

- A. The well-being of farms and ranches in Whatcom County depends in part on good quality soil, water, air, and other natural resources. Agricultural operations that incorporate protection of the environment, including critical areas and their buffers as defined by this chapter, are essential to achieving this goal.
- B. The purpose of the CPAL program is to allow farmers practicing ongoing agricultural activities that may affect critical areas, their functions and values, and/or their buffers to do so either (1) in accordance with the standard requirements of this chapter or (2) pursuant to a conservation farm plan voluntarily prepared and approved pursuant to this article. If farmers and ranchers are willing to enter into the CPAL program, then flexibility in these provisions may be extended to them. If not, then they must observe the standard provisions of this chapter.
- C. This program shall be subject to continued monitoring and adaptive management to ensure that it meets the purpose and intent of this chapter.

**16.16.810 Resource Concerns.**

Agricultural operations, including the keeping of horses and other large animals, have the potential to create adverse impacts to critical areas. It is the County's policy to minimize such impacts.

- A. **Nutrient Pollution of Water.** Animal waste contains nutrients (nitrogen and phosphorous). With each rain, these wastes can wash off the land and into the nearest stream, lake, or wetland. In surface water, phosphorous and nitrogen fertilize aquatic plants and weeds. As the plants and weeds proliferate and decay, the dissolved oxygen that fish need to survive is depleted. Nitrogen in the form of nitrate is easily dissolved in and carried with rainfall through our permeable soils to groundwater. Nitrate concentrations exceeding the maximum contaminate level for safe drinking water are found in many wells of Whatcom County. These can present a significant human health risk, particularly to the very old and young.
- B. **Pathogen Pollution of Water.** Manure contains bacteria and other pathogens. These can make the water unfit for drinking without treatment or shellfish unfit for human consumption. They can also make water unsafe for human contact and recreational sports such as fishing, swimming or water skiing. Both surface and groundwater are vulnerable to this type of pollution.
- C. **Sediment Pollution to Surface Water.** Regardless of the amount of supplemental feed provided, large animals will continue grazing until all palatable vegetation is gone. On especially small lots (one or two acres), the animals that are allowed free and continuous access to vegetation quickly graze-out and trample pasture grasses and forbs. These areas are then susceptible to invasion by weeds, including noxious weeds, and brush. The resulting bare ground is subject to erosion from wind and water. Lands that lack adequate vegetation are subject to erosion, and contaminated runoff from these areas can enter water bodies and wetlands and interfere with fish and wildlife habitat.
- D. **Degradation of Riparian Areas.** The term "riparian" is defined in Article 9 of this chapter and includes the areas adjacent to streams, lakes, marine shorelines and other waters. A healthy riparian area is essential to protecting fish and wildlife, including salmon and shellfish. Dense riparian vegetation

along the water's edge will slow and protect against flood flows; provide infiltration and filtering of pollutants; secure food and cover for fish, birds and wildlife; and keep water cooler in summer. If it occurs, uncontrolled grazing has the potential to remove important riparian vegetation.

**16.16.820 Classification and Applicability.**

- A. A conservation farm plan identifies the farming or ranching activities and the practice(s) necessary to avoid their potential negative impacts (resource concerns). Practice selection depends upon the types of livestock raised and crops grown. Based upon the type and intensity of the operation, some generalizations can be made as to the resource concerns and remedies that apply.
- B. Some operations present relatively low risks to critical areas because of their benign nature, timing, frequency, or location. For these operations, the resource concerns and remedies are relatively easy to identify and implement. These are described in more detail as Type 1 agricultural operations subject to standardized conservation farm plans in WCC [16.16.830](#) and [16.16.840\(A\)](#).
- C. Where the potential negative impacts to critical areas are moderate or high, solutions are more difficult to formulate and implement. In those circumstances, a more rigorous planning process is required. In such cases, a formal written plan shall provide the desired environmental protection. These types of operations are described as agricultural operations requiring custom conservation farm plans in WCC [16.16.830](#) and [16.16.840\(B\)](#) or (C).
- D. Agricultural activities that qualify for coverage include:
  1. Type 1 Operations.
    - a. To qualify as a Type 1 operation, a farm shall not exceed one animal unit per one acre of grazable pasture. These operations present a low potential risk to critical area degradation including ground/surface water contamination because the animals kept generate fewer nutrients than can be used by the crops grown there.
    - b. Critical areas on Type 1 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved standard conservation farm plan prepared in accordance with WCC [16.16.830](#) and [16.16.840\(A\)](#).
    - c. Those operators qualifying for a Type 1 (standard) conservation farm plan may elect to do a Type 2 (custom) conservation farm plan if they want to use "Prescribed Grazing" (NRCS Practice 528A) to manage vegetative filter strips installed alongside critical areas.
  2. Type 2 Operations.
    - a. Type 2 operations are farms that include, but are not limited to, those that exceed one animal unit per one acre of grazable pasture; farms that have orchards, vineyards, small-fruit field or row crops; and drainage improvement districts. These operations present a potential moderate risk to critical area degradation, including ground or surface water contamination, because the nutrients applied from manure or commercial fertilizers may exceed that which can be easily used by the crops grown there without careful planning and management. The agricultural activities are also likely to be much more intense than Type 1 operations, posing greater potential risks to other critical areas.

- b. Critical areas on Type 2 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with WCC [16.16.830](#) and [16.16.840](#)(B).
- 3. Type 3 Operations.
  - a. Type 3 operations include dairies and animal feeding operations/concentrated animal feeding operations (AFO/CAFOs). These operations are already regulated by state and federal governments (see Chapter [90.64](#) RCW et seq.; [40](#) CFR [122.23](#) and [40](#) CFR Part 412).
  - b. Critical areas are protected against the potential negative impacts of Type 3 agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with WCC [16.16.830](#) and [16.16.840](#)(C).

**16.16.830 Conservation Farm Plans – General Standards.**

- A. All conservation farm plans shall include all practicable measures, including best management practices, to maintain existing critical area functions and values.
- B. A conservation farm plan shall not recommend nor authorize:
  - 1. Filling, draining, grading, or clearing activities within critical areas or buffers:
    - a. Except on ongoing agricultural land where such activities are a demonstrated essential part of the ongoing agricultural use or part of routine maintenance; and
    - b. When it does not expand the boundaries of the ongoing agricultural use; and
    - c. The appropriate permits for doing so have been obtained.
  - 2. The construction of new structures. New structures shall be constructed in compliance with the applicable standard requirements of this chapter and the Whatcom County Code.
  - 3. New or expanded drainage systems. Routine maintenance of existing drainage systems may be allowed, but only in compliance with the Washington State Hydraulic Code (Chapter [220-660](#) WAC) and the best management practices found in the “Drainage Management Guide for Whatcom County Drainage Improvement Districts.”
  - 4. The conversion of land to agricultural use.
- C. Other plans prepared for compliance with state or federal regulations (e.g., nutrient management plans), or to obtain an accredited private third-party certification (e.g., GLOBALG.A.P.), or similar plans may be used as part of or in lieu of a conservation farm plan if the ~~technical administrator~~ [Director](#) determines they adequately address the requirements of this title.

**16.16.840 Conservation Farm Plan Requirements.**

- A. **Type 1 (Standard) Conservation Farm Plans.** Owners of Type 1 operations have limited options to control animal waste because their operations are small. The required conservation farm plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to protect water quality, and the following additional components:
  - 1. System Siting and Design. Barns, corrals, paddocks, or lots are to be sited to avoid runoff directly into critical areas.
    - a. Where structures exist in critical areas or buffers and cannot be relocated, corrective measures must be taken if necessary to avoid runoff of pollutants and bacteria to critical areas.

- b. Along regulated streams<sup>2</sup>, lakes, ponds, or wetlands:
      - i. Where trees and shrubs already exist, they shall be retained and managed to preserve the existing functions of the buffer pursuant to the USDA Natural Resource Conservation Service’s (NRCS) Conservation Practice 391, “Riparian Forest Buffer.”
      - ii. Where trees and shrubs are absent, a strip or area of herbaceous vegetation shall be established and maintained between barns, corrals, paddocks, and grazing areas pursuant to the NRCS Conservation Practice 393, “Vegetative Filter Strip,” and USDA’s buffer width design tool for surface runoff found in the publication “Conservation Buffers Design Guidelines for Buffers, Corridors, and Greenways.” Livestock shall be excluded from the vegetative filter strips established to protect critical areas pursuant to NRCS Practice 472, “Access Control.”
2. Manure Collection, Storage, and Use. Manure and soiled bedding from stalls and paddocks are to be removed and are to be placed in a storage facility protected from rainfall so that runoff does not carry pollutants and bacteria to critical areas. Manure is to be used as cropland fertilizer. The rate and timing of manure application shall not exceed crop requirements or cause surface or groundwater water quality degradation. It is to be applied in a manner to avoid runoff of nutrients and bacteria to critical areas.
3. Pasture Management. Pastures are to be established and managed pursuant to “Prescribed Grazing” (NRCS Practice 528A).
4. Exercise or Barn Lots. These normally bare areas must be stabilized and managed to prevent erosion and sediment movement to critical areas. A diversion terrace shall be installed, where necessary, to hinder flow to and across the lot or paddock. Runoff from the lot must be treated via the vegetative filter strip or riparian buffer as described in subsection (A)(1) of this section to avoid contaminants reaching critical areas.
5. Existing native vegetation within critical areas and their buffers shall be retained.
6. Chemical additions, including fungicides, herbicides, and pesticides, shall not be applied within 50 feet of standing or flowing water except by a licensed applicator.
7. Fertilizers Other Than Manure. The rate and timing of fertilizer application shall not exceed crop requirements, or cause surface or groundwater quality degradation.
- B. **Type 2 (Custom) Conservation Farm Plans.** In addition to the elements of a Type 1 conservation farm plan, Type 2 plans must address the following:
  1. In developing the elements that an approved conservation farm plan must contain, the ~~technical administrator~~ Director may authorize the use of the methods, technologies, and best management practices of the Natural Resources Conservation Service. Other standards may be used when such alternatives have been developed by a land grant college or a professional engineer with expertise in the area of farm conservation planning.
  2. Implementation of the conservation farm plan must protect existing values and functions of critical areas. Benchmark conditions are to be captured and described in the plan. This may consist of photo documentation, written reports or both.

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<sup>2</sup> Note that ditched channels may or may not meet the definition of a stream. See Article 9, Definitions.

3. Wetlands shall be conserved pursuant to the provisions of Title 180 – National Food Security Act Manual (see <http://www.nrcs.usda.gov/programs/wetlands/index.html>).
4. Custom conservation farm plans need not address the application, mixing, and/or loading of insecticides, fungicides, rodenticides, and pesticides; provided, that such activities are carried out in accordance with the Washington State Department of Agriculture and all other applicable regulations including, but not limited to: the provisions of Chapter [90.48](#) RCW, the Clean Water Act, United States Code (USC) Section 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act), Chapter [15.58](#) RCW (Pesticide Control Act), and Chapter [17.21](#) RCW (Pesticide Application Act).
5. Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to prevent and/or mitigate same by:
  - a. A planning advisor; or
  - b. Through the USDA Natural Resources Conservation Service; or
  - c. The Whatcom conservation district; or
  - d. An eligible farmer or rancher, who participates in this program by:
    - i. Attending a County-sponsored or approved workshop, and
    - ii. Conducting a risk assessment of their farm or ranch, alone or with a planning advisor's assistance, and
    - iii. Developing a plan to prevent and/or mitigate any identified risks, and
    - iv. Having the plan approved pursuant to WCC [16.16.290](#).

One resource for guidance is "Tips on Land and Water Management for Small Farm and Livestock Owners in Whatcom County, Washington." It can be obtained from the Whatcom conservation district's website: <http://www.whatcomcd.org/small-farm>. Other guidance may also be used, provided it is consistent with the best available science criteria in WAC [365-195-900](#) through [365-195-925](#).

- C. **Type 3 (Custom) Conservation Farm Plans.** Conservation farm plans meeting the criteria of state and federal laws pertaining to AFO/CAFOs (see Chapter [90.64](#) RCW et seq., [40](#) CFR [122.23](#) and [40](#) CFR Part 412) fulfill the requirements of this chapter. (See U.S. EPA "Final Guidance – Managing Manure Guidance for Concentrated Animal Feeding Operations (CAFOs)" at: <http://epa.gov/guide/cafo/>).

#### **16.16.850 Preparation and Approval of Conservation Farm Plans.**

Conservation farm plans shall be subject to County review, approval, monitoring, adaptive management, and enforcement in accordance with the following:

- A. The ~~technical administrator~~ Director shall review and approve all conservation farm plans.
- B. Table 5~~Table 4~~ shows which entities may prepare and/or provide technical assistance and recommendations in preparing which type of conservation farm plan:

**Table 5. Who May Prepare Conservation Farm Plans**

Who May Prepare	Type 1 Operations	Type 2 and 3 Operations
The farm operator	X	
Whatcom County planning and development services	X	X
A qualified consultant	X	
A watershed improvement district (for a farm or ranch that is within its boundaries)	X	
The Whatcom conservation district	X	X
A planning advisor	X	X

- C. The farm operator can seek conservation farm plan approval directly through the department of planning and development services, or grant permission to any of the entities listed in Table 5Table 4 to prepare and submit it. If the conservation farm plan is prepared by any entity listed in Table 5Table 4 other than the Whatcom conservation district, the Department will conduct a site visit prior to plan approval in order to assess critical areas and sufficiency of the plan to protect water quality and critical areas.

**16.16.860 Monitoring and Compliance.**

- A. The ~~technical administrator~~ Director and/or the farm operator shall periodically monitor plan implementation and compliance beginning one year after plan approval and every two years thereafter, through the life of the plan, or more frequently at the ~~technical administrator~~ Director's discretion. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. For a time period of up to every five years, self-certification is allowed for Type 1 conservation farm plans, or if the plan is prepared by the Whatcom conservation district or planning advisor and approved by the department. If a sufficient self-certification monitoring report (must include photos and implemented best management practices) is not submitted within 30 days of request, County staff may make a site visit. Site visits will be coordinated with the landowner/farm operator. Prior to carrying out a site inspection, the ~~technical administrator~~ Director shall provide reasonable notice to the owner or manager of the property as to the purpose or need for the entry, receive confirmation, and afford at least two weeks in selecting a date and time for the visit. At the landowner's/farm operator's discretion, staff may be accompanied by the planning advisor or Whatcom conservation district planner.
- B. Where the planning advisor has reason to believe that there is an imminent threat to public health or significant pollution with major consequences occurring as a result of the agricultural operations, the planning advisor will advise the agricultural operator of his or her concerns in writing. While the planning advisor may provide suggestions for resolving the issue, the responsibility for compliance and resolution of issues rests solely with the farm operator. If compliance issues are not promptly resolved, the planning advisor shall promptly withdraw from representing the farm operator, notify



- the ~~technical administrator~~ Director of such, and may report such situations to the ~~technical administrator~~ Director for subsequent action and enforcement in accordance with WCC [16.16.285](#).
- C. The farm practices described in an approved conservation farm plan will be deemed to be in compliance with this chapter so long as the landowner/farm operator is properly and fully implementing the practices and responding to possible adaptive management requirements according to the timeline in the plan. This will be verified through conservation farm plan implementation monitoring.
- D. Agricultural operations shall cease to be in compliance with this article, and a new or revised conservation farm plan will be required, when the ~~technical administrator~~ Director determines that any of the following has occurred:
1. When a farm or ranch operator fails to properly and fully implement and maintain their conservation farm plan.
  2. When implementation of the conservation farm plan fails to protect critical areas. If so, a new or revised conservation farm plan shall be required to protect the values and functions of critical areas at the benchmark condition.
  3. When substantial changes in the agricultural activities of the farm or livestock operation have occurred that render the current conservation farm plan ineffective. Substantial changes that render a conservation farm plan ineffective are those that:
    - a. Degrade baseline critical area conditions for riparian and wetland areas that existed when the plan was approved; or
    - b. Result either in a direct discharge or substantial potential discharge of pollution to surface or ground water; or
    - c. The type of agricultural practices change from Type 1 to Type 2, Type 2 to Type 3, or Type 1 to Type 3 operations.
  4. When the increase in livestock or decrease in land base or nutrient export results in the farm being out of balance between the nutrients generated and to be used by growing crops.
  5. When a new or revised conservation farm plan is required, and the farm operator has been so advised in writing and a reasonable amount of time has passed without significant progress being made to develop said plan. Refusal or inability to provide a new plan within a reasonable period of time shall be sufficient grounds to revoke the approved conservation farm plan and require compliance with the standard provisions of this chapter.
  6. When an owner or manager denies the ~~technical administrator~~ Director reasonable access to the property for technical assistance, monitoring, or compliance purposes, then the ~~technical administrator~~ Director shall document such refusal of access and notify the owner of his/her findings. The owner shall be given an opportunity to respond in writing to the findings of the ~~technical administrator~~ Director, propose a prompt alternative access schedule, and to state any other issues that need to be addressed. Refusal or inability to comply with an approved conservation farm plan within a reasonable period of time shall be sufficient grounds to revoke said plan and require compliance with the standard provisions of this chapter.
- E. With one exception, Whatcom County will not use conservation farm plans (standard or custom) as an admission by the landowner that s/he has violated this chapter. Disclosure of current farm

practices, structures on conservation farm plan documents, or observations made through monitoring inspections or conservation farm plan approval, will not be used to bring other enforcement actions against a farm operator. The exception is that when matters of major life, health, environment, or safety issues, as determined by the ~~technical administrator~~ Director, are observed and the landowner fails to immediately and permanently remediate, then the observations may be used in an enforcement action.

**16.16.870 Limited Public Disclosure.**

- A. Conservation farm plans will not be subject to public disclosure unless required by law or a court of competent jurisdiction;
- B. Provided, that the County will collect summary information related to the general location of a farming enterprise, the nature of the farming activity, and the specific best management practices to be implemented during the conservation farm plan review process. The summary information shall be provided by the farm operator or his/her designee and shall be used to document the basis for the County's approval of the plan.
- C. The County will provide to the public via its website information regarding which farms have approved conservation farm plans and the date of their approval.
- D. Upon request, the County may provide a sample conservation farm plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation farm plan.

## Article 9. Definitions

### 16.16.900 Definitions.

The terms used throughout this program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular. Any words not defined herein shall be defined pursuant to Titles 20 (Zoning), 22 (Land Use and Development), 23 (Shoreline Management Program), or their common meanings when not defined in code.

“Accessory structure” means a structure that is incidental and subordinate in intensity to a primary use and located on the same lot as the primary use. Barns, garages, storage sheds, and similar appurtenances are examples. Structures that share a common wall with a primary residential structure shall be considered an extension of the primary structure, rather than an accessory structure. [AP87]

“Active alluvial fan” means a portion or all of a fan that has experienced channel changes, erosion, or deposition. Active fans can be identified based on determination by field geomorphic and topographic evidence, and by historical accounts.

“Activity” means human activity associated with the use of land or resources.

“Adaptive management” means using scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. Management policy may be adapted based on a periodic review of new information.

“Adequate water supply” means a water supply that meets requirements specified in the Whatcom County drinking water ordinance ([WCC Chapter 24.11 WCC](#)).

“AFO” is an acronym for animal feeding operation.

“Agricultural activities” means those activities directly pertaining to the production of crops or livestock including, but not limited to: cultivation; harvest; grazing; animal waste storage and disposal; fertilization; the operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, and canals; and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. The construction of new structures or activities that bring a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.

“Agricultural land” is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW [84.33.100](#) through [84.33.140](#), or livestock, and/or lands that have been designated as capable of producing food and fiber, which have not been developed for urban density housing, business, or other uses incompatible with agricultural activity.

“Alluvial fan” means a fan-shaped deposit of sediment and organic debris formed where a stream flows or has flowed out of a mountainous upland onto a level plain or valley floor because of a sudden change in sediment transport capacity (i.e., significant change in slope or confinement).

“Alluvium” is a general term for clay, silt, sand, gravel, or similar other unconsolidated detrital materials, deposited during comparatively recent geologic time by a stream or other body of running water, as a sorted or semi-sorted sediment in the bed of the stream or on its floodplain or delta.

“Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the critical area.

“Anadromous fish” means fish species that spend most of their lifecycle in salt water, but return to freshwater to reproduce.

“Animal unit” means 1,000 pounds of livestock live weight.

“Aquifer” means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs (Chapter [173-160](#) WAC).

“Aquifer susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

“Aquifer vulnerability” is the combined effect of susceptibility to contamination and the presence of potential contaminants.

“Bankfull width” means:

1. For streams – The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross section (see Forest Practices Board Manual, Section 2).
2. For lakes, ponds, and impoundments – Line of mean high water.
3. For tidal water – Line of mean high tide.
4. For periodically inundated areas of associated wetlands – Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

“Base flood” is a flood event having a ~~one-percent~~1% chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A (zone subject to flooding during a 100-year flood, but less so than V zones) or V (zone subject to the highest flows, wave action, and erosion during a 100-year flood).

“Bedrock” is a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.

“Best available science” means information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore critical areas. As defined by WAC [365-195-900](#) through [365-195-925](#), best available science is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

“Best management practices” means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitat;
3. Control plant site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.

“Buffer (the buffer zone)” means the area adjacent to the outer boundaries of critical areas including wetlands; habitat conservation areas such as streams, lakes, and marine shorelines; and/or landslide hazard areas that separates and protects critical areas from adverse impacts associated with adjacent land uses.

“CAFO” is an acronym for concentrated animal feeding operation.

“CFR” is an acronym for Code of Federal Regulations.

“Channel migration zone (CMZ)” means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses that area of current and historic lateral stream channel movement that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are susceptible to channel erosion. There are three components of the channel migration zone: (1) the historical migration zone (HMZ) – the collective area the channel occupied in the historical record; (2) the avulsion hazard zone (AHZ) – the area not included in the HMZ that is at risk of avulsion over the timeline of the CMZ; and (3) the erosion hazard area (EHA) – the area not included in the HMZ or the AHZ that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration zone may not include the area behind a lawfully constructed flood protection device. Channel migration zones shall be identified in accordance with guidelines established by the Washington State Department of Ecology.

“Clearing” means destruction of vegetation by manual, mechanical, or chemical methods and that may result in exposed soils. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.

“Commercial fish” means those species of fish that are classified under the Washington State Department of Fish and Wildlife Food Fish Classification as commercial fish (WAC [220-12-010](#)).

“Compensatory mitigation” means a project for the purpose of mitigating, at an equivalent or greater level, unavoidable critical area and buffer impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not limited to: wetland creation, restoration, enhancement, and preservation; stream restoration and relocation; rehabilitation; and buffer enhancement.

“Conservation” means the prudent management of rivers, streams, wetlands, wildlife and other environmental resources in order to preserve and protect them. This includes the careful use of natural resources in order to prevent depletion or harm to the environment.

“Conservation easement” means a legal agreement that the property owner enters into to restrict uses of the land for purposes of natural resources conservation. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property.

“Contaminant” means any chemical, physical, biological, or radiological substance that does not occur naturally in groundwater, air, or soil or that occurs at concentrations greater than those in the natural levels (Chapter [172-200](#) WAC).

“County” means Whatcom County, Washington.

“CPAL” is an acronym for Conservation Program on Agriculture Lands.

“Critical aquifer recharge areas” means areas designated by WAC [365-190-080](#)(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC [365-190-030](#)(2).

“Critical area tract” means land held in private ownership and retained in an open undeveloped condition (native vegetation is preserved) in perpetuity for the protection of critical areas.

Critical Areas. The following areas shall be regarded as critical areas:

1. Critical aquifer recharge areas;
2. Wetlands;
3. Geologically hazardous areas;
4. Frequently flooded areas;
5. Fish and wildlife habitat conservation areas.

“Critical areas report” means a report prepared by a qualified professional or qualified consultant based on best available science, and the specific methods and standards for technical study required for each applicable critical area. Geotechnical reports and hydrogeological reports are critical area reports specific to geologically hazardous areas and critical aquifer recharge areas, respectively.

“Critical facilities (essential facilities)” means buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes pursuant to the most recently adopted International Building Code (IBC).

“Critical habitat” means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington State Department of Fish and Wildlife as identified in WAC [232-12-011](#) or [232-12-014](#); in the Priority Habitat and Species (PHS) Program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

“Critical saltwater habitat” includes all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.

“Cumulative impact” means effects on the environment that are caused by the combined results of past, current and reasonably foreseeable future activities. Evaluation of such cumulative impacts should consider: (1) current circumstances affecting the critical area and relevant natural processes; (2) reasonably foreseeable future development that may affect the critical area; and (3) beneficial effects of any established regulatory programs under other local, state, and federal laws.

“Debris flow” means a moving mass of rock fragments, soil, and mud, more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.

“Debris torrent” means a violent and rushing mass of water, logs, boulders and other debris.

“Deepwater habitats” means permanently flooded lands lying below the deepwater boundary of wetlands. Deepwater habitats include environments where surface water is permanent and often deep, so that water, rather than air, is the principal medium in which the dominant organisms live. The boundary between wetland and deepwater habitat in the marine and estuarine systems coincides with the elevation of the extreme low water of spring tide; permanently flooded areas are considered deepwater habitats in these systems. The boundary between wetland and deepwater habitat in the riverine and lacustrine systems lies at a depth of two meters (6.6 feet) below low water; however, if emergent vegetation, shrubs, or trees grow beyond this depth at any time, their deepwater edge is the boundary.

“Delineation” means the precise determination of wetland/non-wetland boundaries in the field according to the application of the specific method described in the Corps of Engineers Wetlands Delineation Manual, 1987 Edition, as amended, and the Western Mountains, Valleys, and Coast Region Supplement (Version 2.0) 2010, or as revised.

Designated Species, Federal. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.



Designated Species, State. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC [232-12-014](#) (state endangered species) and WAC [232-12-011](#) (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

“Development” means any land use activity, action, or manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, site work, and installation of utilities; land division, binding site plans, and planned unit developments; dredging, drilling, dumping, filling, grading, clearing, or removal of any sand, gravel, or minerals; shoreline stabilization works, driving of piling, placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment. any activity that requires federal, state, or local approval for the use or modification of land or its resources. These activities include, but are not limited to: subdivisions and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development permits and exemptions; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval. [CES88]

“Director” means the director of the Whatcom County Department of Planning and Development Services, or his/her designee.

“Ditch” or “drainage ditch” means an artificially created watercourse constructed to convey surface or groundwater. Ditches are graded (manmade) channels installed to collect and convey water to or from fields and roadways. Ditches may include:

1. Irrigation ditches;
2. Waste ways;
3. Drains;
4. Outfalls;
5. Operational spillways;
6. Channels;
7. Stormwater runoff facilities; or
8. Other wholly artificial watercourses.

This definition is not meant to include artificial water courses that conveys or historically conveyed (prior to human alteration) waters of the state, is used by anadromous or other fish populations, or flows directly into shellfish habitat conservation areas.

“Emergency activities” means those activities which require immediate action within a time too short to allow full compliance with this chapter due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of Chapter [90.58](#) RCW and this chapter. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

“Emergent wetland” means a wetland with at least 30% ~~percent~~ of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

“Enhancement” means actions performed within an existing degraded critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing critical area or buffer. Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible erosion controls, or removing nonindigenous plant or animal species.

“Erosion” means a process whereby wind, rain, water and other natural agents mobilize, transport, and deposit soil particles.

“Erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having “severe” or “very severe” erosion hazards and areas subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat.

“Estuarine wetland” means the zero-gradient sector of a stream where it flows into a standing body of water together with associated natural wetlands; tidal flows reverse flow in the wetland twice daily, determining its upstream limit. It is characterized by low bank channels (distributaries) branching off the main stream to form a broad, near-level delta; bank; bed and delta materials are silt and clay; banks are stable; vegetation ranges from marsh to forest; and water is usually brackish due to daily mixing and layering of fresh and salt water.

“Exotic” means any species of plants or animals that is not indigenous to the area.

“Farm pond” means an open water depression created from a non-~~wetland~~ site in connection with agricultural activities.

“Feasible” means an action, such as a development project, mitigation, or preservation requirement that meets all of the following conditions:

1. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
2. The action provides a reasonable likelihood of achieving its intended purpose; and
3. The action does not physically preclude achieving the project’s primary intended legal use.

In cases where this chapter requires certain actions “unless they are infeasible,” the burden of proving infeasibility is on the applicant/ proponent. In determining an action’s infeasibility, the County may weigh the action’s relative costs and public benefits, considered in the short- and long-term time frames.

“Feasible alternative” means an action, such as development, mitigation, or restoration, that meets all of the following conditions: (1) the action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (2) the action provides a reasonable likelihood of achieving its intended purpose; and (3) the action does not physically preclude achieving the project’s primary intended legal use. Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and benefits.

“Fen” means a mineral-rich wetland formed in peat that has a neutral to alkaline pH. Fens are wholly or partly covered with water and dominated by grass-like plants, grasses, and sedges.

“Fill material” means any solid or semisolid material, including rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure that, when placed, changes the grade or elevation of the receiving site.

“Filling” means the act of transporting or placing by any manual or mechanical means fill material from, to or on any soil surface, including temporary stockpiling of fill material.

“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to: rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species. “Fish and wildlife habitat conservation areas” does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company unless they meet the qualifications of WCC 16.16.710(B).

“Fish habitat” means a complex of physical, chemical, and biological conditions that provide the life-supporting and reproductive needs of a species or life stage of fish. Although the habitat requirements of a species depend on its age and activity, the basic components of fish habitat in rivers, streams, ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not limited to, the following:

1. Clean water and appropriate temperatures for spawning, rearing, and holding;
2. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-channel habitat;

3. Abundance of bank and in-stream structures to provide hiding and resting areas and stabilize stream banks and beds;
4. Appropriate substrates for spawning and embryonic development. For stream- and lake-dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand;
5. Presence of riparian vegetation as defined in this article. Riparian vegetation creates a transition zone, which provides shade and food sources of aquatic and terrestrial insects for fish;
6. Unimpeded passage (i.e., due to suitable gradient and lack of barriers) for upstream and downstream migrating juveniles and adults.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

~~“Floodplain” is synonymous with one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act. “Floodplain” means the total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.~~

~~“Floodway” means the area, as identified in a master program, that either: (a) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. “Floodway” means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one foot. Also known as the “zero rise floodway.”~~ [CES89][P/C90]

“Forested wetland” means a wetland with at least 30% ~~percent~~ of the surface area covered by woody vegetation greater than 20 feet in height, excluding monotypic stands of red alder or cottonwood that average eight inches in diameter at breast height or less.

“Frequently flooded areas” means lands in the floodplain subject to a ~~one percent~~ 1% or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the County in accordance with WAC [365-190-080](#)(3). Classifications of frequently flooded areas include, at a minimum, the “special flood hazard area”

designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

“Function assessment” or “functions and values assessment” means a set of procedures, applied by a qualified consultant, to identify the ecological functions being performed in a wetland or other critical area, usually by determining the presence of certain characteristics, and determining how well the critical area is performing those functions. Function assessments can be qualitative or quantitative and may consider social values potentially provided by the wetland or other critical area. Function assessment methods must be consistent with best available science.

“Functions” means the processes or attributes provided by areas of the landscape (e.g., wetlands, rivers, streams, and riparian areas) including, but not limited to, habitat diversity and food chain support for fish and wildlife, groundwater recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.

“Functions, services, and value” means the beneficial functions that critical areas perform, the services they provide humans, and the values people derive from these roles including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, protection from hazards, providing historical and archaeological resources, noise and visual screening, open space, and recreation. These beneficial roles are not listed in order of priority.

“Game fish” means those species of fish that are classified by the Washington State Department of Wildlife as game fish (WAC [232-12-019](#)).

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

“Gradient” means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth’s surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio (vertical to horizontal), a fraction (such as meters/kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).

“Grading” means any excavating or filling of the earth’s surface or combination thereof.

“Grazable acres” means both pasture and hay land as described in the Whatcom County Standard Farm Conservation Planning Workbook.

“Groundwater” means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (Chapter [90.44](#) RCW).

“Groundwater management area” means a specific geographic area or subarea designated pursuant to Chapter [173-100](#) WAC for which a groundwater management program is required.

“Groundwater management program” means a comprehensive program designed to protect groundwater quality, to assure groundwater quantity, and to provide for efficient management of water resources while recognizing existing groundwater rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated groundwater management area or subarea and developed pursuant to Chapter [173-100](#) WAC.

“Growing season” means the portion of the year when soil temperatures are above biologic zero (41 degrees Fahrenheit).

“Growth Management Act” means Chapters [36.70A](#) and [36.70B](#) RCW, as amended.

“Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by Whatcom County pursuant to WCC [16.16.710](#)(C)(12).

“Hazard tree” (outside the shoreline jurisdiction) means a tree whose risk evaluation, as determined through a Whatcom County approved tree risk assessment method, is high. Risk evaluation is the combined measurement of: tree failure identification, probability of failure, potential damage to permanent physical improvements to property causing personal injury, and consequences. A tree that constitutes an airport hazard is considered a hazard tree. A hazard tree whose failure is imminent and consequences of damage to permanent physical improvements to property causing personal injury are significant is considered an emergency. “Imminent” in this instance means failure has started or is most likely to occur in the near future, even if there is no significant wind or increased load. Imminent may be determined by a qualified consultant (defined in this section) or when mutually agreed upon by a landowner and Whatcom County.

“Hazard tree” (within the shoreline jurisdiction) means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

“Hazardous substance” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC [173-303-090](#) or [173-303-100](#).

“High intensity land use” means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than one unit/acre), high-intensity new agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high-intensity recreation (golf courses, ball fields), hobby farms, and Class IV special forest practices, including the building of logging roads ~~(note that pursuant to WCC 16.16.230(A), all other forest practices are exempt from this chapter)~~.

“Hydraulic project approval (HPA)” means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter [75.20](#) RCW.

“Hydric soil” means a soil that is or has been saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the NRCS “Field Indicators of Hydric Soils” Version 7, and/or the Corps of Engineers Wetlands Delineation Manual, as amended.

“Hydrologic soil groups” means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:

1. Low runoff potential and a high rate of infiltration potential;
2. Moderate infiltration potential and a moderate rate of runoff potential;
3. Slow infiltration potential and a moderate to high rate of runoff potential; and
4. High runoff potential and very slow infiltration and water transmission rates.

“Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

“Hyporheic zone” means the saturated zone located beneath and adjacent to streams that contain some proportion of surface water from the surface channel. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production important in fish nutrition and provides other functions related to maintaining water quality.

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow compared to natural conditions prior to development. Common impervious surfaces may include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Impervious surfaces do not include surface created through proven low impact development techniques.

“In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.

“Infiltration” means the downward entry of water into the immediate surface of soil.

“Intertidal zone” means the substratum from extreme low water of spring tides to the upper limit of spray or influence from ocean-derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.

“Invasive species” means a species that is: (1) nonnative (or alien) to Whatcom County, and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health.



Invasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

“Lahar” means a mudflow and debris flow originating from the slopes of a volcano.

“Lahar hazard area” means areas that have been or potentially could be inundated by lahars or other types of debris flows, according to a map showing volcano hazards from Mount Baker, Washington.

“Lake” means a naturally or artificially created body of deep (generally greater than 6.6 feet) open water that persists throughout the year. A lake is larger than a pond, greater than one acre in size, equal to or greater than 6.6 feet in depth, and has less than 30% ~~percent~~ aerial coverage by trees, shrubs, or persistent emergent vegetation. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake’s ordinary high water mark with the stream where the stream enters the lake.

“Landfill” means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

“Landslide” means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material en masse; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.

“Landslide hazard areas” means areas that, due to a combination of site conditions like slope inclination and relative soil permeability, are susceptible to mass wasting.

“Low intensity land use” means land use that includes the following uses or activities: forestry (cutting of trees only), low intensity open space (such as passive recreation and natural resources preservation), ~~and unpaved trails,~~ utility corridors without maintenance roads and little or no vegetation management, or similar uses that do not require land disturbance. [CES93]

“LWD” is an acronym for large woody debris.

“Maintenance or repair” means those usual activities required to prevent a decline, lapse or cessation from a lawfully established condition or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition. This does not include any activities that change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.

“Major development” means any project for which a major project permit is required pursuant to [WCC Chapter 20.88](#) ~~WCC~~. For the purposes of this chapter, “major development” shall also mean any project associated with an existing development for which a major development permit has been required or other existing legally nonconforming development for which a major development permit would otherwise be required if developed under the current land use regulations outlined in WCC Title [20](#).

“Mass wasting” means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.

“Mature forested wetland” means a wetland with an overstory dominated by mature trees having a wetland indicator status of facultative (FAC), facultative-wet (FACW), or obligate (OBL). Mature trees are considered to be at least 21 inches in diameter at breast height.

“Maximum credible event” means the largest debris flow event that can be hypothesized from geologic processes within a watershed above an alluvial fan with consideration of the volume of sediment and debris that would be available within the drainage combined with material from landslides that would enter the drainage, and the volume of water that could become trapped behind and within the debris flow or dammed within the drainage.

“May” means the action is allowable, provided it conforms to the provisions of this title.

“Mean annual flow” means the average flow of a river or stream (measured in cubic feet per second) from measurements taken throughout the year. If available, flow data for the previous 10 years should be used in determining mean annual flow.

“Mitigation” means individual actions that may include a combination of the following measures, listed in order of preference:

1. Avoiding an impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
3. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for an impact by replacing or providing substitute resources or environments; and
6. Monitoring the mitigation and taking remedial action when necessary.

“Mitigation bank” means a site where wetlands or similar habitats are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to aquatic resources.

“Mitigation bank instrument” means the documentation of agency and bank sponsor concurrence on the objectives and administration of the bank. The “bank instrument” describes in detail the physical and legal characteristics of the bank, including the service area, and how the bank will be established and operated.

“Mitigation bank review team” or “MBRT” means an interagency group of federal, state, tribal and local regulatory and resource agency representatives that are invited to participate in negotiations with the bank sponsor on the terms and conditions of the bank instrument.

“Mitigation bank review team process” or “MBRT process” means a process in which the County and other agencies strive to reach consensus with the MBRT members on the terms, conditions, and procedural elements of the bank instrument.

“Mitigation bank sponsor” means any public or private entity responsible for establishing and, in most circumstances, operating a bank.

“Mitigation plan” means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

“Moderate intensity land use” means land use that includes the following uses or activities: residential (one unit/gross acre or less), moderate-intensity open space (parks with biking, jogging, etc.), moderate-intensity new agriculture (orchards, ~~and~~ hay fields, nurseries, raising and harvesting crops requiring annual tilling <sup>[P/C94]</sup>), ~~and paved trails, building of logging roads, and utility corridors or rights-of-way shared by several utilities and including access/maintenance roads.~~ <sup>[CES95]</sup>

“Monitoring” means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of ecosystem functions and processes, and/or assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features compared to baseline or pre-project conditions and/or reference sites.

“Native vegetation” means plant species that are indigenous to Whatcom County and the local area.

“Nearshore habitat” means the zone that extends seaward from the marine shoreline to a water depth of approximately 20 meters (66 feet). Nearshore habitat is rich biologically, providing important habitat for a diversity of plant and animal species.

“No net loss” means the maintenance of the aggregate total of the County’s critical area functions and values as achieved through a case-by-case review of development proposals. Each project shall be evaluated based on its ability to meet the no net loss goal.

“Off-site mitigation” means to replace critical areas away from the site on which a critical area has been adversely impacted by a regulated activity.

“Ongoing agriculture” means those activities conducted on lands defined in RCW [84.34.020\(2\)](#), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

“Ordinary high water mark” means the mark or line on all lakes, rivers, streams, and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of

waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation (RCW [90.58.030](#)(2)(b)).

“Person” means any individual, ~~trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity, either public or private, acting as a unit cooperative, public or municipal corporation, state agency or local governmental unit, however designated, or Indian nation or tribe.~~<sup>[CES96]</sup>

“Planned unit development (PUD)” means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits.

“Planning advisor” means those qualified individuals who have technical experience and training necessary to prepare conservation farm plans for agricultural lands and who have been certified a technical service provider by the USDA Natural Resources Conservation Service (see <http://techreg.usda.gov>) and signed the practice and confidentiality agreement.

“Pond” means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than ~~30% percent~~ aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds, ponds built for the primary purpose of combating fires, stormwater facilities, and beaver ponds less than two years old are excluded from this definition.

“Potable” means water that is suitable for drinking by the public (Chapter [246-290](#) WAC).

“Preservation” means actions taken to ensure the permanent protection of existing, ecologically important critical areas and/or buffers that the County has deemed worthy of long-term protection.

“Primary association” means the use or potential use of a habitat area by a listed or priority species for breeding/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s) as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding/nesting/spawning.

“Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat

element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife (WAC [173-26-020](#)(24)).

“Priority species” means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington State Department of Fish and Wildlife.

“Project” means any proposed or existing activity regulated by Whatcom County.

“Project permit” or “project permit application” means any land use or environmental permit or approval required by Whatcom County, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive plan or subarea plan.

“Qualified professional” or “qualified consultant” means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC [365-195-905](#)(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or a related field, and related work experience, and meet the following criteria:

1. Is listed on a roster of qualified professionals or qualified consultants prepared by the ~~PDS~~ [Natural Resource Supervisor](#)~~Director~~.
2. A qualified professional for wetlands must have a degree in wildlife biology, ecology, soil science, botany, or a closely related field and a minimum of five years of professional experience in wetland delineation and assessment associated with wetland ecology in the Pacific Northwest or comparable systems. The following is required to be submitted to be placed on the roster:
  - a. Curriculum vitae or resume;
  - b. Three complete and approved wetland delineations (as primary author on at least one), conducted in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987, or as amended; and
  - c. One complete and approved wetland delineation using the U.S. Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region, 2010, or as amended. Successful completion of a wetland class using this manual may be substituted for this requirement.
3. A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or a closely related field and a minimum of three years of professional experience related to the subject species/habitat type or approved equivalent work experience.
4. A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.
5. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.
6. A qualified professional for tree risk assessment means a certified arborist or certified tree professional with a current ISA Tree Risk Assessment Qualification.

7. Anyone who has had their professional licensure, ~~or~~ certification, professional membership revoked for violations of the provisions of their professional al licensure, certification, or professional membership does not meet the definition of a qualified professional or qualified consultant.

“RCW” is an acronym for Revised Code of Washington.

“Reasonable use” means a property that is deprived of all reasonable use when the owner can realize no reasonable return on the property or make any productive use of the property. “Reasonable return” does not mean a reduction in value of the land, or a lack of a profit on the purchase and sale of the property, but rather, where there can be no beneficial use of the property; and which is attributable to the implementation of the critical areas ordinance.

“Reasonable use exception” means an exception to the standards of this title that allows for any one of the uses allowed within a given zoning designation which cannot otherwise conform to the requirements set forth in this title, including the variance criteria; that have the least impact on the critical areas found on the subject property.

“Recharge” means the process involved in the absorption and addition of water from the unsaturated zone to groundwater.

“Reestablishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former critical area. Reestablishment results in rebuilding a former critical area and results in a gain in acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded critical area. Rehabilitation results in a gain in function but does not result in a gain in area. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

“Resident fish” means a fish species that completes all stages of its life cycle within freshwater and frequently within a local area.

“Restoration” means measures taken to restore an altered or damaged natural feature, including:

1. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
2. Actions performed to reestablish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

“Retroactive Permit” means a permit applied for after the development, use, or activity has occurred, generally to bring such development, use, or activity into compliance through code enforcement.

“Rills” means steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

“Riparian corridor” or “riparian zone” means the area adjacent to a water body (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.

“Riparian vegetation” means vegetation that tolerates and/or requires moist conditions and periodic free-flowing water, thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilize stream banks, attenuate high water flows, provide wildlife habitat and travel corridors, and provide a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.

“Scrub-shrub wetland” means a wetland with at least ~~30% percent~~ of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

“Seiche” is a standing wave in an enclosed or partially enclosed body of water. Seiches are typically caused when strong winds and rapid changes in atmospheric pressure push water from one end of a body of water to the other. When the wind stops, the water rebounds to the other side of the enclosed area. The water then continues to oscillate back and forth for hours or even days. In a similar fashion, earthquakes, tsunamis, or severe storm fronts may also cause seiches along ocean shelves and ocean harbors. Seiches and seiche-related phenomena have been observed on lakes, reservoirs, swimming pools, bays, harbors and seas. The key requirement for formation of a seiche is that the body of water be at least partially bounded, allowing the formation of the standing wave.

“Seismic hazard areas” means areas that are subject to severe risk of damage as a result of earth-quake-induced ground shaking, slope failure, settlement, or soil liquefaction.

“SEPA” is a commonly used acronym for the State Environmental Policy Act.

“Shellfish” means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.

“Shellfish habitat conservation areas” means all public and private tidelands suitable for shellfish, as identified by the Washington State Department of Health classification of commercial growing areas, and those recreational harvest areas as identified by the Washington State Department of Ecology are designated as shellfish habitat conservation areas pursuant to WAC [365-190-80](#). Any area that is or has been designated as a shellfish protection district created under Chapter [90.72](#) RCW is also a shellfish habitat conservation area.

“Shellfish protection district” means the Drayton Harbor shellfish protection district (DHSPD) and the Portage Bay shellfish protection district (PBSPD) (~~WCC~~ Chapter [16.20](#) ~~WCC~~), or other area formed by the County based on RCW Title [90](#), in response to State Department of Health (DOH) closures or



downgrades of a commercial shellfish growing area due to a degradation of water quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the shellfish habitat conservation area.

“Shorelands” or “shoreland areas” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter [90.58](#)RCW.

“Shoreline” (Shoreline Management Act) means all of the water areas of the state, including reservoirs and their associated wetlands, together with lands underlying them, except:

1. Shorelines on segments of streams upstream from a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
2. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

“Shorelines” means all of the water areas of the state as defined in RCW [90.58.030](#), including reservoirs and their associated shorelands, together with the lands underlying them, except:

1. Shorelines of statewide significance;
2. Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second (cfs) or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

“Shoreline Jurisdiction.” See WCC 23.20.010.

“Shorelines of statewide significance” means those areas defined in RCW [90.58.030](#)(2)(e).

“Shorelines of the state” means the total of all “shorelines,” as defined in RCW [90.58.030](#)(2)(d), and “shorelines of statewide significance” within the state, as defined in RCW [90.58.030](#)(2)(e).

“Single-family development” means the development of a single-family residence permanently installed and served with utilities on a lot of record.

“Site” means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way, under the applicant’s/proponent’s ownership or control that is the subject of a development proposal or change in use.

“Slope” means:

1. Gradient.
2. The inclined surface of any part of the earth’s surface, delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

“Soil” means all unconsolidated materials above bedrock described in the Soil Conservation Service Classification System or by the Unified Soils Classification System.

“Special Flood Hazard Area (SFHA)” means the area that will be inundated by the flood event having a 1% chance of being equaled or exceeded in any given year. The 1% annual chance flood is also referred to as the base flood or 100-year flood. On the FIRM maps, SFHAs are labeled as Zone A.

Zone AO, Zone AH, Zones A1-A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone AR/A, Zone V, Zone VE, and Zones V1-V30.

“Species of local importance” are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

“Sphagnum bog” means a type of wetland dominated by mosses that form peat. Sphagnum bogs are very acidic, nutrient-poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.

“Stormwater Manual” or “Stormwater Management Manual for Western Washington” means the version of the Department of Ecology’s Stormwater Management Manual for Western Washington most recently adopted by council.

“Streams” means those areas where surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include ditches or other artificial water courses unless they are used to convey streams naturally occurring prior to human alteration, and/or the waterway is used by anadromous or other fish populations, or flows directly into shellfish habitat conservation areas.

“Structure” means a permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether installed on, above, or below the surface of the ground or water, except for vessels.

“Substantially Developed Surface” is a legally established area of non-vegetated impervious surface.

“Surface waters of state.” See definition for “waters of the state”

“Survey” means one of the following:

1. Mapping using a compass and tape; or
2. Mapping using a smart phone or hand held GPS; or
3. A survey completed by a licensed surveyor.

“Swale” means a shallow drainage conveyance with relatively gentle side slopes, generally with flow depths less than one foot.

~~“Technical administrator” means the director of the planning and development services department or staff member designated by the director to perform the review functions required in this chapter.~~ [CES97]

“Toe” means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.

“Top” means the top of a slope; or in this chapter it may be used as the highest point of contact above a landslide hazard area.

“Unavoidable” means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.

“USDA” is an acronym for the United States Department of Agriculture

“Utilities” means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.

“Volcanic hazard areas” means geologically hazardous areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

“WAC” is an acronym for Revised Code of Washington.

“Waters of the state” or “state waters” means all [lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and other surface waters and watercourses within the jurisdiction of Washington State \(RCW 90.48.020\).](#) ~~salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.~~

“Watershed” means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g., Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and 3. These are nested within approximately 14 sub-basins (e.g., North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within four basins (e.g., Nooksack River, Fraser River, Samish River, coastal).

“Watershed improvement district” means a special district established pursuant to Chapter [85.38](#) RCW citation.

“WDFW” is an acronym for the Washington State Department of Fish and Wildlife.

“Wellhead protection area” means the area (surface and subsurface) managed to protect ground-water-based public water supplies.

“Wet meadow” means palustrine emergent wetlands, typically having disturbed soils, vegetation, or hydrology.

“Wet season” means the period generally between November 1st and March 30th of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

“Wetland” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate wetland impacts.

“Wetland buffer” means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and ecological stability of the wetland.

“Wetland class” means the general appearance of the wetland based on the dominant vegetative life form or the physiography and composition of the substrate. The uppermost layer of vegetation that possesses an aerial coverage of 30% ~~percent~~ or greater of the wetland constitutes a wetland class. Multiple classes can exist in a single wetland. Types of wetland classes include forest, scrub/shrub, emergent, and open water.

“Wetland delineation” means the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the Corps of Engineers Wetlands Delineation Manual, 1987 Edition, and the Western Mountains, Valleys, and Coast Region Supplement (Version 2.0) 2010, or as revised, and the mapping thereof.

“Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter.

Wetland Enhancement. See “mitigation.”

“Wetland mitigation bank” means a site where wetlands and buffers are restored, created, enhanced or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

Wetland Restoration. See “mitigation” and “reestablishment.”

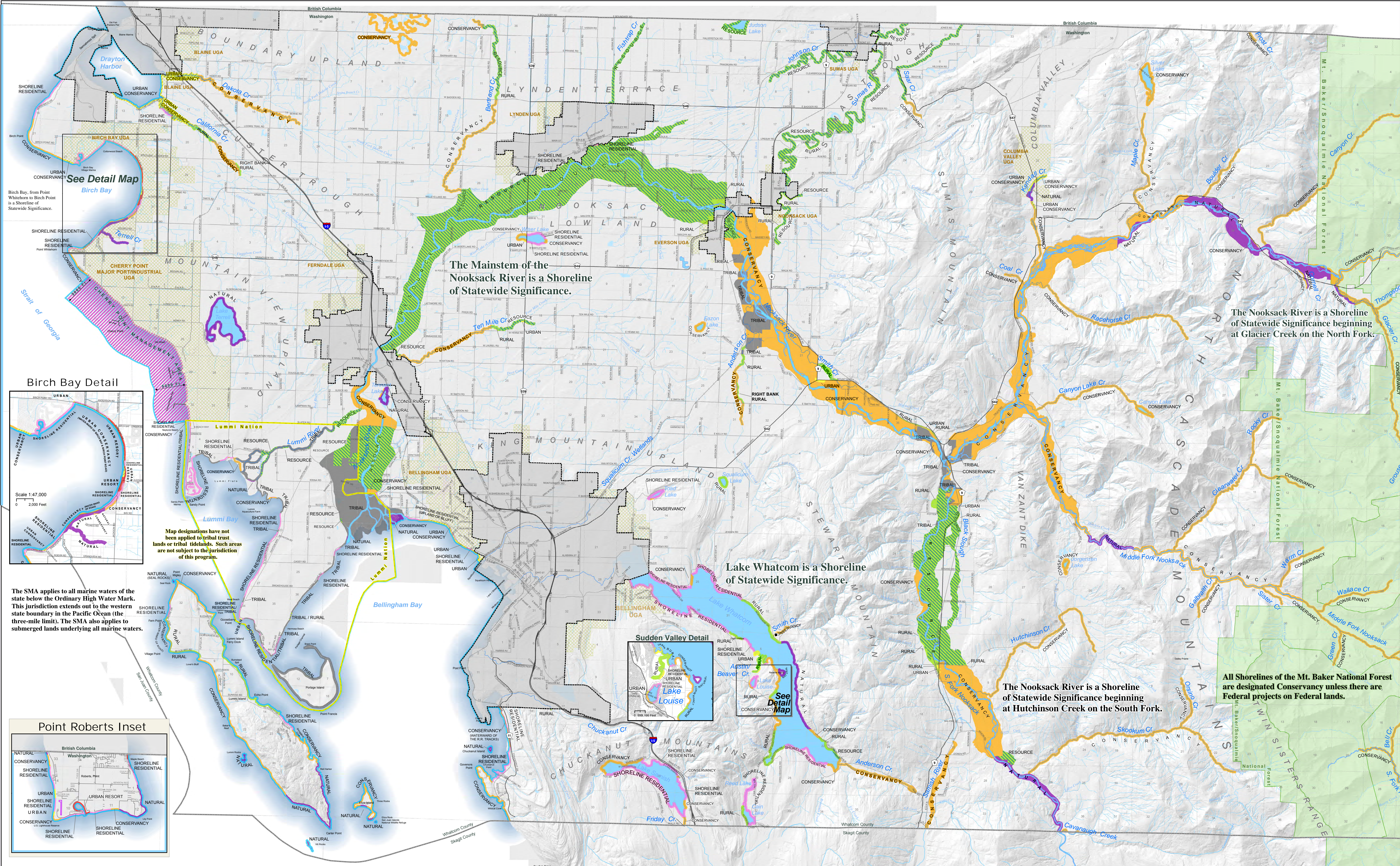
“Windthrow” means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

“Wood waste” means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

“WRIA” is an acronym for Water Resource Inventory Area



DRAFT Shoreline Environment Designations 2/24/2021



Official Shoreline Map

Shoreline Area Designations

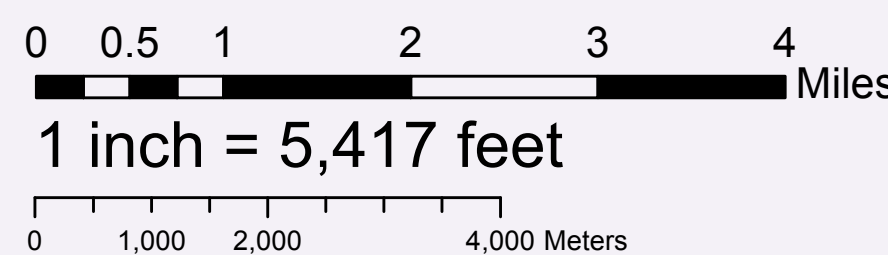
- Urban
- Urban Resort
- Urban Conservancy

- Shoreline Residential
- Rural
- Resource
- Conservancy

- Natural
- Tribal
- Cherry Point Mgmt. Area
- Aquatic

- Lummi Nation Boundaries
- City Boundaries
- Urban Growth Area

Applies to all areas waterward of OHWM on Shorelines of the State

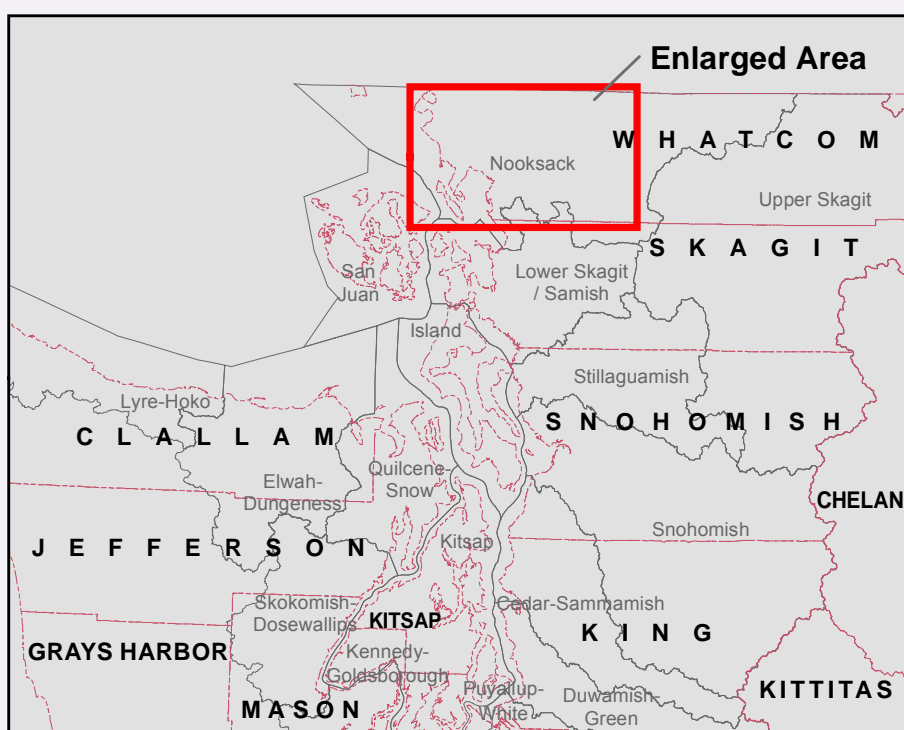


**About this Map:**  
The information depicted on this map is intended to be used with Whatcom County's Shoreline Management Plan, adopted May 27, 1976. Revised to comply with Washington Administrative Code 173-28. Approved by Department of Ecology.

**Shoreline Jurisdiction:**  
The map shows Shoreline Area Designations within the area subject to WCC Title 23. The map does not necessarily identify or depict the lateral extent of shoreline jurisdiction or all associated wetlands. The lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the ordinary high water mark (OHWM), floodway and presence of associated wetlands, provided that, exclusive of associated wetlands, the maps identify the lateral extent of shoreline jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork of the Nooksack River.

**USE OF WHATCOM COUNTY'S MAP 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.

Puget Sound Area Map





# SMP Periodic Update 2020

## Exhibit H: Written Public Comments on the Draft Amendments received by staff (updated April 28, 2021)

(Note: Some section numbers in the draft documents have been revised after some of the earlier comments were received and may not be accurate anymore.)

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
BP01	Jeff Chalfant, BP	9/18/20	B	C/P Ch. 11	Removal of “policies” from code and moving it to the Comprehensive Plan – County staff confirmed that all language was transferred to Comp Plan without edits (except for grammatical corrections).	Correct.
BP02	Jeff Chalfant, BP	9/18/20	D	23.20.050(B)(10)	Adding Cherry Point Management Area as a new “Shoreline Environment” – County staff confirmed that this is a simplification step and that no changes to permitted uses or development were made.	Correct. While the CPMA was treated like an environment designation, it just wasn't called out as such.
BP03	Jeff Chalfant, BP	9/18/20	D	23.30.030(D), 23.40.125(E)(1)(e), 23.40.150(C)(2), 23.40.210(B)(8)	The use of galvanized steel appears to be a newly prohibited material for use in or above shoreline. While we understand the limitation for the use of such materials in water there are no feasible alternatives for use above the water on our pier for equipment and structural components. It is our understanding based on our discussion that our comment is consistent with feedback received from the Parks Department and was not the intent and that an adjustment to the language will be made to allow for use above the water.	We have removed the (newly added) prohibition on galvanized steel, as we could find no mention of it in state law or guidance.
BP04	Jeff Chalfant, BP	9/18/20	D	23.30.040(I) & 23.40.020(F)(4)	Fences and signs have specific limitations in terms of size, height, and setback that cannot be accommodated due to requirements of the Coast Guard and other Federal agencies associate with industrial security requirements. We recommend the addition of a provision that will allow for the construction of security fencing and signage required by such regulations including Chemical Facility Anti-Terrorism Standards (CFATS) codified a 6 CFR, Part 27.	Based on this comment we have added to 23.40.020(F)(9) (Shoreline Bulk Provisions) “provided, that the Director may exempt security fencing from this requirement as required by federal or state regulations” to acknowledge that in certain circumstances higher fences may be allowed. Additionally, we have added “Signage required by state or federal security requirements” as an exemption to 20.40.020(F)(10)(b)).
BP05	Jeff Chalfant, BP	9/18/20	D	23.40.010(B)	Table 1 – Shoreline uses for Cherry Point Environment Area Fill and Excavation activities are shown as a prohibited use.	The existing regulation in 23.40.125(E)(3) has always said that fill is prohibited in

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					However, there are development activities that are permitted within the Cherry Point Environment that require the use of fill and excavation. County staff acknowledged this discrepancy as unintentional and will amend the language to ensure that fill and grading activities are allowed as a part of approved use and development.	the CPMA, though provides an exception of “the minimum necessary to access piers or other structures that provide access to the water.” We believe this covers your concern. We have, however, clarified that “fill or excavation waterward of the OHWM requires a shoreline conditional use permit,” which is a requirement of the SMA. In the Use Table 1 we have also changed it to be “X/C*,” meaning that fill and excavation is prohibited except as otherwise permitted by the specific regulations (i.e., 23.40.125(E)(3))
BP06	Jeff Chalfant, BP	9/18/20	D	23.40.010	<i>Table 1 – Shoreline uses for Cherry Point Environment Area, Shoreline Stabilization</i>  Revetments are shown as a prohibited use; however, bulkheads are allowed as a conditional use. The definition of bulkheads indicates that revetments are sometimes bulkheads. We understand that this is an unintended circular reference and that the County will amend the definition of bulkhead to remove the reference to revetments and replace with a more appropriate reference to the use of rip rap.	We have struck “such as a revetment or seawall” from the definition of bulkhead (20.60.020(16)) to address this circular inconsistency.
BP07	Jeff Chalfant, BP	9/18/20	D	23.40.010	<i>Table 1 – Shoreline uses for Cherry Point Environment Area, Industrial Moorage</i>  The heading of the table indicates industrial moorage includes piers, docks and buoys. The definition of pier indicates that it includes other structures not normally considered to fit Ecology’s definition of a pier such as mooring buoys. County staff clarified that the intent was not to prohibit the installation of buoys and that the definition for piers will be amended to be consistent with the Ecology definition and that it will be clarified that buoys are permitted in the Cherry Point Management Area.	We have deleted the term “recreational” in reference to mooring buoys in Table 1 and added a P (permitted) in the Cherry Point Environment. Additionally, we have modified Table 1 to indicate that mooring buoys are not included as general public, commercial, or industrial moorage for the purposes of the table; the mooring buoys row does.
DOEWG01	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.630	We acknowledge and support the County’s proposed adoption of buffer tables from Ecology’s Wetland Guidance. This approach provides the most flexibility by basing the widths of buff-	Comment noted.



Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					ers on three factors: the wetland category, the intensity of the impacts, and the functions or special characteristics of the wetland.	
DOEWG02	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.225(8)	<p>We are particularly concerned about the provision allowing alteration of “functionally disconnected”...wetlands. This term appears to be undefined in the CAO. In addition, there are no acreage thresholds for this provision. Nor is there apparent consideration that wetlands that are unconnected to larger undisturbed landscapes can still provide important functions, specifically water quality and hydrologic storage. Additionally, some Category III wetlands may provide high habitat functions, which warrant larger buffers, not weaker protections.</p> <p>We also note that this change does not appear to be supported by any findings in the Whatcom County Best Available Review: Addendum to the 2005 BAS Report. Nor does this approach align with the strategies detailed in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study: <a href="https://fortress.wa.gov/ecy/publications/documents/0706030.pdf">https://fortress.wa.gov/ecy/publications/documents/0706030.pdf</a>.</p> <p>We offer the following questions in an attempt to better understand the County’s rationale for this approach:</p> <ul style="list-style-type: none"> <li>• What scientific basis is there for reducing protections on these wetlands?</li> <li>• Has any analysis been conducted to indicate these wetlands are not important resources in the UGA?</li> <li>• Has any analysis been conducted of how many wetlands would be affected and what the functions and values of those wetlands are?</li> <li>• Would mitigation be required to occur within the UGAs? If not, what are the cumulative effects of large-scale loss of wetlands in the UGAs in the County?</li> </ul> <p>In the absence of this information it is unclear how implementation of this provision could achieve No Net Loss of ecological function. In addition, the concept of functional isolation cannot be applied in SMA jurisdiction since all wetlands within that area are considered associated wetlands, by definition.</p>	Deleted “functionally disconnected” and amended as per conversation with DOE staff.

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					We recommend the County either conduct a more refined analysis and resulting policy, informed by existing special studies, to develop a scientifically-based approach, or delete subsection (8) from the draft.	
DOEWG03	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.640(C)(1)	<p><i>Buffer width reduction</i></p> <p>We are concerned about the apparently redundant and potentially additive buffer reduction that is allowed by this section. We cannot determine whether subsection (C)(1) can be applied in addition to the Ecology-recommended buffer reduction strategy listed in subsection (C)(2).</p> <p>If they can both be applied to a single project then they would result in buffers that are well below what science says is necessary to protect wetland functions. For example, in the current draft, a 150-foot buffer for a Category 3 wetland that has moderate habitat function adjacent to high intensity land use. Allowing this buffer to be reduced to 75 feet through additive reductions in (1) and (2) will not provide a buffer adequate to protect the wetlands' habitat functions.</p> <p>We recommend that the language, with respect to these two reduction strategies, be clarified such that they cannot be applied to the same proposal.</p>	Amended as per conversation with DOE staff to clarify that buffer reductions are not additive.
DOEWG04	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.640(C)(2)	May allow High Impact uses to be reduced to Moderate buffer width if Ecology's minimizing measures are implemented. Per Ecology's CAO guidance, in addition to the minimizing measures, there must be a relatively intact corridor between the wetland and other wetland/priority habitat. Additionally, as worded in the draft regs, this provision does not imply how the applicant chooses which measures to incorporate into the proposal or how many. The wording should be modified to encourage all reasonable/applicable measures. As currently worded, an applicant may argue for the reduction based on minimal measures.	Amended as per conversation with DOE staff to meet DOE guidance.
DOEWG05	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.640(C)(3)	If a buffer width is reduced, then any remaining "substantial" (needs a definition) portion of the buffer that is degraded shall be replanted with native vegetation. It is unclear how this relates to buffer mitigation ratios described in 16.16.680(H). The addi-	Deleted "substantial" and amended as per conversation with DOE staff.

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					tion of a statement clarifying the applicability of buffer mitigation ratios is needed.	
FSJ01	Level Pratt, Friends of the San Juans	9/16/20	F	16.16.710(C)(2)	<p>In the Fish and Wildlife section of the CAO of the SMP (Ch. 16.16), the County mentions ESA-listed species managed by U.S. Fish and Wildlife, but makes no mention of NOAA Fisheries ESA involvement or authority. Further, the County fails to explicitly acknowledge that the marine nearshore is NOAA Fisheries designated critical habitat for Puget Sound Chinook salmon (Figure attached). Research has clearly demonstrated the importance of the marine and estuarine nearshore to the sustainability and recovery of Puget Sound Chinook.</p> <p>To more fully support Chinook and Southern Resident orca recovery, as well as meeting Goals 10A and 10K of the Shoreline Master Program (see also WAC 173-26-221(2)(C)(iii)), Friends of the San Juans recommends the following revision (new text underlined) in WCC §23.05.065(A):</p> <p>16.16.710(C)(2) Areas in which federally listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the U.S. Fish and Wildlife's Threatened and Endangered Species List or Critical Habitat List (<a href="http://ecos.fws.gov/ecp/">http://ecos.fws.gov/ecp/</a>) or the National Marine Fisheries Service (NMFS) (<a href="https://www.fisheries.noaa.gov/species-directory/threatened-endangered">https://www.fisheries.noaa.gov/species-directory/threatened-endangered</a>), as amended. Note: As of September 2005, NMFS designated the estuarine and marine nearshore environment (extreme high water to a depth of approximately 30 meters mean lower low water, as Puget Sound Chinook Critical Habitat (see Federal Register / Vol. 70, No. 170, 9/2/05) that includes most of the Whatcom County estuarine and marine coastline.</p>	We have amended the section (though in practice we've always looked at both lists).
FSJ02	Level Pratt, Friends of the San Juans	9/16/20	F	16.16.225(B)(8)	We also have concerns about a provision in the CAO that is proposed to be incorporated into the SMP that allows for "Alteration of functionally disconnected Type III or IV wetlands when associated with an approved commercial development within an Urban Growth Area;" (WCC §16.16.225.B.8). There is no explanation or definition of a "functionally disconnected" wetland. It is	Based on this and discussions with DOE staff, we have deleted "functionally disconnected" from this provision. Additionally, based on communication with DOE staff, we have added that the wetlands have to have a habitat score of less than

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					our understanding that they do not exist in the shoreline jurisdiction. The fact they're in the shoreline assumes a functional relationship. We respectfully recommend that the County cite this CAO section as excepted (not included) in the SMP (WCC §23.05.065.A).	6 to qualify.
FW/WEC01	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	B	C/P Ch. 11	<p>We strongly support the Climate Change/Sea Level Rise policies with necessary improvements.[They go on to explain why addressing this is important, their interpretation of state requirements, and supporting material.]</p> <p>But more is needed. It is important that wetland and aquatic vegetation be allowed to occur to maintain shoreline functions and values. So we recommend the addition of the following policy on page 11-31 of the PDF version to read as follows.</p> <p><u>Policy 11AA-8: New lots and new and expanded development should be located so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises.</u></p>	This is a policy decision and all comments will be forwarded to the P/C and Council.
FW/WEC02	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	B	C/P Ch. 11	<p>We recommend that proposed Policy 11AA-5 be modified to read as follows:</p> <p>Policy 11AA-5: <u>Whatcom County shall monitor the impacts of climate change on Whatcom County's shorelands, the shoreline master program's ability to adapt to sea level rise, and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed.</u> Whatcom County <del>shall</del> <u>should</u> periodically assess the best available sea level rise projections <u>and other sciences related to climate change within shoreline jurisdiction</u>, and incorporate them into future program updates, as relevant.</p>	This is a policy decision and all comment will be forwarded to the P/C and Council.
FW/WEC03	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.05.130(A)	<p>Modify the property rights section so that it is consistent with state and federal law.</p> <p>Proposed 23.05.130(A) would provide that the regulation of private property must be consistent with all relevant constitutional and other legal limitations including local laws. This provision would allow W/C to adopt policies or regulations that override the Ecology's approved SMP. This violates the SMA and</p>	Our attorney believes that this language does not allow the County to override the SMP. It simply states a legal truth—that regulation of property must be consistent with other laws. This does not somehow give the County permission to amend the SMP without Ecology's approval.

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					cannot be adopted.	
FW/WEC04	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.05.130(E)	Proposed 23.05.130(E) provides that this “program shall not be applied retroactively in a way that requires lawfully existing uses and developments (as of the original effective date of this program) to be removed.” This provision will prevent the amortization of existing uses in hazardous areas, such as channel migration zones, frequently flooded areas, and areas subject to sea level rise. This would allow frequently flooded homes to always be rebuilt, no matter the hazard. This is poor policy and should not be adopted.	Our attorney agrees with the commenter on this matter; we have removed (E).
FW/WEC05	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.10.030(C)(2)	Proposed 23.10.030(C)(2) provides “that substantive amendments shall become effective immediately upon adoption by the Department of Ecology.” But all SMP amendments must be approved by Ecology and become effective 14 days after Ecology adopts them. Proposed 23.10.030(C)(2) should be modified to reflect these requirements.	The commenter is correct. Though we’d amended similar language in 23.05.090 to meet this requirement, we missed it in this section. The section has now been revised.
FW/WEC06	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.10.030(C)(3)	Proposed 23.10.030(C)(3) provides that the County Council makes final decisions on shoreline conditional use permits and variances. Ecology must approve both conditional use permits and variances. So this section should provide that these are final County decisions, not final decisions on the permits.	The commenter is correct. Though proposed Ch. 22.07 correctly spells it out, we missed it in this section. The section has now been revised.
FW/WEC07	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.010(B)	Modify so that it is consistent with the SMA and SMP Guidelines. The WA Court of Appeals has held that “reasonable and appropriate uses should be allowed on the shorelines <i>only if they will result in no net loss of shoreline ecological functions and systems</i> . See RCW 90.58.020; WAC 173-27-241(3)(j).”  However proposed 23.30.010(B) exempts development, use, and activities within the shoreline jurisdiction and within “legally existing substantially developed areas” from the no net loss requirement. This violates the SMA and SMP Guidelines cited by the court of appeals. Proposed 23.30.010(B) also ignores avoidance and minimization and can be read to exempt development in critical areas from the no net loss standard. We recommend that proposed 23.30.010(B) be modified to read as follows:	We have amended the text as the commenter has suggested.

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					B. Development, use, and activities within the shoreline jurisdiction and outside of critical areas and legally existing substantially developed areas shall avoid and minimize adverse impacts, and any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes pursuant to WAC 173-26-186.	
FW/WEC08	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.010(B)	The mitigation sequencing requirement in <i>existing</i> WCC 23.30.010(B) must be retained or included elsewhere in the SMP regulations. Mitigation sequencing applies to all development in shorelines jurisdiction, not just development that adversely impacts critical areas. Deleting existing WCC 23.30.010(B) and relying only on the critical areas regulations violates WAC 173-26-201(2)(e)(ii)(A) and other provisions of the SMP Guidelines.	WAC 173-26-201(2)(e)(ii)(A) seems to be addressing how one applies mitigation sequencing to mitigation applied through SEPA review for those types of impacts not regulated by the SMP (e.g., traffic impacts). The County has already adopted WAC 197-11-768 by reference in our SEPA regulations (WCC 16.08.175).
FW/WEC09	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.050 Ch. 16.16	We recommend that shoreline jurisdiction be expanded to include the 100-year floodplain and that the buffers for river and stream shoreline be increased to use the newly recommended 200-year SPTH of 204 feet and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider. This will help maintain shoreline functions and Chinook habitat.	Proposed WCC 23.20.010(B)(4 lists the shoreline jurisdiction as including "floodways and contiguous floodplain areas landward <i>two hundred feet from such floodways</i> ," straight from RCW 90.58.030.  The 204 ft. referenced is not a hard SPTH; this is the weighted 3 <sup>rd</sup> Quantile. WDFW Vol 2 provides a step by step process to determine the Riparian Management Area for a parcel based on the ability of a given soil type to support tree growth. The 200 yr. index curve is variable, and as shown in Figure A2-33 the SPTH in Whatcom Co. ranges from 101' to 250'. The buffer on Type S Freshwater is proposed to be 200 feet (16.16.740(B), Table 4), measured, presumably, from the edge of the floodway.
FW/WEC10	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.060	We strongly support the amendments to 23.30.060 to require review of sites that may have cultural or archaeological resources but are concerned that the SMP update deletes the inadvertent discovery requirements in the existing SMP. Even	This section was developed in consultation with the Lummi Nation Tribal Historic Preservation Office and the WA State Dept. of Archaeology & Historic Preserva-

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					with predevelopment review, cultural resources can still be inadvertently discovered. Proposed WCC 23.30.606 provides that certain state and federal inadvertent discovery provisions apply, but they delete the County's provisions. This will prevent Whatcom County from requiring compliance with the inadvertent discovery requirements. So we recommend that the existing inadvertent discovery requirements in "B" be retained so the County can effectively address the inadvertent discovery of cultural resources.	tion, so we assume it meets all requirements. 23.30.060(B)(3)(a) still requires an inadvertent discovery plan conform to DAHP's most current management standards when warranted.
FW/WEC11	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.070(A)(3)	Proposed WCC 23.30.070(A)(3) must be deleted. WAC 173-26-221(4)(d)(iii) does not allow developments to not provide public access because "[o]ther reasonable and safe opportunities for public access to the shoreline are located within 1/4-mile of the proposed development site" as the proposed amendments do.	WAC 173-26-221 applies to the establishment of environment designation boundaries and provisions, and there is no subsection (4)(d), so we're not clear as to what the commenter is referring.
FW/WEC12	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.080	<p>We recommend that the SMP require new lots and new buildings be located outside the area of likely sea level rise and if that is not possible, buildings should be elevated above the likely sea level rise. These requirements will provide better protection for buildings, property, and people and will also allow wetlands and marine vegetation to migrate as the sea level rises. We recommend the following new section be added to the SMP periodic update:</p> <p><b><u>23.30.080 Sea Level Rise.</u></b></p> <p>A. <u>New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>B. <u>Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>C. <u>New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</u></p>	<p>Before adopting specific regulations, we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.). The COB and WCPW are currently developing the CoSMoS model, which should provide the best data for Whatcom County. The policies being introduced would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>



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FW/WEC13	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.010	<i>Table 2, Shoreline Use.</i> We recommend that bulkheads and other forms of hard armoring should be shoreline conditional uses. This ensures that these damaging uses will get an appropriate level or review. The SMP should also provide that all property owners seeking to construct a bulkhead on the shoreline of their property must receive Hydraulic Project Approval (HPA) from the Washington Department of Fish & Wildlife per 2SHB 1579 starting on July 1, 2019.	Our code already allows requires staff to do the same level of review as a substantial or CUP and to condition administrative permits. It also requires a geotechnical analysis for all shoreline stabilization types to ensure the least impactful method is selected.  Obtaining an HPA is already a state requirement for any work in waters of the state. WCC 23.05.040(C) reminds applicants that it's their duty to seek any other required permits from other agencies. Additionally, a standard condition on all of our permits is that one may need additional permits from other agencies. We do not believe that we should be listing every state and federal permit one may need in every section of code where such might apply.
FW/WEC14	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.90.130(C) (existing)	We oppose the elimination of environment specific impervious surface and open space requirements in current 23.90.130(C) Table 2, Buffer, Setbacks, Height, Open Space, and Impervious Surface Coverage Standards for Shoreline Development.  WAC 173-26-211(5)(b)(ii)(D) requires rural conservancy shoreline environments to limit impervious surfaces to ten percent of the lot which Table 2 currently does. Research by the University of Washington in the Puget Sound lowlands has shown that when total impervious surfaces exceed 5 - to 10% and forest cover declines below 65% of the basin, then salmon habitat in streams and rivers is adversely affected. This science documents the need to retain the existing impervious surface limits and open space standards to achieve no net loss.	New Table 3. Bulk Regulations for Shoreline Development still contains impervious surface limits meeting this requirement.  However, we did miss the open space requirements, and have added them back in as 23.40.020(E) and Table 3
FW/WEC15	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.125(B)(2)	We strongly support the fossil fuel use regulations in proposed 23.40.125(B)(2). The changing climate shows the need for a just transition away from fossil fuels. The proposed fossil fuel use regulations are an important step in this important transition. We	Comment noted.

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					support them.	
FW/WEC16	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.010	In the Cherry Point Aquatic Reserve we recommend that conditional use permits be required for changes of use, that existing uses be defined specifically, and that new piers, docks, wharfs, and wings be prohibited at Cherry Point. These measures are necessary to protect the valuable resources of the Cherry Point Aquatic Reserve.	The County Council is considering such regulations for Title 20 (Zoning), which would also apply. Staff doesn't believe they need to be repeated here. Nonetheless, we have incorporated their proposed use requirements into 23.40.010 Table 2 (Use Table).
FW/WEC17	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.140	<p>We oppose the amendments to 23.40.140 Mining policies and regulations and urge the County to retain the existing policies and regulations as they are needed to achieve no net loss.</p> <p>If mining is going to be allowed in floodplains, floodways, and channel migration zones, which the County is proposing to allow, then additional standards are needed. First, mines should be located outside the channel migration zone so that they do not increase the rate of channel migration. Second, mines should be no deeper than the bottom of the nearby streams and rivers so when the river moves into the mine, which is a certainty, the impacts will be reduced. Third, the mine reclamation plan should have a design so that when the river or stream moves into the mine, the mine workings are not so wide that the captured sediments destabilize the river or stream or increase erosion risks on upstream properties.</p> <p>We recommend that the following new regulation be added.</p> <p><u>D. Mining in the 100-year floodplain, floodway, or channel migration zones shall meet the following standards:</u></p> <p><u>i. Mines should be located outside the channel migration zone unless there is no feasible alternative site.</u></p> <p><u>ii. Mines shall be no deeper than the bottom of the nearby streams and rivers.</u></p> <p><u>iii. The mine reclamation plan shall have a design so that when the river or stream moves into the mine it is not so wide or deep that the captured sediments destabilize the river or stream or increase erosion risks on upstream properties.</u></p>	Such mining has always been allowed; we're not changing that. Nonetheless, all comments will be forwarded to the P/C and Council.

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FW/WEC18	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.140	<p>In 2020, the legislature adopted RCW 90.48.615(2) which prohibits “[m]otorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout. This includes all fresh waters with designated uses of: Salmonid spawning, rearing, and migration.”</p> <p>We recommend that the SMP Update prohibit motorized or gravity siphon aquatic mining and discharging effluent from this type of mining in shorelines that are the critical habitat for salmon, steelhead, or bull trout and that salmonids use for spawning, rearing, and migration.</p>	We have added a section regarding this.
FW/WEC19	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	(existing) 23.100.150	<p>We oppose the amendments to remove policies and regulations encouraging or requiring low-impact development.</p> <p>The update removes some policies and regulations that encouraged, allowed the County to require, or required low-impact development techniques. For example, former (C)(2) on page 156 provided that “[c]lustering and low impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines in accordance with policies and regulations of WCC 23.90.090.” This regulation has been deleted. While the subdivision regulations are now proposed to allow the County to require clustering, the requirement for low-impact development has been deleted. Low impact development is an important technique for reducing development’s water quality impacts on rivers, lakes, streams, wetlands, and Puget Sound. We urge the County to retain these policies and regulations; they needed to maintain no net loss of shoreline resources.</p>	Former 23.100.150 (C)(2) was moved to 23.40.130(A)(10), though without the reference to LID. At the time, we had been thinking about stormwater LID techniques, which is covered by a general regulation of meeting our Title 20 stormwater regulations; we had not been thinking about LID in terms of plat design. The term has now been reinstated. 23.40.130(A)(10).
FW/WEC20	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	(existing) 23.40.200(A)(10), (11), and (12)	<p>Do not delete existing 23.40.200(A)(10), (11), or (12) prohibiting freestanding signs between the right-of-way and buildings, the waterbodies, or placing them in critical areas buffers, or the sign limits in Table 2, Sign Area Limits.</p> <p>Existing WCC 23.40.200(A)(10), (11), and (12) currently prohibit</p>	The SMA, WAC, or DOE guidelines do not address signs. For simplicity’s sake we were proposing to just have our Title 20 sign regulations address signs. However, T-20 does not address these circumstances, so we have reinserted exist-

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					many freestanding signs between the right-of-way and buildings the waterbodies or placing them in critical area buffer. Signs are not a priority shoreline use, but the policy of the SMA calls on the County and Ecology to protect shoreline views. These existing regulations are necessary to implement the policy of the SMA and cannot be deleted. Existing Table 3 is also needed to limit the sizes of signs in shoreline jurisdiction to implement the policy of the SMA. Again, it cannot be legally deleted.	ing 23.40.200(A)(10), (11), & (12) as 23.40.200(A)(6), (7), & (8).  Existing Table 3 does not address sign size.
FW/WEC21	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.265(A)(1)	Require wider setbacks between development and shoreline and critical areas buffers to protect homes and property from wildfire danger.  Whatcom County is susceptible to wildfires. Climate change has the potential to increase wildlife risk through changes in fire behavior, wildfire ignitions, fire management, and the vegetation that fuels wildfire.  Setbacks from critical areas buffers provide an area in which buildings can be repaired and maintained without having to intrude into the buffer. It also allows for the creation of a Home Ignition Zone that can protect buildings from wildfires and allow firefighters to attempt to save the buildings during a wildfire. Since a 30-foot-wide Home Ignition Zone is important to protect buildings, we recommend that 16.16.265(A)(1) require a setback at least 30 feet wide adjacent to shoreline and critical area buffers. Combustible structures, such as decks, should not be allowed within this setback to protect the building from wildfires. This will increase protection for people and property.	This distance was established by Council and staff is not proposing to change it. However, all comments will be provided to them.  (Note that this comment contradicts comments GCD12 and MES09.)
FW/WEC22	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 3	We strongly support updating the Geohazard Area standards in Article 3.  Whatcom County is susceptible to landslides. The SMP Guidelines, in WAC 173-26-221(2)(c)(ii)(B), provide: "Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development." Landslides are a type of geological hazard that can result in major impacts to people and property.	16.16.322(D) already precludes land divisions, and requires risk-reducing measures be taken for non-division development in geohazard areas. 16.16.310 also covers landslide deposits, scarps and flanks.

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					We strongly support designating the landslide deposits, scarps and flanks, and areas with susceptibility to deep and shallow landslides as geologically hazardous areas. This will better protect people and property.	
FW/WEC23	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 3	Landslides are capable of damaging commercial, residential, or industrial development at both the tops and toes of slopes due to the earth sliding and other geological events. So the areas at the top, toe, and sides of the slope are geological hazards. We recommend these areas be designated as landslide hazards.	CAO Article 3 already covers this.
FW/WEC24	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 3	Require the review of geologically hazardous areas capable of harming buildings or occupants on a development site.  We recommend that the regulations require review of any landslide capable of damaging the proposed development. Geological hazards, such as landslides are capable of damaging property outside the hazard itself. The 2014 Oso slide ran out for over a mile (5,500 feet) even though the slope height was 600 feet. A 2006 landslide at Oso traveled over 300 feet. Recent research shows that long runout landslides are more common than had been realized. This research documents that over the past 2000 years, the average landslide frequency of long runout landslides in the area near the Oso landslide is one landslide every 140 years. The landslides ran out from 787 feet to the 2,000 feet of the 2014 landslide. So we recommend that Whatcom County require review of all geological hazards capable of harming a proposed lot or building site.	CAO Article 3 already covers this.
FW/WEC25	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.325(C)	We support WCC 16.16.325(C) which requires individualized setbacks from landslide hazard areas based on the actual hazard. WCC 16.16.325(C) will help protect people and property. Construction should not be allowed in these setbacks.	Comment noted.
FW/WEC26	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 5.5	To protect the coastal aquifers, we recommend that Article 5.5 apply to all areas subject to saltwater intrusion.  All of the islands in the County and its marine shorelines have the potential for wells to be contaminated by salt water. WAC 173-26-221(2)(a) requires that shoreline master programs must provide for management of critical areas designated as such	To staff's knowledge, only Lummi Island has been designated as a vulnerable seawater intrusion areas by the County Council (which is why it has the rules in Art. 5.5).

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					<p>pursuant to RCW 36.70A.170(1)(d) located within the shorelines of the state with policies and regulations that ... [p]rovide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources." Critical areas include areas with a critical recharging effect on aquifers used for potable waters.</p> <p>Saltwater intrusion can worsen until wells "must be abandoned due to contaminated, unusable water." Saltwater intrusion is often worsened by over-pumping an aquifer. The Western Washington Growth Management Hearings Board has held that Growth Management Act requires counties to designate vulnerable seawater intrusion areas as critical aquifer recharge areas. The Board also held that counties must adopt development regulations "to protect aquifers used for potable water from further seawater degradation."</p>	
FW/WEC27	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Table 1, Standard Wetland Buffer Widths	We support updating the buffer widths to conform to Ecology's most recent recommendations, as they are based on best available science	Comment noted.
FW/WEC28	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.640(B)	Buffer averaging should not allow widths less than 75% of the required buffer for all wetlands. Type IV wetlands have important functions and values. Allowing 50% buffer reductions for type IV wetlands is inconsistent with best available science and should not be allowed.	Based on this comment we have removed the allowance for Type IV wetlands in 16.16.640(B) and inserted the language from 2016 DOE Guidance (XX.040 Exemptions and Allowed Uses in Wetlands) providing exceptions to regulation of certain wetlands/buffers from regulation in a new section 16.16.612.
FW/WEC29	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.740(B)	<p>Retain using the PHS recommendations as the default for buffers and management recommendation priority habitats and species.</p> <p>Currently, Table 4, Buffer Requirements for Habitat Conservation Areas (HCAs), provides that for areas with which federally listed species have a primary association, state priority habitats, and areas with which priority species have a primary association the "[m]inimum buffers shall be based on recommendations</p>	While the text in the table is proposed for deletion, amended (B)(2) requires that minimum buffers be based on habitat a management plan prepared pursuant to WCC 16.16.750, subsection (B)(4) of which requires that assessment reports include Management recommendations developed by WDFW through its PHS

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					provided by the Washington State Department of Fish and Wildlife PHS Program; provided, that local and site-specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise." This requirement is being deleted and instead the buffers are based on a habitat a management plan. While we recognize the habitat management plan will include information on the PHS program recommendation and a survey of best available science related to the species or habitat, the current requirement is clearer that the default buffer should be the PHS recommendations. We think this is clearer and provides better protection for priority species and habitats and recommend it be retained.	program. Thus, the requirement is still there (and always was, as this section isn't proposed for modification).
FW/WEC30	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.740(B)	We also recommend that the required consultation with Indian Tribes and Nations in Table 4 be retained. They have significant expertise on fish and wildlife and their habitat needs.	16.16.750(C) still allows for agency and tribal consultation.
FW/WEC31	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20			We support preparing a No Net Loss technical memo. While WAC 173-26-090(2)(d)(ii) provides that "[t]he review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations," this provision does not excuse compliance with WAC 173-26-090(2)(d)(i) and cannot override RCW 90.58.080(4)(a) of the Shoreline Management Act. So, while SMPs must be brought into compliance with new laws and new SMP Guidelines, they must also comply with all current provisions of the SMA and the SMP Guidelines including the no net loss requirement. We urge Whatcom County to update the SMP to achieve no net loss.	A NNL technical memo will be prepared prior to the P/C making their recommendations to Council. We thought it more appropriate to do this task after the public comment period in case the proposals needed to be amended.
GCD01	Glyn & Carol Davies	9/23/20	D	23.10.160(C)	A penalty of double standard post development is excessive. Please consider reducing the penalty to the cost of mitigation plus a percentage penalty in the range of 15% - 25%.	This section doesn't say that penalties in the way of fines are doubled; it says that "corrective action, restoration, or mitigation" will be required at a double ratio



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						"when appropriate" as a way to discourage violations.
GCD02	Glyn & Carol Davies	9/23/20	D	23.30.040(C)	Please consider clarifying the planting of vegetation to minimize impacts to views from the water requirement in this provision. For example, views from the water are optimized by plants and shrubs that do not exceed 3' – 4' in height. Dense, forested vegetation on the shoreline is highly obstructive to views, so this provision should be clear regarding the type of vegetation that protects views.	This provision is aimed at protecting views from the water. The SMA requires protecting views to <i>and from</i> the water. (RCW 90.58.020))
GCD03	Glyn & Carol Davies	9/23/20	D	23.40.020(F)	Suggest adding a 15 <sup>th</sup> provision to this clause to conform to 16.16.720(G)(4) Accessory Uses. "When located in the shoreline jurisdiction, residential water-oriented accessory structures may be permitted in an HCA buffer; provided that the size shall be limited to 10% of the buffer's area or 500 square feet, whichever is less."	We have added a cross reference to that section.
GCD04	Glyn & Carol Davies	9/23/20	D	23.40.150(A)(2)	"No pier or dock shall be used for a residence." This provision should be deleted since it contradicts 23.40.150(A)(A) that allows moorage for single family residences.	23.40.150(A)(A) to which the commenter refers is proposed for deletion. Furthermore, it refers to "moorage associated with a SFR," which means a private dock at a private SFR (i.e., a personal dock), which is still allowed. The prohibition in 23.40.150(A)(2) refers to someone living on their boat or dock.
GCD05	Glyn & Carol Davies	9/23/20	D	23.40.150(A, B, & C)	<i>Dimensional Standards – Freshwater and Marine – tables</i> Please consider allowing ramps to be 6' wide rather than 4' wide as a safety measure when transporting kayaks, canoes, or boating provisions, equipment and supplies to the dock for launching (kayaks or canoes) or loading into a boat (ice chests, water skis, wakeboards, etc.). 4' is narrow when carrying bulky items to the float, and can be dangerous, particularly if the ramp or pier is high off the water due to the shoreline configuration relative to the float. This would also mean increasing the square footage for the individual use dock or pier to 520 sq. ft. to accommodate a 6' wide ramp, and increasing the added square footage if the dock has to be extended due to water depth to 6 sq. ft. rather than 4 sq. ft.	WDFW regulations in WAC 220-660-140 and 380 limit the width of residential dock ramps to 4' wide.

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GCD06	Glyn & Carol Davies	9/23/20	D	23.40.150(A, B, & C)	We also suggest changing the minimum water depth to either 10' measured below ordinary high water, or 6' measured over mean low low water. This is to allow adequate clearance for propellers to protect the sea floor or lake bed from turbulence when a boat is operating in shallow water	Changing to a 10' standard would essentially allow a doubling of the length of docks on our lakes, when we're required to minimize overwater structures. It would also interfere with public navigation.
GCD07	Glyn & Carol Davies	9/23/20	D	23.40.150(C)(8)	Please consider adding a qualifier to this provision stating "...unless shoreline constraints, and/or positioning of pilings make it infeasible to create sufficient buoyancy for the float without positioning flotation components under a portion of the grating."	This standard is from WDFW regulations in WAC 220-660-140 and 380.
GCD08	Glyn & Carol Davies	9/23/20	D	23.40.150(D)(6)	Please consider increasing the size of a covered moorage accessory for a single-family pier or dock to 500 sq. feet (25 x 20) and 20 ft. in height above OHWM to accommodate larger boats that are increasingly common on the lakes in Whatcom County. Also please consider deleting the requirement in this provision that the cover (the "roof materials") be "...translucent or at least 50% clear skylights." The purpose of a covered moorage is to protect the boat, principally from sunlight, which is not served by a translucent cover. Additionally, even if the cover is translucent, the boat under it is not, which defeats the purpose of a translucent cover in any case.	These standards are from DOE guidance.
GCD09	Glyn & Carol Davies	9/23/20	D	23.40.170(C)(3)	Please consider increasing the total allowed footprint of home, sidewalks and similar structures, parking areas and normal appurtenances to "the greater of 40% of the total area of the lot or 4,000 sq. ft." 2,500 sq. ft. is small for just the residence by today's standards, and is prohibitively small when it includes the garage, driveway, sidewalks, decks, patios, etc. in addition to the home.	This provision is existing and is for construction on constrained lots, which by definition cannot accommodate larger development; if one wants a larger home, one can buy an unconstrained lot.
GCD10	Glyn & Carol Davies	9/23/20	F	16.16.235(4)(b)(iii)	Why is tree replacement at a 3:1 ratio? Please consider a tree replacement ratio of 1:1.	A 3:1 ratio is based on DOE guidance, which recommends a ratio of 4:1 for mature trees and 2:1 for young trees. For simplicities sake, we averaged it. Additionally, this is the same replacement ratio in on Council's adopted tree protection regulations for Lake Whatcom and our other special watershed districts.

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GCD11	Glyn & Carol Davies	9/23/20	F	16.16.235(B)(5)(e)	Please consider a pruning height for shrubs on the order of 2' – 3' in order to minimize view obstruction.	We have now moved that provision from the view corridor section to the vegetation management section.
GCD12	Glyn & Carol Davies	9/23/20	F	16.16.265(A)(1)	Please consider eliminating the building setback. The purpose of the critical area buffer is to provide protection; with generous buffer requirements (100' for shoreline, 50' – 100' for critical areas, etc.) there is no need for an additional 10' building setback (or consider reducing the building setback to 5' from the buffer).	This setback was established by Council and staff is not proposing to change it. We have, however, amended the section to allow for a reduction where the setback isn't warranted, modeled on the COB's similar regulation.  (Note that this comment contradicts comment FW/WEC21.)
GCD13	Glyn & Carol Davies	9/23/20	F	16.16.265(A)(1)(b)	Please consider allowing for a grade-level deck that is covered by a corresponding deck on the 2 <sup>nd</sup> floor, as well as the bottom of the stairs/staircase for access to a second level deck, if any.	Comment noted.
GCD14	Glyn & Carol Davies	9/23/20	F	16.16.270(C)(12)	Same comment as GCD08 above: Please consider increasing the total allowed footprint of home, garages/shops, decks, parking, and all lawn and nonnative landscaping to "the greater of 40% of the total area of the lot or 4,000 sq. ft." 2,500 sq. ft. is small for just the residence by today's standards, and is prohibitively small when it includes the garage, driveway, sidewalks, decks and patios and lawn in addition to the home. Also, 23.40.170.C.3 allows an additional 500 sq. ft. for landscaping, lawn, turf, ornamental vegetation, or garden. This provision should match and allow the same additional 500 sq. ft.	Reasonable use as proposed would now be the last effort to avoid a constitutional taking and allow development on very constrained lots and these cases should be rare. The new paradigm is to administratively allow up to 50% buffer reduction (with mitigation) through a minor variance (administrative) and a greater reduction with a public hearing (Hearing Examiner). This new approach should provide greater flexibility while cutting down on costs to applicants and cases going to the H/E. The shoreline code cited is what is allowed without a shoreline variance; an applicant always has the option to seek a larger footprint through a variance.
GCD15	Glyn & Carol Davies	9/23/20	F	16.16.620(F)	Please allow for a storage tank when a storage tank is mandated by County requirements for the well.	A storage tank is not required to be adjacent to a well, as is a pump(house); it could be placed elsewhere on a property, outside of critical areas/buffers.
GCD16	Glyn & Carol Davies	9/23/20	F	16.16.620(G)(2)(d)	Please consider allowing the dispersion outfall within the outer 50% of the buffer.	The 25% is existing language; however, we have proposed adding, "unless a

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						closer location is demonstrated to be the only feasible location" to account for odd circumstances.
GCD17	Glyn & Carol Davies	9/23/20	F	16.16.265(A)(1)	Please consider eliminating the building setback. The purpose of the critical area buffer is to provide protection; with generous buffer requirements (100' for shoreline, 50' – 100' for critical areas, etc.) there is no need for an additional 10' building setback (or consider reducing the building setback to 5' from the buffer).	We have added text to the section describing its purpose.  However, this setback was established by Council and staff is not proposing to change it.
GCD18	Glyn & Carol Davies	9/23/20	F	16.16.680(F)	Please consider limiting the replacement ratio for preservation to 3 times the ratio for reestablishment or creation (in most cases, 1:1 ratio should be applicable, so a 3 times ratio is generous and should suffice).	Mitigation ratios for wetland impacts are taken verbatim from DOE guidance.
GCD19	Glyn & Carol Davies	9/23/20	F	16.16.720(A)	Since you are proposing eliminating provision "O" under this section that calls out residential, perhaps reference residential use in this provision: "...including, without limitation, residential uses."	We're not sure to what the commenter is referring.
GCD20	Glyn & Carol Davies	9/23/20	F	16.16.720(B)(3)	Please allow for a storage tank when a storage tank is mandated by County requirements for the well.	Tanks do not necessarily need to be next to a well, as a pump house does. Tanks could be located elsewhere on a property, outside of critical areas/buffers.
GCD21	Glyn & Carol Davies	9/23/20	F	16.16.720(G)(1)(d)	Please consider 6 foot width for private trails.	Comment noted.
GCD22	Glyn & Carol Davies	9/23/20	F	16.16.745(C)(1)(c)	Please consider allowing buffer reduction to 65% of the standard buffer specified in the table.	The amendments proposed are intended to meet DOE guidance. As such, we cannot vary without developing our own Best Available Science.
GCD23	Glyn & Carol Davies	9/23/20	F	16.16.760(8)	Please consider mitigation at 1:1 ratio regardless of whether placed before or after impact occurs. Sometimes mitigation must occur after the impact occurs for logistical reasons. This should not result in a 25% penalty.	This ratio is not proposed for amendment; Council approved it in 2017 to account for temporal loss.
LNTHPO01	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	9/15/20	D	23.60.030(18)	One of our primary concerns is the use of the term "significant" in regards to cultural resources. This term has a specific meaning under Federal law. The definition that is included for this term on page 227 is taken from the Federal process and it does not apply here. Under state law a different process is followed.	The term significant has been deleted from the definition of "cultural resource site" as it is no longer used in the regulations.

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MES01	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.255(B)	Subsection (5) was stricken, and a side bar note says this is addressed by (4). This does not appear to be the case as 4 is an allowance for water dependent use.	We think the commenter erred in his reference. Allowance for water dependent uses is subsection (3); (4) refers to uses allowed by Ch. 16.16, which includes activities allowed with or without notification.
MES02	Ed Miller, Miller Environmental Services	9/18/20	F	6.16.255(B)(8)	<i>Alteration of functionally disconnected Type III or IV wetlands with associated with an approved commercial development within an Urban Growth Area.</i> Please define “functionally disconnected”. If this was intended to mean “isolated wetlands”, this provision would exclude many wetlands that have seasonally flowing outlets within the Birch Bay area. Also, why doesn’t this exemption apply to residential development in other UGAs?	The term “functionally disconnected” has been deleted.
MES03	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.225(C)	Please define “ecological connectivity” and “habitat corridors.” It appears this section will grant the County the authority to protect/prohibit development over areas outside of defined critical areas and their buffers. The language is vague, which will create unpredictable review and requirements. A corridor could be 10 feet wide or >300 feet wide, depending on which species we are seeking to maintain a corridor for. Additionally, corridors are already covered in the CAO, as a WDFW priority habitat covered under the HCA section.	The commenter is correct. However, this verbiage was added in response to the Council’s direction in the adopted scoping document.
MES04	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.225(D)	Was this section intended to apply to native plant communities within critical areas and buffers or within any native plant community “associated” with critical areas? What does “associated” mean? This could potentially imply that any native vegetation beyond the regulated buffer should be prioritized for protection. This new section seeks to extend authority over all vegetation (native and non-native) on a property.	The CAO only applies to critical areas and their buffers, and as adopted by reference in the SMP, only applies to the shoreline jurisdiction. This proposed language does not extend authority over all vegetation on a property.
MES05	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.230(B)	We noted the verbiage change from the prior “exempt activities” title. With this modification, no activities would be exempt from the critical areas ordinance. Additionally, under subsection B of this section, the language was modified to remove the allowance to prune or plant ornamental or native trees within critical areas or buffers. This would take away any rights to prune or plant native or non-native trees in lawfully established gardens	Per state law, <i>all</i> activities are subject to the CAO, including those listed here. They are not exempt; they just don’t need a permit or review. We changed the title to make it clearer.  Pruning (and all vegetation management)

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					or landscaped areas, including fruit trees? Why? This seems to be taking away some existing established rights. This section is inconsistent with 16.16.235.B.4.a.i.	still listed as an activity allowed in buffers with notification (16.16.230(B)(4)). We removed <i>planting</i> so people don't think they can plant new non-native trees in the buffer. However, one can still maintain existing vegetation.
MES06	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.235(B)(4)(b)(iv)(B)(2)	Evergreen trees may not be appropriate for all environments, particularly wetlands with high levels of seasonal ponding. We recommend removing the evergreen tree requirement.	This language is the same that is used in our tree protection regulations for our watersheds. Nonetheless, we agree that in certain circumstances evergreens may not be the best choice. Therefore we have added, "unless otherwise approved by the Director."
MES07	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.235(B)(5)	What is the time scale when referring to "one-time"? The life of the tree? The duration of property ownership? Please clarify.	This was unclear. We have removed "a one-time," but added "a cumulative total of." We were trying to limit the total amount of buffer that could be cleared.
MES08	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.255(C)(3)	"Habitat corridor" and "ecological connectivity" are general ecology terms, not defined in this code and not regulated as a critical area – unless they are a specific, identified HCA (such as old growth/mature forest, Oregon White Oak, etc.). Biodiversity areas and corridors are identified as a state "priority habitat" by Washington Department of Fish and Wildlife (WDFW)– with corridors defined as "relatively undisturbed and unbroken tracts of vegetation that connect fish and wildlife habitat conservation areas, priority habitat, areas identified as biologically diverse, or valuable habitat within a city or UGA." Critical areas reports are already required to cover biodiversity areas and corridors as an HCA. If the intent of this added section is to include other areas in addition to those currently regulated as critical areas, it seems to be an extension of and addition of a new regulated area.	The commenter is correct. However, this verbiage was added in response to the Council's direction in the adopted scoping document.
MES09	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.265(A)(1)	What is the intent of the building setback? If it is to protect tree root zones and allow for building access and maintenance, a building setback is not always needed. For example, a new building within a grass field would not disturb root zones within a buffer or result in significant disturbance by a homeowner walking around the house. Assuming this 10-foot building setback	This setback was established by Council and staff is not proposing to change it. We recognize, however, that there may be instances where the setback isn't warranted and have amended the section to allow for a reduction in such cases, mod-

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					area would or could be tabulated as impact, the setback will effectively reduce the allowed "reasonable use" footprint (which is proposed to be reduced back down to 2,500 square feet under this code). Forcing applicants to build smaller homes on reasonable use lots in order to accommodate a 10-foot building setback will significantly reduce the buildable area on a property. For example, a 50 x 50-foot building (2,500 SF) would have to shrink to 40 by 30-foot building (1,200 SF) if it is against a road setback in order to leave a 10-foot building setback around three sides of the structure.	eled on the COB's similar regulation.
MES10	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.265(B)(1)	Significant Trees" needs to be defined in the CAO.	The WCC has too many disparate definition sections, many of which define the same words differently. Staff is working toward ultimately having one definition chapter. But until that happens, we're trying not to add new definitions where words are already defined elsewhere, which is why we've added "Any words not defined herein shall be defined pursuant to Titles 20 (Zoning), 22 (Land Use and Development), 23 (Shoreline Management Program), or their common meanings when not defined in code" at the beginning of the definition section.
MES11	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.270(C)(12)	<i>Reasonable Use Exceptions. For single-family residences, the maximum impact area may be no larger than 2,500 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages/shops, decks, parking, and all lawn and nonnative landscaping.</i>  Why is reasonable use reduced from 4,000 SF to 2,500 SF? The County Council previously approved the larger area so that property owners could use a reasonable portion of their 5, 10, 20-acre properties with a house, shop, garden, etc. If the intent is to make it the same as the SMP reasonable use allowance	Reasonable use as proposed would now be the last effort to avoid a constitutional taking and allow development on very constrained lots and these cases should be rare. The new paradigm is to administratively allow up to 50% buffer reduction (with mitigation) through a minor variance (administrative) and a greater reduction with a public hearing (Hearing Examiner). This new approach should provide greater flexibility while cutting down on costs to applicants and cases going to the H/E. The shoreline code cited is what is al-



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					<p>(2,500 square feet), please explain why they need to be the same. Shoreline lots fall within 200 feet of the shoreline, a more highly protected area designated by the Shoreline Management Act. Additionally, shoreline lots are often smaller-sized lots. A majority of non-shoreline lots in the County are at least five acres in size. No specific reasoning is given on why the reasonable use allowance is being lowered, despite the recent critical areas code update in 2017 which brought it to 4,000 square feet.</p> <p>This is particularly concerning if a 10-foot building setback is required to be included within the reasonable use allocation area, severely reducing building size. Potentially, a property owner with five acres or more could be limited to a 1,000 SF house with a required 10-foot building setback and max out the reasonable use allowance with a small house footprint.</p>	lowed without a shoreline variance; an applicant always has the option to seek a larger footprint through a variance.
MES12	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.630(C) & 16.16.740(A)(1)	<p>This section of code was revised to remove the provision that buffers do not extend across substantially developed areas and/or across legally established roads. The language was changed to only include “existing, legally established substantially developed surface”. This change would allow larger buffers to include disconnected area on the opposite side of roads or developed surfaces (such as buildings). Please explain the reason for this change. We are not aware of any Department of Ecology guidance that proposes including disconnected portions of buffer across roads or developed areas.</p> <p>While some wildlife species may cross roads (e.g. birds, mammals), it seems unlikely that water-dependent species (e.g., amphibians) would regularly access buffers across roads and buildings. Since the intent of the buffer is to protect the functions of the wetland, perhaps the analysis should focus on what functions a disconnected buffer would provide to a wetland across a road or building. The disconnected buffer would not provide hydrologic or water quality functions for the wetland across the road.</p> <p>This change would substantially increase the amount of regulat-</p>	Hydrologic or water quality functions are not the only reason for buffers. While small water-dependent species (e.g., amphibians) may not cross roads, many others do, or they nest, roost, or any number of other activities. DOE guidance does not provide provisions for reducing buffers because of minor (e.g., dirt driveways) intrusions.

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					ed buffer areas in Whatcom County, particularly in conjunction with the larger buffers proposed under this code change. As such, it seems there should be some reasoning provided as to why this change is needed or even valid.	
MES13	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(A)	How will the Director determine what distance is necessary to increase the buffer if it's "poorly vegetated"? This appears subjective as there is no definitive science that provides clear buffer widths in these cases – they could vary depending on what function or which species you are seeking to protect. What would qualify as "poorly vegetated"? Bare dirt? Grass? Significant coverage of invasive species? This section of code could be interpreted and applied very differently among staff, decreasing predictability and consistency for landowners. The section has also been altered from the existing code to allow for buffer increases to "provide connectivity to other wetland and habitat areas". This seems to be an especially broad provision to increase buffers almost anywhere.	Staff is proposing amendments to this section to provide better rationale (based on DOE guidance) for an already existing section.
MES14	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(B)(2)	<i>Buffer Width Averaging. In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.</i>  This section effectively eliminates the intent of buffer averaging and converts it to buffer reduction by requiring mitigation. Buffer averaging is an important and simple way to allow more flexibility for property owners that need to make minor buffer adjustments. This section will also reduce consistency and predictability (each staff member could apply this differently), and will increase the cost for simple projects by requiring plantings, monitoring, bonding, etc. by thousands of dollars.	The intent that if the remaining reduced buffer area is degraded, it is now narrower and lacks the vegetation to properly function. If it is well vegetated, enhancement would not be necessary (nor required).
MES15	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(C)(1)(c)	<i>Buffer Width Reduction. The buffer shall not be reduced to less than 75 percent of the standard buffer.</i>  The existing code section allows for up to a 50 percent (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher category wetland are restricted to a 25 percent reduction. Why is this being changed? Is there guidance from the Depart-	We are responding to comments from DOE regarding having to meet their latest guidance.

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					ment of Ecology supporting the change or data from Whatcom County showing that the current allowed reduction up to 50 percent for Category IV wetlands is not working? Category IV wetlands are generally low functioning wetlands – why are we further restricting buffer flexibility here?	
MES16	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(C)(1)(e)(iii)	Does this mean the Director could require property owners to protect non-critical area and non-buffer areas with a conservation easement? This essentially gives the Director unlimited authority to restrict uses over non-protected uplands on properties, further limiting uses on properties without clear rationale, size limitations/restrictions, or predictability. Again, this section of code will create highly unpredictable review, requirements, and result in additional cost and critical areas assessment report revisions, depending on staff interpretations and personal beliefs. Additionally – allowed buffer reductions already require buffer mitigation to offset the impact. Please provide rationale for requiring additional mitigation that may include non-designated critical areas.	This is not intended to be in addition to mitigation, but one of the ways to achieve no net loss through the mitigation sequence while applying landscape ecology principals.
MES17	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(C)(1)(g) & 16.16.640(C)(3)	<i>Buffer Width Reduction. All buffer reduction impacts are mitigated and result in equal or greater protection of the wetland functions and values. This includes enhancement of existing degraded buffer area and provide mitigation for the disturbed buffer area.</i>  Define “degraded”. This could result in the Director arbitrarily requiring acres of additional planting, above and beyond the 1:1 or 1.25:1 buffer mitigation. How is the amount of area determined? What if the area is an active hayfield or established pasture that is in use? The Director could remove the ability to use a legally established, non-conforming uses and require planting over such area. This again will add uncertainty, lack of predictability, and significantly increase costs without any clear limitations on how much planting could be required. Additionally, this sounds like two things are now required – enhancement of existing degraded buffer and conducting additional mitigation. Why are property owners penalized for the current condition of the property – that may have been in place for generations?	The planting of degraded buffers has been a part of our CAO since 2005 and is based on DOE guidance. Based on case history, we are only clarifying that the area that might be enhanced is limited to the specific portions of the buffer being reduced, not anywhere on the lot, and certainly not outside critical area buffers (and thus does not “grant unlimited potential for mitigation requirements”). Per DOE guidance, “degraded” is any portion of a buffer that is not in a densely vegetated community.

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					Also, it should be noted that buffers are not static, and have been increasing with every update and version of the CAO. As a result, areas which now may be considered "degraded buffer," potentially requiring additional enhancement (per the draft change), may not have even been regulated as buffer a few years ago.	
MES18	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.680(C)(4)	<p><i>Mitigation Ratios. For impacts to wetland buffers, mitigation shall be provided at the follow ratios... (1) Where the mitigation is placed after the impact occurs, at a 1.25:1 ratio (area or function); and (2) where the mitigation is in place and functional before the impact occurs (i.e. advanced mitigation), at a 1:1 ratio (area or function).</i></p> <p>Planting mitigation prior to project construction is complicated because of access for equipment, permit issuance, and seasonal constraints (plants generally must be planted in winter or spring) – which doesn't always coincide with project construction. At the stage when the mitigation is designed and the critical areas assessment report is submitted to the County for review with the site plan, we don't know when or if planting could occur prior to project construction. This makes it impossible to assume applicants could achieve a 1:1 mitigation ratio unless they are using an established mitigation bank to offset their impacts. Why is this being changed? Is there a directive from the Department of Ecology or data in Whatcom County supporting this, and the higher ratio?</p>	The amendments to this section are proposed to meet Best Available Science and DOE guidance to account for temporal loss, i.e., the time between impact and when mitigation is providing the same functions and values as to prior to the impact.
MES19	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.720(D)	<p><i>Private Access. Access to existing legal lots may be permitted to cross habitat conservation areas if there are no feasible alternative alignments.</i></p> <p>This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a habitat conservation area. This could include trumpeter swan loafing areas (which are roughly mapped on WDFW priority habitats and species maps), biodiversity corridors, bat habitat (which includes entire townships where bats are mapped), streams, Pileated woodpecker habitat (which is not mapped by WDFW and must be determined by the project biologist or</p>	We believe Mr. Miller was reviewing an older draft. We have since amended this subsection (and subsection (C) to clarify how subdivisions could still occur.

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					County staff), and many other priority habitats.	
MES20	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.630(F)	<p><i>Table 1 Standard Wetland Buffer Widths.</i></p> <p>Based on a sampling of numerous projects in Whatcom County, the most common wetland category is a Category III with a moderate habitat score (110 or 150-foot buffers for moderate or high intensity land uses respectively). However, we also find that Category III wetlands with a high habitat score occur. This could easily occur in a wetland of small to moderate size (5,000 to 10,000 square feet), and partially in a pasture. The updated buffer for this type of wetland would be 225 feet or 300 feet (for moderate or high intensity development respectively). A 225-foot buffer would result in over 3.6 acres of land that would be protected as buffer. On a five-acre property, with multiple wetlands, this could easily create many more reasonable use properties, resulting in many more variances.</p>	Based on conversations with DOE staff, Table 1 is proposed to be updated to be consistent with their latest guidance. Mr. Miller provides a good example as to why staff is proposing an (up to 50%) administratively approved minor variance.
MES21	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.740(A)	<p><i>Buffer Widths</i></p> <p>This is the same concern as comment MES12, and would allow for buffers to extend to areas across roads.</p>	Hydrologic or water quality functions are not the only reason for buffers. While small water-dependent species (e.g., amphibians) may not cross roads, many others do, or they nest, roost, or any number of other activities. DOE guidance does not provide provisions for reducing buffers because of minor (e.g., dirt driveways) intrusions.
MES22	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.740(B)	<p><i>Table 4. Buffer Widths.</i></p> <p>What is a Type O water? No definition is given and there is no other correlation with any other part of the HCA section or Washington State water typing.</p> <p>The buffer provision for natural ponds and lakes under 20 acres was previously 50 feet, but was removed. What are the buffers for small lakes and natural ponds? The added water typing buffers in the table include a 100-foot buffer for lakes. Assumedly natural ponds and small lakes would not be required to have the same buffer as large lakes in the County. Currently artificially created ponds (created prior to 2005) do not require a buffer, is</p>	<p>A definition of Type O waters is provided in §16.16.710(C)(1)(a)(v).</p> <p>Natural ponds and lakes under 20 acres fall into one of the five listed types, which are generally based on size, permanence, and presence of fish.</p>

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					this still the case?	
MES23	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.745(A)	<i>Buffer Width Increasing.</i>  There is a new provision to this section that allows the Director to extend Type S or F buffers to resources within 300 feet – including Category III wetlands, other HCA's or other waters. Again, this is an exceptionally broad provision to add in additional regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. There is also no clear guidance on how this would be done. The amount of additional area in Whatcom County this could include is hard to imagine. The extension of every fish stream or lake buffer to another resource within 300 feet is essentially extending most of the buffer areas to 300 feet.	This provision has been borrowed from Skagit County as a way to provide inter-jurisdictional consistency, making it easier for our consultants working in multiple jurisdictions.
MES24	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.745(B)	<i>Buffer Averaging.</i>  Same concern as comment MES14.	The intent is that if the remaining reduced buffer area is degraded, it is now narrower and lacks the vegetation to properly function. If it is well vegetated, enhancement would not be necessary (nor required).
MES25	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.745(C)	<i>Buffer Reduction.</i>  Same concern as comment MES17 and MES18.	Planting of degraded buffer has been a part of our CAO since 2005 and based on DOE guidance. We have only tried to clarify based on case history; we are clarifying that the area that might be enhanced is limited to the specific location being reduced.  Per DOE guidance, degraded is any portion of a buffer that is not in a densely vegetated community.
MES26	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.760(B)	<i>Buffer Mitigation.</i>  Same concern as comment MES18.	It is being amended to meet DOE guidance.
NES01	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.270(C)(12)	Please provide additional clarification on what is included in the maximum allowed 2,500 sq. ft. impact area to provide consistency in application. The text states driveways shall be the minimum necessary but does not specify if any of this square	Whatever fits in 2,500 sq. ft. We could set specific numbers, but that would provide less flexibility to a homeowner.

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					footage shall be included in the allowed 2,500 sq. ft. impact area. Is there a minimum square footage of parking area that is required to be included? Is the 10-foot building setback counted towards this allowance?	
NES02	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.270(C)(12)	<p>For projects that require a critical area buffer impact, it appears these will be reviewed in the following order: reduction of up to 25% administered by the Director; a minor variance (buffer reduction of 25-50%) administered by the Director; a major variance (buffer reduction beyond 50%) administered by the Director; and last, if major variance is denied or if all other code requirements including mitigation cannot be met, a reasonable use application is administered by the Hearing Examiner. A flow chart similar to Table 1. Project Permit Processing Table in 22.05, may be helpful to describe this process and requirements associated with each.</p> <p>Please clarify if there are any specific criteria for minor and minor variances in regards to total allowed impact area. It appears variances have no maximum allowable footprint and can be permitted as long as mitigation sequencing is applied and impacts can be mitigated.</p>	The commenter is correct; and a flow chart might be helpful; we'll try to develop one. As to variance criteria, see WCC 22.07.050. There are no criteria in regards to total allowed impact area (though one would have to mitigate).
NES04	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.640(C)(1)(g) & 16.16.640(C)(3)	Both sections appear to require mitigation, as well as additional enhancement of 'existing degraded buffer area' to provide mitigation for the 'disturbed buffer area.' Please define 'degraded buffer area' and 'disturbed buffer area,' and provide additional clarity on how much additional enhancement may be required beyond the standard 1:1 and 1.25:1 mitigation ratios. Further defining these terms and the amount of enhancement that is expected will help clarify the application of this code section to specific projects.	Per DOE guidance "degraded" is the difference between existing conditions and a densely vegetated community. As each site is different, it would be difficult to have a code that accounts for every variation. We are trying to balance having a code that is a "cookbook" verses providing flexibility to homeowners and their consultants.
NES05	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.640(B)(1)(a) & (C)(1)(a)	Buffer averaging is preferred to buffer reduction [16.16.640(C)(1)(b)]. Sections 16.16.640(B)(1)(a) and (C)(1)(a) imply a development proposal cannot use a combination of buffer averaging in one area and buffer reduction in another. Clarification could be added to state buffer averaging is not allowed if the portion of impacted buffer has already been reduced. This would allow mitigation plans to use buffer averaging	Clarification has been added.



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					where feasible (preferred) and buffer enhancement to compensate for the remainder of buffer reduction.	
NES06	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.740, Table 4	Provide definition of a Type O stream. This stream type does not appear to be defined in the Washington Administrative Code (WAC 222.16.030), Washington Department of Natural Resources (WDNR) water typing system, or anywhere in the Code update.	A definition of the water types has been added.
NES07	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.710(C)(1)(b)(i)	Throughout 16.16.710(C)(1) the term “natural streams” has been revised to “natural waters.” The term “waters” leaves ambiguity which could be interpreted to mean wetlands or water flowing out of wetlands. Under this definition, 16.16.710(C)(1)(b) would regulate any artificial man-made ditch that receives water from a wetland and categorize the ditch as a stream that would require a stream buffer. Many ditches, including roadside ditches, receive water from wetlands and could be regulated as streams. Is this the intent of this change? If not, for clarity, the term “natural waters” could be replaced “waters of the state” which is defined in (16.16.900).	Based on this comment we have amended the section to say “waters of the state” rather than “natural waters.”
NWC01	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.680	As written, it isn't clear that the area of substantial surface and the area beyond the substantial surface are no longer functioning as a part of the buffer protection. As I read it, the provision only seems to address the substantial surface itself.	Correct.
NWC02	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.273	Can we presume that the minor variance is in addition to the standard buffer reduction? Otherwise the minor variance would force many more projects to the Hearing Examiner than under the current reasonable use.  For example a 100' buffer would go to 75' minimum; then with minor variance the buffer could then be modified to 25% to 50% of that number or 56.25 or 37.5. When the 10' building setback is added, the relief is no way near what reasonable use is allowing currently especially on smaller lots where the separation is many times only 10' to 20' between the wetland and the foundation. As I describe the minor variance would still require a 66.25 foot to 47.5 foot separation between the foundation and the wetland. It is our belief that even a variance on the standard buffer reduction would overburden the Hearing Examiner if rea-	The proposed new approach would allow the applicant to request, and the County to vary, any numerical or dimensional standard to provide reasonable development. It would be the duty of the Hearing Examiner to determine if a legally permissible project has been recommended.

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					sonable use would under the revisions be required to go to the hearing examiner. You state "They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number cases having to go to the Hearing Examiner." Perhaps you have better statistic than I do about the narrow buffers we have needed under reasonable use. I do a lot of work in Sudden Valley and for the most part many of the projects can stay about 35 feet from a critical area, but those would under the revisions be moved to the hearing examiner.	
NWC03	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.265(B)(4)	<p>Is the intent that the conservation easement shall only apply to the specific altered buffer on properties containing critical areas and/or associated buffers? If so then it should so state. It seems since Notice on title is expected for properties that have critical areas and/or assoc. buffers that are not altered. My thoughts go to the properties that have an established house, want to put a shop in one corner and may need to alter a buffer to do so, but the permittee should not be asked to then identify all of the non-altered wetlands or buffers on the rest of the acreage. So then the applicant would do a conservation easement for the altered buffers and or wetlands, and then also a notice on title to cover any of the other critical areas that are unaltered. If all wetlands and buffer on the property are required to be placed in a CE when only one wetland and/or wetland buffer is altered, this would result in excessive wetland delineation, surveying of wetland boundaries, and reporting costs.</p> <p>Also alteration to buffers on a property should be allowed in the future modified to the full extent of the code provisions and not forced locked into a conservation easement when the first project might only be a minor modification.</p>	<p>The commenter raises a good point. We have revised the section to refer to the "review area."</p> <p>As to the 2<sup>nd</sup> point, our conservation easements do allow for future development as permitted by code.</p>
NWC04	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.680	It seems that some effort has been made in part of the code to use the label of compensatory mitigation. Thank you. When a violation occurs clearing or overlayment, once repaired the repair area should not be then placed in a conservation ease-	Comment noted.

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					ment. Because the word mitigation is still somewhat interchangeable in the code or in the minds of those enforcing the code, it needs to be clear that only compensatory mitigation areas are to be placed in conservation easements.	
NWC05	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16	Administratively, through reasonable use, wetlands are being filled. This action does not show up as an administrative option under minor variance. As written it looks like wetland fill would need to go to hearing examiners as well. This again would send several more of the single family small residential lots to the hearing examiner. Basically I like the idea of administrative variance or minor variance, but with changes it looks significantly more restrictive than the current practices for what can be handled without going to the hearing examiner.  You might also talk with the City of Bellingham. I was working on a stream buffer reduction below minimum standards, very soon after the hearing examiner had told the City to start handling these as an administrative variance and to quit sending them to the hearing examiner. I found this interesting.	Staff's recollection is that staff has only been approving wetland fill for a SFR through administratively processed reasonable use exceptions (RUE) for the last 2 years, and that has only happened once. However, we do not believe that wetland fill (or other uses approve through an RUE ought to be approved by staff; thus the reason for the proposed change.
PA01	Paul Anderson	9/18/20	F	16.16.225(B)(8)	I recommend that this provision be listed "as excepted in WCC § 23.05.065," since it is not applicable for shoreline associated wetlands. Interpretation and enforcement of this section within shoreline jurisdiction is problematic as shoreline associated wetlands by definition (WAC 173-22-030(1)) have proximity and influence with the shoreline water and therefore, are not "functionally disconnected".	Based on this and discussions with DOE staff, we have deleted "functionally disconnected" from this provision. Additionally, based on communication with DOE staff, we have added that the wetlands have to have a habitat score of less than 6 to qualify.
PA02	Paul Anderson	9/18/20	F	16.16.260(G)(1)	Three years is not adequate to establish whether a mitigation site will successfully compensate for lost critical area functions, especially where that mitigation includes the planting of shrubs and trees. In terms of wetland mitigation, state and federal agencies have required a minimum of five years monitoring for several years and I recommend that five years be the minimum monitoring required in the SMP.	Though staff had not proposed to amend this section, based on this comment we realized that the existing code does not reflect current practices. We have updated this section to do so, and to address Mr. Anderson's comment.
PA03	Paul Anderson	9/18/20	F	16.16.640(C) & 16.16.720(D)	<i>[Wetland] Buffer Width Reduction</i>  Allowing an outright reduction in buffer width will not protect critical area (wetland or fish and wildlife habitat) functions or	We have added language to this section from DOE guidance, clarifying that buffer reductions are not allowed outright, but

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					shoreline ecological functions. The only time a reduction in adopted buffer widths should be allowed (no > than a 25% reduction) is when it is used with buffer averaging (see Buntin et al. 2016). To ensure that there is no net loss of shoreline ecological functions, I recommend that this provision be stricken within shoreline jurisdiction. This same concern and recommendation applies to 16.16.720.D. (Buffer Width Variance).	only under certain (DOE approved) circumstances.
PA04	Paul Anderson	9/18/20	F	16.16.710(C)(2)	<p><i>Habitat Conservation Areas – Designation, Mapping, and Classification: “Areas in which federally listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the U.S. Fish and Wildlife’s Threatened and Endangered Species List or Critical Habitat List...”</i></p> <p>Within shoreline jurisdiction, this section needs to be edited to also include the National Marine Fisheries Service (NMFS), the federal agency responsible for managing marine species listed under the Endangered Species Act that includes Puget Sound Chinook salmon (<i>Oncorhynchus tshawytscha</i>) and Southern Resident killer whales (<i>Orcinus orca</i>). These two iconic species are of significant cultural, commercial and recreational importance for the Pacific Northwest and not acknowledging their importance and presence within the SMP is a substantial oversight. Due to its critical importance for Chinook salmon rearing and migration, NMFS designated the marine and estuarine nearshore (extreme high water to approx. 30 meters depth), including most of the Whatcom County coast, as critical habitat for the recovery of Puget Sound Chinook in September 2005 (see Federal Register, Vol. 70, No. 170, 9/2/05). NMFS is acknowledged as a regulatory agency in WCC §16.16.900 (Definitions; “Critical habitat”).</p> <p>The marine and estuarine nearshore within the County meets the definition of a Fish and Wildlife Habitat Conservation Area in WAC 365-190-130 and, more importantly for the SMP, the definition of Critical Saltwater Habitat in WAC 173-26-221(2)(C). I respectfully recommend that the County include reference to NMFS-managed listed species in the SMP and that the marine</p>	We have amended 16.16.710(C)(2) to include NMFS listings and critical habitat.

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					and estuarine nearshore is designated critical habitat for Puget Sound Chinook. To simplify the permitting process and assist staff and applicants in understanding this update, I would also recommend that the salmonid habitat maps be updated to show the marine and estuarine nearshore as a regulated critical area.	
PA05	Paul Anderson	9/18/20	F	16.16.720 & 16.16.740	<i>Habitat Conservation Areas – Use and Modification and Habitat Conservation Area Buffers</i>  Since shorelines and shorelands (associated wetlands) include more than just streams and the SMP protective standards apply to those other waters, I recommend changing “stream(s)” to “water(s)” in Table 3 (§16.16.720) and in §16.16.740. Also, since tidal waters include a number of species and habitats of cultural, commercial and recreational importance (e.g., shellfish areas; Chinook salmon), what is the rationale and science to support requiring a wider buffer on marine versus freshwater habitats; 150 and 200 feet, respectively? To ensure no net loss of ecological function, I recommend that the upland buffer on marine habitats be increased to 200 feet, which is well within the buffer range reported in the scientific literature (see Protecting Nearshore Habitat and Functions in Puget Sound; Protection of Marine Riparian Functions In Puget Sound, Washington; available from WDFW: <a href="https://wdfw.wa.gov/">https://wdfw.wa.gov/</a> ).	Amended per this suggestion (though in Table 3 only for the performance standards that apply to all waters.)  And while the buffer is proposed to be 150' in the marine areas, we are still managing for NNL in the entire shoreline jurisdiction.
WCPW01	Atina Casas, W/C Public Works	9/18/20	E	22.05.020	Shoreline Substantial is included in both the Type II and Type III sections of the table. The footnote (c) in the Type II section explains the circumstances when a Shoreline Substantial will be processed as a Type III. This footnote should also be in the Type III section for further clarity.	Comment noted.
WCPW02	Atina Casas, W/C Public Works	9/18/20	E	22.07.020(B)(1)	How will the applicant know what the dollar amount is when OFM changes it every 5 years? Will updated values be shown on the permit application form so applicants know if their project qualifies based on the current value at the time of application submittal?	Correct, the application is changed when OFM updates the amount.
WCPW03	Atina Casas, W/C Public Works	9/18/20	E	22.07.030(A)	<i>A. Shoreline substantial development permits are considered Type II applications pursuant to WCC 24 22.05.020 (Project Permit Processing Table).</i>	We have modified the sections to clarify.

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					For clarity, add a sentence that this permit could be considered a Type III application pursuant to 22.05.090(2) (Open Record Public Hearing).	
WCPW04	Atina Casas, W/C Public Works	9/18/20	F	16.16.680(H)(1)	Consider keeping the wetland buffer impact mitigation ratio 1:1 for public road and bridge projects. Mitigation is not possible before impacts. And between clear zone requirements for vehicle safety and limited right-of-way, there often isn't onsite area available to accommodate a 1.25:1 mitigation ratio.	The mitigation ratios are proposed to be amended to meet DOE guidance. Nonetheless, Public Works could choose to enhance publicly owned property now and apply the mitigation to future projects (i.e., advance mitigation).
WCPW05	Atina Casas, W/C Public Works	9/18/20	F	16.16.760(B)(8)	Consider an HCA buffer impact mitigation ratio of 1:1 for public road and bridge projects. Mitigation is not possible before impacts. And between clear zone requirements for vehicle safety and limited right-of-way, there often isn't onsite area available to accommodate a 1.25:1 mitigation ratio.	The mitigation ratios are proposed to be amended to meet DOE guidance. Nonetheless, Public Works could choose to enhance publicly owned property now and apply the mitigation to future projects (i.e., advance mitigation).
WCPW06	Atina Casas, W/C Public Works	9/18/20	F	16.16.900	Add a definition for Critical Facilities, which is referenced in 16.16.322.	A definition has been added.
WCPW07	Chris Elder, W/C Public Works	9/18/20	B	C/P Ch. 11	Under the Council approved scope of possible amendments, topic #6 highlights Climate Change/Sea Level Rise with the recommended action of "Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations". The proposed amendments to the Shoreline Master Program have not sufficiently addressed this topic based on available data including projected impacts of climate change and have not incorporated best management practices developed to address the projected impacts of climate change.	Policies regarding climate change/ sea level rise have been developed and/or strengthened and are proposed to be included in Chapter 11 of the CompPlan (pg. 11-30).
WCPW08	Chris Elder, W/C Public Works	9/18/20			Related to climate change, the most significant projected climate impacts related to the SMP update include sea level rise and increases in coastal and riverine flooding, both in magnitude and frequency. I have included the several regional and state scientific climate data reports and data informed recommendations on how to incorporate projected climate change impacts such as sea level rise and increased coastal and riverine flooding into planning processes. The list of resources supplied is located at	Before adopting specific regulations, it seems like we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.) and anticipate the development of the CoSMoS model (on which the COB and WCPW are working), which should provide the best data for Whatcom County. The policies being introduced



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					<p>the end of this memo.</p> <p>It should be noted that Whatcom County is currently participating in development of a local Coastal Storm Modeling System (CoSMoS) which will further inform the extent of potential impacts of sea level rise combined with storm surge, wind currents, barometric pressure, and other environmental factors. Data from this effort will inform the magnitude and area of impact and will support selection of an actual sea level rise elevation and/or shoreline impact zone, but existing data already highlights that sea level rise has occurred and will continue to occur at an increasing rate.</p>	<p>would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>
WCPW09	Chris Elder, W/C Public Works	9/18/20			<p>While this periodic update to the Shoreline Master Program may not spur development or adoption of an actual sea level rise projection for Whatcom County shorelines, staff recommends developing new code language that clearly identifies the projected impacts of sea level rise and increased impacts of riverine and coastal flooding within Title 23. Furthermore code improvement must require applicants pursuing development within the shoreline jurisdiction to perform a climate vulnerability assessment for the proposed action and highlight mitigation measures proposed to address projected climate impacts. This language will support applicants in mitigating climate risk to their private investment and will support local government in protecting public safety, private property, and environmental health.</p>	<p>Your comments will be forwarded to the P/C &amp; Co/C for their consideration.</p>
WCPW10	Chris Elder, W/C Public Works	9/18/20			<p>The resources described below have been attached to this comment letter to support the above comments and recommendations:</p> <ul style="list-style-type: none"> <li>• The University of Washington's Climate Impacts Group Shifting Snowlines and Shorelines (2020) highlights this significant climate changes occurring within our region and does provide summary projections of potential changes in sea level.</li> <li>• The Extreme Coastal Water Level in Washington State (Guidelines to Support Sea Level Rise Planning) (2019) provides valuable guidance regarding incorporation of sea level rise projections into local planning.</li> </ul>	<p>Thank you.</p>

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					<ul style="list-style-type: none"> <li>• Maps of Climate and Hydrologic Change for the Nooksack River Watershed (2017) highlights the projected changes in seasonal precipitation in the Nooksack River which projects an increase in winter precipitation over the next 30 years of between 9.5% and 20.8% which will contribute to increased magnitude and frequency of flooding.</li> <li>• Incorporating Sea Level Change in Civil Works Programs is a US Army Corps of Engineers regulation requiring consideration of sea level impacts on all coastal projects as far inland as the extent of estimated tidal influence and providing guidance for incorporating the direct and indirect physical effects of projected future sea level change across the project life cycle in managing, planning, engineering, designing, constructing, operating, and maintaining projects and systems of projects.</li> <li>• Integrating Climate Resilience into Flood Risk Management (2010) provides significant policy guidance and considerations.</li> </ul> <p>Additional online resources that may support development of climate change related improvements can be found at the following sites.</p> <ul style="list-style-type: none"> <li>• <a href="https://toolkit.climate.gov/">https://toolkit.climate.gov/</a></li> <li>• <a href="https://toolkit.climate.gov/tool/adaptation-tool-kit-sea-level-rise-and-coastal-land-use">https://toolkit.climate.gov/tool/adaptation-tool-kit-sea-level-rise-and-coastal-land-use</a></li> </ul>	
RES01	Ander Russell, Re-Sources	9/17/20	D	23.30.020	<p><i>SMP Scoping Document Item 5 : Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173- 26) – Thank you for adding language referencing WCC Title 23 Shoreline Regulations 23.30.020 as it pertains to mitigation. We feel that in order to adequately address item 5b from the Scoping Document further clarification is needed on exactly what mitigation actions are needed for development. Please add clarification and reference WCC 16.16.</i></p>	<p>5b from the scoping document is “Clarify development mitigation requirements.” We feel we have done this in many sections of both Title 23 &amp; WCC 16.16. While most of the “clarifying” has been done to the text of WCC 16.16, it pertains to shoreline permits since the CAO is adopted as part of the SMP.</p>
RES02	Ander Russell, Re-Sources	9/17/20	D	23.40.020(G)	<p><i>Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage – Thank you for adding in language about the need for mitigation under G (Development activities allowed in buffers and setbacks). Please clarify</i></p>	<p>The text of that section clearly states, “provided...that they comply with all the applicable regulations in WCC Chapter 16.16, including mitigation.” Please note</p>

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					and strengthen that language. Any impacts from activities happening within the critical area buffer must be mitigated please show how this will be done.	that mitigation requirements are in WCC 16.16, a part of the SMP, and that both need to be read together.
RES03	Ander Russell, Re-Sources	9/17/20	B & D	C/P Ch. 11 & Title 23	<p><i>Climate Change/Sea Level Rise</i> – Thank you for the updated language concerning climate change and sea level rise that was added to the Chapter 11 of the CompPlan (Exhibit B). We strongly support the recommended changes outlined by Futurewise and WEC for this scoping item. A comprehensive approach to addressing the impacts of climate change by protecting natural shorelines and other natural systems will help our community withstand and recover from the increase in those impacts over time.</p> <p>Please add language to reflect a focus on climate change and sea level rise impacts to Exhibit D. The SMP and CompPlan must do a better job at addressing sea level rise and other climate change impacts. We understand that the bulk of the revisions in this area have been added to Exhibit B. However, the words climate change and sea level rise do not appear at all in Exhibit D.</p> <p>Climate change impacts on sea levels, storm surges and riverine and marine flooding are extensively documented and must be planned for and addressed in all County regulations and planning documents. The County need not look any further than its own report on climate change impacts to have the data needed to develop and strengthen policies around climate change, flooding and sea level rise. Just this past winter Whatcom County was inundated with unprecedented flooding from heavy rains that breached dikes and submerged houses. The cost of the damage from the flooding between late January through early February was over \$4 million, \$2.5 million of which was related to road and infrastructure damage.</p> <p>Further recommendations on how to incorporate climate change impacts on rising sea levels, storm surges, and riverine and marine flooding in to Exhibits B and D:</p> <ul style="list-style-type: none"> <li>• Make the changes recommended by Futurewise/WEC to</li> </ul>	<p>Before adopting specific regulations, it seems like we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.) and anticipate the development of the CoSMoS model (on which the COB and WCPW are working), which should provide the best data for Whatcom County. The policies being introduced would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>

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					<p>Exhibit B, policy 11 AA-5 and include new policy 11 AA-8 outlined in their letter.</p> <ul style="list-style-type: none"> <li>• We strongly support the addition of a Sea Level Rise section to Exhibit D. We support the language proposed for a new Section 23.30.080 by Futurewise and WEC in their letter.</li> <li>• Shoreline maps should be updated to include Best Available Science (BAS) and reflect any additional areas that are now considered within the 200' of the OHWM as a matter of shoreline jurisdiction.</li> <li>• Given the impacts of sea level rise on property and life, please prevent construction in areas that will be underwater in the next 30 years. The Washington Coastal Hazards Resilience Network has the best available science on this with various sea level rise projections depending on various greenhouse gas scenarios.</li> <li>• Whatcom County has over 50 Toxic Cleanup Sites in marine shoreline areas.<sup>3</sup> Please add language about what steps can be taken to plan for Sea Level Rise impacts on those sites. Proactive steps to protect communities, water and habitat now will prevent high costs down the road.</li> <li>• Science around climate change, sea level rise, storm surges and their impacts is dynamic and evolving - often at a faster pace than required SMP update timelines. Strengthen the language around assessing and incorporating Best Available Science. Be specific about the intervals at which BAS will be assessed and what the process for incorporating BAS will look like. <ul style="list-style-type: none"> <li>○ Examples from local jurisdictions that incorporate climate impacts: <ul style="list-style-type: none"> <li>▪ The City of Tacoma has included many updates in their 2019 Periodic Update regarding climate change impacts. Below are the additions they are proposing which Whatcom County could incorporate:</li> <li>▪ A new general policy of "Evaluate sea level rise data and consider sea level rise risks and impli-</li> </ul> </li> </ul> </li> </ul>	

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					<p>cations in the development of regulations, plans, and programs.” (p. 66)</p> <ul style="list-style-type: none"> <li>▪ New site planning policies: <ul style="list-style-type: none"> <li>○ “Development should be located, designed, and managed both to minimize potential impacts from sea level rise and to promote resilience in the face of those impacts, by such actions as protecting wetland and shoreline natural functions, incorporating green infrastructure, retaining mature vegetation, and considering soft-shore armoring wherever possible.” (p. 69)</li> <li>○ “Assess the risks and potential impacts on both City government operations and on the community due to climate change and sea level rise, with special regard for social equity.” (p. 70)</li> <li>○ “Promote community resilience through the development of climate change adaptation strategies. Strategies should be used by both the public and private sectors to help minimize the potential impacts of climate change on new and existing development and operations, including programs that encourage retrofitting of existing development and infrastructure to adapt to the effects of climate change.” (p. 70)</li> </ul> </li> <li>▪ A new general policy for Critical Areas and Marine Shoreline Protection: “Protect natural processes and functions of Tacoma’s environmental assets (wetlands, streams, lakes, and marine shorelines) in anticipation of climate change impacts, including sea level rise.”</li> </ul>	
RES04	Ander Russell, Re-Sources	9/17/20	B	C/P Ch. 11	Scoping Document Item 8: <i>Habitat</i> – Please address Scoping Document item 8a. We understand it is not necessary to have	8a is, “Reference WDFW and DNR’s Shore Friendly Program.” And you’re

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					references to the WDFW and DNR Shore Friendly Program in the code in order for the County to mirror the program but referring to it adds weight and legitimacy for the use of practices outlined in the WDFW and DNR Shore Friendly Program.	right; the code need not reference all the helpful programs the state (or feds or County) manages. However, we have added reference to that program in C/P policy 11I-2, and we do provide such references to applicants here at PDS.
RES05	Ander Russell, Re-Sources	9/17/20	F	16.16.225(C)	Please make the following changes to strengthen weak language:  <u>Development proposals shall seek to maintain ecological connectivity and habitat corridors whenever possible.</u> <u>Restoration of ecological connectivity and habitat corridors shall be considered a priority restoration and mitigation action.</u>	See response to RES07. Further, until actual wildlife corridors are identified, mapped, and adopted, trying to maintain a variable corridor width dependent on the species one's trying to manage would not be possible through piecemeal development review.
RES06	Ander Russell, Re-Sources	9/17/20	F	16.16.255(B)(3) & (5)	We support the addition of 16.16.255 B #s 3 and 5	Comment noted.
RES07	Ander Russell, Re-Sources	9/17/20	D		Please add a wildlife corridor overlay to shoreline maps in Exhibit D or wherever else is relevant.	The only wildlife corridor that the Council has adopted is the Chuckanut Wildlife Corridor, which is shown on our critical areas maps. Our understanding is that the Council's Wildlife Advisory Committee is looking into recommending others (based on a scientific review), but until the Council acts to adopt any new ones we have nothing to map.
RES08	Ander Russell, Re-Sources	9/17/20	D		We are generally opposed to expansions of nonconforming overwater structures, and will make recommendations to P/C & Co/C on revisions to Chapter 23.50.	Comment noted (however, the code does not allow this).
RES09	Ander Russell, Re-Sources	9/17/20	D	23.40.160	<i>Recreation</i> – Item 13d: The language around trails within critical area buffers must be strengthened. Any impacts to any portion of the critical area buffer from recreational trails must comply with all applicable regulations in WCC 16.16 and be mitigated.	In general we have tried not to repeat every requirement of one code in another (i.e., those of 16.16 in T-23, and vice versa), as there is a general rule that shoreline permits are subject to 16.16. Nonetheless, we have added subsection 23.40.160(A)(6) to remind folks.
RES10	Ander Russell, Re-Sources	9/17/20			<i>Cherry Point Management Area and heavy impact industrial zone</i> – We support the Aug 17 <sup>th</sup> draft revisions to the Cherry	Comment noted.



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					Point Management Area section of Chapter 11. Going further, to fully implement the Comprehensive Plan policy amendments for the Cherry Point industrial zone adopted by the County in May 2017, and to maintain consistency with the proposed Cherry Point Amendments—if adopted—additional amendments to other sections of the SMP are warranted. We intend to propose additional revisions, and will seek feedback from PDS and stakeholders before submitting specific language for consideration by the P/C this Fall. Particularly, specifications for where shoreline conditional use permits are required and conditional criteria should be updated further.	
RES11	Ander Russell, Re-Sources	9/17/20	F	16.16.745	<i>Scoping Document Item 18: Shoreline Setbacks/Riparian Management</i> – We were unable to see where language around Scoping Document item 18b had been added. Please provide specific language to show what incentives will be provided to enhance Fish and Wildlife Habitat Conservation Areas.	18(b) reads, “Provide incentives to enhance Fish and Wildlife Habitat Conservation Areas (FWHCA).  Staff had added this to the scope as we had originally considered developing a site-specific shoreline buffer program wherein incentives to enhance would allow buildings be built closer to the shoreline. However, while exploring this option we determined that additional analyses of shoreline characterization would be required, and doing so was not part of the overall scope of a periodic update.
RES12	Ander Russell, Re-Sources	9/17/20	A & B		<i>Scoping Document Item 19: Water Quality</i> – Lake Whatcom is the drinking water source for 100,000 Whatcom County residents. Scoping Document item number 19 addresses Lake Whatcom water quality. However, no recommendations about Lake Whatcom have been added to this or any section in Exhibits A or B. Please add policy language about the importance of Lake Whatcom as the source of drinking water for most County residents and about the current water quality improvement plan (TMDL). We understand that this language is referenced in Exhibit A, however that language is only in the narrative. Please add policy language (in Exhibit A and Exhibit B) about how the	Ch. 10 of the CompPlan already contains an entire narrative regarding this (pg. 10-22), as well as multiple policies (Goal 10-J and its policies, pg. 10-36, as well as multiple other policies throughout). We didn't think this all needed to be repeated.

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					County will improve water quality specific to the TMDL for Lake Whatcom.	
RES13	Ander Russell, Re-Sources	9/17/20			<p><i>Scoping Document Item 22: No Net Loss</i> – Thank you for providing clarification in the Guide to Reviewing Draft SMP Amendments document, about the creation of a Not Net Loss Technical (NNL) memo. We support the creation of the memo and understand that it will be completed at an unspecified date after, “public review of draft amendments,” is completed.</p> <p>We agree with the statements made by Futurewise and WEC in their letter. It is very likely that until the County can show that it achieves NNL of shoreline ecological functions it may not be in compliance with the Shoreline Management Act and the Shoreline Master Guidelines.<sup>4</sup></p> <p>Throughout the update clarification is needed on how no net loss (NNL) will be met and monitored. Please provide clarification in the memo of how the County will monitor activities such as forest practices, mining, construction of structures and trails, shoreline stabilization and all others in a way that will result in NNL of shoreline ecological functions.</p> <p>In order to restore salmon, orca and the shoreline ecological functions we all depend on we must think beyond bare minimum requirements. We know the NNL standard is not fully protecting shorelines and wetlands from degradation and we cannot afford to wait another 8 or 9 years for the next update.</p> <p>Please provide clarity on when the technical memo will be completed, allow for public input on the memo and if the memo or resulting actions, show that the SMP is not achieving NNL outline how NNL or net ecological gains, will be achieved and how those new standards will be incorporated in to the SMP, Comp-Plan and Critical Areas Ordinance.</p>	Comment noted. A draft will be provided to the P/C prior to their final action. The draft will need to be finalized once the Co/C has completed their review.
RES14	Ander Russell, Re-Sources	9/17/20	C	C/P Ch. 8	Thank you for including the new Whatcom County Comprehensive Plan Chapter 8: Mineral Resource Lands in this recommended update draft.	Comment noted (though we believe you're referring to the <i>Marine</i> Resource Lands section).
RES15	Ander Russell, Re-Sources	9/17/20	D	23.30.050	<i>Vegetation Management</i> – Add language requiring the restoration of native vegetation and vegetation conservation standards	Thank you. We had inadvertently left out some of the existing language of the veg-

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					(lawns and turf are prohibited) for any new building permits, expansions or change of use in the following areas: within 50' of the OHWM for Lake Whatcom or impaired water bodies on the 303(d) list.	etation management section, but have now reinserted it.
RES16	Ander Russell, Re-Sources	9/17/20	D	23.30.060	<i>Cultural Resources</i> – We support the suggestions added by Lummi Nation. Accept and approve all changes added by Lummi Nation in this section.	Comment noted.
RES17	Ander Russell, Re-Sources	9/17/20	D	23.40.040	<i>Agriculture</i> – We support staff's recommendation during scoping around manure holding facilities. We plan to make comments to the P/C & Co/C during this update process to, again, request that requirements be added that any manure holding facility permitted within the shoreline jurisdiction be in the form of above ground tanks or towers instead of earthen lagoons. In order to be protective of our waterways and groundwater, please make manure holding facilities a shoreline conditional use.	Comment noted (though we believe you brought this issue up during scoping, staff did not).
RES18	Ander Russell, Re-Sources	9/17/20	D	23.40.040	<i>Agriculture</i> – Along the same lines, to reduce the risk of contaminant run-off from flooding and seepage, consider making it mandatory for any new or replaced manure lagoons to be above ground in tanks or towers.	Comment noted.
RES19	Ander Russell, Re-Sources	9/17/20	D	23.40.140	<i>Mining</i> – We oppose the amendments to WCC 23.40.140, Mining. We support the language proposed by Futurewise and WEC in their letter. Please update this section with their language for 23.40.140(D).	Comment noted.
RES20	Ander Russell, Re-Sources	9/17/20	D	23.40.140	<i>Mining</i> – We recommend that the SMP Update prohibit motorized or gravity siphon aquatic mining and discharging effluent from this type of mining in shorelines that are the critical habitat for salmon, steelhead, or bull trout and that salmonids use for spawning, rearing, and migration. This is necessary in order to follow RCW 90.48.615(2).	We have added such language.
RES21	Ander Russell, Re-Sources	9/17/20	D	23.40.150	<i>Docks, Piers and Mooring Buoys</i> – Overwater structures, including docks, cause direct and indirect impacts to shoreline functions and habitat for salmon and forage fish like Cherry Point herring during the construction process and over the useful life of the dock. The cumulative impacts of overwater structures are: <ul style="list-style-type: none"> <li>• "Increase in pollutants and habitat disturbance associated with boat operations and dock and piling maintenance",</li> <li>• "Increased travel distance and time for juvenile salmon and</li> </ul>	Please review 23.40.150 again, as we believe we have accomplished these.

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					<p>extended time in deeper water, increasing predation risk”,</p> <ul style="list-style-type: none"> <li>• “Decrease in eelgrass and plant habitat and overall photosynthesis in intertidal zone”,</li> <li>• “Alteration in juvenile salmon prey base and predation pressure”, and</li> <li>• “Change in wave energy and longshore drift patterns, and resulting changes in upper intertidal sediment distribution”</li> </ul> <p>Please make these changes concerning Overwater Structures:</p> <ul style="list-style-type: none"> <li>• Add a clear preference for the use of mooring buoys.</li> <li>• Applicants must demonstrate conclusively that use of a moorage buoy, nearby marina, public boat ramp, or other existing shared facility is not possible. This includes providing evidence of contact with abutting property owners and evidence that they are not willing to share an existing dock or develop a shared moorage. For commercial/industrial facilities, this would include evidence that existing commercial facilities can't be shared or are inadequate for the proposed use.</li> <li>• Minimum grating requirements to allow for light.</li> <li>• Any dock, pier, and moorage pile must include an evaluation of the nearshore environment and the potential impact of the facility on the environment.</li> </ul>	
RES22	Ander Russell, Re-Sources	9/17/20	F	16.16.235(B)(4)	<i>Mitigation requirements for hazard trees</i> – Currently there's no requirement to mitigate, or replant, a hazard tree. We suggest adding a requirement to replant a native tree in an appropriate location on site for every hazard tree removed in the shoreline.	Please refer to 16.16.235(B)(4)
RES23	Ander Russell, Re-Sources	9/17/20	D	23.40.150	<i>Lake Whatcom</i> – The City of Bellingham's SMP (Title 22, BMC) makes many mentions of Lake Whatcom and discourages certain new uses and activities like docks (a whole section in BMC 22.09.060 “Piers, floats, pilings – Lake Whatcom and Lake Pad-den) and the spraying of herbicides (BMC 22.05.020(B)(1)(n)). Please consider mirroring the City's SMP regulations for Lake Whatcom.	We have reviewed Bellingham's sections of code that you reference and do not see any discouragement as you say; in fact, there's has the same components as ours.
RES24	Ander Russell, Re-Sources	9/17/20	D	23.40.190	<i>Bulkheads and Shoreline Armoring</i> – Bulkheads and other forms of hard armoring should be conditional uses because of their	Comment noted. Please note that in the use table most of the hard armoring

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					adverse impacts on the shoreline environment.	measures are either prohibited or require a CUP. For bulkheads specifically we did not change existing text. Furthermore, we did add text that prioritizes soft-stabilization measures, and that hard measures are of last resort.
PB01	Pam Borso	11/8/20	C	C/P Ch. 8	I would like to urge you to include the amendment to Whatcom County's comprehensive plan to include Marine Resource Lands as a way to recognize marine and tidal lands in Chapter 8 of the Comprehensive plan. Marine and tidal lands are as important as forestry, mining and agricultural lands. These lands are significant resources and along with the upland areas adjacent to them need to be protected for their cultural, social and economic values.	Your comments will be forwarded to the P/C for their consideration.
MS01	Mike Sennett	11/8/20	C	C/P Ch. 8	Whatcom County's geography stretches from the coasts of the Salish Sea to the Cascades, and all the watersheds of the three forks of the Nooksack River are gathered and delivered to the Salish Sea. It seems to me that the unique areas where land and ocean meet have been undervalued by the settler culture. The original functioning ecosystems that supported the indigenous peoples have been severely degraded. Estuaries and wetlands have been filled in, and development has sprawled along the shores in Sandy Point, resulting in shoreline armoring. Birch Bay, Drayton Harbor and The Lummi Nation's tide flats have been contaminated by dairy industry pollution. The lack of protection for our coast has resulted from a lack of recognition of its singular importance by the various governments that have oversight over those areas.  It is time to correct that myopia, and to recognize the important status of our marine lands. By adding the :Marine Resources Lands Amendment to Chapter Eight of the Comprehensive Plan, joining Forestry, Agriculture, and Mining as codified land uses.	Your comments will be forwarded to the P/C for their consideration.
KC01	Kim Clarkin	11/12/20	C	C/P Ch. 8	I support calling out, recognizing and protecting Marine Resource Lands specifically in Ch. 8 of the Comprehensive Plan. I do not understand parts of the new section: a. p8-36, para 1 makes it sound like MRLs are only marine	a. Portions of other jurisdictions' shoreline jurisdiction are excluded; the County has no jurisdiction there. b. You would have to ask the MRC.

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					<p>shorelines. According to the map they actually extend to the county line. It would be helpful to describe the extent and exclusions in this section. The map shows that part of Bellingham Bay, Drayton Harbor and the shoreline around Blaine are excluded for unexplained reasons. Some of these areas are in special designations but there is no explanation of what these designations mean. Perhaps this could be clarified.</p> <p>b. On p8-39, Policy 8U-3 seems unnecessary. If it is meant to convey a specific meaning, could that be stated clearly?</p> <p>c. Policy 8U-4 refers to State marine resource lands within Whatcom County. I think we may mean State aquatic lands within the county.</p> <p>d. On p 8-41, goal 8W includes no policies. Is this because specifics are listed in other areas of the CompPlan? It would seem useful to incorporate policies related to e.g., reducing shading of near-shore habitat by piers and docks; reducing hard shoreline stabilization methods and incentivizing soft ones; preventing oil spills; removing creosote; protecting kelp and eelgrass beds, etc. If this is done elsewhere in the Comp Plan perhaps reference to those sections here would help integrate the Plan.</p> <p>e. I suggest including the boundaries of the Cherry Point Aquatic Reserve on the map.</p>	<p>c. We believe the MRC chose the word “marine” instead of aquatic because they were focused on the <i>Marine</i> Resource Lands, not all aquatic lands.</p> <p>d. Goal 8W has no policies because the MRC did not propose any.</p> <p>e. Not a bad idea.</p>
CPAPCSC 01	Cherry Point Aquatic Reserve Citizen Stewardship Committee	11/11/20	C	C/P Ch. 8	The CPAR CSC supports policies and regulations that further protect and enhance marine shoreline areas, such as the Cherry Point Aquatic Reserve. Therefore, the CPAR CSC writes this letter to express support for the Chapter 8 Marine Resource Lands addition to the Whatcom County Comprehensive Plan. This addition to Chapter 8 recognizes marine resource lands and designates long overdue protection of these marine resource lands that are vital economically, culturally, recreationally and environmentally.	Your comments will be forwarded to the P/C for their consideration.
BIAWC01	Jacquelyn Stryna, BAIWC	11/5/20	D, F		Terminology – There is initial concern about terminology that requires clarification, including terms such as “Type O water,” “functionally disconnected,” “habitat corridors,” and “ecological connectivity,” among others. Please clarify and specify where	All terms are defined in Ch. 23. 60 (Definitions) of Title 23 or Article 9 (Definitions) of Ch. 16.16.



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					these terms are codified.	
BIAWC02	Jacquelyn Stryna, BAIWC	11/5/20	F	16.16.265(A)(1)	Building setbacks – It is unclear why there is a need for building setbacks to be a minimum of 10 feet from the edge of a CA buffer (WCC 16.16). As currently written, the building setbacks further reduce the “reasonable use” footprints from a mere 4,000 square feet to 2, 500 square feet.	The 10’ building setback from critical area buffers is an existing rule (only moved in the amended version). It was adopted by Council to minimize impacts when maintaining structures (e.g., when putting a ladder up against a 2-story structure the bottom would need to stick out 5-10 feet) and to provide a “fire safe” area where combustible materials can be removed.
BIAWC03	Jacquelyn Stryna, BAIWC	11/5/20	D, F		SMP and CAO changes lend increased authority to the County over development, which restricts the freedom and business autonomy of home builders and homeowners alike. Private property rights are infringed upon with less autonomy for land owners and more authority for County government to determine garden and landscape decisions. Restated, the SMP and CAO updates specifically narrow the choices of home builders and homeowners for no reasonable benefit. These proposed updates extend County authority.	Your comments will be forwarded to the P/C for their consideration.
BIAWC04	Jacquelyn Stryna, BAIWC	11/5/20	F	16.16.270(C)(12)	Reasonable Use Exceptions/Reduction: Why is the County proposing a reasonable use reduction to such a small footprint of 2,500 square feet?	Staff has proposed to go back to the 2,500 sq. ft. maximum impact area we had prior to the 2017 Critical Areas update, as under a reasonable use exception granted by the Hearing Examiner no mitigation would be required.
BIAWC05	Jacquelyn Stryna, BAIWC	11/5/20	F	16.16.630(E)	Increased Buffers only further restrict land availability and choke the potential for a home to be built.	Your comments will be forwarded to the P/C for their consideration.
BIAWC06	Jacquelyn Stryna, BAIWC	11/5/20	D, F		Mitigation requirements cost burden projects and mitigation ratio changes impede autonomy in the construction schedule.	Your comments will be forwarded to the P/C for their consideration.
BIAWC07	Jacquelyn Stryna, BAIWC	11/5/20	D, F		All of the proposed land use modifications add to the overall project cost of building a house. This type of over-regulation directly contributes to the high cost of housing Whatcom County is experiencing, plus constricts the availability of land supply.	Your comments will be forwarded to the P/C for their consideration.
LSK01	Lesa Starkenburg-Kroontje, on behalf of John and Leanne Olson, Larry and Bar-	11/19/20	G	Shoreline Environment Designation Map	This letter is written on behalf of John and Leanne Olson and Larry and Barbara Nims, the owners of APN 390302 428076 0000 and 390302 485039 0000, and on behalf of John and Gladys Van Boven, the owners of APN 390302 440200 0000.	Before a determination can be made, staff has requested of their attorney an approved reclamation plan.

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	bara Nims, and John and Gladys Van Boven				<p>Their property is located at the corner of East Pole Road and Everson Goshen Road and is depicted on the attached Assessor section map.</p> <p>My clients' property was designated as a shoreline of the state under the Shoreline Management Program during the 2008 Comprehensive Plan update. However, this entire property is part of the mineral resource overlay under the Whatcom County Code with permits to mine and the ability to change the configuration of the water body.</p> <p>In 2008 after the completion of the Shoreline Management Program update, the property owners were made aware of the designation. Whatcom County staff at the time believed that the owners had requested the designation. This was not the case. In fact, it was the Department of Ecology who mistakenly noted this area as requiring designation in their correspondence with Whatcom County in January of 2007. Had the property owner's been notified they would have explained the temporary configuration of the water body that is still actively mined.</p> <p>The property owners were told to correct the erroneous shoreline designation, they needed to wait until the next Shoreline Management Program Periodic Update. Since the periodic update time is upon us, it is now time to correct the designation. However, I see the error is continuing forward as the maps still note the area is designated as "shoreline".</p> <p>The Washington State Department of Ecology and Whatcom County have not made it a practice to designate mineral extraction sites as shorelines because the size and configuration of the shoreline is not certain until mineral extraction is complete and the mineral resource land zoning overlay removed from the property.</p> <p>In fact, as mineral extraction, and its accessory uses, are considered the highest and best use for the property within the mineral resource land overlay it is presumed that expansion and contraction of the water body will continue over the course of</p>	

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					<p>many decades. To create a nonconformity for the preferred zoning use and the existing permits for a waterbody that may to temporary in nature is not good planning.</p> <p>This situation has been discussed many times in different permit settings with the County with the understanding that at this time of this periodic update the error would be corrected.</p>	
RFW01	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	A, B, C, E, G	C/P Ch. 10, Ch. 11, Ch. 8 & Title 22, & Shoreline Environment Designation Map	<p>We recommend that the P/C tentatively approve all Comprehensive Plan amendments proposed in Exhibits A, B, and C, as well as all proposed amendments to WCC Title 22 shown in Exhibit E, as well as the Shoreline Environmental Designations map.</p> <p>However, as our previous comments stated, we are recommending additional policies be added into the Comprehensive Plan, with corresponding development regulations updated in Title 22.</p>	Your comments will be forwarded to the P/C for their consideration.
RFW02	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	B	C/P Ch. 10	<p>Modify Policy 11AA-5 be modified to read as follows:</p> <p>Policy 11AA-5: <u>Whatcom County shall monitor the impacts of climate change on Whatcom County's shorelands, the shoreline master program's ability to adapt to sea level rise and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed.</u> Whatcom County <del>shall</del> should periodically assess the best available sea level rise projections and other science related to climate change within shoreline jurisdiction and incorporate them into future program updates, as relevant.</p>	The P/C accepted this recommendation, though retained "should" (instead of "shall") in both the 1 <sup>st</sup> and 2 <sup>nd</sup> sentences.
RFW03	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	B	C/P Ch. 11	<p>Add a new Policy 11AA-8 reading: <u>New lots and new and expanded development should be located so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises.</u></p>	Your comments will be forwarded to the P/C for their consideration.
RFW04	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	A	C/P Ch. 8	<p>Add an additional policy, possibly under Goal 10D: <u>Protect natural processes and functions of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise.</u></p>	Your comments will be forwarded to the P/C for their consideration.

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RFW05	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	D, F	Title 23, Ch. 16.16	We recommend that the P/C table all changes to WCC 16.16 and WCC 23.40 until a No Net Loss memo is prepared.	A draft NNL addendum is anticipated in December 2020. The P/C will have it prior to any final action.
MM01	Mike MacKay	11/30/20	D	23.40.190(A)(8)	<p>1. When hard shoreline stabilization measures are demonstrated to be necessary, they must:</p> <ul style="list-style-type: none"> <li>a. Limit the size of stabilization measures to the minimum necessary; and</li> <li>b. Assure no net loss of shoreline ecological functions, <u>including loss of substrate for forage fish spawning</u>; and</li> <li>c. <u>Regular beach nourishment must be provided to retain beach material with substrate size suitable for forage fish spawning; and,</u></li> <li>d. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.</li> </ul>	<p>Though the commenter cited §23.4.180, the text to which he is referring is found in §23.40.190(A)(8).</p> <p>Though staff agrees with the sentiment, we don't believe the addition to (b) is necessary, as loss of substrate for forage fish spawning is just one of many shoreline ecological functions already addressed in Ch. 16.16. Thus, it is one of many specific aspects already addressed by the general rules. Additionally, such areas are already designated as critical saltwater habitat, which is designated a Habitat Conservation Area in Ch. 16.16.</p> <p>The addition of (c) is similar (one specific aspect already covered by the general). But furthermore, beach nourishment is not always the best solution for all habitats. Determining whether beach nourishment is necessary should be determined through the Critical Area Assessment Report process.</p>
MM02	Mike MacKay	11/30/20		23.50.020	<p>Nonconforming Structures</p> <p><u>H. Seasonal floating traps and weirs for enumerating salmon on streams and rivers are considered a legally nonconforming structures, provided they do not impede river vessel transport or otherwise affect the normal functions of river flow and sediment transport.</u></p>	Staff opposes this addition. We don't believe that we ought to blanket designate all seasonal traps and weirs as "legally nonconforming." To achieve this status, the structure has to have been in the same place prior to August 27, 1976—or permitted prior to being made non-permissible by a change in code—and remain in place without a gap of 18

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						months. The fact that they're seasonal and moved around makes that highly unlikely. Nonetheless, seasonal traps and weirs are considered a water-dependent use allowed in the aquatic environment and are permissible (though we can't recall when anyone's ever applied for a permit to install one).
MM03	Mike MacKay	11/30/20		23.060.060	"F" definitions <u>24. "Forage Fish" means a group of marine fishes such as surf smelt, sandlance, and herring which provide an important primary food sources for juvenile salmonids and other fish. Intertidal and subtidal gravel and sand sediments on many beaches provide the essential spawning and incubation habitat for surf smelt and sandlance.</u>	Staff isn't opposed to adding such a definition, but think it unnecessary as "spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sandlance" is already included in the definition of "Critical saltwater habitat." Nonetheless, were it to be added it should be added to Ch. 16.16, not Title 23. However, the second sentence isn't really part of a definition of what these fish are, just a statement of the importance of sediment to them. Staff suggests not including it.
MM04	Mike MacKay	11/30/20		23.40.090	Fill and Excavation <u>9. Marine fill or excavation shall not impede the normal movement of juvenile salmon to move along the intertidal shoreline (salmon migratory corridor) or to force them into deeper water where they are subject to increased predation.</u>	Similar to comment MM01, we find this a very specific issue already covered by the general rules. Subsection (A)(1) (and other sections of Title 23) already state that shoreline uses and modifications cannot impact shoreline ecological functions and ecosystem-wide processes. Part of our goal for this update was to reduce such redundancies and we don't think each section needs to list all the potential impacts a use or modification may have.
MM05	Mike MacKay	11/30/20		23.60.190	"S" definitions <u>1. "Salmon migratory corridor" means the intertidal path-</u>	Again, were such a definition added it should be added to Ch. 16.16, not Title

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					<u>way used by juvenile salmonids during the first few months of saltwater migration. This intertidal habitat provides protection from predators during initial entry into saltwater.</u>	23. Nonetheless, staff doesn't think this definition is needed as the term is not used in either Ch. 16.16 or Title 23.
NWSF01	Eleanor Hines, NW Surfrider Foundation	11/11/20	C	Marine Resource Lands	<p>Writing to express our strong support for the addition of marine resource lands in chapter 8 in the Comprehensive Plan.</p> <p>Agriculture, forest, and mineral lands are already recognized in the Whatcom County Comprehensive Plan, so the addition of Marine Resource Lands to Chapter 8 is fully supported by the Surfrider Northwest Straits Chapter. We only regret that Marine Resource Lands were not included sooner as they are extremely important economically, culturally, recreationally, and environmentally to Whatcom County. Marine resource lands deserve the same protection as our other resource lands and would add a unique protection from other current policies and regulations.</p> <p>We strongly support the inclusion of education and recreation in this section, and we ask that appropriate resources and capacity are allocated to ensure the Chapter 8 additions are fulfilled. We will continue to advocate for the effective and sustainable management of our marine resource lands so that future generations enjoy all the economic, cultural, recreational, and environmental benefits they provide.</p>	Your comments will be forwarded to the P/C for their consideration.
RFW06	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	B		Add new Policy 11AA-8: <u>New lots and new and expanded development along the marine shoreline should be located two feet above the OHWM so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises. Sea level rise elevation data shall be revised every eight years or when the SMP is updated.</u>	Your comments will be forwarded to the P/C for their consideration.
RFW07	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	Ch. 23.30	<p>Add new section:</p> <p><b><u>23.30.080 Sea Level Rise.</u></b></p> <p><u>A. New lots shall be designed and located a minimum of two feet above the OHWM so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p>	Your comments will be forwarded to the P/C & Co/C for their consideration.



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					<p>B. <u>Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>C. <u>New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</u></p>	
RFW08	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	23.40.010	Modify Table 1, Shoreline Use by Environment Designation: Change Liquid Manure Storage Facilities and Spreading from a Permitted use to a Conditional Use for the Rural, Resource, and Conservancy Shoreline environments.	
RFW09	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	23.40.040	<p>Agriculture – Add to subsection (A) General:</p> <p>6. <u>Replacement manure storage facilities must be tanks or towers.</u></p> <p>7. <u>All new manure storage facilities must be tanks or towers.</u></p>	Your comments will be forwarded to the P/C for their consideration.
RFW10	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	23.40.140	<p>Mining – Add:</p> <p><u>D. Mining in the 100-year floodplain, floodway, or channel migration zones shall meet the following standards:</u></p> <ul style="list-style-type: none"> <li>i. <u>Mines should be located outside the channel migration zone unless there is no feasible alternative site.</u></li> <li>ii. <u>Mines shall be no deeper than the bottom of the nearby streams and rivers.</u></li> <li>iii. <u>The mine reclamation plan shall have a design so that when the river or stream moves into the mine it is not so wide or deep that the captured sediments destabilize the river or stream or increase erosion risks on upstream properties.</u></li> </ul>	<p>Your comments will be forwarded to the P/C for their consideration.</p> <p>(Were this added it should probably be (B)(2), not (D).)</p>
RFW11	Karlee Deatherage (ReSources), Tim Trohimovich (Futurewise), & Rein Attemann (WEC)	1/12/21	B	11AA-8	<p>Add new policy:</p> <p><u>11AA-8: The buildable area of new lots and new and expanded development along the marine shoreline should be located two feet above the OHWM so they will be at a lower risk of damage and not interfere with the landward expansion and movement of</u></p>	This is a revised proposal after speaking with staff about our implementation concerns. Though staff still takes the position that we should await the CoSMoS model to be completed for Whatcom County,

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					<u>wetlands and aquatic vegetation as sea level rises. The part of the ownership waterward of the buildable area may be used as required open space. If new data is available, sea level rise elevation data shall be revised during the SMP periodic update.</u>	this policy is probably implementable.
RFW11	Karlee Deatherage (Resources), Tim Trohimovich (Futurewise), & Rein Attemann (WEC)	1/12/21	D	23.30.080	<p>Add new section:</p> <p><b><u>23.30.080 Sea Level Rise.</u></b></p> <p>A. <u>The buildable portion of new lots shall be designed and located a minimum of two feet above the OHWM so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time. The part of the ownership waterward of the buildable portion may be used as required open space.</u></p> <p>B. <u>Where lots are large enough, new structures and buildings shall be located a minimum of two feet above the OHWM so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>C. <u>New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</u></p> <p><b>How the language will work in practice</b> Currently new shoreline development must locate the ordinary high-water mark as part of the application for a shoreline exemption or shoreline permit. The proposed policy and regulations simply require the applicant to locate the buildable area for new lots or the new development two feet above the ordinary high-water mark. Where existing lots are not large enough to accommodate this requirement, the new structures or buildings can be elevated. Determining the location of the area two feet above the ordinary high-water mark will require little addition time or expense.</p> <p><b>Why two feet of elevation?</b></p>	<p>This is a revised proposal after speaking with staff about our implementation concerns. Though this tact may be implementable, staff still takes the position that we should await the CoSMoS model to be completed for Whatcom County.</p> <p>There isn't a requirement to address climate change/sea level rise in the SMA, though we could if Council desires. However, what we understand from the DOE is that any such regulations should be built on data, which is what PS-CoSMoS will be providing. Furthermore, once the data is available, we should perform vulnerability and risk assessments to see what kind and where the problems might be, and update our shoreline inventory and characterizations. Without such science, we would be open to challenges.</p>

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					<p>The two feet of elevation is based on the Projected Sea Level Rise for Washington State – A 2018 Assessment for Whatcom County. These science-based projections were prepared by a collaboration of Washington Sea Grant, the University of Washington Climate Impacts Group, Oregon State University, the University of Washington, and the US Geological Survey.<sup>3</sup></p> <p>These projections incorporate:</p> <ul style="list-style-type: none"> <li>• New science showing the potential for higher sea level rise in the 21st century.</li> <li>• The projections are “community-scale.” They were prepared for 171 locations distributed along Washington’s coastline including Puget Sound. The projections account for variations “in the rate of vertical land movement across the state.”<sup>5</sup> That is: the projections include whether an area is uplifting or subsiding.</li> <li>• The report was peer-reviewed.</li> </ul> <p>Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. The National Research Council concluded that global sea level had risen by about seven inches in the 20th century. A recent analysis of sea-level measurements for tide-gage stations, including the Astoria, Oregon and Seattle Washington tide-gauges, shows that sea level rise is accelerating. The Virginia Institute of Marine Science (VIMS) “emeritus professor John Boon, says ‘the key message from the 2019 report cards is a clear trend toward acceleration in rates of sea-level rise at 25 of our 32 tide-gauge stations. Acceleration can be a game changer in terms of impacts and planning, so we really need to pay heed to these patterns.’” We hope the P/C agrees that it is time to address this accelerating problem.</p>	
KC02	Kim Clarkin	1/10/21	D	23.50.010(E)	<p>I support the proposed changes to regulations of non-conforming uses, structures, etc. that are to be replaced.<sup>1</sup> I do not believe we should approve replacements that are non-conforming. We are attempting to improve--not just maintain--the habitat and other conditions of our shorelines. Replacement should be an opportunity to bring shorelines up to our current</p>	<p>Whatcom County has some of the most lenient nonconforming regulations around, and allowing a nonconforming use to switch to another type of nonconforming use is rather rare. Nonetheless, this is what our existing nonconforming</p>

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					standards and guidelines. Please vote to modify title 23 to accord with this goal.  [ <sup>1</sup> Note: Staff believes Ms. Clarkin is referring to Commissioner Hansen's proposal to delete the ability of a nonconforming use to change to another type of nonconforming use.]	use regulations in WCC Title 20 (Zoning) allow, so staff has prepared this section of the SMP to mimic those regulations.
PB02	Pam Borso	1/11/21	D	23.40.140	Please approve the following amendment to the Shoreline Management Act as presented by Jim Hansen:  Chapter 23.40.140 Mining: Changes to Prohibit Commercial Gravel Bar Scalping	Gravel mining in our rivers is currently allowed. However, it is difficult to permit given other state and federal regulations, especially the Endangered Species Act (which is why we don't see much of this activity). However, Council has indicated a desire to allow some gravel mining. This desire is expressed in their docketed item PLN2019-00011:  "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 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."
PB03	Pam Borso	1/11/21	D	23.50.010(E)	Please approve the following amendment to the Shoreline Management Act as presented by Jim Hansen:	See response to KC02

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					Nonconforming Uses: Jim will propose a change that will no longer allow the replacement of one shoreline nonconforming use (Grandfathered) with another different nonconforming use.	
MM06	Mike MacKay	1/1/21	D	23.40.140	<p>Please consider language which would prohibit mining (gravel scalping) in the Channel Migration Zone.</p> <p>I have firsthand experience how this activity can seriously impact endangered Chinook salmon in the Nooksack River. I was doing field surveys at the time as a fisheries biologist with the Lummi Tribe. These were spawner surveys documenting locations of Chinook and Chum redds (salmon nests). This took place in late September in the 1980s at a sandbar downstream of the Everson Bridge on the right bank (North side).</p> <p>At that time it was not widely known about Chinook spawning in that part of the lower river. I had talked to several gravel scalping company employees during this activity and they vehemently denied seeing any salmon spawning at these excavation sites. WA Fish and Wildlife had reluctantly issued permits for gravel scalping activities. Operators were required by WDFW to re-grade areas they excavated at the end of each day. Unfortunately this was routinely ignored.</p> <p>In this case of the Everson sandbar, the bar was dredged and the sand/silt/gravel material was stockpiled in large heaps immediately upstream of several active Chinook redds that I observed being constructed. A few days later there was a high flow event, as is common this time of year during rainstorms (late September). The stockpiled mounds were eroded away and essentially covered the redds downstream I had observed earlier. I carefully documented this with a report and photos which was sent to WDFW permit writers. Since this time WDFW has been reluctant to issue new permits for this activity on the Nooksack River.</p> <p>I have researched the effects of fine sediments on salmon redds in the literature. What occurs is that the fines less than 0.5 mm are driven down into the stream bed by the swift water into the</p>	See response to PB02

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					<p>newly built redd(s) and form a layer which effectively suffocates the eggs. This fine sediment impedes the flow of oxygenated water around the egg pockets. Adult female salmon are careful to remove fine sediments from the redd during their excavation and egg laying. While some natural occurring fines accumulate in the egg pockets as the result of high flow events, this amount usually doesn't restrict flows of circulating water to any large extent, and certainly not to the degree that an eroded nearby source of newly excavated sediment would.</p> <p>There are numerous sandy/gravel areas in the lowlands of Whatcom County not adjacent to the river available for gravel extraction. Gravel scalping should not be an allowed activity in the Channel Migration Zone or next to any flowing rivers or streams.</p>	
KC03	Kim Clarkin	1/12/21	D	23.30.080	I support the additional policy and regulation proposed by Futurewise, RE-Sources, and WEC regarding limiting new and expanded near-shore building to 2' above the OHWM. Given the projected sea levels in future, and the uncertainty surrounding the exact figure, 2' seems to me an excellent choice. We should definitely not permit people to build right at current OHWM if we want to protect their safety and investment. Please incorporate the additions to Chapter 11 of the Comprehensive Plan, and WCC 23.30.	See response to RFW11.
NTNR01	Michael Maudlin, Nooksack Tribe Natural Resources staff	1/13/21	D	23.30.070	<p><b>Public Access</b></p> <p>Trail construction within the shorelines buffer is a long-term, permanent impact to instream habitat. The loss of wood recruitment to the channel due to the removal of hazard trees and maintenance of downed wood across the trail needs to be considered in the assessment of trail impacts. The interruption of the process of natural wood delivery to the channel is largely responsible for the degraded instream habitat conditions for threatened fish stocks and has led to local salmon recovery partners spending millions of dollars installing artificial logjams to offset this impact. Where trails align with existing roads or levees that already receive maintenance this is less of an additional impact, but siting recreational development within the</p>	While the writer's point may be valid, the SMA identified public access to the shorelines as a preferred use (and one of the driving forces in its adoption). While WCC Ch. 16.16 contains numerous standards for where trails may be located in critical areas and how they're built, WCC 16.16 does not address maintenance. We suggest you work w/ Whatcom County Parks Department to address this issue.



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					shorelines buffer should be discouraged to be consistent with other general regulation sections.	
NTNR02	Michael Maudlin, Nooksack Tribe Natural Resources staff	1/13/21	D	23.40.140	<b>Mining</b> The Nooksack Natural Resources Department strongly opposes gravel mining in the active channel area and bars of the river. The history of instream habitat degradation associated with past mining operations has been well documented by the Lummi Nation and with the subsequent listing of fish stocks under the Endangered Species Act gravel removal from the channel is not a viable commercial activity. The disturbance from gravel mining can directly impact salmon habitat, disrupt the aquatic food web, degrade water quality, disturb emergent vegetation and alter the natural process of sediment transport and storage- all of which the SMP is designed to protect. It is simply not possible to design and conduct in-channel mining activities that will not lead to a loss of ecological function and natural process. Any sediment management activities in the river, including removal for flood management, need to maintain consistency with the WRIA 1 Salmon Recovery Plan and the on-going integrated floodplain management planning effort. This section should be edited to prohibit gravel mining from the river.	Your comments will be provided to the P/C & Co/C.
NTNR03	Michael Maudlin, Nooksack Tribe Natural Resources staff	1/13/21	D	23.40.160	<b>Recreation</b> As previously mentioned, trails can be a permanent impact to critical area buffers. It is important to make sure that trail location is not degrading riparian function. Limiting trails to the outer 25% of the buffer will help preserve potential wood recruitment to the channel. Ideally, recreational infrastructure would be cited outside of buffer areas to the fullest extent possible.	We agree, and WCC 16.16 does limit trail construction to the outer 25% of the buffer (except in certain limited circumstances) and mitigation is required.
MES27	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.225(D)	Replace "associated with marine, river, or lake shorelines and wetlands" with "within designated critical areas and/or buffers." The term "associated with marine, river or lake shorelines and wetlands" is vague. This could imply any native plant communities any distance from a marine area, river, lake or wetland. It seems the intent should be to prioritize native plant communities within designated critical areas and/or buffers – that are specifically covered within this chapter of the CAO. Otherwise, it seems the code would be directing applicants to design projects	This new section is intended to address the SMA's requirement to preserve native plant communities associated with shorelines. Though shorelines are considered critical areas pursuant to 16.16.710, staff thought it would be easier for people to understand this rule by if we just call them out. Thus, this wouldn't expand CAO requirements outside of intended areas.

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					based on plants and plant communities not covered by the CAO.	Though it could be changed to read as suggested, it wouldn't have any effect on the regulation. The term "associated" refers to associated with... shorelines, as detailed in the WAC.
MES28	Ed Miller, Miller Environmental Services	2/19/21	F	6.16.255(C)(3)	Strike the new added section "Critical areas assessment reports shall... identify impacts of the proposed use/development on habitat corridors, ecological connectivity, and habitat for salmon and forage fish." Currently, Biodiversity areas and corridors are a WA Fish and Wildlife (WDFW) Priority Habitat. All WDFW priority habitats are currently regulated as HCA's in the CAO. As such applicants are already required to address them. Additionally, habitat for salmon and forage fish are also HCA's covered in the code, as all streams and waters are included as HCA's. The term ecological connectivity is very general and could be widely interpreted to mean many different habitats not covered under the CAO. Otherwise, if that is not staff intent, it would appear this extends CAO jurisdiction over areas not designated as critical areas within the code.	This language, along with other additions, was added to address Council's direction in the Scoping Document to "Consider strengthening ecological connectivity and wildlife corridor requirements" and "Consider ways to improve protections for salmon and forage fish habitat" (Items #8b and 8c). Though, as Mr. Miller argues, Biodiversity areas, wildlife corridors, and WDFW Priority Habitats are designated as critical areas already, addressing them in critical areas assessments was often overlooked. The text was inserted as a reminder that – if there are any such features affected by a development proposal – they should be addressed in the assessment.
MES29	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.270	This section is a complete rewrite of reasonable use procedures and would require a variance (minor and major variance) before reasonable use would apply. Strike the proposed changes and return to the prior language.	The change better aligns with Department of Commerce and Department of Ecology guidance on Reasonable Use Exceptions. The current and previous CAO did not follow the guidance from State Agencies.  The existing code does require a variance process to be completed before a reasonable use exception is granted. The Hearing Examiner has questioned why he isn't the final decision maker, as the current code allows an administrative determination to be made after a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust

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						any administrative remedies before seeking a quasi-judicial decision. Thus, we have rewritten the processes and changed the order of the various mechanisms so that the more impactful cases are heard by the Hearing Examiner.  Please see the staff report to the P/C dated 4/12/21 for a more detailed explanation as to why staff is proposing this new schema.
MES30	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.270(j)	Add the italicized text at the end of the sentence, "The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter <i>or if the mitigation requirements cannot be met, to the maximum extent feasible on the property.</i> "	The section to which Mr. Miller refers is language proposed for deletion. Nonetheless, under the proposed RUE rules, his suggestion would already be the case.
MES31	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.270(C)(12)	<p>We also propose adding language for the reasonable use section to allow for a development footprint of up to 4,000 square feet for reasonable use single-family residential development. Buffer mitigation should be proposed to offset impacts from reasonable use development as much as possible, but development shall not be denied if the minimum 1:1 mitigation ratio cannot be achieved on the subject property. This would not apply to direct impacts to critical areas themselves, as is the case in the current code.</p> <p>The proposed change is a significant alteration to the code. A significant number of previously designated reasonable use projects, processed administratively, would need to go to the hearing examiner. This will significantly increase costs and time to applicants for simple single-family construction or projects with only buffer impacts – as the current code requires an open public hearing for anything more complex. The change to section j is included so that applicants aren't required to purchase another property for mitigation – which has been required in some cases, precluding any development at all (even for buffer impacts).</p>	<p>The P/C has already tentatively voted to leave the allowable disturbed area as 4,000 sf.</p> <p>Please see the staff report to the P/C dated 4/12/21 for a more detailed explanation as to why staff proposed to go back to the 2,500 sf under our proposed new schema.</p>

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MES32	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.620(D) & .720(D)	Strike the change to “existing legal lots” and keep the current language of “private development sites” in both wetland and HCA sections. This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a wetland or buffer or habitat conservation areas. Access to acres of unencumbered property could be restricted if one small wetland or its buffer would need to be impacted to access a development area.	We believe that Mr. Miller was reviewing an older draft, as this language has already changed. Furthermore, subsection (C) continues to allow for stream crossings to undeveloped land.
MES33	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.630(B) & 6.16.740(A)(1)	Retain the existing language stating that “buffers shall not include areas that are functionally and effectively disconnected from the wetland (or HCA) by an existing, legally established road or other substantial developed surface,” rather than the proposed “buffers shall not include areas of existing, legally established substantially developed surface”. The proposed change would allow buffers to include disconnected area on the opposite side of roads or developed surfaces (such as buildings).	The amendment is proposed so as to be completing consistent with DOE’s guidance and not just the portion about functional disconnect. (See Ecology Wetland Science Volume 2.)
MES34	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(A)(5)	Regarding Buffer Width Increasing, strike this added section, which is not in the current code and allows staff to extend any Category II wetland buffers out to 300 feet if another wetland or HCA is within 300 feet. HCA’s include mature forest, priority snags (logs on the ground, 20 feet long, 12 inches wide), streams, etc. The intent of this appears to be to increase buffers if adjacent critical areas are present. However, this is already accounted for in the wetland rating form. The habitat score, which drives the buffer width, is scored higher if habitat conservation areas are within 330 feet. The proposed draft change seems redundant when these factors are already utilized in determining the buffers in the current code - based on the wetland rating form.	The existing code already allows the Director to increase buffer widths, but with less guidance, which consultants are usually clamoring for. Thus, we “borrowed” language from Skagit County, which provides better detail on when the Director can do so. We don’t see how this would result in a double counting towards buffer requirements
MES35	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(B)(2) & 16.16.745(B)(2)	Regarding Buffer Width Averaging, strike the proposed language “In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.”  This new language effectively eliminates the intent of buffer	In 2005 the Department of Ecology released two volumes of Best Available Science: <a href="#">Volume 1</a> was a synthesis of knowledge to date, and <a href="#">Volume 2</a> addressed management recommendations. Ecology addresses buffer averaging in two locations, the first is in Volume 2

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					<p>averaging and converts it to buffer reduction by requiring mitigation. Buffer averaging is an important and simple way to allow more flexibility for property owners that need to make minor buffer adjustments. This section will also reduce consistency and predictability (each staff member could apply this differently), and will increase the cost for simple projects by requiring plantings, monitoring, bonding, etc. by thousands of dollars. Additionally, the Director already has the ability to require plantings in a wetland or HCA buffer where it lacks adequate vegetation under 16.16.630.D or 16.740.B.1 – making this code addition redundant.</p>	<p>section 8.3.8.3 (Buffer Averaging) and the second, in greater detail, in <a href="#">Appendix 8-C</a> (Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System). In Volume 2, Section 8.3.8.3, Ecology explains three reasons why buffer averaging is in the tool kit for protection of wetlands. The first and typical reason is to allow development to occur closer than usual to the wetland in order to fit a particular development “footprint” onto a given site. The second reason is protect a natural feature (e.g., a stand of trees or snags) that otherwise would fall outside of the standard buffer. And the third reason is to provide connections with adjacent habitats or to address those situations where pre-existing development has reduced a buffer area to a width less than the required standard.</p> <p>In Appendix 8-C Ecology states “widths of buffers may be averaged if this will improve the protection of wetland functions or if it is the only way to allow for reasonable use of a parcel. There is no scientific information available to determine if averaging the widths of buffers actually protects functions of wetlands.” Ecology then proceeds to provide criteria for averaging a buffer: 1) It should not be reduced by more than ¼; 2) the area of the standard and averaged buffer are the same; and 3) the buffer is increased adjacent to the higher functioning buffer, and there is a distinct difference between the higher functioning and lower functioning buffers.</p>

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						<p>The requirement for a high function and lower function buffer eliminates the use of averaging when the buffer is entirely degraded.</p> <p>Thus, staff recommends that we amend the draft language to allow buffer averaging only when there is fully functioning and degraded habitat and add language that supports Ecology's Guidance for allowing averaging to protect ecologically significant areas outside of the buffer or habitat connectivity. Section (B)(2) would read:</p> <ol style="list-style-type: none"> <li>1. Averaging of required buffer widths will be allowed for the following when the dimensional standards of subsection (B)(1) are met: <ol style="list-style-type: none"> <li>a. To protect a natural feature (e.g., a stand of trees or snags) that otherwise would fall outside of the standard buffer.</li> <li>b. To provide connections with adjacent habitats or to address those situations where pre-existing development has reduced a buffer area to a width less than the required standard.</li> </ol> </li> </ol>
MES36	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(C)(1)(c)	<p>Regarding Buffer Width Reduction, retain the existing language that allows for up to 50% reduction (or 25 feet) for Category IV wetlands, rather than the proposed "The buffer shall not be reduced to less than 75% of the standard buffer.</p> <p>The existing code section allows for up to a 50% (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher category wetlands are restricted to a 25% reduction. Under the</p>	The maximum reduction of 75% through buffer averaging is based on DOE guidance.



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					draft buffer averaging section, Category IV wetlands are still allowed up to a 50% reduction. This will just remove some flexibility for property owners for the lowest category of wetlands.	
MES37	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(C)(1)(e)(iii)	<p>Regarding Buffer Width Reduction, strike the new added section requiring "Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction."</p> <p>This added code section appears to increase CAO authority to other areas of the property and other project components outside of critical areas. Staff already has authority to deny proposed buffer reductions, under parts D, F and G of this code section. Part G of this section already requires mitigation for buffer reduction impacts and result in equal or greater protection for the wetland.</p>	This section does not expand CAO authority to areas outside of critical areas; it only provides a pathway to having narrower buffers (see response to item 5, above). The proposed subsections (e) & (f) provide three ways to for an applicant to minimize impacts and provide equivalent functions and values. Subsection (iii) of these subsections lists just one of the ways an applicant of a moderate impact land use project may apply low intensity buffer widths, which are narrower. An applicant need not do this if they don't want to reduce their buffers (the wider buffers would then apply).
MES38	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(C)(3) & 16.16.745(C)(2)	<p>Regarding Buffer Width Reduction, strike the draft added section "where a portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area."</p> <p>The new language appears to be redundant; C.2.g of the wetland section and C.1.g of the HCA section already requires mitigation and no net loss of function for any buffer reduction. Additionally, Section 16.16.630.D and 16.16.740.A.2 also gives the Director authority to require planting in degraded buffer if needed. The draft language implies any amount of degraded buffer could be required to be planted for buffer impacts, no matter how small. This would penalize applicants who own agricultural property and/or grass/hayfields.</p>	The planting of degraded buffers has been a part of our CAO since 2005 and is based on Best Available Science and DOE guidance. Based on case history, we are only clarifying that the area that might be enhanced is limited to the specific portions of the buffer being reduced, not anywhere on the lot, and certainly not outside critical area buffers (and thus does not "grant unlimited potential for mitigation requirements"). Per DOE guidance, "degraded" is any portion of a buffer that is not in a densely vegetated community. Ecology provides this requirement in Appendix 8C, Section 8C.2.5 to either increase the buffer or enhance with native vegetation. Ecology's guidance for buffer size is based on science with a densely planted vegetative

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						buffer.
MES39	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.680(H)	<p>Regarding Wetland Mitigation Ratios, maintain the existing language and strike the proposed language that requires a higher ratio of mitigation when it's done after the impact occurs.</p> <p>Generally, applicants do not conduct mitigation activities prior to permit approval, and generally go to construction as soon as permits are issued. Additionally, mitigation planting is often tied to the planting season – which is preferably fall through spring to increase survivability. This added code language would appear to add a year to applicants' timeline or penalize them with up to 25% more buffer mitigation. Additionally, no net loss of buffer function already required under 16.16.640(C)(2)(g).</p>	This proposed requirement comes from DOE guidance to account for temporal loss.
MES40	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.710(C)(1)(a)(vi) & 16.16.740(B)	<p>Strike this addition of Type O waters and associated 25-foot buffer. Return the prior designation of Natural Ponds to the buffer Table requiring a 50-foot buffer.</p> <p>The definition of Type O waters is vague and could potentially include ditches and artificial ponds. Type O waters do not correlate with Washington State water typing. If the intent is to include ponds as an HCA, we recommend restoring previous code language that included a 50-foot buffer for natural ponds and lakes under 20 acres in size and no buffer for artificial ponds.</p>	<p>The amendment to create Type O water is proposed so as to align Ch. 16.16 with the County's Manure and Agricultural Nutrient Management regulations (WCC Ch. 16.28), which prohibit "the spreading of manure within 50 feet of drainage ditches leading to rivers and streams."</p> <p>This is the code that our Pollution Identification and Correction (PIC) program uses to curtail the introduction of agricultural runoff into our waterways, thereby protecting our shellfish resources. Creating a Type O water with a 25-foot buffer was suggested by our PIC managers, the Whatcom Conservation District, the Department of Agriculture, and other partner agencies so that there's a buffer between where manure might be spread and our waterways. It was determined that 25-feet would be adequate for this function. Were we to revert to the existing code, then such waterways/ditches might be considered one of the other types with a larger buffer.</p>

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MES41	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.745(A)	Regarding Buffer Width Increasing, strike the new added section 16.16.745(A)(2), allowing the Director to increase HCA buffers under certain conditions.  This is a new provision to the code that allows the Director to extend Type S or F buffers to resources within 300 feet – including Category III wetlands, other HCA's or other waters. Again, this is an exceptionally broad provision to add in additional regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. The extension of every fish stream or lake buffer to another resource within 300 feet is essentially extending most of the buffer areas to 300 feet.	The existing code already allows the Director to increase buffer widths, but with less guidance, which consultants are usually clamoring for. Thus, we “borrowed” language from Skagit County, which provides better detail on when the Director can do so. We don't see how this would result in a double counting towards buffer requirements
MES42	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.760(B)(8)	Regarding HCA Buffer Mitigation Ratios, maintain the existing language and strike the proposed language that requires a higher ratio of mitigation when it's done after the impact occurs.  Generally, applicants do not conduct mitigation activities prior to permit approval, and generally go to construction as soon as permits are issued. Additionally, mitigation planting is often tied to the planting season – which is preferably fall through spring to increase survivability. This added code language would appear to add a year to applicants' timeline or penalize them with up to 25% more buffer mitigation. Additionally, no net loss of buffer function already required under 16.16.760.	This proposed requirement comes from DOE guidance to account for temporal loss.
LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(2)	A Cultural Resources <u>survey and</u> report. The current language does not include the word survey.	“Survey and” has been added to this section.
LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(3)	The LNTHPO would like to be consulted whether or not cultural resources were encountered during the survey.	This section directs the County to provide the cultural resource report to DAHP—and if Native American cultural resources are addressed—to the Tribes. Staff isn't sure why such reports would need to be provided to the LNTHPO if N.A. resources aren't involved. Nonetheless your comment will be provided to the P/C and Co/C.

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LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(5)	<p>The LNTHPO recommends that the permit also be conditioned based on the County's consultation with the affected tribes and the Department of Archaeology and Historic Preservation.</p> <p>If no cultural resources are encountered and the consulting parties concur with the findings, the Whatcom County Inadvertent Discovery Plan for cultural resources should be on-site and followed if cultural resources or human remains are encountered.</p>	<p>This section states that "any permit issued shall be conditioned on meeting the approved report's management recommendations." Given that the report, including the management recommendations, would be approved by DAHP and the Tribe(s) through consultation, then this would already be the case.</p> <p>And subsection (6) already states that any activities would still subject to the state and federal regulations regarding inadvertent discoveries regardless of whether any cultural resources are identified or not, so this, too, would already be the case.</p>
LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(6)	<p>The LNTHPO recommends that this point be made broader to state that any activities are still subject to state and federal laws and regulations regarding cultural resources and human remains.</p>	<p>Regardless of whether we state that any activities are still subject to the state and federal regulations, it would still be the case. Nonetheless, we have broadened the language as suggested.</p>
RFW12	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.270	<p>Restore Reasonable Use language in Dec 4, 2020 draft. We urge the Commission to revisit their proposed change to expand the maximum impact area for single-family residences to be no larger than 2,500 square feet in 16.16.270.C.12. The purpose of the reasonable use provision is to allow only the minimal "reasonable" use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations. The courts generally decide the concept of reasonable; however, reasonable use is often interpreted as a modest single-family home. A home with a footprint 4,000 square feet is excessive. A median size house built in 2019 has 2,301 square feet of floor area. We can assume that to be less than footprint 1,500 square feet.</p> <p>Additionally, we strongly urge the Commission to maintain the new language in the code for the processing of reasonable use exceptions. We understand this is a departure from the current</p>	<p>Your comment will be provided to the P/C &amp; Co/C for consideration.</p>

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					code which allows administrative approval of reasonable use exceptions; however, the way Whatcom County has been processing this is contrary to the intent of reasonable use. Quasi-Judicial bodies like the Hearing Examiner should be making the final call as opposed to staff. All feasible measures to derive use of the property must also be exhausted, which includes pursuing a variance. This mirrors language used in both Skagit County and Snohomish County.	
RFW13	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.640(A)(5) and 16.16.745(A)(2)	Regarding Buffer Width Increasing, maintain staff proposed changes.  The Commission received a suggestion from Miller Environmental Services, Inc. requesting this section to be removed. We disagree. The wetland rating form is not a part of the CAO and this language should be kept in code. Also, this decision could be made by the Director on a case by case basis to increase the size of the required buffer in specific instances. Striking this from the code could deprive the Director of an important tool to better protect the few remaining areas in the county that are vital for wildlife and water quality functions of wetlands and streams. The Department of Ecology's wetland guidance recommends this as an important tool as well: "Ecology's buffer recommendations are also based on the assumption that the buffer is well vegetated with native species appropriate to the ecoregion. If the buffer does not consist of vegetation adequate to provide the necessary protection, then either the buffer area should be planted or the buffer width should be increased."	Your comment will be provided to the P/C & Co/C for consideration.
RFW14	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.640(C)(1)(e)(iii)	Regarding Buffer Width Reduction, maintain staff proposed changes. This change proposed by staff allows the Director to provide flexibility in making buffer reductions while still managing and protecting landscape-scale functions and values. We could see how this could benefit a parcel if buffer reduction is occurring in an area with older stands of native trees and there are other trees of similar age onsite that could be preserved and protected from unnecessary clearing. Mature trees serve critical habitat, stormwater control, and water quality functions even if they are not part of a formal buffer for a critical area.	Your comment will be provided to the P/C & Co/C for consideration.

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RFW15	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.710(C)(1)(a)(v) and 16.16.740(B)	Regarding Type O Waters and buffer, maintain staff proposed changes.  Miller Environmental Services, Inc. proposes to delete the definition and buffer requirements for Type O waters which connect directly to either waters of the state (Type S waters) or fish habitat (Type F waters) via channel, pipe, culvert, stream, or wetland. We support the staff's proposal to include this because all waters are connected and we must be providing some level of protection from a water quality perspective. Ongoing Agriculture is exempt from this requirement.	Your comment will be provided to the P/C & Co/C for consideration.
RFW16	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.745(A)	Regarding Buffer Width Increasing, maintain staff proposed changes.  Having the ability to increase fish and wildlife habitat conservation area buffers is crucial to lend more protection to areas that serve multiple ecosystem functions. This change may only apply to shorelines of the state (Type S waters), fish-bearing waters (Type F waters), or high value wetlands (Category I, II, or III). Again, this is a discretionary decision from the Director which means it may not always happen.	Your comment will be provided to the P/C & Co/C for consideration.
MES43	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.270 & 16.16.273	These sections are a complete rewrite of reasonable use procedures and would require a variance (minor and major variance) before reasonable use would apply.  Current Code: Reasonable use provisions are currently considered prior to a variance application. A variance application is time-consuming, more expensive, and requires review/approval by the hearing examiner with a public hearing. Per 16.16.270.C.1 only reasonable use exceptions for single-family residential building or for other development proposals that would affect only buffers, but not critical areas themselves (e.g., wetlands and streams), shall be processed administratively. Other applications that directly impact critical areas, with the exception of single-family residential, currently have to apply for a variance application. If an applicant currently wants to propose a larger footprint than the allowed 4,000 square feet under reasonable use, they could also apply for a variance.	Our Hearing Examiner has questioned our current schema, in particular why he isn't the final decision maker, as the current code allows an administrative determination to be made after a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust any administrative remedies before seeking a quasi-judicial decision. Staff is proposing that reasonable use exceptions be the last method of altering standards to allow reasonable economic use of constrained property, and that they be decided upon by the Hearing Examiner (see 16.16.270 Reasonable Use Exceptions).  In this schema, the degree to which one



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					<p><i>Suggested Change:</i> Strike the proposed changes to reasonable use and variance procedures. Return to the current language. Also, add bolded language to section 16.16.270.j. The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter – <b>or if the mitigation requirements cannot be met, to the maximum extent feasible on the property.</b></p> <p><i>Rational for suggested change:</i> The proposed change is a significant alteration to the code and process. A significant number of previously designated reasonable use projects, processed administratively, would need to go to the hearing examiner. This will significantly increase costs and time to applicants for simple single-family construction or projects with only buffer impacts – as the current code requires an open public hearing for anything more complex. This will also create more uncertainty as to what will be allowed when a property is encumbered with critical areas and buffers. It should also be remembered, that reasonable use scenarios have increased significantly over the last four years as the result of larger buffers occurring on properties since 2017 – the result of utilization of updated Ecology wetland rating forms and guidance. Generally, critical areas, primarily wetlands, have not changed but buffers have become significantly larger.</p> <p>The change to section j is included so that applicants aren't required to purchase another property for mitigation – which has been required in some cases, precluding any development at all (even for buffer impacts).</p>	<p>can vary standards while providing the least amount of mitigation moves up a level at each step, with the Hearing Examiner making the tougher decisions through a quasi-judicial process. This would return the reasonable use exception to truly the last effort of avoiding a taking.</p> <p>However, to counter the additional time and cost of this process, staff is also proposing to create a new category of variances, called minor variances (16.16.273 Variances). They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number of cases having to go to the Hearing Examiner and cost less to the citizens of Whatcom County overall.</p>
MES44	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.620(D) & 16.16.720(D)	<p><i>Draft Code:</i> Private Access. Access to <u>existing legal lots</u> may be permitted to cross Category II, III or IV wetlands or their buffers, provided the access meets the following... And. Private Access. Access to existing legal lots may be permitted to cross habitat conservation areas if there are no feasible alternative alignments.</p> <p><i>Current Code:</i> <u>Access to private development sites</u> may be permitted to cross Category II, III or IV wetlands or their buffers,</p>	<p>This formerly proposed language has already been stricken and reverted to the original language in the more recent versions of Exhibit F (4/5/21)</p>

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					<p>provided...</p> <p><i>Suggested Change:</i> Strike the change and keep the current language, both wetland and HCA sections.</p> <p><i>Rationale for suggested change:</i> This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a wetland or buffer or habitat conservation areas. Access to large areas of unencumbered property could be restricted if one small wetland or its buffer would need to be impacted to access a development area. For example, creating new lots in unencumbered areas (no critical areas) per the underlying zoning might not be allowed on a 40 acre property if the crossing of a non-fish stream or the outer portion of a buffer was required.</p>	
MES45	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.640(A)(5)	<p><i>Draft Code:</i> Buffer Width Increasing: <u>The Director may require the standard buffer width to be increased by the distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following:</u></p> <p><u>(5) When a Category I or II wetland is located within 300 feet of:</u></p> <ul style="list-style-type: none"> <li>a. <u>Another Category I, II or III wetland; or</u></li> <li>b. <u>A fish and wildlife HCA; or</u></li> <li>c. <u>A type S or F stream; or</u></li> <li>d. <u>A high impact land use that is likely to have additional impacts.</u></li> </ul> <p><i>Suggested Change:</i> Strike the new, added section (5).</p> <p><i>Rationale for suggested change:</i> This added provision, not in the current code, allows staff to extend any Category II wetland buffers out to 300 feet – if another wetland or HCA is within 300 feet. HCA's include mature forest, priority snags (logs on the ground, 20 feet long, 12 inches wide), streams, etc.</p> <p>The intent of this appears to be to increase buffers if adjacent critical areas are present. However, this is already accounted for in the wetland rating form. The habitat score, which drives the buffer width, is scored higher if habitat conservation areas are within 330 feet. The proposed draft change seems redundant</p>	Staff believes this addition better reflects DOE guidance and Council's direction to improve connectivity.

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					when these factors are already utilized in determining the buffers in the current code - based on the wetland rating form. If the intent is also to protect habitat corridors, then it is also redundant, as these are already protected in the habitat conservation section of the code – State priority habitat “Biodiversity areas and corridors”.	
MES46	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.640(B)(2) & 16.16.745(B)(2)	<p><u>Draft code. Buffer Width Averaging: In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.</u></p> <p><i>Suggested Change:</i> Strike the proposed change.</p> <p><i>Rationale for Suggested Change:</i> This section effectively eliminates the intent of buffer averaging and converts it to buffer reduction by requiring mitigation in the form of added plantings. Buffer averaging is an important and simple way to allow more flexibility for property owners that need to make minor buffer adjustments. This section will also reduce consistency and predictability (each staff member could apply this differently), and will increase the cost for simple projects by requiring plantings, monitoring, bonding, etc. by thousands of dollars. Additionally, the Director already has the ability to require plantings in a wetland or HCA buffer where it lacks adequate vegetation under 16.16.630.D or 16.740.B.1, making this code addition redundant.</p>	This formerly proposed language has already been stricken and reverted to the original language in the most recent version of Exhibit F (4/5/21)
MES47	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.640(C)(1)(c)	<p><u>Buffer Width Reduction draft code: The buffer shall not be reduced to less than 75% of the standard buffer.</u></p> <p><i>Current Code:</i> Allows for a Category IV wetland buffer to be reduced by up to 50% or 25 feet, whichever is greater.</p> <p><i>Suggested Change:</i> Restore prior language to allow for up to 50% reduction (or 25 feet) for Category IV wetlands.</p> <p><i>Rationale for Suggested Change:</i> The existing code section allows for up to a 50% (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher category wetlands are restricted to a 25% reduction. Under the draft buffer averaging</p>	Staff believes this amendment better reflects DOE guidance.

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					section, Category IV wetlands are still allowed up to a 50% reduction. This proposed change will remove flexibility for property owners for the lowest category of wetlands.	
MES48	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.710(C)(1)(a)(v) & 16.16.740(B)	<p><i>Draft Code:</i> Type O waters include all segments of aquatic areas that are not type S, F, or N waters and that are physically connected to type S or F waters by an above-ground channel, system, pipe, culvert, stream or wetland. And 16.16.740.B. Type O Buffer = 25 feet.</p> <p><i>Current Code:</i> Not present in the current code.</p> <p><i>Suggested Change:</i> Strike this addition of Type O waters and associated 25-foot buffer. Return the prior designation of Natural Ponds to the buffer Table requiring a 50 foot buffer.</p> <p><i>Rationale for Suggested Change:</i> The definition of Type O waters will include ditches and artificial ponds that eventually drain to a fish stream. This will include most of the ditching and artificial ponds in Whatcom County. This will in effect place 25-foot buffers in any front yard along a road with a County ditch – creating protected critical areas buffers along most property road frontage. Any time the County public works excavated new ditching, or extended existing new ditching, they would also be creating new critical areas and encumbering adjacent properties with a buffer for a resource that the County created. This seems problematic and overreaching. Ditching provides a function to control and direct stormwater. The department of Ecology has no recommendations designating artificial ditches as critical areas or for placing buffers on artificial ditching. This would create a new critical area, most of which are within County rights-of-way. Additionally, most of the ditches outside of road right of ways are agricultural in nature and created prior to the growth management act and the clean water act. Additionally, Type O waters do not correlate with Washington State water typing.</p>	This formerly proposed language has already been stricken and amended in the most recent version of Exhibit F (4/5/21)
MES49	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.710(C)(b)(i)	<p><i>Draft Code:</i> Ditches or other artificial water courses are considered streams for the purposes of this chapter when: i. used to convey <u>waters of the state</u> existing prior to human alteration; and/or...</p>	Based on public comment and direction from the P/C, staff has rewritten this section to be clearer and allow lesser buffers on modified waterways that are not regu-

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					<p><i>Current Code:</i> Ditches or other artificial water courses are considered streams for the purposes of this chapter when: i. used to convey <u>natural streams</u> existing prior to human alteration; and/or...</p> <p><i>Suggested Change:</i> Strike the change and replace the current language.</p> <p><i>Rationale for suggested change:</i> This change seems to make the section more confusing. State definitions (italics added):</p> <p>“Waters of the state includes all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses located within the jurisdiction of the state of Washington (RCW 90.48.020).”</p> <p>“WAC 220-660-030(153) Watercourse, river or stream means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.”</p> <p>Per state definition, waters of the state (that might be found in a ditch) have an ordinary high water mark and are not artificial – essentially a “natural stream”. It seems the current language is consistent with state definitions and is clearer.</p>	lated by WDFW. See 16.16.710(C) & (D)(2) in the most recent version of Exhibit F (4/5/21).
MES50	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.745(A)(2)	<p><i>Draft Code:</i> Buffer Width Increasing. The Director may require the standard buffer width to be increased or to establish a non-riparian buffer, when such buffers are necessary for one of the</p>	Staff believes this addition better reflects DOE guidance and Council’s direction to improve connectivity.

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					<p>following:</p> <ol style="list-style-type: none"> <li>1) To protect priority fish or wildlife using the HCA</li> <li>2) To provide connectivity when a Type S or F water body is located within 300 feet of: <ol style="list-style-type: none"> <li>a. Another Type S or F water body; or</li> <li>b. A fish and wildlife HCA; or</li> <li>c. A Category I, II or III wetland.</li> </ol> </li> </ol> <p><i>Current Code:</i> 16.16.745.A.2 - language added, not in the current code.</p> <p><i>Suggest Changed:</i> strike the new added section 16.16.745.A.2.</p> <p><i>Rationale for suggested change:</i> This is a new provision to the code that allows the Director to extend Type S or F buffers to resources within 300 feet – including Category III wetlands, other HCA's or other waters. Again, this is an exceptionally broad provision to add in additional regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. The extension of every fish stream or lake buffer to another resource within 300 feet is essentially extending most of the buffer areas to 300 feet. If the intent is also to protect habitat corridors, then it is also redundant, as these are already protected in the habitat conservation section of the code – State priority habitat "Biodiversity areas and corridors".</p>	
RFW17	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21	D		<p>Incorporate regulations to prepare for accelerating sea level rise impacts.</p> <p>The SMA and SMP Guidelines require shoreline master programs to address the flooding that will be caused by sea level rise. RCW 90.58.100(2)(h) requires that shoreline master programs "shall include" "[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages ..." WAC 173-26-221(3)(b) provides in part that "[o]ver the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas ..." "Counties and cities should consider the following when designating and classifying frequently flooded areas ... [t]he</p>	There isn't a requirement to address climate change/sea level rise in the SMA, though we could if Council desires. However, what we understand from the DOE is that any such regulations should be built on data, which is what PS-CoSMoS will be providing. Furthermore, once the data is available, we should perform vulnerability and risk assessments to see what kind and where the problems might be, and update our shoreline inventory and characterizations. Without such sci-



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					<p>potential effects of tsunamis, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change ....” The areas subject to sea level rise are flood prone areas just the same as areas along bays, rivers, or streams that are within the 100-year flood plain. RCW 90.58.100(1) and WAC 173-26-201(2)(a) also require “that the ‘most current, accurate, and complete scientific and technical information’ and ‘management recommendations’ [shall to the extent feasible] form the basis of SMP provisions.” This includes the current science on sea level rise.</p> <p>Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20th Century. A recent analysis of sea-level measurements for tide-gage stations, including the Seattle, Washington tide-gauge, shows that sea level rise is accelerating.<sup>5</sup> Virginia Institute of Marine Science (VIMS) “emeritus professor John Boon, says ‘The year-to-year trends are becoming very informative. The 2020 report cards continue a clear trend toward acceleration in rates of sea-level rise at 27 of our 28 tide-gauge stations along the continental U.S. coastline.’” “‘Acceleration can be a game changer in terms of impacts and planning, so we really need to pay heed to these patterns,’ says Boon.” The Seattle tide gage was one of the 27 that had an accelerating rate of sea level rise. The report Projected Sea Level Rise for Washington State – A 2018 Assessment projects that for a low greenhouse gas emission scenario there is a 50 percent probability that sea level rise will reach or exceed 1.2 feet by 2100 around Sandy Point and the west side of the Lummi Peninsula. Projected Sea Level Rise for Washington State – A 2018 Assessment projects that for a higher emission scenario there is a 50 percent probability that sea level rise will reach or exceed 4.5 feet by 2100 for the same area. Projections are available for all of the marine shorelines in Whatcom County and Washington State.</p> <p>The extent of the sea level rise currently projected for Whatcom</p>	ence, we would be open to challenges.

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					<p>County can be seen on the NOAA Office for Coastal Management Digitalcoast Sea Level Rise Viewer available at: <a href="https://coast.noaa.gov/digitalcoast/tools/slr.html">https://coast.noaa.gov/digitalcoast/tools/slr.html</a>. Please see map images at the bottom of this letter detailing the changes in water elevation from the current mean higher high water (MHHW) to four feet of sea level rise.</p> <p>Projected sea level rise will substantially increase flooding. As Ecology writes, “[s]ea level rise and storm surge[s] will increase the frequency and severity of flooding, erosion, and seawater intrusion—thus increasing risks to vulnerable communities, infrastructure, and coastal ecosystems.” Not only our marine shorelines will be impacted, as Ecology writes “[m]ore frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life.”</p> <p>Zillow recently estimated that 31,235 homes in Washington State may be underwater by 2100, 1.32 percent of the state’s total housing stock. The value of the submerged homes is an estimated \$13.7 billion. Zillow wrote:</p> <p>“It’s important to note that 2100 is a long way off, and it’s certainly possible that communities [may] take steps to mitigate these risks. Then again, given the enduring popularity of living near the sea despite its many dangers and drawbacks, it may be that even more homes will be located closer to the water in a century’s time, and these estimates could turn out to be very conservative. Either way, left unchecked, it is clear the threats posed by climate change and rising sea levels have the potential to destroy housing values on an enormous scale.”</p> <p>Sea level rise will have an impact beyond rising seas, floods, and storm surges. The National Research Council wrote that:</p> <p>“Rising sea levels and increasing wave heights will exacerbate coastal erosion and shoreline retreat in all geomorphic environments along the west coast. Projections of future cliff and bluff retreat are limited by sparse data in Oregon and Washington and by a high degree of geomorphic variability along the coast.</p>	

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					<p>Projections using only historic rates of cliff erosion predict 10–30 meters [33 to 98 feet] or more of retreat along the west coast by 2100. An increase in the rate of sea-level rise combined with larger waves could significantly increase these rates. Future retreat of beaches will depend on the rate of sea-level rise and, to a lesser extent, the amount of sediment input and loss.”</p> <p>These impacts are why the Washington State Department of Ecology recommends “[l]imiting new development in highly vulnerable areas.”</p> <p>Unless wetlands and shoreline vegetation can migrate landward, their area and ecological functions will decline. If development regulations are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. This loss of shoreline vegetation will harm the environment. It will also deprive marine shorelines of the vegetation that protects property from erosion and storm damage by modifying soils and accreting sediment. WEC and Futurewise’s Sept. 16, 2020 letter included maps that show the extent of this amount of sea level rise in Whatcom County and wetland migration in part of the County if the wetlands are not blocked by development. Additional maps are also enclosed with this letter.</p> <p>Flood plain regulations are not enough to address sea level rise for three reasons. Projected Sea Level Rise for Washington State – A 2018 Assessment explains two of them:</p> <p>“Finally, it is worth emphasizing that sea level rise projections are different from Federal Emergency Management Agency (FEMA) flood insurance studies, because (1) FEMA studies only consider past events, and (2) flood insurance studies only consider the 100-year event, whereas sea level rise affects coastal water elevations at all times.”</p> <p>The third reason is that floodplain regulations allow fills and pilings to elevate structures and also allow commercial buildings to be flood proofed in certain areas. While this affords some</p>	

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					<p>protection to the structure, it does not protect the marshes and wetlands that need to migrate.</p> <p>Because of these significant impacts on people, property, and the environment, “[n]early six in ten Americans supported prohibiting development in flood-prone areas (57%).” It is time for Washington state and local governments to follow the lead of the American people and adopt policies and regulations to protect people, property, and the environment from sea level rise. We recommend the addition of the following regulations as part of the shoreline master program periodic update:</p> <p>X. New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</p> <p>X2. Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</p> <p>X3. New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</p>	
RFW18	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21	F	16.16.270	<p>Restore Reasonable Use impact area language in the Dec 4, 2020 draft Exhibit F, WCC 16.16.270 Reasonable Use Exceptions.</p> <p>We urge Whatcom County to restore the proposed change from the P/C to expand the maximum impact area for single-family residences from 4,000 square feet to 2,500 square feet in 16.16.270.C.12. The purpose of the reasonable use provision is to allow only the minimal “reasonable” use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations.</p> <p>The courts generally decide the concept of reasonable; however, reasonable use is often interpreted as a modest single-family</p>	Your comment will be provided to the P/C & Co/C for consideration.

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					home. A home with a footprint of 4,000 square feet is excessive. A median size house built in 2019 has 2,301 square feet of floor area. We can assume that to be less than footprint 1,500 square feet.	
RFW19	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21	F	16.16.730 , Table 4	<p>Incorporate the State of Washington Department of Fish &amp; Wildlife's new riparian buffers guidance.</p> <p>As has been reported in media and scientific reports, the southern resident orcas, or killer whales, are threatened by (1) an inadequate availability of prey, the Chinook salmon, "(2) legacy and new toxic contaminants, and (3) disturbance from noise and vessel traffic." "Recent scientific studies indicate that reduced Chinook salmon runs undermine the potential for the southern resident population to successfully reproduce and recover." The shoreline master program update is an opportunity to take steps to help recover the southern resident orcas, the Chinook salmon, and the species and habitats on which they depend.</p> <p>The SMP Guidelines, in WAC 173-26-221(3)(c), provides in part that "[i]n establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and Management Recommendations for Washington's Priority Habitats, prepared by the Washington state department of fish and wildlife where applicable."</p> <p>The State of Washington Department of Fish and Wildlife has recently updated the Priority Habitat and Species recommendations for riparian areas. The updated management recommendations document that fish and wildlife depend on protecting riparian vegetation and the functions this vegetation performs such as maintaining a complex food web that supports salmon and maintaining temperature regimes to name just a few of the functions.</p> <p>The updated Riparian Ecosystems, Volume 1: Science synthesis and management implications scientific report concludes that</p>	<p>Pursuant to 23.230.010(B)(4) floodways and contiguous floodplain areas landward two hundred feet from such floodways are within the shoreline jurisdiction.</p> <p>And pursuant to 16.16.730 Table 4, Type S – Freshwater HCAs are proposed to have a 200-foot buffer based on National Wildlife Federation v. FEMA (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472)</p>

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					<p>the “[p]rotection and restoration of riparian ecosystems continues to be critically important because: a) they are disproportionately important, relative to area, for aquatic species, e.g., salmon, and terrestrial wildlife, b) they provide ecosystem services such as water purification and fisheries (Naiman and Bilby 2001; NRC 2002; Richardson et al. 2012), and c) by interacting with watershed-scale processes, they contribute to the creation and maintenance of aquatic habitats.” The report states that “[t]he width of the riparian ecosystem is estimated by one 200-year site-potential tree height (SPTH) measured from the edge of the active channel or active floodplain. Protecting functions within at least one 200-year SPTH is a scientifically supported approach if the goal is to protect and maintain full function of the riparian ecosystem.” These recommendations are explained further in Riparian Ecosystems, Volume 2: Management Recommendations A Priority Habitats and Species Document of The Washington Department of Fish and Wildlife.</p> <p>Based on these new scientific documents, we recommend that shoreline jurisdiction should include the 100-year floodplain and that the buffers for rivers and streams in shoreline jurisdiction be increased to use the newly recommended 200-year SPTH and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider. New development, except water dependent uses should not be allowed within this area. This will help maintain shoreline functions and Chinook habitat.</p>	
TSF01	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.010	<p>Table 1 of the draft proposes to revise the shoreline use table to prohibit general aquaculture (aquaculture other than commercial geoduck and salmon net pen facilities) in aquatic areas adjacent to the Natural shoreline environment designation (SED). This proposed revision should not be adopted. No scientific or technical information is identified in the Draft Amendment that would support this revision. As recognized by the GMHB, prohibiting aquaculture in the Natural SED absent such support is impermissible. Allowing aquaculture in the Natural SED is consistent with the purpose and policies of the Natural SED.</p>	<p>The purpose of the natural shoreline area is to “ensure long-term preservation of ecologically intact shorelines” and “preservation of the area’s ecological functions, natural features and overall character must receive priority over any other potential use.” The Natural SED is only applied in a few areas of the county, primarily the headwaters of the 3 upper Nooksack branches and around state or</p>



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						locally controlled nature preserves. None of these areas would likely be used for aquaculture.
TSF02	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(A)(1)	<p><del>Strike A.1. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is degree of proposed substrate modification is aquaculture operations at the site.</del></p> <p>The first sentence of this provision is unsuitable for a regulation, as it merely expresses a preference for certain activities over others. Moreover, it is inadequately defined and unsupported by scientific and technical information. To the extent that it would disfavor common shellfish aquaculture practices that have been proven to have insignificant impacts on species and habitat (e.g., those covered by the Programmatic Consultation or analyzed by Washington Sea Grant), it runs directly counter to such information in violation of the SMA and Guidelines. It would also fail to give preference to and foster shellfish aquaculture contrary to state law.</p> <p>The second sentence appears to impose a substantive requirement that any substrate modifications must be the minimum necessary for feasible operations. This restriction is similarly unsupported by scientific and technical information and fails to give preference to and foster shellfish aquaculture. In an analogous context, the GMHB held that an aquaculture regulation requiring gear use be limited to the minimum necessary for feasible operations violated state law and must be stricken.</p>	<p>Though the language is existing, the commenter may be correct regarding the 1<sup>st</sup> sentence, as it does read more like a policy rather than a regulation. And Policy 11CC-3 basically says the same thing, so that 1<sup>st</sup> sentence could be deleted (though it wouldn't have much effect on the regulation).</p> <p>Regarding the 2<sup>nd</sup> sentence (again, existing language), staff sees no legal issue in requiring methods used minimize impacts to shoreline functions. The regulation only states that the applicant demonstrate that the degree of proposed substrate modification is the minimum necessary. We would think that Taylor Shellfish Farms already uses the least impactful methods given how environmentally friendly they purport to be. Nonetheless, your comments will be provided to the P/C and Co/C for their consideration.</p>
TSF03	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(A)(2)	<p><del>Strike A.2 The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible.</del></p> <p>Similar to the previous provision, this provision is not only unsupported by scientific and technical information, but such information demonstrates aquaculture structures do not have</p>	<p>Again, existing language, and it's only asking that the applicant demonstrate that any proposed structures be the least impactful to shoreline functions. Nonetheless, your comments will be provided to the P/C and Co/C for their consideration.</p>

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					unacceptable impacts. This provision imposes unjustifiable use restrictions and fails to give preference to and foster aquaculture, and hence it should be deleted.	
TSF04	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(A)(3)	<p><del>Strike A.3 Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact critical saltwater habitat, or other fish and wildlife habitat conservation areas.</del></p> <p>This provision is insufficient in scope and detail to ensure proper implementation, as several key terms are undefined. Moreover, this regulation appears to articulate a zero-impact standard inconsistent with the SMA and the Guidelines, which acknowledge that activities will have some impacts and calls for those impacts to be minimized. This provision is particularly inappropriate given commercial shellfish beds are themselves critical saltwater habitat.</p>	Staff disagrees with the commenters conclusions. The key words are either defined or their common usage is understood, and the regulation does not articulate a zero-impact standard: It only limits certain types of practices that might have significant impacts on critical saltwater habitats.
TSF05	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(B)(9)	<p>"Where aquaculture activities are authorized to use <u>public County</u> facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities."</p> <p>This revision provides important clarification that the authority to require a project proponent pay a portion of maintenance costs and required improvements applies to County, rather than any public (e.g., state or federal), facilities. Use and maintenance of non-County public facilities are properly addressed by the entities or agencies that own or control those facilities.</p>	Staff agrees with the commenter and has made this suggested edit.
TSF06	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(F)(1)	<p>In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), applications for aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed aquaculture activity, including but not limited to the following, <u>if not already provided in other local, state, or federal permit applications or equivalent reports</u>:</p>	Staff agrees with the commenter, but none of the language prohibits the applicant from submitting materials used in or produced by other permitting processes. Regardless of whether another agency has made a decision on a permit, the County is still required to maintain a record of our decision making and would

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					Aquaculture operations are subject to numerous laws and regulatory programs. Applicants for new aquaculture projects must obtain several federal and state approvals in addition to shoreline permits. The County should allow aquaculture applicants to utilize information provided in other local, state, or federal permit applications or equivalent reports in order to satisfy shoreline permit application requirements. This allowance will not hinder the County's interest in ensuring it has all information necessary to conduct a thorough evaluation of aquaculture proposals, and it is critical to avoid unnecessary burdens on applicants and streamline permitting consistent with the laws and policies discussed above.	need copies of those materials to come to a rational conclusion.
TSF07	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(F)(2)	<p>Applications for aquaculture activities must demonstrate that the proposed activity will be compatible with surrounding existing and planned uses.</p> <ul style="list-style-type: none"> <li>a. Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise.</li> <li>b. Aquaculture activities shall <del>be restricted to reasonable hours and/or days of operation when necessary to</del> minimize substantial, adverse impacts from noise, light, and/or glare on nearby residents, other sensitive uses or critical habitat.</li> <li>c. Aquaculture facilities shall not <del>introduce incompatible visual elements or substantially degrade</del> <u>significantly impact</u> the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials.</li> </ul> <p>Taylor Shellfish, along with other responsible farmers, employ numerous practices to avoid and minimize potential noise and light impacts on other shoreline users. However, to help protect the safety of its crews and provide marketable products, shellfish operators frequently need to conduct activities during nights or on weekends when there are low tides. This is recognized in</p>	Staff agrees with the commenter and has amended this section as suggested.

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					<p>the Guidelines, which state: "Commercial geoduck aquaculture workers oftentimes need to accomplish on-site work during low tides, which may occur at night or on weekends. Local governments must allow work during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses." Restricting operations to certain hours or days may compromise the safety of farm crews and/or render operations infeasible. This requirement in 2.b is incompatible with the SMA and Guidelines, and it should be removed.</p> <p>The requirement in 2.c that aquaculture facilities not introduce incompatible visual elements or substantially degrade the aesthetic qualities of the shoreline is inconsistent with the Guidelines, which instead require that that aquaculture not significantly impact aesthetic qualities. The requirement that aquaculture activities not introduce incompatible visual elements is insufficient in scope and detail to ensure proper implementation. This subsection should be aligned with state law.</p>	
TSF08	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(H)(2)	<p>In the Natural shoreline environment, aquaculture activities that do not <del>require structures, facilities, or mechanized harvest practices and that will not result in the alteration of</del> <u>substantially degrade</u> natural systems or features are permitted.</p> <p>The prohibition on structures, facilities, or mechanized harvest in the Natural environment is unsupported by scientific and technical information and is accordingly inconsistent with the SMA and Guidelines. As discussed above, there is extensive scientific and technical information that demonstrates shellfish aquaculture activities, some of which include these proscribed items, have minimal impacts that are consistent with the Natural environment. The revised language shown here remedies these failures and aligns this regulation with the management policies in the Guidelines for the Natural environment.</p>	Staff disagrees with the commenter. The Natural SED is intended to remain natural and is the only SED where such structures are prohibited. It is not a general prohibition, just one for one certain SED. The Natural SED is only applied in a few areas of the county, primarily the headwaters of the 3 upper Nooksack branches and around state or locally controlled nature preserves. None of these areas would likely be used for aquaculture.
BIAWC08	Robert Lee, BIAWC	4/12/21	F	16.16.273	<p><b>Reasonable Use and Variances:</b> Staff has proposed major changes to the procedures and criteria for both. The current 2017 CAO allows PDS staff to grant reasonable use (RU) permits for one single family house under very strict criteria if CAO rules alone would deny "all reasonable and economically viable</p>	Please see the responses provided for Comments GCD14, NES02, NWC02, NWC05, BIA04, MES11, MES29, MES31, MES43, RFW12, & RFW18.

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					<p>use" of the property.</p> <p><b>A. Variances:</b> They now require a public hearing and approval by the Hearing Examiner (HE). The applicant must demonstrate "undue hardship" due to CAO "dimensional requirements". Frankly, it's not clear what the difference is between the scope of these and RU applications in current code.</p> <p>Per draft Section 16.16.270.A, p 30-31, Exh. F, if a person only needs a 25 to 50% CAO buffer reduction, they would apply for a Minor Variance, instead of a RU Exception per current code.</p> <p>The draft does not say whether this value is total area, width, or both. Staff decides these permits; notice to neighbors is required. We do appreciate the new minor variance idea allowing staff approval, but why they also have to provide notice to adjacent land owners?</p> <p>A Major Variance is required for any other CAO exceptions. See Section 16.16.273, p 34. Either level of variance will be a costly process; the fee is \$2750, plus critical area reports, possibly consultants and any legal costs.</p> <p>One could only apply for a Reasonable Use Exception RU if their variance app is denied. This means if you don't get adequate relief with a variance approval, one must repeat the permit process to apply for an RU, and pay double fees and costs. A person may also face an appeal to Superior Court from someone.</p>	<p>In addition, variances have always required a public hearing and approval by the H/E using the same criteria. We have now introduced a "minor" variance (the creation of which has already been approved by Co/C) for minor buffer reductions. An all variances always require public notice, as we're potentially letting applicants use lesser standards than what the code prescribes, which might have impacts on neighbors.</p> <p>We have also put in a request to have a much lower fee for minor variances.</p>
BIAWC09	Robert Lee, BIAWC	4/12/21	F	16.16.270(C)(12)	<p><b>B. Reasonable Use Exception (RU)</b></p> <p>1. Footprint Size:</p> <p>Re draft Sections 270, Item C, p 31, we support the increase in the allowed "impact area" for a house via the RU process to 4,000 sq. ft., from 2,500, recently accepted by the P/C. This limit is a minimally reasonable value when you consider most of the sites will be 2 acres or larger, and many rural land owners will want barns, corrals, shops, etc.</p> <p>Also, these and all other CAO rules apply in the county's two</p>	<p>Please see the responses provided for Comments BIA04, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, &amp; RFW18.</p> <p>And remember, RUEs are for lots totally constrained by critical areas. Lots that aren't so constrained can build to whatever size the code allows for their zone. We would think that someone who wants barns, training rings, and other large</p>

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					<p>Urban Growth Areas: Birch Bay and Columbia Valley, where lot sizes are usually much smaller, and on public sewer and water systems.</p> <p>However, "impact area" is not defined in the draft CAO. We suggest this term be defined to include only artificial impervious surfaces. We support the driveway exception as written, and ask that drainfield areas be listed as excepted too.</p> <p>There appears to be no scientific basis for either value. The 4,000 sf value will often be generally reasonable in this context for smaller lots, e.g., 1 to 5 acres. But several large rural areas are zoned 10 acre minimum. We think consideration should be given to a "sliding scale" proposal, for parcels 5 acres and larger, based on zoning, platting options, availability of drinking water, soils for septic, etc.</p> <p>Many rural residents are horse enthusiasts, and want training rings, which will push the total footprint over the 4,000 sf limit.</p>	structures would choose a lot not so constrained.
BIAWC10	Robert Lee, BIAWC	4/12/21	E	22.05.020	<p><b>2. RU Process:</b> We believe the RU decision should be made by staff instead of the Hearing Examiner (HE), a far less costly, time consuming and legalistic process.</p> <p>We believe these decisions should be based mainly on a scientific analysis of the particular situation; that is: the functions and values of the resource, and adjacent site character, mainly its natural features: e.g., soils and geology, topography, native vegetation etc.</p> <p>An important question: is there any state law, court decision or code that requires that RU's be decided by the HE, a quasi-judicial official? Or that bars professional and qualified staff from making these mainly technical and science kind of decisions?</p>	Please see the responses provided for Comments GCD14, NES02, NWC02, NWC05, BIA04, MES11, MES29, MES31, MES43, RFW12, & RFW18.
BIAWC11	Robert Lee, BIAWC	4/12/21	F	16.16.270(C)	<p><b>3. RU Criteria:</b></p> <p>a. We also have concerns over the fairness of some of the key words/phrases/values related in the RU code, such as:</p> <p>16.16.270 A, C.2, C.3, etc.: "all reasonable and economically viable use of a property".</p>	<p>The RUE criteria are basically the same as the existing criteria (old (B)(2)), which come from state law and courts cases on this matter.</p> <p>And if you're going to quote the <a href="#">CAO handbook</a>, might as well quote more of it,</p>



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					<p>The words "all" and "viable" seem more arbitrary and subjective than logical and objective. Does staff have a reliable, credible source for this language?</p> <p>The current, 2018, State Department of Commerce guidance on critical areas and this topic states, in part:</p> <p style="padding-left: 40px;">The reasonable use permit criteria should allow for "reasonable" uses. If the criteria state that the applicant must demonstrate that no other use "is possible," or that there are "no feasible alternatives," it would conflict with the concept of a "reasonable" use as other "possible" alternatives may be so costly as to be unreasonable.</p> <p>Their 3-page excerpt on RU is attached, and a link to the complete report. The Department of Commerce has primary regulatory authority over all GMA elements, including all 5 critical areas.</p> <p>In reviewing the long list of complex criteria, all 12, for approval of a RU application (Section 270.C, almost all of p 31), we note the links in several of "reasonable" with "economics", and use of "all". Why is economics a critical factor here? The test is supposed to be "reasonable".</p> <p>See items C.2, 3, 4 and 5. It appears staff is trying to make it as difficult as possible for a person to obtain a RU exception, and obtain fair relief from the arbitrary buffers per Department of Ecology guidance on wetlands and habitat buffers.</p> <p>We say the buffers are arbitrary because they are not based on a staff accepted scientific assessment of a site's critical area resources and relevant local conditions.</p>	<p>for it also says, "Unlike variances, the purpose of a reasonable use exception permit is not to allow general development within critical areas, but to allow only the minimal "reasonable" use of the property so as to avoid a constitutional taking. Four scenarios are provided to illustrate situations where a reasonable use exception might or might not be applicable:</p> <p>A – No reasonable use exception would be granted because there is sufficient space outside the critical area clearing limits.</p> <p>B – A reasonable use exception might be granted since there is insufficient space for a reasonable use. The development area would need to be limited or scaled back in size and located where the impact is minimized. The jurisdiction might consider a variance to the required setback to minimize intrusion into the protection area.</p> <p>C – A reasonable use exception would be granted for a minimal development if the property is completely encumbered and mitigation methods are applied.</p> <p>D – The jurisdiction might consider modifications to the required setback to prevent intrusion into the protection area.</p> <p>The criteria for reasonable use permits need to be consistent with case law to reduce the potential for appeals and over-</p>

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						<p>turned decisions. Key to being consistent with case law is careful use of the term “reasonable.” Generally, the concept of “reasonable” has been left to the courts to decide, thereby making it difficult for cities to rule on whether or not a project qualifies. A reasonable use is often thought to be a modest single-family home, although some other structure might be “reasonable” depending on zoning, adjacent uses, and the size of the property.</p> <p>Some jurisdictions have allowed a reasonable use exception in only those situations where <i>all</i> economic use of a property would be denied by the critical areas regulations. Criteria that might be used to allow approval of a reasonable use exception include:</p> <ul style="list-style-type: none"> <li>• No other reasonable economic use of the property has less impact on the critical area;</li> <li>• The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;</li> <li>• The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this regulation, or its predecessor;</li> <li>• The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;</li> <li>• The proposal will result in no net loss of critical area functions and values con-</li> </ul>

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						<p>sistent with the best available science; or</p> <ul style="list-style-type: none"> <li>The proposal is consistent with other applicable regulations and standards."</li> </ul>
BIAWC12	Robert Lee, BIAWC	4/12/21	F	Articles 6 and 7	<p>2. Wetland and Habitat Conservation Area Buffers:</p> <p>A. General Comments:</p> <p>Such buffers are usually the most constraining, and thus costly, elements of compliance with local CAOs for landowners and land users. They often end up consuming more usable land than the area of the wetland they are supposed to protect. We have seen many examples of this, large and small.</p> <p>We're familiar with many situations where buffer requirements appear arbitrary and excessive. In one situation, where a qualified private scientist classified a 6 acre area that has been hayed for at least 75 years a Category IV wetland, the lowest value. He used the 2014 DoE Rating form, 17 pages of detailed questions, some a bit subjective. The PDS staff person said he thought it was a Cat. III. This meant the buffer increased from 60 ft. to 110 ft. of hayfield, almost doubling!</p> <p>Per the draft, DoE and staff don't think that's enough. The new Wetland Buffer table, Sec. 630.E, p 67, based on DoE guidance, will require more than a doubling, from 110 to 225 ft., for a Cat. III of any size, whether the parcel is 10,000 sf or 100 acres. We think this is excessive regulation, and it's quite commonplace in the CAO.</p> <p>The County does not have to adopt DoE staff's arbitrary and excessive buffers. They are not based on the WACs. Remember, the state Department of Commerce is the only state agency with rule making authority on GMA obligations, including critical areas. DoE's main authority on wetlands is limited to controlling the filling or alterations of wetlands through the federal Clean Water Act.</p>	<p>In July 2018 the Washington Department of Ecology (DOE) modified the habitat score ranges and recommended buffer widths in their wetland buffer tables in the DOE guidance, with some minor text changes to ensure consistency. Some citizens, local environmental consulting firms, and <b><i>the Building Industry Association of Whatcom County</i></b> then requested that we amend our code to meet this new guidance, and it was docketed as PLN2019-00008.</p> <p>The project was brought before the Planning Commission on March 14, 2019. But there was confusion as to what we actually had to do at that time and what impacts it would have on development. DOE had informed staff that, while we didn't need to amend our code at that point (having just updated Ch. 16.16 (Critical Areas) (Exhibit F) that they would review our code for consistency with their guidance when Ch. 16.16 was opened for amendment again, noting that that would occur during the 2020 SMP Periodic Update.</p> <p>So at the Commission's request, staff worked with the local wetlands consultants to review the issue and try to determine what effects it might have. Three consulting firms provided analyses based on data from projects they had worked</p>

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						<p>on. From these analyses, it appears that many of Whatcom County's lower quality wetlands (e.g., small Category IV wetlands in agricultural fields) would end up with smaller buffers, but that our higher quality wetlands (Categories II and III) would end up with larger buffers. (But even this is speculation, as ATSI noted that the comparison results are not statistically significant.) Thus, farmers may benefit but developers/ builders may suffer, as many of our lower quality wetlands are those found in agriculture fields, while our higher quality wetlands are typically found in non-agriculture rural areas.</p> <p>Nonetheless, given the Department of Ecology's statements that they'll be monitoring the SMP Update to ensure that we meet their latest guidance (which is based on Best Available Science), and given that Comprehensive Plan Policy 10M-2 directs the County to "Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines," staff is proposing to amend §16.16.630 (Wetland Buffers) Table 1 (Standard Wetland Buffer Widths) to meet DOE guidance. As indicated, these changes would lessen buffers on lower quality wetlands, and increase them on higher quality ones.</p>
BIAWC13	Robert Lee, BIAWC	4/12/21	F	Articles 6 and 7	<p><b>B. Buffer Details in the Draft:</b></p> <p>We have reviewed the Wetland and Habitat drafts and the de-</p>	Your comment will be provided to the P/C and Co/C for consideration.

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					<p>tailed comments on them submitted February 19 and 25, 2019, for Jon Maberry by Ed Miller and Liliana Hansen, both Professional Wetland Scientists (PWS). GAC members discussed these issues with Ed recently.</p> <p>We firmly agree with the scope and substance of all 14 comments in their firm's 8-page February 19 letter, including its recommendation to delete 12 of the draft changes/additions (attached). The Miller firm is highly regarded by many BIAWC members for their professional approach to complex environmental issues.</p> <p>We also agree with the reasonable and constructive suggestions in Jon Maberry's Prepared Motions submitted to the Planning Committee February 25, attached.</p> <p>Finally, it appears to us there's a pattern in these and other parts of the draft CAO of making the rules more restrictive and less balanced between the government's legitimate police power authority and the constitutional rights of private land owners and land users.</p>	
P6601	David Klanica, Phillips 66	4/12/21	A	10D-11	<p>Policy 10D-11 was added that addresses climate change: "Protect ecological functions and ecosystem-wide processes of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise."</p> <p>Phillips 66 is requesting further explanation and clarification whether upland property owners who propose bulkheads, armoring, or bank stabilization to prevent shoreline erosion or sloughing due to sea level rise will be subject to new limitations or requirements that could affect the current or future use of their property.</p>	The amendments regarding shoreline stabilization regulations are found in Exhibit D (Title 23). You would want to look at both 23.40.010, Table 1, and 23.40.190.
P6602	David Klanica, Phillips 66	4/12/21	B	Governing Principle (C)(2)	<p>The Shoreline Management Act was adopted in 1971 to protect the shorelines of the state of Washington. Certain shorelines were designated as "shorelines of statewide significance" including those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide. The Act established a system where local governments would ensure that</p>	As explained in the comment bubble tagged on this change, the word "significant" is proposed for deletion as there is no such threshold under SMA. Under the SMA, all adverse impacts must be mitigated in order to help achieve NNL. (The term "significant impact" comes from

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					<p>certain developments in shoreline areas would be reviewed and protected. More specifically, these agencies would review "substantial developments" which were those that would have a "significant adverse" impact on the environment including, but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values.</p> <p>Whatcom County has proposed in its Governing Principles (GPC2)) that it will include "policies and regulations that require mitigation of adverse impact in a manner that ensures no net loss of shoreline ecological functions." Phillips 66 is concerned about how this revised policy will be implemented as a practical matter. First, it appears to go beyond the County's statutory authority outlined in the SMA. Second, Phillips 66 is concerned that, without further clarification, it may be used inconsistently across the County. For instance, what is meant by "adverse" versus the original "significant adverse"? Must all land use permits affecting the shoreline now indicate what, if any adverse impacts might occur? Phillips 66 requests that the P/C provide more information as to how the removal of the word "significant" will change day-to-day shoreline management activities.</p>	SEPA.)
P6603	David Klanica, Phillips 66	4/12/21	B	Policies 11G-3 & 11G-4	Regarding Policy 11G-3 and Policy 11G-4 addressing the County's MOU with DAHP and Lummi Nation require the County to consult with DAHP and the Tribes. Phillips 66 is requesting additional clarification for applicant/property owner responsibilities.	Please read 23.30.050 (Cultural Resources) in Exhibit D, as that should provide the additional clarification you seek.
P6604	David Klanica, Phillips 66	4/12/21	B	Overall Goals & Policies	<p>Regarding Overall SMP Goals and Objectives for the Restoration and Enhancement Element were revised as follows: "This element provides for the timely restoration and enhancement of ecologically impaired areas in a manner that achieves a net gain in shoreline ecological functions and processes above baseline conditions as of the adoption of this program."</p> <p>Phillips 66 requests additional clarification and definition for "baseline condition" (e.g. baseline conditions at the time of application?).</p>	<p>The baseline condition was set by the comprehensive update done in 2007. As part of that update the County developed:</p> <ul style="list-style-type: none"> <li>• Vol. 1 - Inventory and Characterization Report</li> <li>• Vol. II - Scientific Literature Review</li> <li>• Vol. III - Restoration Plan</li> <li>• Vol. IV - Cumulative Effects Analysis</li> </ul> <p>all of which can be found on our SMP Update <a href="#">webpage</a>.</p>
P6605	David Klanica, Phillips 66	4/12/21	B	Policies 11AA -1 through 11AA-7	Regarding General Policies for Climate Change/Sea Level Rise (Policies 11AA -1 through 11AA-7): please explain/provide detail	These are only general policies; we are not developing CC/SLR regulations at this



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					for shoreline development applicant's responsibilities pertaining to climate change and sea level rise. Will development applications be required to address climate change and sea level rise as part of the SMP application or will there be separate analysis and document requirements (e.g. when will a study addressing sea level rise be required)?	time.
P6606	David Klanica, Phillips 66	4/12/21	C	Policy 8T-1	Regarding Policy 8T-1, Phillips 66 requests clarification of the methods by which the County will coordinate with landowners to protect marine resource lands.	Well, we generally do that through email, though sometimes letters, phone calls, or meetings.
P6607	David Klanica, Phillips 66	4/12/21	C	Policy 8U-2	Regarding Policy 8U-2, Phillips 66 requests clarification of the types of non-regulatory programs, options, and incentives that owners of marine resource lands can employ to meet or exceed County environmental goals.	We can't provide you a precise list, as they haven't been developed yet, but they could include tax incentives, educational programs, volunteer groups, etc.
P6608	David Klanica, Phillips 66	4/12/21	C	Policy 8V-2	Regarding Policy 8V-2, Phillips 66 requests clarification of the process by which the County will work cooperatively with local, State, Federal and Tribal agencies, adjacent upland property owners, and the general public, as applicable, to address community concerns and land use conflicts that may affect the productivity of marine resource lands.	How would we work cooperatively? Here are 10 simply ways from entrepreneur.com to cultivate team cohesion: <ul style="list-style-type: none"> <li>• Create a clear and compelling cause</li> <li>• Communicate expectations</li> <li>• Establish team goals</li> <li>• Leverage team-member strengths</li> <li>• Foster cohesion between team members</li> <li>• Encourage innovation</li> <li>• Keep promises and honor requests</li> <li>• Recognize, reward and celebrate collaborative behavior</li> </ul>
P6609	David Klanica, Phillips 66	4/12/21	D		The General Provisions of Title 23 indicate that shoreline development must be consistent with the SMA of 1971, the County's shoreline regulations and "other County land use regulations" (See Title 23 draft at lines 11-13). Title 23 then references certain requirements for "existing legal fossil-fuel refinery operations, existing legal transshipment facilities, expansions of these facilities, and new or expansions of renewable fuel refineries or transshipment facilities". Related definitions are also provided on page 241 at lines 20-36. Expansions of existing fossil fuel and renewable fuel facilities are required to obtain conditional	Yes, staff is well aware of this work and understands that changes have been made to Council's original proposal. However, at the time these documents were 1 <sup>st</sup> edited, their original proposal was all we had on which to rely, which is why the comment bubbles indicate that we will have to substitute in any changes based on Council's final adoption of the

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					<p>shoreline permits. (See Title 23, page 137 at lines 3-10).</p> <p>As the Planning Department is aware, industry, labor and environmental organization stakeholders have been working together to develop recommended changes to the County Council's October 2019 proposed Comprehensive Plan amendments. Many of the terms and definitions included in this proposal assume that the 2019 proposed Amendments will be adopted as is. Phillips 66 requests that terms borrowed from the 2019 proposal not be adopted at this time. Considerable progress has been made by the stakeholders and is being presented to the County Council for its consideration in the near future. We request that this proposal be delayed until the final work from the ongoing stakeholder effort is accepted or rejected and the "final" definitions and framework for when conditional use permits is finalized.</p>	Cherry Point fossil fuel amendments.
P6610	David Klanica, Phillips 66	4/12/21	F		Article 7 Fish and Wildlife Habitat Conservation Area was amended to now include Type O waters. Phillips 66 requests the addition of a definition of Type O waters in the Whatcom County guidance.	This proposal has already been dropped. We suggested you look at the most recent version of Exhibit F, dated 4/5/21.
WH01	Wendy Harris	4/13/21			<p>This is in response to the question that was asked at the last Planning Commission meeting regarding "waters of the state." That is not a term used in the Shoreline Management Act. Rather, it refers to all waters under its jurisdiction as "shorelines of the state" or "shorelands of the state" and these are the appropriate terms to use for waters and exposed land under SMA jurisdiction.</p> <p>Under RCW 90.58.030, "Shorelines" means all of the waters of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes. <a href="https://apps.leg.wa.gov/RCW/default.aspx?cite=90.58.030">https://apps.leg.wa.gov/RCW/default.aspx?cite=90.58.030</a>.</p>	The commenter is correct, and these are all laid out in 23.20.010 (Shoreline Jurisdiction).

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					<p>In other words, only waters with minimum quantifiable measurements (size, type, velocity, etc.) are a regulated state shoreline. This is often forgotten when we hear complaints about over-regulation and unreasonableness.</p> <p>Shorelines of the state are specifically set out in the WAC. In Whatcom County, all rivers and streams that are shorelines of the state are set out in WAC 173-18-410. <a href="https://apps.leg.wa.gov/WaC/default.aspx?cite=173-18-410">https://apps.leg.wa.gov/WaC/default.aspx?cite=173-18-410</a>.</p> <p>Lakes are listed in WAC 173-20-760 and 770. <a href="https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-770">https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-770</a>; <a href="https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-760">https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-760</a>.</p> <p>There are two kinds of shorelines of the state. The most common shoreline under SMA jurisdiction imposes a no net loss standard of review to prevent any degradation beyond baseline conditions, informed by review of best available science.</p> <p>However, particularly large and significant rivers and lakes, as well as marine waters, are designated "Shorelines of Statewide Significance" (SSWS). These have increased protection through a prioritized preference of use, similar to how we apply mitigation standards. These are set out in statute, with preferred use for natural conditions that support the long-term interests of all state residents. RCW 90.58.020(f); <a href="https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.020">https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.020</a>.</p> <p>The Whatcom County SSWS are the Nooksack River, Lake Whatcom, Baker Lake, and marine waters, including Birch Bay. R CW 90.58.030.</p> <p>The SMA also discusses "shorelands" or "shoreland areas", which includes lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of</p>	

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					<p>ecology.</p> <p>RCW 90.58.030(2)(d),  <a href="https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.030">https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.030</a>.</p> <p>I recommend the SMP Handbook, which is linked on DOE's website and explains how the SMP process works. Specific issues and provisions are separate chapters in the Handbook.  <a href="https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Shoreline-Master-Plan-handbook">https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Shoreline-Master-Plan-handbook</a>;  <a href="https://apps.ecology.wa.gov/publications/SummaryPages/1106010.html">https://apps.ecology.wa.gov/publications/SummaryPages/1106010.html</a>.</p> <p>P.S. If you are wondering why I have written this, it is because I do not believe that the Planning Commission and citizen committees generally are being provided with relevant and timely information on the laws and policies they are asked to review and this fails to serve public needs and public input requirements. Unless citizen-appointed committees have a comprehensive and complete understanding of the purpose and intent of the policies and laws they are asked to review, they will remain tools of the Planning Department. Please continue to ask questions and ensure that you are provided with all the information you need upfront, before beginning a large review project.</p>	
PB04	Pam Borso	4/21/21	F	16.16.270	<p>Restore Reasonable Use impact area language in the Dec 4, 2020, draft Exhibit F, WCC 16.16.270 Reasonable Use Exceptions.</p> <p>I urge Whatcom County to reject the proposed change from the Planning Commission to expand the maximum impact area for single-family residences from 2,500 sf to 4,000 sf. The purpose of the reasonable use provision is to allow only the minimal "reasonable" use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations. A 4,000 sf home is excessive.</p>	Your comments will be forwarded to the P/C & Co/C for their consideration.
PB05	Pam Borso	4/21/21	F		Incorporate the State of Washington Department of Fish & Wildlife's new riparian buffers guidance. The buffer requirements	Please see the response to comment

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					contained in the SMP are less than adequate to ensure no net loss of riparian and stream functions vital to fish, wildlife and our water supply.	#FW/WEC09.
PB06	Pam Borso	4/21/21	F		Incorporate regulations to prepare for accelerating sea level rise impacts. Whatcom's SMP does not incorporate protections from this peril. Not only our marine shorelines will be impacted, as Ecology writes "more frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life." 31,235 homes in Washington State may be underwater by 2100; the value of the submerged homes is an estimated \$13.7 billion.	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21			The most recent staff memorandum contains several important explanations and clarifications regarding what is meant by the "baseline" condition upon which no net loss project mitigation requirements are measured and recognizes important distinctions between what is appropriate to require for project mitigation obligations and what must be voluntary or incentive-based for restoration. These principles should be built into the language of the code itself or, at a minimum, into the language of the adopting ordinance, so as not to disappear into history once the code amendments are adopted.	Staff doesn't feel this is necessary, as this explanation is based on DOE's guidance and explanatory handouts so it true throughout the state. Nonetheless, your comment will be provided to the P/C and Co/C for consideration.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21			The County Council is currently in the final stages of review of comprehensive plan and code amendments for fossil and renewable fuel facilities and expansions. This work is the result of many months of effort and good faith negotiations between the County and interested stakeholders, including WSPA. As noted by staff in several places in the draft shoreline master program amendments, it is imperative that these shoreline master program amendments be fully consistent with the outcome of that other County Council effort. WSPA asks for an additional opportunity to review and provide input on future revisions made by staff to achieve that consistency before these amendments to the shoreline master program are adopted.	Please refer to the response to comment P6609. The P/C's recommended amendments will be forwarded to the Co/C for their review, public hearing, and adoption (during which they may make their own amendments). We would urge you to pay attention to the SMP update page (or Council's agenda page), where new drafts are posted as decisions are made.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21		23.40.010	The Shoreline Use and Modification Use Table establishes a shoreline conditional use permit requirement for expansions of existing legal fossil fuel refinery and transshipment facilities and new or expansion of existing legal renewable fuel refinery op-	What is shown in the draft Title 23 regarding this issue is what staff was provided over a year ago. Once Council makes a final decision on their separate Cherry

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					erations or renewable fuel transshipment facilities. Conditional use permit review requirements for these facilities are being addressed in the zoning code amendments currently under review by the County Council. A separate, duplicative and potentially inconsistent shoreline conditional use permit review for the same facilities that will undergo thorough zoning code conditional use permit review is unnecessary and should be eliminated. In particular, it is not appropriate to apply shoreline conditional use permit requirements to upland activities that will be fully evaluated under the zoning code requirements applicable to those upland activities. At a minimum, this provision should clarify that such fossil fuel facilities located outside of the shoreline jurisdiction should be evaluated under the zoning code conditional use permit criteria and not pursuant to shoreline conditional use permit requirements.	Point amendments staff will rectify the differences.  You should understand, though, that if both Title 20 and Title 23 require a CUP for a certain activity, the permits would be combined under WCC 22.05.030 (Consolidated Permit Review). Shoreline requirements would not be applied outside of the shoreline jurisdiction.
DK01	David Kershner	4/22/21	N/A	N/A	<p>I have served on the Whatcom County Climate Impact Advisory Committee since its inception in 2018. While I am not writing in my capacity as a committee member, I have familiarized myself with the research on sea level rise related to climate change. The financial costs to Whatcom County taxpayers and property owners of not adequately planning for sea level rise are likely to be substantial. As you may know, the real estate company Zillow estimates that nearly \$14 billion worth of housing in Washington State could be submerged in the next 80 years under some climate change scenarios. The ecological costs will also be substantial, if we plan to prevent flooding of structures but not to allow migration of shoreline habitat. That habitat not only supports wildlife populations, it also provides economic benefits, such as recreation and fisheries.</p> <p>To reduce the economic toll of sea level rise and truly protect shorelines consistent with the intent of the Shoreline Management Act, I urge you to recommend revising regulations to ensure that newly-created lots only allow construction in areas that are not likely to be inundated in this century. Where existing lots are large enough to still allow residential, commercial, or industrial uses compatible with the zoning, I urge you to recommend a similar revision. In addition, I support revising the regulations</p>	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.



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					to ensure that new or substantially changed structures be elevated above the likely sea level rise elevation for the life of the structure.  Waterfront property that I own on Lummi Island would likely be constrained in its use due to these regulations. Nevertheless, new protections are the only responsible approach to shoreline planning, given what we know about sea level rise.	
DK01	David Kershner	4/22/21			As a former commercial salmon fisher, I also support strengthening riparian buffer restrictions consistent with recommendations of the Washington Department of Fish and Wildlife Riparian Ecosystems Volumes I and II. Salmon populations have declined in part due to riparian habitat degradation. We need to protect this habitat to restore healthy salmon populations.	Your comment will be forwarded to the P/C & Co/C for their consideration.
AC01	Alan Chapman	4/22/21			I have been involved in fisheries management, and watershed resource issues in Whatcom County for over 30 years.  Regardless of the level of belief one might have in projections of climate change and sea level rise and associated storm surges, it does not make sense to allow development in areas of high risk. I urge the county, in the interests in avoiding significant damage to life, property and natural resources to not allow creation of lots where reasonable use would be subject to a high risk of damage from climate change effects, sea level rise, or reduce public trust ecological benefits within the foreseeable future. Where existing lots are large enough to still allow residential, commercial, or industrial uses compatible with the zoning, I urge you to recommend or require a similar risk avoidance approach. In addition, I support revising the regulations to ensure that new or substantially changed structures be elevated above the likely sea level rise elevation for the life of the structure.	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.
AC02	Alan Chapman	4/22/21			In the interest of protecting and achieving a net ecological gain of shoreline functions through consideration of locational relevant riparian buffer requirements that might be identified in the Washington State Department of Fish and Wildlife recent guidance on riparian guidance.	Your comment will be forwarded to the P/C & Co/C for their consideration.

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PR01	Paula Rotondi	4/22/21	F	16.16.270	<p>As you consider changes to the Shoreline Master Plan (SMP), I urge you to make decisions based upon what will be best for those living here twenty years from now – rather than what is best for corporations' short term profits. Please draft more stringent SMP standards.</p> <p>First, regarding Reasonable Use Exceptions, please reject the proposed change to expand the maximum impact area for single family residences from 2,500 square feet to 4,000 square feet. "Reasonable Use" means there must be some minimal use such as a 2,500 square foot house. If those living here twenty years from now are to have natural treasures such as salmon fishing, crabbing, the sight of Orcas, the SMP cannot afford extravagances such as a 4,000 square foot house that will do more damage to our already damaged shorelines.</p>	Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.
PR03	Paula Rotondi	4/22/21			<p>Second, the buffer requirements in the SMP do not adequately protect riparian and stream functions which are essential for sustaining fish, wildlife and protecting our water supply. If people living here twenty or more years from now are to have the fish and wildlife treasures we enjoy today and have adequate supplies of clean water, then the SMP must incorporate the State of Washington Department of Fish &amp; Wildlife's new riparian buffers guidance.</p>	Please see the response to comment #FW/WEC09.
PR03	Paula Rotondi	4/22/21			<p>Third, please do not add to the challenges of those living here twenty years or more from today who will be dealing with increasingly severe ramifications of climate change. Climate change causes sea level to rise and also causes more extreme storms with tide surge coastal flooding and also river flooding. The Washington State Department of Ecology, the Federal Emergency Management Agency, private investment companies, insurance companies, and real estate companies (Redfin most recently) warn that many thousands of homes worth billions of dollars will be lost due to climate change exacerbated flooding. Please include regulations in the SMP to prepare for accelerating sea level rise.</p>	Please see the responses provided for Comments FW/WEC01, FW/WEC02, FW/WEC12, WCPW07, WCPW08, WCPW09, RES03, RFW02, RFW03, RFW04, RFW06, RFW07, RFW11, RFW17, & PB06.
P6611	Dave Klanica, Phillips 66	4/22/21	D		<p><i>Extent of Jurisdiction.</i> Given the recent Department of Ecology's revocation of the Port of Kalama and Northwest Innovation</p>	We are. Shoreline jurisdiction is addressed in §23.20.010.

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					Works Shoreline Conditional Use Permit, questions have been raised as to overall shoreline management authority. Whatcom County, as well as other Counties and Ecology must lawfully apply its shoreline management program requirements, particularly when seeking to require mitigation for activities that occur outside the jurisdictional shores of the State. It appears that Ecology unlawfully applied certain mitigations when the only activities within the shoreline were dredging for a new dock berth, portions of the security fence, an infiltration pond, a first-flush pond, fire suppression water storage and a containment berm for certain storage tanks. We ask that Whatcom County commit to act within its jurisdictional boundaries.	
P6612	Dave Klanica, Phillips 66	4/22/21			<i>Consistency with Ongoing Comprehensive Plan and Code Amendments.</i> Both WSPA and Phillip 66's previous comments request that the shoreline master program amendments be consistent with the outcome of the ongoing good faith negotiations between the County and interested stakeholders that has occurred over many months related to the Comprehensive Plan and Code Amendments. We request consistency primarily as to definitions as the development of the relevant definitions was a significant effort and even slight differences in wording across county programs could add uncertainty and confusion. Phillips 66 does not believe that all activities which will require a conditional use permit under the Code Amendments should also require a conditional use permit under the shoreline management act. The shoreline program only affects activities that are within the jurisdictional shores of the State. The Zoning requirements cover much broader non-shoreline areas. Additionally, shoreline conditional use permit requirements should not be applied to upland activities that will be fully evaluated under the zoning code requirements applicable to those upland activities. The programs also involve different decision makers and appeal paths. The differences can warrant different permitting approaches.	Please see the responses provided for Comments FW/WEC16, RES10, P6609, WSPA01
BH01	Bill Haynes, Ashton Engineering	4/22/21	D	23.50.140	Regarding the Table for Dimensional Standards (page 147), the minimum length required to reach a moorage depth of 5' below	We agree; our math was wrong. It has been amended to be 5.5 feet now.

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					<p>ordinary high water.</p> <p>Ordinary High Water (OHW) elevation 314.5' has been well established on the Lake Whatcom - at least for the multiple projects I've been involved with.</p> <p>The proposed change results in a low water depth at the outer end of the dock (float) of 2'. Design low water has been established at an elevation of 311.5'.</p> <p>In a Jan. 29, 1999 letter from the WA Dept. of Ecology (DOE) to WCPDS and the WC Hearing Examiner, the DOE determined "...an in-water depth of 2.5 feet at 311.5 feet MSL is the minimum necessary draft to accommodate a standard powerboat on Lake Whatcom."</p> <p>The proposed update lowers the design depth from 2.5' to 2.0'. That depth is at the watered end of the dock only. Presumably, depths towards shore are shallower and at low water level a power boat will have less than 2' to moor in. In addition, the landward end of the float may go aground depending on the bottom contours if the outer end is at 2'. If the site is exposed to waves, the dock/boat may be tossed up and down on the lake bed.</p> <p>Assuming a 6'x20' floating dock aligned with its approach ramp, I would propose the overall minimum length required to reach an inshore depth of 5' at OHW (2' depth at 311.5'). That assumes depths offshore increase.</p>	
KC04	Kim Clarkin	4/22/21			<p>I am concerned about the current document's lack of land use restrictions on areas that will be affected by sea level rise. I do not agree that waiting to strengthen regulations till more information is available is a good idea. In the meantime, many decisions will be made that may harm critical areas along the changing shoreline. Those decisions may also harm the people who invest in shoreline developments that storm surges could damage. This is the kind of foresight and protection citizens expect from their government—not a laissez-faire attitude such as led to the Oso disaster. Other commenters have given strong refer-</p>	<p>Please see the responses provided for Comments FW/WEC01, FW/WEC02, FW/WEC12, WCPW07, WCPW08, WCPW09, RES03, RFW02, RFW03, RFW04, RFW06, RFW07, RFW11, RFW17, &amp; PB06.</p>

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					ences for up-to-date scientific information the Planning Dept. can use to write pertinent and reasonable rules to distance new developments from the shoreline.	
KC05	Kim Clarkin	4/22/21			I do not see a reason for expanding the reasonable use exception to 4,000 ft2 in critical areas. That is a trophy home, not a reasonable exception. Critical areas are critical to wildlife, water and other things that we are trying to protect. Let's actually protect them.	Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.
KC06	Kim Clarkin	4/22/21			<p>I strongly encourage you to use WDFW's most recent recommendations for riparian buffer widths for new developments. They are based on a thorough knowledge of rivers, valleys, and in-stream habitat development over the long term, and they should be incorporated in our long-term planning. No one is saying that existing developments have to be retired. New development should be completely different; recognizing our expanding understanding of the damage we wreak on ecosystems, we should aggressively seek to avoid that damage.</p> <p>I congratulate you and the Planning Department for making otherwise reasonable updates to a huge document and working toward making regulations more understandable. It has been a long slog for you, and I'm grateful for your attention to this extremely important roadmap to our future relationship with our environment. Please make it as strongly protective as you can.</p>	Please see the response to comment #FW/WEC09.
JM01	Janet Migaki	4/22/21			<p>The SMP, CAO, City and County Comprehensive Plans mention or refer to a quagmire of environmental agencies + regulations, as well as mention or refer to multiple intersecting jurisdictions, permits, ordinances, exemptions and waivers—all used for 'managing' waters of the State.</p> <p>Lake Whatcom, a significant water of the State, is not a healthy or protected source of water, yet it is used for Bellingham's drinking water. The Lake's well documented decline is troublesome since many of the lake's contaminants resist the treatment processes used by the City treatment plant and pass into public drinking water supplies.</p> <p>Where in the SMP and accompanying documents does it men-</p>	Lake Whatcom's water quality is managed through the Lake Whatcom Management Program, under the direction of the Lake Whatcom Policy Group. You can find what you're looking for at <a href="https://www.lakewhatcom.whatcomcounty.org/">https://www.lakewhatcom.whatcomcounty.org/</a> .

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					<p>tion or discuss the primary and ultimate regulatory agency held fully accountable for protecting the water quality of Lake Whatcom water?</p> <p>The Lake is violating several water quality parameters +contaminants, and the water has not been tested for a full toxicology analysis since late 1990s.</p> <p>Does the SMP address protecting the Lake's total water quality? I know the 50-year TMDL tries to address low DO levels, with not encouraging reports to date. What about so many more lake water quality issues- who is accountable and responsible for protecting and keeping the lake healthy enough to be a drinking water source?</p>	
MRC01	Marine Resources Committee	4/22/21			<p>Thank you for taking the time to review the Whatcom County Marine Resources Committee's (WCMRC) comments on marine land protection. One role of the WCMRC is to work with county leadership and other key constituencies to help protect marine and enhance nearshore habitat through local and state ordinances and regulatory plans. The WCMRC supports regulations and policies that further protect and enhance marine shoreline areas that are vital economically, culturally, recreationally, and environmentally.</p> <p>The Whatcom County Marine Resources Committee supports the inclusion of the proposed amendment to Chapter 8: Marine Resources Lands policy section, as developed by the WCMRC, to the Comprehensive Plan.</p>	Your comment will be provided to the P/C and Co/C for consideration.
BIAWC14	Rob Lee, BIAWC Executive Officer	4/22/21	F		<p>We want to say thank you for:</p> <ul style="list-style-type: none"> <li>recommending the 4,000 sq. ft. RU area, we request excluding septic systems from this square footage if covered with native landscaping.</li> <li>For creating the minor variance for buffer reduction of the 25% to 50%. We request that you lower the fee for minor variances.</li> <li>We request that any buffer reductions under Reasonable Use are decided administratively through a minor variance, Critical areas included.</li> </ul>	Your comment will be provided to the P/C and Co/C for consideration.



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BIAWC15	Rob Lee, BIAWC Executive Officer	4/22/21	F	16.16.270 & 16.16.273	<p>Reasonable Use and Variances: We will comment separately on the permit process, "impact area" size, and criteria issues.</p> <p>A. Permit Procedure:</p> <p>1) <i>Present Process</i>: PDS staff has proposed major changes to the procedures. The current 2017 CAO allows staff to grant reasonable use (RU) permits for one single family house under very strict criteria if CAO rules alone would deny "all reasonable and economically viable use" of the property. The next step is a variance requiring Hearing Examiner (HE) approval.</p> <p>We were surprised to learn recently that these RU permits have become a major part of local wetland scientist's workload. This is due mainly to high buffer standards and tight limits on adjustment options. These conflicts between strict environmental rules and permitted, customary land uses are obviously not unusual.</p> <p>2) <i>Staff Proposed Process</i>: As we understand it, the current draft Exh F/CAO proposal, dated 4/2/2021, offers a 3-level process:</p> <p>a) Minor Variance: if a person only needs a 25 to 50% CAO buffer reduction, they will apply for this approval. The draft does not say whether this value is total area, width, or both. Staff decides these permits; an application and notice to neighbors is required. We do appreciate this new minor variance idea allowing staff approval. The concept should be used for other CAO issues. No further CAO permits are needed. See Section 16.16.273, p 34.</p> <p>b) A Major Variance is required if the Minor Variance is denied. One would apply to PDS, and the H/E would decide after a hearing. This is an expensive and slow process; the fees are now \$2,750 each, plus critical area reports, probably consultants doing the applications, a consultant or attorney at the hearing, and possible legal costs if you or an opponent appeals the decision. Anyone testifying, or you, can appeal the decision to Superior Court, also costly and slow. See Section 16.16.273, p 34.</p>	<p>Regarding the commenter's point A.2.b: A major variance wouldn't be required if the minor variance is denied; a major variance would be applied for if one wants to reduce a buffer more than 50%. They're not sequential: one just applies for the permit one needs.</p> <p>Similarly, regarding the commenter's point A.2.b: With staff's assistance, an applicant should know whether a major variance is attainable, given the required findings (§22.07.050). Thus, if one understood one's chances to be nil, one would just apply for an RUE; so again, they don't have to be sequential.</p> <p>The biggest difference is that through a variance, whether minor or major, one must still mitigate for impacts. Under an RUE the H/E can allow impacts without requiring mitigation. This would apply on a property that is so encumbered by critical areas that nothing could fit on the lot without causing impacts and there's no room to mitigate.</p>

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					<p>c). A Reasonable Use Exception is the last resort, virtually identical to the Major Variance process and possible outcomes. It would also be decided by the HE, with high similar costs, and potential litigation. See 16.16.270. A and B.</p> <p>One may apply for an RUE only if their Major Variance app is denied. If you do not get adequate relief with a major variance, you must repeat the process to apply for and hope to be granted an RUE by the HE, paying like fees and costs again. You or an opponent may appeal this decision too to Superior Court from someone, at either stage.</p> <p>3) BIAWC/GAC Proposal: a simpler, less costly, and more practical alternative for all sides:</p> <p>a) Minor Variance (informal staff decision): expand the options to allow buffer adjustments above 50%. This would be determined mainly on a valid scientific analysis of site and vicinity functions and values of the affected wetland(s) and/or habitat(s), acceptable to qualified staff. Also, adjustments should be possible in both total buffer area and width. Can be appealed via RU process.</p> <p>b) Major Variance (formal HE decision): eliminate it, as redundant with the RU option, adding unneeded costs, complexity and time demands on both public and private parties.</p> <p>c) RUE: Use the draft as written; consider simplifying criteria per comments, information, and proposal below, per Item C.</p>	
BIAWC16	Rob Lee, BIAWC Executive Officer	4/22/21	F	16.16.270(C)(12)	<p>B. "Impact Area" size limit: For reasons stated in our April 12 2021 letter, we support the 4,000 sq. ft. value for the "impact area" to be allowed as the upper limit for buildings and other impervious surfaces, except for a minimal standard driveway. We suggest "impact area" be defined for certainty, and exclude landscaped areas using native plants and water features, and septic mounds or areas. The term "footprint" has a different meaning in the construction and real estate worlds.</p> <p>Also, there is no scientific basis for any fixed value, 2,500 or</p>	<p>Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, &amp; RFW18.</p> <p>And the commenter is correct about the impact area having no scientific basis; rather, it is a legal basis. The courts have consistently interpreted a reasonable use</p>

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					4,000. Also, some landowners who already have a "pre-CAO" house or other building on their parcel would be severely penalized by the 2,500 value.	(in SFR zones) to be an averaged sized house in that jurisdiction. In Whatcom County, PDS records indicate that an averaged sized house is 1,820 sf, meaning the footprint would be around 900-1,000 sf (2-story). We would expect that someone wanting a larger home or more appurtenant improvements wouldn't choose a lot that is so encumbered by critical areas that they couldn't fit it on the property.
BIAWC17	Rob Lee, BIAWC Executive Officer	4/22/21	F		<p>C. RU Criteria: In our April 12 2021 statement, we raised several substantive questions on the "reasonableness" of some of the many RU criteria (12! see p 2-3). And we attached the full text of guidance on Reasonable Use from the state Department of Commerce again. We did omit the small p1 diagram because it was not clear how it related to the text on it or overall context.</p> <p>In general, this guidance advises "careful use" of terms such as "alternative or possible uses, etc."; and care with "economic use" etc.; see p 2-3.</p> <p>In the Synopsis of Public Comments updated April 14, 2021, staff commented at length on this guidance (pp 110-113). We have no disagreement with most comments. But in D, p 111, if you as the government are going to say: "the criteria ... need to consistent with case law...", then you have an obligation to impacted citizens to cite at least the more recent and relevant cases and point out the claimed support.</p> <p>Somewhere in the Synopsis, staff also referred to Department of Ecology guidance on this topic. I searched their site and found: "Wetland Guidance for CAO Updates"; 65p, 2016 (attached). The subject is cited on 4 pages: 8, 13 and 31-32. This excerpt is the only substantive guidance in the document, p 8:</p> <p>"Exceptions are typically addressed in a CAO in the context of reasonable use of property. For more information about this</p>	Your comments will be provided to the P/C and Co/C.

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					<p>regulatory tool, see Section VII of the Critical Areas Assistance Handbook published by the Washington State Department of Commerce:  <a href="http://www.commerce.wa.gov/Documents/GMSCritical-Areas-Assist-Handbook.pdf">http://www.commerce.wa.gov/Documents/GMSCritical-Areas-Assist-Handbook.pdf</a></p> <p>We think this is an important legal issue for many county landowners. We suggest you ask the PDS/Commissions' legal counsel to review these criteria and related resources and produce a memo with a recommended set of criteria for the record before you complete your recommendations on this important issue to the County Council. The adopted CAO definitions of Reasonable Use and RU Exception should be reviewed too; attached.</p>	
BIAWC18	Rob Lee, BIAWC Executive Officer	4/22/21	F		<p>2. Buffers for wetlands and Habitat (HCAs)</p> <p>Our April 12 testimony makes several comments on this important issue. In general, the buffers make more land unusable for all kinds of essential land uses than preserving the actual wetland.</p> <p>At this point, we have carefully reviewed the 3 most recent statements by Miller Environmental Services on the many changes proposed by staff re wetland and habitat buffer and related issues. We have discussed many with him and find that we agree in general with all the comments. A few other wetland scientists have also submitted valuable comments, e.g., NW Ecological Services and NW Wetlands Consulting.</p> <p>We respectfully recommend that Planning Commission members and staff review these comments carefully, and seriously consider acceptance. Almost all are opposed to new, more restrictive language, and do not propose new text or values.</p> <p>Many of staff's proposed changes, and opposed by Miller, would tip whatever balance the CAO now has toward preservation of more non-wetland areas, i.e., buffers. Other items objected to will make the process of obtaining some flexibility in the rules more difficult, or impossible in some cases.</p>	Your comments will be provided to the P/C and Co/C.

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					<p>We submitted two of the three Miller letters with our April 12 letter: the February 19, 2021 letter (8 pages; 14 comments, and the Jon Maberry Prepared Motions, one page, 12 issues, dated February 25 2021.</p> <p>We are attaching the firm's most recent April 12, 2021 letter to this statement, 8 issues and 6 p.</p> <p>We are taking this approach because no active members of our GAC or of the BIAWC have the scientific credentials or experience to do the kind of objective analysis of the draft changes that Miller and the other scientists have done.</p> <p>From reading all the Miller comments, we conclude that if the CAO draft is adopted as written today, the Whatcom CAO will be one of the restrictive in the state, if not the most!</p>	
BIAWC19	Rob Lee, BIAWC Executive Officer	4/22/21	F		We do ask that the Planning Commission hold the record open for written comments for at least 2 weeks. We will review the testimony after the hearing and may want to send additional comments.	The P/C considered this request at their 4/22 hearing and denied it.

Total # of comments: 270

## TECHNICAL MEMORANDUM

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Date: December 31, 2020  
To: Cliff Strong, Ryan Ericson  
From: Dan Nickel, Mark Daniel, Devin Melville  
Project Name: Whatcom County SMP

### Subject: Whatcom County SMP Periodic Update - No Net Loss Statement

## Introduction

Whatcom County (County) is conducting a periodic review of its Shoreline Master Program (SMP). While the majority of amendments are to comply with current State law and address recent legislative updates, to clarify prior interpretations, and reorganize the SMP to improve usability for both applicants and staff), several amendments are substantive in nature and merit additional documentation to ensure that implementation of the updated SMP and future development will not result in a net loss of shoreline ecological functions.

The Shoreline Management Act guidelines (Guidelines) require local shoreline master programs to regulate new development to “achieve no net loss of ecological function.” The County’s 2007 comprehensive SMP update was approved under this benchmark based on the analyses performed then<sup>1</sup>. This memorandum builds on those analyses and addresses the amendments proposed for this year’s periodic review and specifically identifies amendments that are more substantive in nature.

The following areas of the SMP have amendments that warrant evaluation:

- Pier and dock standards
- Common line setback evaluation
- Trail location standards
- Nonconforming residential development
- Buffer reduction mechanisms
- Residential accessory structures

<sup>1</sup> See <https://www.whatcomcounty.us/3119/SMP-Update-2020-Documents>



The purpose of this memo is to describe these amendments and evaluate their potential effects on shoreline ecological functions to ensure the County will continue to meet the Washington State Department of Ecology no net loss criteria.

## No Net Loss Evaluation

### Pier and Dock Standards

**Amendment Description:** WCC 23.40.150(B) (Moorage Structures) (formerly titled Docks, Piers, and Mooring Buoys) contain revised dimensional standards, including overall square footage, for both freshwater and marine moorage (overwater) structures.

**NNL Evaluation:** The amended pier and dock standards in WCC 23.40.150(B), subsections 1 and 2, are extrapolated from the U.S. Army Corps of Engineers (Corps) Regional General Permit 6 and consistent with the Washington Department of Fish and Wildlife standards provided in the hydraulic code rules (WAC 220-660-140 and -380). These state and federal requirements contain provisions to allow overwater structures while ensuring implementation of impact reduction mechanisms to protect aquatic habitats. Furthermore, moorage structures are required to be constructed of materials that will not adversely affect water quality or aquatic plants or animals over the long term (WCC 23.40.150(C)).

While the proposed amendments to the Whatcom County SMP do not explicitly limit the number of future overwater structures, the proposed amendments minimize impacts by regulating overall footprint and dimensional standards, which are known to have a direct correlation to habitats and species. In general, the updated pier and dock standards allow for reduced square footage of overwater structures and a reduction in the total number of docks by prioritizing shared docks over single-user docks. The proposed amendments also avoid future impacts by prohibiting such moorage structures in key shoreline habitat areas (WCC 23.40.150(A)(6)).

### Common-Line Setback

**Amendment Description:** To protect views of the shoreline from existing structures when new development is proposed, WCC 23.30.040 (Views and Aesthetics) of the updated SMP includes a new subsection (B) that now allows setbacks in Urban, Shoreline Residential and Rural environments to be modified pursuant to WCC 23.40.020(D) (Shoreline Bulk Provisions, Setbacks, Common-Line Setback for Single-Family Residences). That section (incorporated from former Appendix F, where it had only applied to nonconforming lots) allows for setbacks to be

reduced or increased, depending on how existing adjacent homes are situated, to provide the greatest view opportunities for both the existing and new development. Furthermore, WCC 23.30.040 (Views and Aesthetics) new subsection (L) precludes new uses or development from substantially obscuring shoreline views within shoreline view areas or from existing residences on adjacent property.

**NNL Evaluation:** When the use of a common-line setback is allowed, compliance with buffer width reduction and mitigation sequencing pursuant to WCC 23.30.010 (Ecological Protection) shall be required. WCC 23.30.010 (B) states that development, use, and activities within the shoreline jurisdiction shall avoid and minimize adverse impacts, and any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes pursuant to WAC 173-26-186, Governing Principles of the Guidelines. Furthermore, WCC 23.30.010 (C) has been added to specifically to add flexibility in buffer modification when approaches include “increased protection of shoreline ecological function and processes.” To minimize impacts to views from the water, a new subsection (C) was added to WCC 23.30.040 (Views and Aesthetics), that now allows the Director to require the planting of vegetation to mitigate the impacts.

## Trail Location Standards

### **Amendment Description:**

WCC 16.16.620 (Wetlands – Use and Modification), Subsection (H) (Recreation) has been amended to allow public trails to include viewing platforms to be closer than the outer 25% of the buffer “when necessary to provide wetland educational opportunities or for public health and safety,” and to be wider than the standard widths when necessary to meet ADA requirements. Corresponding amendments have also been made to WCC 16.16.720(G)(1) (Habitat Conservation Areas – Use and Modification).

**NNL Evaluation:** This allowance is permissible provided that all criteria in WCC 23.40.160(A)(6) (Recreation) are met; this amendment adopts by reference the requirements of WCC Chapter 16.16 (Critical Areas), which contains the standards for trails in critical areas. WCC 16.16.620(H) criteria for passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails, states the trail must minimize erosion and sedimentation, hydrologic alteration, and disruption of natural processes such as wood recruitment and natural wildlife movement patterns. Such trails must be made of pervious material or elevated where feasible,

be designed to avoid removal of significant trees, and be constructed in a manner that minimizes disturbance of the buffer and associated critical areas.

## Nonconforming Residential Development

**Amendment Description:** Standards for addressing the enlargement or expansion of single-family residences non-conforming to the shoreline buffer have been clarified in WCC 23.50.020 (Nonconforming Structures), subsection (F). Expansion of a nonconforming single-family structure may be approved when the expansion does not extend waterward of the existing primary structure's building footprint or the when the expansion is consistent with the constrained lot provisions in WCC 23.40.170.

**NNL Evaluation:** Approved expansion of single-family residences non-conforming to the shoreline buffer is not anticipated to have further impacts to the shoreline under the clarified standards provided in WCC 23.50.020 (F). Subsection (2) includes the following specific restrictions to ensure protection of existing ecological functions and mitigate for impacts. The expansion of nonconforming single-family residences or normal appurtenances greater than the constrained lot provisions of WCC 23.40.170 may be approved once during the life of the structure (100 years), with a total building footprint expansion of no more than 500 square feet. Additionally, the expansion must be landward or lateral of the existing footprint, shall occur on a previously impacted impervious surface, shall not occur waterward of the common line setback, and shall be accompanied by enhancement of an area equivalent to the expansion if the total building footprint increases by more than 250 square feet.

## Buffer Reduction Mechanisms

**Amendment Description:** WCC 16.16.745 and 16.16.640 address buffer modifications within wetlands and habitat conservation areas, including buffer width averaging, buffer width reductions, and buffer width variances. Buffer averaging allows limited reductions of buffer width in specified locations, while requiring increases in others. In such cases, the width of buffers may be averaged if it will improve the protection of functions and the applicant can demonstrate that all specified criteria are met. Buffer width reduction may be approved by the Director on a case-by-case basis, provided that the general standard for alternatives analysis and mitigation sequencing per WCC 16.16.260 have been applied and the applicant demonstrates to the satisfaction of the Director that all of the specified criteria have been met. Standard buffer widths may be reduced more than 25% though a variance pursuant to WCC 16.16.273, provided that buffer averaging beyond the limits allowed by the variance is prohibited.

**NNL Evaluation:** The updated SMP adopts the CAO by reference, allowing for limited buffer reduction mechanisms provided specified criteria are met. For buffer averaging proposals, both WCC 16.16.745 (B)(2) and WCC 16.16.640 (B)(2) state the Director may require enhancement to the remaining buffer to ensure no net loss of ecological function, services, or value in the specified locations where a buffer has been reduced to achieve averaging. For buffer reduction proposals, both WCC 16.16.745 (C) and WCC 16.16.640 (C) allow the Director to require retention of existing native vegetation on other portions of the site to offset habitat loss from buffer reduction. Additionally, all buffer reduction impacts are required to be mitigated with the result being equal or greater protection of functions and values. In all circumstances where a substantial portion of the remaining buffer is degraded, buffer reduction plans shall include replanting with native vegetation in the degraded portions of the remaining buffer area to further ensure the no net loss standard is achieved.

## Residential Accessory Structures

**Amendment Description:** WCC 16.16.720(G)(4), Accessory Uses, allows for water-oriented accessory structures associated with a residential use to be located in habitat conservation area buffers. Such structures would be limited in area to either 10 percent of the buffer area or 500 square feet, whichever is less. Additionally, no more than 20 percent of the linear length of shoreline could be occupied by such a structure. Per this section, such recreation-oriented applications would only be allowed when all reasonable measures have been taken to avoid adverse effects on species and habitats, including applying recommendations from the Washington Department of Fish and Wildlife, providing mitigation for all adverse impacts that cannot be avoided, and limiting the amount and degree of the alteration to the minimum needed to accomplish the project purpose. As required mitigation for the development, the shoreline must be planted with native vegetation extending at least 15 feet landward from the ordinary high water mark for at least 75 percent of the shoreline length.

**NNL Evaluation:** This allowance for small water-oriented residential accessory structures is intended to offer flexibility to waterfront landowners who would like to enhance their water enjoyment opportunities, typically for viewing or direct water access. To balance these direct impacts to HCA buffers, the County has proposed a planting requirement immediately adjacent to the shoreline. Native vegetation in these locations are known to provide a variety of positive ecological benefits including habitat, water quality, and vegetation functions. Assuming an average waterfront lot width of 100 feet, such a requirement would require a minimum planting area of 1,125 square feet (100 feet long x 15 feet wide x 0.75). This planting area represents over a 2:1 mitigation ratio to the maximum potential impact area of 500 square feet. Even a small lot width of 50 feet would result in approximately 562.5 square feet of native shoreline planting.

Implementation of this provision is expected to improve habitat, water quality, and vegetative conditions as vegetation matures over time.

## Restoration Plan Implementation

The Shoreline Restoration Plan prepared as part of the Comprehensive SMP update in 2007 serves as a valuable resource for the County and its restoration partners to improve impaired ecological functions on the County's shorelines. The plan provides a framework for restoration on all County shorelines outside of incorporated areas.

The plan focuses on restoration projects that are reasonably likely to occur in the foreseeable future. This list has been updated during the periodic SMP update process<sup>2</sup>. Potential restoration opportunities were identified based on recommendations in existing restoration planning documents, as well as input from County staff and restoration partners. The plan lists restoration and protection strategies, including opportunities for specific projects, for each of the County's watersheds.

The plan provides an implementation framework by identifying existing and ongoing plans and programs as well as potential restoration partners at the federal, state, regional, and local levels. The framework builds on local and regional planning coordination among these programs and partners, identifying mechanisms for implementation including development incentives for restoration; landowner outreach and engagement; maximizing mitigation outcomes; and monitoring the effectiveness of restoration actions.

Restoration projects which have been completed or are in progress since 2007 include:

- Removing groins and bulkheads along Birch Bay Drive (ongoing)
- Removal of a failed solid fill pier, large rock groin, concrete debris and derelict piles in the western portion of Legoe Bay (ongoing)
- Lummi Island Quarry Restoration (ongoing)
- Bulkhead removal along Gooseberry Point (ongoing)
- Little Squalicum Creek mouth/estuary debris removal (ongoing)
- Debris removal and restoration of the armored shore at Mount Baker Plywood (ongoing)
- Point Roberts, Lighthouse Park structure removal (complete)
- Lummi View Drive Relocated (complete)

<sup>2</sup> Restoration Plan Addendum, March 31, 2020

- West Beach, Lummi Peninsula bulkhead removal (ongoing)

## Cumulative Impacts

The Cumulative Impacts Analysis during the 2007 comprehensive SMP update evaluated the effects of foreseeable development under the SMP and demonstrated that the goals, policies, and regulations, combined with recommendations in the Shoreline Restoration Plan, would prevent degradation of ecological functions relative to baseline conditions.

The Cumulative Impacts Analysis determined that the proposed SMP provides a high level of protection to shoreline ecological functions. The report indicated that on its own, the proposed SMP, which includes the Shoreline Restoration Plan, is expected to protect and improve shorelines within Whatcom County while accommodating foreseeable future shoreline development, resulting in no net loss of shoreline ecological function.

Emphasis is placed on achieving no net loss of ecological function throughout the SMP, with all uses and modifications subject to general and/or specific standards addressing the preservation of water quality, water quantity, and habitat function in the shoreline, as well as basin-wide ecological processes. The following are some of the key features that protect and enhance shoreline ecological functions to ensure that the no net loss standard is met.

- Shoreline environment designations are assigned to shorelines to minimize use conflicts and designate appropriate areas for specific uses and modifications.
- The SMP contains general policies and regulations designed to provide the basis for achieving no net loss of shoreline ecological functions, such as mitigation sequencing, critical areas and flood hazard regulations, and vegetation conservation standards.
- The critical area protection standards ensure that vegetated buffers are retained on wetlands, fish and wildlife habitat conservation areas, and geologically hazardous areas.
- More shoreline uses and modifications are permitted in areas with higher levels of existing disturbance, and allowed uses and modifications are more limited in areas with lower levels of disturbance. Regulations prohibit uses that are incompatible with the existing land use and ecological conditions and emphasize appropriate location and design of various uses.
- The Shoreline Restoration Plan identifies a number of project-specific opportunities for restoration inside and outside of shoreline jurisdiction, and also identifies ongoing



county programs and activities, restoration partners, and recommended strategies and actions consistent with a variety of watershed-level planning efforts.

## Conclusion

The proposed amendments to the SMP described above are not anticipated to have adverse effects on shoreline ecological functions at the planning level. Further, the updated SMP includes a variety of other amendments that are either insignificant when it comes to evaluating impacts to ecological functions or anticipated to strengthen the shoreline ecological protections provided by the SMP. Therefore, the proposed amendments to the SMP are not anticipated to result in a net loss of ecological functions when implemented in tandem with the Shoreline Restoration Plan. Monitoring key indicators is an effective way to ensure the standard of no net loss is being achieved. This can best be implemented by requiring the submission of short-term and long-term monitoring reports as part of permit approvals for development applications and maintaining consistency throughout the permitting process in evaluating mitigation sequencing. Additionally, ongoing efforts by state agencies to monitor land cover change detection, specifically work generated by the Washington Department of Fish and Wildlife, will continue to offer a valuable resource to ensure compliance with no net loss standards.

## TECHNICAL MEMORANDUM



Date: March 31, 2020  
To: Whatcom County  
From: Dan Nickel, The Watershed Company  
Jonathan Waggoner, Herrera Environmental  
Project Name: Whatcom County SMP Periodic Update  
Project Number: 181232

### Subject: Whatcom County Shoreline Restoration Plan Addendum

The purpose of this memorandum is to update the previous Shoreline Restoration Plan adopted by Whatcom County in 2007. The Shoreline Restoration Plan is meant to help identify restoration or enhancement projects and areas of the shoreline for improvement. Generally, uses and developments within shorelines cannot always be fully mitigated, which may result in incremental and unavoidable degradation to the baseline conditions of the shoreline. The Restoration Plan aims to counter these incremental degradations by identifying areas and projects for enhancement and restoration which can improve degraded baseline conditions along the shoreline over time.

This addendum references projects listed in the Shoreline Restoration Plan containing enhancement and restoration project proposals and updates them based on information received by the County, agencies, tribes and stakeholder organizations (Table 1). New projects which have been completed or are planned for construction are included in Table 2.

Table 1. Project updates for restoration actions

Project Location / Identifier	Environmental component(s)	Status (2020)	Proponent	Notes
Drayton Harbor	The large platform and foundation could be removed to restore the beach and fringing marsh	No change		
Drayton Harbor	Remove bulkheads in two separate locations that protrude into the intertidal	No change		
Drayton Harbor	Remove dilapidated dock	No change		
Birch Bay	Birch Bay Drive & Pedestrian Facility Project – Remove groins and bulkheads along Birch Bay Drive to restore upper beach and backshore habitats	Under construction	Whatcom County	Phase I under construction. Completion expected in 2021. Will restore 7,500 linear feet of shoreline.

Project Location / Identifier	Environmental component(s)	Status (2020)	Proponent	Notes
Pt Whitehorn	Remove bulkheads along these bluffs, which are the sole sediment source for accretionary shoreforms and valuable habitat in Birch Bay and State Park reaches	No change		
Cherry Pt	Remove dumped debris from bluff face and beach	No change		
Conoco Phillips	Sediment would be excavated from landward of the berm and bypassed to the south side of the pier fill area in stages. This would free up impounded sediment to southern shores and create a saltmarsh or estuary in the backshore	No change		
Sandy Pt	Marsh Restoration – Reduce intertidal slope and impervious surfaces and create riparian buffer/dune habitat to aid with flood control issues in the basin. Portions of the undeveloped (filled) uplands could be restored to marsh	No change		
Lummi River Delta	Tidal Connectivity – Restoration opportunities include removing extensive dikes and tide gates across the Red River Delta to restore tidal inundation and greatly increase fish habitat	No change		
Lummi Island, Pt Migley	Remove Bulkheads – Bulkheads could be scaled back or moved landward where possible and picnic structures over what would be active beach should be removed	No change		
Lummi Island, Village Pt	Remove Structures – Remove relict structures in backshore/marsh environments with marsh restoration	No change		
Lummi Island, Village Pt	Remove pier, groin, debris – Removal of a failed solid fill pier, large rock groin, concrete debris and derelict piles in the western portion of Legoe Bay would benefit the nearshore	In early design		Goal is to restore ~150 linear feet
Lummi Island, Village Pt	Remove derelict piles which are likely creosote	No change		
Lummi Island, Smugglers Cove	Lummi Island Quarry Restoration – The shore that is not in use could be restored through removal of fill and riparian restoration to resemble the rocky shore prior to mining operations	In early design	Northwest Straits Foundation	Goal is to restore ~600 linear feet
Eliza Island	Remove derelict piles which are likely creosote in two locations	No change		
Gooseberry Pt	Remove bulkheads	Ongoing	Lummi Tribe	Likely saving as mitigation – goal is to restore ~160 linear feet

Project Location / Identifier	Environmental component(s)	Status (2020)	Proponent	Notes
Gooseberry Pt	Remove bulkheads	No change		
Lummi Shore Rd	Beach monitoring – Conduct beach monitoring to ensure the beach nourishment is continued, as begun under the USACE-constructed revetment	Ongoing	Lummi Tribe	
Lummi Shore Rd	Remove derelict drift nets, debris, and other foreign material from the Lummi Shore Road beaches	No change		
Cliffside Community Beach	Remove abundant wood debris smothering nearshore sediments along the Cliffside community beach	Complete	WDOE	Study complete, removal not recommended
Squalicum Creek	Debris removal and exotic species removal and revegetation with native plants at Little Squalicum Creek mouth/estuary	Permits acquired	City of Bellingham	Funding sources still being sought
Mt Baker Plywood	Debris removal and restoration of the armored shore around the west side of the Mount Baker Plywood area would provide habitat improvements	Design in process	Port of Bellingham	Preliminary design near completion
Chuckanut Bay	Beach Nourishment	No change		
Pt Roberts, Boundary Bluff	Removal of rock bulkheads in the southern and central portion of the reach, where erosion does not appear to be substantial	No change		
Pt Roberts, Boundary Bluff	Remove abandoned pilings north of Lighthouse Park (including by the west end of Gulf Road)	No change		
Pt Roberts, Lighthouse Park	Remove the old telephone building and associated shore defense structures, this includes a soldier pile bulkhead and boulder and debris revetment	Complete	Whatcom County	250 linear feet restored
Pt Roberts, Lilly Pt	A row of houses/cabins with revetments cause bluff sediment impoundment; restore marine riparian vegetation	No change		
Pt Roberts, Lilly Pt	Remove old cannery – Old Cannery - Pilings, slag piles, and various debris such as concrete pieces could be cleaned up from the intertidal and backshore	No change		
Pt Roberts, Maple Beach	The Elm St outfall structure, short groin, and the old pilings could be at least partially removed to free up beach area and remove the foreign material	No change		

Table 2. Completed or planned projects not Included in the previous Shoreline Restoration Plan.

Project Location	Project Description	Status (2020)	Proponent	Notes
Lummi Peninsula	Lummi View Drive Relocated	Complete	Lummi Tribe	The southern end of Lummi View Drive was moved landward to avoid erosion
West Beach, Lummi Peninsula	Bulkhead Removal	In Process	Lummi Commercial Corp	2751 Haxton Way, Restoration design complete
Waypoint Park	Waypoint Park	Complete	City of Bellingham	New beach included in park
Boulevard Park Beach	Boulevard Park Beach	Complete	City of Bellingham	Phase 1 complete, phase 2 to be part of overwater walkway
Post Point Lagoon	Post Point Lagoon	Complete	City of Bellingham	Lagoon shoreline restoration
Chuckanut Bay Shorelands	Chuckanut Bay Shorelands	Complete	City of Bellingham	Beach restoration and fish passage improvements in Mud Bay



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-339

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<b>File ID:</b>	AB2021-339	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/08/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Discussion to establish a process for filling district court judicial vacancy

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A judicial vacancy is expected to occur July 1, 2021. The Council is required to fill the vacancy per state and county law.

Per RCW 3.34.060:

District judges-Eligibility and qualifications.

To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:

- (1) Be a registered voter of the district court district and electoral district, if any; and
- (2) Be either:
  - (a) A lawyer admitted to practice law in the state of Washington; or
  - (b) In those districts having a population of less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	

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**Attachments:** Press Release-DC Judge vacancy 2021, Additional Information from Grant, Application and Letters of Support - Angela Anderson, Application and Letters of Support - Royce Buckingham, Application and Letters of Support - Lisa Keeler, Application and Letters of Support - Jeffrey Lustick, Application and Letters of Support - Melissa Nelson, Application and Letters of Support - Shohana Paige, Application and Letters of Support - Kimberly Thulin

**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****County Council accepting applications for District Court Judge**

BELLINGHAM, Washington, June 8, 2021 - The Whatcom County Council is accepting applications for the position of Whatcom County District Court Judge until 4 p.m. June 28. To apply, one must be a registered voter of the district court district and electoral district, if any, and a lawyer admitted to practice law in the state of Washington. The term ends when a successor is elected and qualified in the November 2022 general election.

The Council will appoint a person to fill the unexpired term of retiring District Court Judge Dave Grant. Judge Grant worked nearly 35 years for Whatcom County, first as a county prosecutor. He was appointed to the District Court bench in 2004. Grant said of his time that it's been "an honor to serve the people of our community across those years."

Applications are available on the County Council website and can be mailed or emailed on request at 360-778-5010 or [council@co.whatcom.wa.us](mailto:council@co.whatcom.wa.us). Applications must be submitted to the Whatcom County Council Office by 4:00 p.m. on Monday, June 28, 2021.

For more information, contact Clerk of the Council Dana Brown-Davis at 360-778-5010.

###

## Judge Grant's Retirement - Additional Information

David Grant <DGrant@co.whatcom.wa.us>

Sun 6/6/2021 6:25 PM

To: Barry Buchanan <BBuchana@co.whatcom.wa.us>

Cc: Dana Brown-Davis <DBrown@co.whatcom.wa.us>; Bruce Van Glubt <BVanglub@co.whatcom.wa.us>; Matthew Elich <MElich@co.whatcom.wa.us>; Eric Richey <ERichey@co.whatcom.wa.us>; Philip Buri <philip@burifunston.com>; emily@butlerbeschenlaw.com <emily@butlerbeschenlaw.com>

Mr. Buchanan:

I've realized it might be helpful to provide you and the Council with some additional information that may assist you in responding to my retirement. First, as I mentioned in my notice letter, the Court is in a good position now and well equipped to handle my departure. There is certainly no need to name a replacement for me by July 1st. The Court has two remaining full-time judicial officers, one judge and a commissioner. While we have restarted jury trials, we can only do one jury trial per week (*see*, Admin. Order 2021-03, Resumption of Jury Trials). With the use of *pro tempore* judges on a part-time basis (we have about a dozen well-qualified *pro tempore* judges available), all of the needs of the Court can be met. Since my salary will cease, the fiscal impact of using temporary substitutes should be negligible as well. Essentially, even if all COVID related restrictions were suddenly lifted, I am confident the Court can accommodate my absence for a number of months. I can assure you, the Court can give you whatever time you need.

Having said that, the Council may wish to consider incorporating some components of the various judicial qualification processes used elsewhere around the state. For example, the Governor's Office and the King County Bar Association have developed formalized judicial candidate vetting processes, complete with application questionnaires and interview topics. Samples of their forms are no doubt easily obtained. Additionally, in the past, the Whatcom County Bar Association has volunteered input on local judicial candidates. I am sure the Whatcom County Prosecutor's Office could provide you guidance on whether such a process could be used here, and if so, to what extent. We are fortunate that our county has active local chapters of both the State Bar Association (its current president is Phil Buri, Esq.) and the Washington Women Lawyers (with Emily Beschen, Esq. as its president). I imagine you could explore with Mr. Richey how such local resources might be incorporated into your process.

Obviously, I have seen this process before and I know questions arise. When they do, I am sure Mr. Richey can be depended upon to assist, and I am confident that the local chapters of our state bar associations would help too. Additionally, if you have any need for further information from me or the Court, please don't hesitate to contact me or Bruce Van Glubt. We are ready to assist as we can. You and the Council have the time to explore your options in crafting the full and thorough appointment process you no doubt prefer.

Sincerely,

Dave Grant

Presiding Judge

Whatcom County District Court

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

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



RECEIVED

JUN 28 2021

WHATCOM COUNTY  
COUNCIL

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

## APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name: ANGELA ROSE ANDERSON

Street/Mailing Address: \_\_\_\_\_

City/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Day Telephone: \_\_\_\_\_ Evening Telephone: \_\_\_\_\_

Fax Number: \_\_\_\_\_ E-mail Address: A

**A. Qualifications:** Per RCW 3.34.060, to be eligible to serve as a district court judge, a person must:

1. Be a registered voter of the district court district and electoral district, if any; and
2. Be a lawyer admitted to practice law in the state of Washington.

Are you a registered voter of Whatcom County? (X) Yes ( ) No

Are you a lawyer admitted to practice law in the state of Washington? (X) Yes ( ) No

**B. Resume:** A resume up to two (single-sided) pages in length may be attached to address the following:

- Occupation (if retired, please indicate occupation prior to retirement).
- Professional/Community Activities.
- Education.
- Qualifications related to the position of Whatcom County District Court Judge.

**C. References:**

- Please provide three letters of reference.

**D. Questions:** No more than two sheets of paper (single-sided) may be attached to address the following:

1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.
2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?

3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.
4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.

**E. Essay:** Please describe your familiarity with the current problems, litigation, rules, regulations, and policies of the Whatcom County District Court Office. Provide a one-page (single-side) summary of your top three concerns regarding the above issues.

**F. Certification:** I certify that this application and any other submitted materials contain no misrepresentations or falsifications and that the information given by me is true and complete. I hereby authorize Whatcom County to verify or supplement information given by me in this application and any other submitted materials. I hereby release any and all of my employers or references from any liability or claim that I might have as a result of disclosure of information. I further understand that should investigation at any time disclose any misrepresentation or falsification, I may be disqualified from appointment to the office of Whatcom County District Court Judge.

**As a candidate for appointment as District Court Judge to fill the vacancy, I understand the above information and any other materials submitted with this application will be available to the County Council, County Executive, any County department, and the public.**

Signature of applicant: \_\_\_\_\_



Date: JUNE 27, 2021

***Applications must be submitted to the Clerk of the Whatcom County Council by 4:00 p.m. on June 28, 2021***

Your application may be no more than thirteen single-sided pages total, composed of the following maximum number of pages (all single-sided).

Application	2 pages
Resume	2 pages
Reference Letters	6 pages
Question Responses	2 pages
Essay	1 page

# Angela Anderson

## **BAR ADMISSION**

Member of the Washington State Bar since November 2005

## **ASSOCIATIONS & ACCREDITATIONS**

Whatcom County Bar Association

Washington Defenders Association

National Criminal Defense College Trial Practice Institute July 2009

## **EDUCATION**

**Washington and Lee University School of Law, Lexington, VA**

Juris Doctor, May 2005

Honors: National Association of Women Lawyers- Top Female Graduate  
Mock Trial Competition- Semi Finalist  
Moot Court-Negotiation Competition, Finalist

Journals: Race and Ethnic Ancestry Law Journal- Volume X

Activities: Women Law Students Organization, President; American Constitution Society,  
Secretary; Public Interest Law Student Association

**Truman State University, Kirksville, MO**

Bachelors of Science with Honors in History, *summa cum laude*, May 2002

Honors: Omicron Delta Kappa; Phi Kappa Phi; Pershing Scholarship (Full Tuition)

Activities: Pre-Law Club; Delta Zeta; Public Defender volunteer, Study Abroad in England

## **EXPERIENCE**

**Anderson Legal PLLC- Bellingham, WA**

Attorney and Owner, October 2019-currently

- Defends clients accused of felonies and misdemeanors throughout Whatcom and Skagit
- Appears on behalf of clients at Civil Protection Order Hearings in Superior Court
- Represents individuals in traffic infraction hearings in District Court
- Public Defense contract for the City of Lynden

**Whatcom County Public Defender's Office- Bellingham, WA**

Chief Deputy, January 2018-October 2019

Deputy Public Defender, July 2006- December 2017

- Supervised 15 attorneys and support staff, assisted Director in administrative duties
- Represented felony clients in Superior Court (avg. 80+ open cases/mo)
- Drug Court Public Defender
- District Court Unit Supervisor
- Represented clients in all aspects of District Court (avg. 170+ open cases/mo)
- Previously represented clients in Dependency Court and Family Treatment Court
- Exceptional trial experience- Over 30 jury trials, including two homicides

**John A. Walsh, P.S. & Associates- Seattle, WA**

Attorney, October 2005- February 2006

- Represented clients in criminal cases at a variety of levels including RALJ appeals

**JUDGE PRO TEM EXPERIENCE**

- Whatcom County District Court
- Blaine Municipal Court
- Everson Municipal Court

**LEGAL COMMUNITY INVOLVEMENT**

- Incarceration and Reduction Task Force (2015-2019)
  - Original member representing the Public Defender's Office
  - Legal and Justice Subcommittee
  - Vera Project Participant
  - Pretrial Processes Small Group member
- Opiate Abuse Prevention Task Force
  - Whatcom County Health Department committee on preventing opiate abuse
- Planning member of Mental Health Court
  - Attended original training in California with Health Dept. and District Court
  - Assisted with the initial development stages of the program
- Warrant Quash Day
  - Worked as the Public Defender representative with newly elected Prosecutor Eric Richey to develop and implement
- Whatcom County Judicial Selection Committee
  - December 2014 and July 2018
- Guest speaker
  - Professor K. Anderson's class at WWU on Domestic Violation (three times)
  - Professor Majumdar's class at Fairhaven College (four times)
  - Options High School mock trial class with Ms. Reidel (three times)
  - Lynden High School
  - Legal Care Academy
- High School Mock Trial Competition Judge
- Teen Court Volunteer Judge
- Moot Court Judge- Fairhaven College

**LEGAL INTERNSHIPS**

- Commonwealth Attorney's Office (Prosecutor for State of Virginia) 2004-2005
- Public Defender District of Columbia- Parole Division, Washington DC- Summer 2004
- Georgia Justice Project-- Shepherd Poverty Alliance, Atlanta, GA- Summer 2003
- Department of Justice- Office of Legislative Affairs, Washington DC- Summer 2002

**COMMUNITY INVOLVEMENT**

- Pickford Film Center, Board Member 2015-2018
- Whatcom County Amateur Hockey Association, Board Member 2020-current
- Parkview Elementary parent volunteer



June 15, 2021

RE: Letter or Recommendation for Angela Anderson

To Whom It May Concern:

The undersigned attorneys recommend Angela Anderson for appointment to District Court Judge. We have all had the distinct pleasure of working with Angela for several years as colleagues and adversaries in the arena of criminal justice.

In regards to her judicial qualities, Angela is highly experienced and accomplished in the profession of criminal law. She is uniformly respected among her peers, and she displays exemplary interpersonal skills.

Angela has dedicated her entire professional career to defending criminal defendants in court. She rose through the ranks at the public defender's office to become the Chief Deputy. She continues to represent criminal defendants in private practice, where she has made a name for herself as a trusted and knowledgeable counsellor.

Throughout her career as a defense attorney Angela has maintained a graceful disposition, that would suit her well in the role of a judge. Angela would have no problem controlling the courtroom, and making difficult decisions, without upsetting the parties. She can be trusted to be fair and impartial. Angela Anderson would represent the community very well as a judge.

We recommend Angela Anderson for District Court Judge. Please do not hesitate to call the undersigned if you have any questions or if we can be of further service.

Sincerely,



Eric Richey,  
Whatcom County Prosecutor

Sincerely,



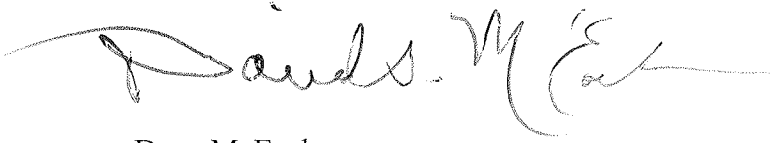
Erik Sigmar,  
Whatcom County Chief Prosecutor

Sincerely,

A handwritten signature in black ink, appearing to read "Dona Bracke". The signature is fluid and cursive, with the first name "Dona" written in a larger, more prominent script than the last name "Bracke".

Dona Bracke  
Whatcom County Assistant Chief Prosecutor  
District Court Supervisor

Sincerely,

A handwritten signature in black ink, appearing to read "Dave McEachran". The signature is written in a cursive style, with the first name "Dave" and last name "McEachran" clearly legible.

Dave McEachran,  
Former Whatcom County Prosecutor

Sincerely,

A handwritten signature in black ink, appearing to read "Warren Page". The signature is written in a cursive style, with the first name "Warren" and last name "Page" clearly legible.

Warren Page,  
Former Assistant Chief Prosecutor,  
Former District Court Supervisor

## Charles and Johanna Snyder



June 15, 2021

Members of the Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

Re: Whatcom County District Court Judge appointment

Dear Councilmembers,

I am writing this letter to strongly recommend Angela Anderson for appointment to the Whatcom County District Court Judge position being vacated by Judge David Grant.

As a judge in Whatcom County Superior Court I had many years of experience with Ms. Anderson as she practiced law. Not only did she appear in my courtroom as an advocate in her role as criminal defense attorney but she was an integral part of the Drug Court for a number of years. She tried two homicide cases before me and did an outstanding job in both. She was never less than fully prepared and her clients were given the best defense that they could get. Her skills as a trial attorney are consummate.

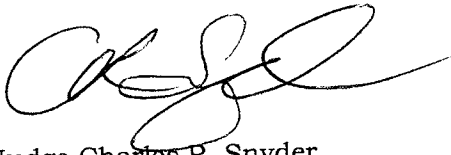
But perhaps the strongest support for my recommendation comes from the time that she served in Drug Court. As you know, Drug Court involves working toward a common goal by all involved, from prosecutor to defense counsel to treatment providers and case managers, including the judge. Angela was always fully aware of what was best for her clients as well as for the program itself, without which her clients would face much longer odds in overcoming their addiction and criminal behavior. What stood out to me was her neutrality and fairness toward all of those involved. She was not hesitant to recommend a more harsh sanction if it was what she believed would be best for the person involved. Yet, at the same time, she advocated forcefully for the best interest of her client. To me, this was clear evidence of her ability to see all sides of an issue, to analyze it thoroughly, and to recommend a resolution that took into account all sides, not just that of her client. That is the essence of judicial reasoning, to my way of thinking.

I am absolutely convinced that Angela Anderson has not only the skills required to be impartial and fair but the requisite demeanor to treat all who come before her in a courtroom with the utmost respect while also being able to impose a decision that may be difficult or unpopular. In my years of watching her practice it became clear that she had the full respect of her opponents, all litigants, and the court. Her public defender clients never asked for her to be replaced with another attorney, which is exceedingly rare. When one sits as a judge that respect is paramount, and I believe she will carry it on to the bench with her from her first day as a judge.

My colleagues on the Superior Court bench all agreed that Angela would make a fine judge. One look at her resume tells you a great deal about her energy and commitment. In addition, I believe that her most recent experience in private practice only reinforces that belief because it shows that she has a full understanding of the complexities of what happens in a courtroom from all sides and that she is much more than merely a defense attorney – she is a well-rounded practitioner with all the skills necessary to serve as a judge.

Again, I unequivocally recommend Angela Anderson for the position of District Court Judge, and I hope you will honor her with the appointment.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Snyder', with a large, stylized flourish extending from the end.

Judge Charles R. Snyder  
Whatcom County Superior Court, retired

Jack Hovenier



June 21, 2021

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

Dear Whatcom County Council Members:

I am writing to request that you appoint Angela Anderson to the District Court Judge position.

In my capacity as the Co-Chairperson of the Whatcom County Incarceration Prevention and Reduction Task Force since it was formed in 2015, I have watched firsthand as Ms. Anderson represented the interests of the Whatcom County Public Defender's office, while balancing that with a deep understanding of the local criminal justice system's deficiencies, strengths and potentials.

Very few people are able to balance the concerns, interests and policy goals of such a diverse group as the Task Force while uniting criminal justice stakeholders that include former Prosecutor McEachern, Sheriff Elfo, former Councilman Mann and many others. Ms. Anderson always managed this deftly and I believe everyone on the Task Force enjoyed working with her.

In 2018 I had the opportunity to work with Keith Tyne and Whatcom County Superior Court Judge Justice Raquel Montoya-Lewis before she became a Supreme Court Justice. We were asked to interview about a dozen candidates for Chief Deputy of the Whatcom County Public Defender's Office and recommend who should be hired. After several days spent in long, intimate candidate interviews in Justice Montoya-Lewis's jury room, we had the unique opportunity to consider Ms. Anderson's skills in relation to all the other candidates. Our unanimous recommendation was that Ms. Anderson be selected. Our reasons included her competence, experience, integrity, poise, strong administrative skills, kindness, wisdom, clarity, intelligence and our analytical and intuitive belief that she was an extraordinary resource for our criminal justice system and the best person for the job.

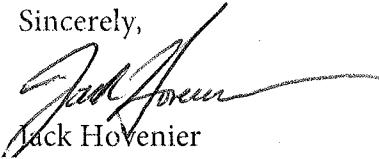
In 2020, my son Casey, had significant legal trouble. I adopted my son when he was 10 from foster care as he was being placed in self-contained classrooms at school and moved to a group home for troubled boys. He was diagnosed with oppositional defiance disorder, fetal alcohol spectrum disorder, reactive attachment disorder, severe anxiety, ADHD and depression. My love for my son is deep and being his father has been a journey I wouldn't trade for anything. He is 23 now, and the father of a 2-year-old daughter. When he faced some serious legal charges, due in part to his impulsivity and mental health and substance abuse issues, I asked Ms. Anderson to represent him.

I know and respect many attorneys. But my son needed someone with the balance of wisdom and compassion to advocate for him with the court, while also understanding that he, like most criminal defendants, needed appropriate consequences. It's a very fine line to walk to harmonize the need for consequences with what is in the long-term, the best interests for that person and society. I know of no one who does that better than Ms. Anderson, which is why I chose her to represent my son. For these very reasons I am confident that Ms. Anderson will be an extraordinary judge.

Ms. Anderson is deeply and passionately committed to creating a criminal justice system that is consistent with the goals of the County Council as stated in the ordinance that created the Incarceration Prevention and Reduction Task Force (ORD 2015-037). Her unique skill-set and experience in Whatcom County is unmatched, and they establish her as the most qualified candidate you could appoint. I give her my highest personal and professional recommendation and urge you to appoint her to this vacancy.

Thank you for your consideration of my request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Hovenier", with a long, sweeping horizontal line extending to the right.

Jack Hovenier

1. The scales of justice are balanced by a fulcrum in the middle. If that fulcrum is not center, the scales tip unfairly to one side. I believe my work experience, dedication and service to Whatcom County provide me with the skills to be the balanced fulcrum needed. I am applying for District Court Judge because I possess the integrity, knowledge, and experience necessary for the position. I am a veteran criminal defense attorney with years of experience practicing in District Court. At the same time, I am also supported by the current and former prosecutors in my pursuit of this position. My experience and their support demonstrate that I will serve as a steady and neutral decision maker. In addition, my career is rooted in years of public service to this community. I spent fourteen years at the Whatcom County Public Defender's Office, the last two as the Chief Criminal Deputy. Currently, I am the Public Defender for the City of Lynden. I have also served as Judge Pro Tem in Whatcom District Court, and Everson and Blaine Municipal Courts. My commitment to serving Whatcom County and my immense experience practicing in District Court make me an ideal candidate for the position of District Court Judge.

I began my legal career as a public defender in Whatcom County District Court in 2006. I was promoted to District Court Supervising Attorney by the age of 30. I supervised four other attorneys and worked collaboratively with the prosecutor's office, probation, court staff and the District Court Judges to address issues related to court process and access to justice. I was later selected to be the Chief Deputy for the Public Defender's Office before the age of 40. In serving this community, I have always looked for opportunities to improve our court system. I helped to develop Mental Health Court, served as the Drug Court public defender, assisted Mr. Richey with the formation of LEAD, and I have participated on numerous county task forces/commissions addressing a variety of criminal justice issues. My extensive work with these groups has directly led to identifying issues and making improvements to our county's court system. Over the years I worked with the Vera Group on their study of incarceration in Whatcom County, served on the County's Incarceration Reduction Task Force, including the Law and Justice subcommittee and Pretrial Services work group, as well as the Opioid Use Prevention Task Force. I am proud of my hard-work on improving access to justice in Whatcom County and hope to carry my experience and dedication forward as District Court Judge.

Experience practicing in District Court and understanding the role the court plays in peoples' lives is important. For many individuals in our community, District Court is their only experience with the justice system. The participants in this court are community members who get traffic tickets, seek protection orders, file small claims, or are charged with a crime. In short, they are the clients that I have represented since 2006. The Judge should be patient, understanding and flexible with those navigating the system. I possess the experience and understanding that can only be gained by years of practice in District Court and other similar courts. I know the treatment providers in our community, the mandatory sentences for specific crimes, the probation department, jail guards and court clerks. I know the issues facing jail capacity, the complicated timelines for competency restoration, and the newly enacted laws regarding vacating criminal records. There is simply too much volume and specificity in District Court to turn it over to someone without the experience and understanding critical to this job. I have that experience.

While District Court is an important institution, it is not above review, critique, and change. However, any critical review and implementation of systemic changes must include a thorough understanding of District Court process. Over the years, working diligently with the Task Force and practicing in District Court, I strive to identify what is working and what needs review/modification. I will not only bring a new vision to District Court, but I will also bring the knowledge of how to implement that vision with the various stakeholders. For example, adapting our approach to some probation services including increased technology can lead to efficiencies in the court process and better overall outcomes for defendants. I know there are ways we can continue to make modifications to better serve this community. I want to be District Court Judge because I have the skills, experience, and understanding that is required to do the job effectively.



As a practitioner, I lean heavily on creative problem solving and taking a collaborative approach to cases which includes working closely with treatment providers and/or Victim Advocates. Our courts need to do the same by expanding therapeutic courts and alternative sentencing arrangements. Our courts should also explore increasing the community's knowledge about the ability to vacate and expunge convictions. I look forward to working with Mr. Richey's Prosecutor's Office and my former teammates at the Public Defender's Office to explore these options. It is a sad truth that the majority of participants in court do not have the ability to meet court obligations. They may not have the finances for treatment or fines. They often struggle keeping track of court dates and appointments with probation and their attorneys. To sit in judgment of these people, you must also understand and have experience with this reality. After fifteen years of representing clients, I have that understanding. I know their challenges. On the bench, balancing that understanding and patience with accountability is a tightrope that only experience and knowledge can help a Judge to navigate.

In the last two years of private practice, I have worked in Lynden, Bellingham, Everson, Blaine, Sumas, Lummi Nation, Ferndale, and Skagit County in addition to practicing in Whatcom County's District and Superior Courts. I value the time I have spent in those other courts. Practicing in other court systems gives me perspective on things other courts are doing well and it gives me insight on ways to improve District Court. As one of the only candidates for this position *currently practicing in District Court*, I also know what the court is doing well and how to capitalize on those strengths.

Finally, it is critical that the person who serves as District Court Judge have integrity. On top of everything else the next Judge must be respected. In my private practice, I have almost no budget for advertising because all my cases come from referrals. I have been referred cases from current and former prosecutors, city attorneys, law enforcement, jail staff and former clients. My commitment to hard work, fair play and respect for others is well known. I encourage you to speak to the clerks, staff, jail guards, community members and county employees with whom I have served on committees and ask who they want as their next judge. I am confident they will say that I am professional, knowledgeable and well-equipped to take on the role of District Court Judge.

To conclude, like nearly all the Council Members, I am a working parent and business owner. My husband is the Lead Prosecutor for the City of Bellingham. We have two active children that play hockey, baseball, golf, horse-back riding, and even duck hunt! We love this community. I am applying for this position not only because I have the experience necessary to do the job, but also because I care about this community. I know that my experience and knowledge can be a benefit to the court system and our wider Whatcom County community. I am dedicated to the preservation and growth of Whatcom County. If you appointment me as your next District Court Judge, you will not be disappointed.

2. Yes, I intend to run for office.

3. Yes, Anderson Legal PLLC is a contracted with the County to provide conflict public defense services for Superior, District, and Juvenile Court.

4. No.

I have practiced in Whatcom County including District Court for the last fifteen years. For several years I practiced exclusively in District Court, much of that time assigned primarily to Judge Grant's courtroom. I was also the Public Defender's District Court Supervisor. My role in District Court included a robust caseload in addition to supervising and training five other attorneys. At that time case standards had not been imposed and there were years where I successfully defended 700+ misdemeanor cases in one year! No other candidate has as much District Court knowledge and experience as I do. I thoroughly understand the court rules, law and litigation surrounding the cases before the Court. I continue to use those same tools as the Lynden Public Defender. Not only do I know the issues facing the Court, but I also have ideas and solutions.

**1. Probation Resource Allocation:** District Court needs to explore a more focused and flexible approach to the use of probation resources. The Court needs to focus the limited resources and energy of our incredible probation department to offenders that could most benefit from intense supervision. By placing every defendant, including first-time offenders, on five-year probation, we are taxing our probation officers and diverting their valuable attention from high-risk and repeat offenders. A more focused approach to probation services is welcomed by probation officers as well. Developing a model to screen and determine which offenders need or deserve full-time probation services would drastically improve overall probation services and outcomes.

**2. Increase Access to Justice Through Technology:** Court process has gone through refinement over the past year. Included in that is a significant Criminal Court Rule change (CRLJ 4.3) adopted state-wide which makes defendant appearances in court less burdensome and more efficient. Many of our rural residents struggle with appearing for court. Court schedules do not always match bus schedules and getting to court can be expensive particularly if you do not have a driver's license or vehicle. This Court should continue to improve on the progress made by the Court during COVID by utilizing "remote appearance" and "remote access". Live streaming increases victim involvement by improving their comfort and safety. We also need to expand access to electronic court records, increase e-filing of court documents including public defender applications, and update our electronic records management systems. AOC already has some of these tools ready to launch. However, the Court needs someone who knows what to do with the tools available. I am excited to work on moving District Court operations into a more electronic and accessible future. Our next Judge must address many challenges and technology can offer some solutions.

**3. Expand Therapeutic Courts and Diversions:** Many of the cases before the court are there because the victims and families of defendants have nowhere else to go. Countless times I have heard the pleas of loved ones seeking help with their child's addiction or mental health crisis. Often, these people want help not jail. However, I also know the other side- that Mental Health Court and Drug Court change lives and heal the trauma. Other District Courts have expanded therapeutic options including Veteran's Court, DUI Court, DV Offender Court, and others. Because of the recent *Blake* decision, the landscape on drug prosecution is also changing. Having worked in Drug Court for many years, I know we can continue to make an impact on those seeking drug diversion. Further, there are opportunities to improve our approach to Domestic Violence cases, especially for low-level and first-time offenders. Diversions away from the traditional court model that include treatment and modified no-contact orders on appropriate individuals, will allow families to safely reunite. Finding a way to fully utilize our probation department's MRT program for DV perpetrators should also be a priority. Thankfully, the models and tools for many of these programs already exist. The next District Court Judge must seize these opportunities and march our Court and our community into a brighter future.

June 25th, 2021

To the Whatcom County Council:

I am writing in support of Angela Anderson's candidacy for the position of District Court Judge. I have known Angela personally for five years and believe her to be an ideal candidate for this position. The combination of her experience, her temperament and her commitment to a fair and accessible justice system make her an obvious choice. Not only does Angela possess the qualifications and the personal characteristics necessary to excel in this role, I also strongly believe that appointing a woman to be District Court Judge would be a victory for justice and progress. It's high time!

Angela has fourteen years of experience as a public defender, and was promoted during her tenure to Chief Deputy. Since then she has developed a successful private practice where she has continued to serve indigent communities as Lynden's Public Defender. Throughout her career, she has been actively engaged in the work of improving the criminal justice system, including serving on the Incarceration and Reduction Task Force and the Health Department's Opiate Use Prevention Task Force.

Angela is a collaborative problem solver and strategic thinker, and she is committed to addressing issues related to access, equity and expediency in the justice system. She has spent the last sixteen years listening to and advocating for defendants in District Court, and she has a deep understanding of their challenges and needs. She believes passionately in the need for courts to modernize and to explore more therapeutic courts at an earlier level to help move people out of the criminal justice system. Angela has a history of working constructively with multiple stakeholders, including prosecutors, treatment providers, probation officers, jail and court staff. She is known and respected as a reasonable and creative problem solver.

In addition to her professional credentials, Angela also demonstrates a commitment to her community over the years through service, including by supporting our neighborhood public elementary school and volunteering through non profit board service. I know Angela to be a person of great character, and high integrity, intelligence and compassion, all essential characteristics of a good judge. I have no doubt that Angela will be an asset to the bench, and that she will work tirelessly to improve the system for all. I urge you to support her appointment to the position of District Court Judge.

Sincerely,

Susan Hemingson  
Bellingham, WA



# WHATCOM LAW GROUP

A PROFESSIONAL SERVICES CORPORATION

Roger L. Ellingson, JD  
Rajeev D. Majumdar, MAIS, MPA, JD  
Casie C. Rodenberger, JD

☎ (360) 332-7000  
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🌐 WhatcomLaw.com

June 26, 2021

Whatcom County Council  
311 Grand Avenue, Suite #105  
Bellingham, WA 98225-4038

*Sent by e-mail to avoid delay.*

***Re: Angela R. Anderson – Appointment to Whatcom County District Court  
Judiciary***

Dear Council Members,

I recently learned that Angela Anderson is applying for appointment to the Whatcom County District Court bench. In response, I am writing this letter of support to let you know that Angela is one of the most impressive lawyers I have had the privilege of collaborating with. I currently interact with Angela regularly as opposing counsel in criminal matters. I am the Prosecuting Attorney of the City of Blaine, and I am always pleased when I know that Angela is my opposing counsel; she is civil, forthright, hardworking, and critical of both my case and her own. Practicing with Angela forces me to contend with a person who truly understands the black letter of the law as well as the bigger societal ramifications.

I have known Angela since 2008 when I first began practicing in Whatcom County, and she had already established a reputation as a positive and zealous force for holding both the state of criminal defense and prosecution accountable to a higher standard. Beyond that, however, she is a professional who is always civil, positive, and is never overcome in the courtroom by negative emotion.

I have had the privilege as serving as President of the Washington State Bar Association, and in that role, I have interacted with thousands of judges, court clerks, and attorneys, and understand the issues that confront our courtrooms—Angela is exceptionally well qualified to meet the challenges. Our primary duty as officers of the court, and in the continued service of our country, should be ensuring access to impartial justice for all people. Part of protecting such access to justice is warranting that our leadership contains diverse perspectives and experiences; for without

✉ PO Box 1258, Blaine, WA 98231

289 H Street, Blaine, WA 98230 | 2417 Main Street, Ferndale, WA 98248



Whatcom Law Group, P.S.  
To: Whatcom County Council  
Page 2 of 2

such representation, it is not only the legal community that suffers from lack of perspective, but it is also the diverse parties that traditionally have had less access to the legal system who suffer. Angela brings a perspective not currently represented on the bench. Through her actions and the issues that she advocates for, Angela has demonstrated to me a commitment to reforming the inefficiencies and inequities that plague our courts of limited jurisdiction, which I believe is a threshold for anyone holding the office of District Court Judge.

Her character is also exemplary. In addition to a naturally pleasant and professional demeanor, she has also established a reputation as a civically engaged and responsible lawyer. I have observed her a *pro-tem* judge with skill, and she has a strong grasp on the issues that judges face and how judges statewide get those issues both right and wrong from an appellate perspective. That is an important perspective to have, because no matter how much effort a judge puts into an issue, if it is outside the bounds of the law, it is unnecessary and wasted effort.

For all of the above reasons, I can unreservedly endorse and support Angela Anderson as a candidate for appointment to the Whatcom County District Court Bench. She would undoubtedly enrich our system of justice and would safeguard the rights of the people.

Sincerely,

**Rajeev D. Majumdar**  
**Attorney at Law**

RDM/jra

*-From the Private Desk of-*

**Judge Robert E. Olson**



To the Honorable Barry Buchanan, Chair, and the Whatcom County Council:

I am writing this letter of reference for Ms. Angela Anderson, Attorney at Law, who is pursuing appointment to Whatcom County District Court. The ethical considerations for judicial officers require that I preface this letter by saying that the observations and opinions expressed herein are personal to me, and should not be considered an endorsement by the court itself.

I have known Ms. Anderson since 2006 when we served together in the Whatcom County Public Defender Office. Ms. Anderson was initially assigned to the section of the office that served clients in Whatcom County District Court. Although I was assigned to a different section in the office, Ms. Anderson very quickly came to be recognized in the office as a diligent attorney who was very skilled in trial court advocacy. In 2010 I left the Public Defender Office and did not have regular contact until I was appointed to the Superior Court bench in 2018.

Since my appointment to the Superior Court, I have had many opportunities to observe Ms. Anderson in court, notably in her role as Chief Deputy of the Whatcom County Public Defender Office. It is testament to her skills with the law and as an administrator that she was selected for appointment to chief deputy. I have also been able to observe her in court, handling heavy case load, and doing so with skill and grace. In her appearances before me, Ms. Anderson has always demonstrated a thorough understanding of court rules and the rules of evidence which are critical skills for any judge. Although she is no longer with the public defender office Ms. Anderson has done Whatcom County a great service by being willing to serve as one of our conflict public defender attorneys without whom our system of justice could not properly function.

Ms. Anderson also demonstrates a detailed understanding of the various administrative duties of serving as a District Court judge. She is a proponent of programs to help bring about incarceration reduction including District Court's specialty mental health court.

Ms. Anderson would also bring a unique perspective to her work as a judge. She is a working mother who has managed to raise a family while balancing that against an obviously dynamic career. I have every reason to believe that the hard work she has done all these years would be an enormous benefit to Whatcom County District Court.

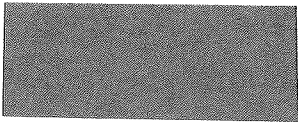
Please do not hesitate to contact me should you require any further information.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert E. Olson", written over the typed name.

Robert E. Olson

Phillip Pruner



June 21, 2021

To whom it may concern:

I have known Angela Anderson and her husband Ryan since 2015. They are an amazing and extremely humble family who are really involved within the Whatcom County community, like youth ice hockey and baseball. Angela donated her time to vacate some of my misdemeanor criminal convictions last year. She did a great job explaining the process and helping me understand the issue. I know Angela has a real passion for helping people clear their criminal record. It is important for people like me to be able to move on from poor decisions I made when I was younger, now that I have a professional career, am youth hockey coach and a father.

Angela has the right temperament for the job as a Judge. Again, she is easy to understand, she is patient as well as hard working. I know she cares about all of members of Whatcom County and appreciates some of the challenges those of us who live outside of Bellingham have with District Court. I have spoken with her many times and I know how excited she is to improve the courts and make access easier for all.

Please appoint Angela Anderson as our next District Court Judge.

Best regards,

A handwritten signature in black ink, appearing to read 'Phillip Pruner', is written over a horizontal line.

Phillip Pruner



## WHATCOM COUNTY PROSECUTING ATTORNEY

### CHIEF CRIMINAL DEPUTY

Erik Signar

### ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

### CRIMINAL DEPUTIES

David Graham  
Kellen Kooistra  
Benjamin Pratt  
Gordon Jenkins  
Kacie Emerick  
Christina Garcia  
Jesse Corkern  
Evan Sterk  
Nicole Meyer  
Julia Monroe  
Maggie Peach  
Andrew Bogle  
Kayleigh Mattoon

### Eric Richey

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

### CHIEF CIVIL DEPUTY

Karen Frakes

### CIVIL DEPUTIES

Royce Buckingham  
Christopher Quinn  
George Roche  
Brandon Waldron

### CIVIL SUPPORT ENFORCEMENT DEPUTIES

Janelle Wilson/Lead  
Dionne Clasen

### APPELLATE DEPUTIES

Kimberly Thulin  
Hilary Thomas

### ADMINISTRATOR

Vanessa Martin

June 25, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Dear Council Members,

My name is Benjamin Pratt. I am a Senior Criminal Deputy Prosecutor with the Whatcom County Prosecutor's Office, where I have served the county since 2017. I'm writing to you in support of Angela Anderson's candidacy for appointment to Whatcom County's District Court bench. I've had the opportunity to work with Ms. Anderson many times in her role as defense counsel, and can confidently say that her sharp legal reasoning, her fair-minded perspective, and her preternatural communication skills make her well suited for the judgeship.

I initially met Ms. Anderson in 2017, when I joined the Prosecutor's Office's District Court team. At the time, she was serving as a defense attorney for the Whatcom County Public Defender's Office. It was immediately apparent that Ms. Anderson was a formidable adversary and force to be reckoned with. She had a strong command of the law, was a skillful and fair negotiator, and had tirelessly worked to build collegial relationships with my colleagues -- to the frequent benefit of her clients. Because our roles are directly adverse to one another, relations between prosecuting attorneys and defense attorneys can often become quite tense; this was never the case with Ms. Anderson, whose relentless kindness and pragmatism ensured that her cases resolved fairly, efficiently, and without unnecessary conflict.

In the years since we met, I watched Ms. Anderson's talents drive her rapidly up the ranks of the Whatcom County Public Defender's office. She handled both misdemeanor and felony level crimes and was ultimately named Chief Criminal Deputy, and served in a supervisory capacity over other defense attorneys. When she decided to depart the Public Defender's office and open a private practice, she was awarded the Defense contract to represent Defendants in the City of Lynden.

I've had occasion to observe Ms. Anderson's advocacy and analytical abilities in many criminal jury trials. In criminal prosecution, the odds are generally stacked against the defense; prosecutors are loath to take cases to trial unless there is ample evidence to prove the defendant's guilt. Time and time again, I've watched Ms. Anderson upend those odds. Much to my office's chagrin, she wins far more than she loses. Her prowess as an advocate and her ability to communicate complex concepts in an accessible, persuasive way are truly remarkable. These skills are crucial for judges to harness; in District Court, especially, it falls to the judge to

explain the proceedings to defendants who are often overwhelmed, confused, and/or navigating the criminal justice system for the first time.

As Judge Grant retires, he leaves behind not just a vacancy on the bench but an important and lasting legacy: people enjoyed appearing in his courtroom. Attorneys, jurors, and even defendants facing serious criminal consequences felt that their time in court was worthwhile, in part because every effort was made to help them understand the process. In turn, they were able to recognize the critical role the court plays in keeping our community safe. If the Council is searching for a successor to maintain that legacy, it needs look no further than Ms. Anderson. That she would serve competently and fairly is a given; her skills in legal analysis and argument are well-honed.

As you consider a field of candidates who possess a wide range of talents, what most sets Ms. Anderson apart from her peers is her kindness and her unparalleled communication skills. She is supported by all sides of this community, whether it be legal or non-legal, police or citizen, criminal or civil, and prosecutor or defense. She is the candidate that everyone wants to practice in front of. And if appointed, I believe she would be the most likely to retain her position in a future election.

Ms. Anderson would make an excellent addition to the Whatcom County bench, and I strongly recommend her for the job.

Thank you for your time,



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Benjamin Pratt  
Senior Criminal Deputy Prosecuting Attorney



June 28th, 2021

In re: Letter of Recommendation for Angela Anderson

Dear Whatcom County Council,

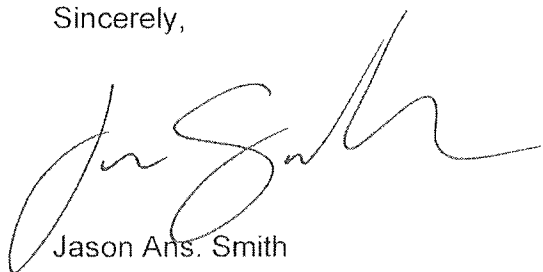
I am writing today to express my sincere admiration and respect for Angela Anderson. I have personally appeared before Angela Anderson while she served as a Judge Pro Tempore in Whatcom County District Court as well as Blaine Municipal Court. Angela Anderson is fair minded, incredibly intelligent and singularly committed to access to justice.

Angela Anderson possesses one of, if not the sharpest legal mind I have ever had the pleasure to practice in front of. Angela Anderson also has a keen insight into the circumstances which cause people to appear before her. Angela Anderson has a firm but compassionate hand when making rulings and during sentencing.

I believe Angela Anderson would be a credit to the bench and would be a breath of fresh air in these ever changing and troubled times. Angela Anderson is the person to lead the criminal justice system into the future.

Please feel free to reach out to me if you have any questions.

Sincerely,



Jason Ans. Smith

Owner – North County Public Defense

1720 IOWA ST  
BELLINGHAM WA 98229  
PHONE: 360-684-3062  
FAX: 360-393-4823  
admin@northcountypd.org



**Colorado Office & Attorneys:**

Robert J. Keating\* 3020 Carbon Place, Suite 202  
Tanya S. Keating Boulder, CO 80301  
B. Seaton Thedinger Tel: (303) 448-8801  
Malcolm A. Naftulin Fax: (888) 350-9917

\*Also Licensed in WA

**Washington Office & Attorneys:**

Thomas P. Lyden 119 N Commercial Street, Suite 910  
Megan N. Yeates Bellingham, WA 98225  
Tel: (360) 296-0344  
Fax: (888) 350-9917

[www.keatingandlyden.com](http://www.keatingandlyden.com)

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**VIA EMAIL**

Whatcom County Council  
[council@co.whatcom.wa.us](mailto:council@co.whatcom.wa.us)

Re: Whatcom County District Court Vacancy

Dear Whatcom County Council:

I am contacting you to voice my support for Angela Anderson to fill the vacancy in Whatcom County District Court.

I currently practice in Whatcom County as a criminal defense attorney and have known Ms. Anderson since I moved to town in 2007. She has the combination of experience, attitude, and honesty that make her a great fit for Whatcom County District Court's bench.

Ms. Anderson was my supervising attorney when I worked with the Whatcom County Public Defender from 2008-2010. I worked with her daily and can attest to her intelligence, great attitude, and true care for our community. Ms. Anderson still serves as a reliable source of advice for my legal questions and we remain friends.

I also know Ms. Anderson in our capacities as parents of young children. Her involvement with, and investments in our community set her apart as the candidate most qualified and deserving of appointment to the Whatcom District Court. Ms. Anderson is dedicated to improving our community through both her personal and professional endeavors – Whatcom County would do well to put her on the District Court bench.

I encourage you to contact me directly if you believe I can be of further assistance.

Sincerely,

KEATING & LYDEN, LLC

  
Thomas P. Lyden

**STEPHEN GOCKLEY**



June 28, 2021

Whatcom County Council Members  
Bellingham, WA 98225  
(Submitted by collective and individual email)

Re: Application of Angela Anderson for appointment as District Court Judge

Dear Council Members:

I am writing to extend my support for the application from Angela Anderson for appointment to the open position of Whatcom County District Court Judge. From first-hand experience, I believe Ms. Anderson would be a very capable, fair, and effective judge in service to the District Court and the Whatcom County community.

I spent my career as a civil legal aid lawyer representing low-income people in Whatcom County. For the past five years, I have been a leader in our local Incarceration Prevention and Reduction Task Force. I know the role of the District Court and I am increasingly aware of the value it can lend to improvements in our local judicial system.

I worked with Ms. Anderson for several years in various aspects of the task force's work. She was always a thoughtful contributor in discussions, and she was respected as a fair and open-minded participant in task force work. Ms. Anderson has experience practicing in District Court, she understands its workings, and she is also sensitive to the fact that both its civil and criminal litigants often come before the Court having struggled with disruptive pressures from economic stress, unstable housing, and multiple health complications. Ms. Anderson has indicated to me she considers the District Court an important setting for making balanced decisions that respond constructively to both community and individual needs, because it handles criminal and civil matters of a less serious nature, and thus provides greater opportunities for diversion and rehabilitation. Beyond individual cases, she is also capable of promoting these approaches at a system level as well. Her perspectives on a judge's role are fully in line with promising practices being employed by judicial officers at national, state, and local levels.

For the above reasons, I am confident Angela Anderson would be a strong choice to serve us as the next District Court Judge for Whatcom County.

Sincerely,

Stephen Gockley  
Attorney at Law

WHATCOM COUNTY  
SHERIFF'S OFFICE

BILL ELFO  
SHERIFF



PUBLIC SAFETY BUILDING  
311 Grand Avenue  
Bellingham, WA 98225-4078  
(360) 778-6600

June 28, 2021

Dear Councilmembers:

Over the past 40 years, I have worked with a wide variety of professionals involved in the Criminal Justice system. One of these individuals is Angela Anderson, who is submitting her application for the position of Judge for Whatcom County District Court. Our interactions have covered some fairly unique territory over the 15 years I have known her, due in large part to the challenges involved with managing offender populations.

I have worked with Angela in her capacity as both a Public Defender and private attorney. During that time, I have seen her exhibit a rare balance of ensuring a vigorous and compassionate defense for her clients, while understanding the need for accountability for one's actions and community safety.

She has been able to regularly broker agreements between a prosecutor and her clients that well serve the cause of justice, while recognizing special circumstances that may justify creative solutions. Of particular note has been Angela's understanding, and ability to work with, behaviorally disabled offenders. Her patience with people who have a very different interpretation of the world enhances her ability to problem solve, and provide guidance and understanding. This has led to the resolution of some very complex cases.

Angela works well with the jail staff. She has always been rapidly responsive when we have needed an order to move someone to hospital, because the client's illness had exceeded the jail's capacity to provide care. Further, jail staff appreciates that she understands the nuances of transporting offenders to Court, the need for safety and security, and the competing demands on a Deputies time. That is not always the case with the other professionals we deal with.

Lastly, Angela has the ability and intelligence to see situations in a broader scope. This is quickly evident when observing her interactions in a variety of meetings, many of which are focused on potential changes in the criminal justice system. She is able to appreciate the ideas and opinions of others, while at the same time providing additional information or an alternative point of view. She is quietly self-confident and very effective.

Thank you for this opportunity to share my experiences in working with Ms. Anderson.

A handwritten signature in cursive script, appearing to read "Wendy Jones".

Wendy Jones, Chief  
Whatcom County Sheriff's Office, Corrections Bureau

## Monica Rouse

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**From:** Kate Newell <[REDACTED]>  
**Sent:** Monday, June 28, 2021 1:13 PM  
**To:** Council  
**Subject:** Letter of Support for Angela Anderson - District Court Judge

Dear County Council Members,

It is my pleasure to write a note in support of Angela Anderson for the District Court Judge appointment. I have known Angela as a friend for the last few years and find her to be an honest, kind and hardworking individual.

In addition to her impressive list of accomplishments and experiences in her career, Angela has a true desire and dedication to bettering the system. She is a caring and down-to-earth woman who would contribute a fresh approach and energy to the District Court. I am confident Angela's appointment would be a beneficial asset to the District Court. Thank you for your time and consideration.

-Kate Newell  
[REDACTED]



## Monica Rouse

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**From:** Jonathan Richardson <[REDACTED]>  
**Sent:** Monday, June 28, 2021 12:43 PM  
**To:** Council; Rud Browne; Todd Donovan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Barry Buchanan; Carol Frazey  
**Subject:** Reference email for Angela Anderson

It is my great pleasure to serve as a reference for Angela Anderson regarding her application for Whatcom County District Court Judge. Most recently, I have been able to observe Angela's work in my current position of Court Commissioner in the Whatcom County Superior Court. I have only held my current position since August of 2020, however, I have known Angela from the time I started working in the Whatcom County Prosecuting Attorney's Office in 2010. We worked as opposing counsel on numerous cases, both in District and Superior Court, taking multiple cases to trial through the years. Angela was always fair, honest and a pleasure to work with, even when we couldn't agree on how a particular case should be resolved.

I watched her transition with great success to the position of Chief Deputy Public Defender, and later to running her own law firm in our community. I'm sure that if given the opportunity, she would be equally successful on the bench.

Throughout her 15 year career in Whatcom County, Angela has consistently practiced in Whatcom County District Court and is uniquely qualified to work in that court. Additionally, she is well-liked and respected by defense attorneys, prosecutors and the bench. She knows the court staff, the probation officers, other judicial officers, and has a deep understanding of the inner workings of the court. I have no doubt that if selected, Angela will have a positive impact on the District Court, its staff and the citizens that utilize the court. She is a talented attorney and overall great person to be around.

Best regards,

Jonathan Richardson

June 28, 2021

To whom it may concern:

This letter is in regard to Angela Anderson's pursuance of Whatcom County District Court Judge. I am a Licensed Mental Health Counselor and have worked in Whatcom County Jail's Behavioral Health Program for approximately 7 years. I have collaborated with Ms. Anderson on several cases involving seriously mentally ill individuals.

Ms. Anderson has extensive knowledge of how the judicial system intertwines with other systems that significantly impact the lives of people involved with the criminal justice system. She is astute in early recognition of forensic mental health competency issues and has always been an excellent advocate for her clients to have access to appropriate treatment to address any barriers to their functioning. She understands how incarceration negatively affects an individual's access to both in- and outpatient mental health and substance abuse treatment, and has been instrumental in helping many of my clients resolve their legal issues in ways that can truly help reduce recidivism – referrals to Mental Health Court, extended inpatient treatment episodes of care for both substance abuse and psychiatric civil commitments, connection with family and natural supports, etc. She has an intuition for recognizing an individual's level of motivation in addressing the underlying factors that contribute to criminal behavior. Her experience with the therapeutic/problem-solving court programs has created a unique insight into what helps an individual succeed, common barriers faced, and if that type of referral is beneficial for both the person and community.

In my experience, Ms. Anderson is knowledgeable about and experienced with the legal system at all local levels. She is approachable, reasonable, and able to objectively evaluate and conceptualize her cases, especially those involving special populations. I believe she has a realistic approach in knowing that the community's safety needs must be regarded yet an offender's psychosocial factors and access to treatment and other resources also needs to be attainable for an individual to be successful. Considering that mental illness and substance abuse problems are such a glaring concern and seem to be escalating at an alarming rate, I think it important to appoint individuals that have experience with, understanding of, and compassion for these populations. As a professional that works closely with the criminal justice system and as a lifelong Whatcom County community member, I strongly recommend consideration of Ms. Anderson's application.

Regards,

Heidi Zosel



WHATCOM MUSEUM | Old City Hall | The Lightcatcher | Syre Education Center

June 28, 2021

To the Clerk of the Council,

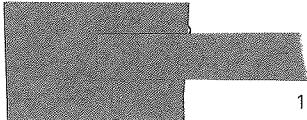
I hope this message finds you well. I am writing to introduce myself as the Curator of Art at the Whatcom Museum in Bellingham, Washington, and to formally offer my support for Angela Anderson for the position of District Court Judge. Angela has been a Public Defender for the last fourteen years and has held her own Private Practice for the last two of those years. I've known Angela for more than six years as our children have grown up together in the same elementary school and played on the same sports teams, but beyond these parenting interactions, I consider Angela a close friend.

Angela is always deeply involved in supporting and lifting up community organizations that she feels passionate about. She engages with the schools as a member of the PTO, organizes events and fundraisers for her son's ice hockey team, and is dedicated to important non-profit groups such as DVSAS, WCAHA, and Pickford Film Center. Knowing how busy her professional days are, I am always impressed by the energy and commitment she brings to these volunteer roles and board committees, and I have seen firsthand how this has positively impacted and improved our community.

I also appreciate how hard she works as she balances a busy family life while fighting to defend the rights of clients throughout Whatcom County. When we gather as friends, I always enjoy our lively discussions around important social justice issues, or engaging debates on public art in our city. As a member of the City's Arts Commission and through my role as Curator of the Museum, I interface with a large swathe of our community, which includes city government officials. I believe Angela, with her leadership abilities, organization skills, and dedication to this community would be a superior choice for judge in Whatcom County.

Sincerely,

Amy Chaloupka  
Curator of Art  
Whatcom Museum



## Jacqueline Lassiter

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**From:** Council  
**Sent:** Monday, June 28, 2021 10:15 AM  
**To:** Kristi Felbinger; Jill Nixon; Jennifer Schneider; Jacqueline Lassiter  
**Subject:** FW: Angela Anderson to fill District Court Judge Vacancy

**From:** Chris Freeman [REDACTED]  
**Sent:** Monday, June 28, 2021 9:24 AM  
**To:** Council <Council@co.whatcom.wa.us>  
**Subject:** Fw: Angela Anderson to fill District Court Judge Vacancy

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Monday, June 28, 2021, 09:02, Chris Freeman [REDACTED] wrote:

Councilmen Ellenbaas,

My name is Chris Freeman. I have been a Whatcom County employee for 15 years with the Sheriff's Office Bureau of Corrections. In that 15 years I have spent over a decade working in the Whatcom County Court system with a multitude of attorney's and Judges as a corrections Deputy, and now as a Corrections Sergeant.

During the time I have spent working in the court system I have had the opportunity to work with, and observe Angela Anderson first as a District Court, and then a Superior Court Public Defender. I watched and worked with Mrs. Anderson as she was assigned to, or volunteered for the more sensitive, and difficult cases that involved defendants with mental health issues. Mrs. Anderson has always in my observations been compassionate, professional, ethical, and a fierce defender of her clients.

I also had the opportunity to work with Mrs. Anderson when she was the second in command at the Whatcom County Public Defenders Office, and I was the Sheriff's Office Court Transport Sergeant. Mrs. Anderson has always been a pleasure to work with, and treated the Corrections Deputies with the utmost respect. This is not always the case as there can at times be a strained relationship with the Public Defenders Office, due to the Corrections Deputies being seen as Law Enforcement.

Mrs. Anderson has been practicing Criminal Law for the entire 15 years that I have known her. She is an outstanding attorney, and I believe would be the best selection to fill the vacant District Court Judges position. She will be fair, and will make informed and educated rulings. Her work with mental health clients will give her a much needed insight and compassion to an issue that is running rampant, and back logging our criminal justice system.

As a Court Transport Deputy and later the court Transport Sergeant I had the opportunity to observe the impact that a civil attorney that became a judge had on the criminal side of the courts. Although the

Judge was a pleasure to work with, the lack of experience in criminal matters created a major back log of cases, and criminal court calendars that lasted 3-4 hours longer than normal. I believe from my experiences and observations that an attorney coming from the criminal side of the courts will prevent this slow down and backlog, especially with the impact COVID-19 has had on the courts, and cases getting pushed back to protect the public from the pandemic. I believe strongly that Angela Anderson is the most qualified applicant for the District Court Judge position, for all the reasons listed above.

Mrs. Anderson in my opinion will be able to assist Judge Elich to work efficiently to try and get the court schedules cleaned up, as well as be fair and impartial in each case she hears. Mrs. Anderson will ensure the law is followed, and that all cases are handled fairly and impartially. She has earned the respect of everyone she has worked with, and is held in high regard by the Corrections staff.

I highly recommend that the council select Angela Anderson to fill the vacancy on the District Court Bench, as it will be the best decision for citizens of Whatcom County, as well as the Court Staff. I know there are several applicants for this position, but having worked in the courts Mrs. Anderson is the stand out in the field of applicants.

Thank you for your time.

Respectfully  
Chris Freeman  
Corrections Sergeant  
Whatcom County Sheriff's Office

## Monica Rouse

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**From:** C Dunavan [REDACTED]  
**Sent:** Monday, June 28, 2021 8:53 AM  
**To:** Council  
**Subject:** District Court Judge opening

June 27, 2021

Dear County Council Members,

I am writing in support of Angela Anderson's candidacy for Whatcom County District Court Judge. Angela currently serves as the Public Defender for the City of Lynden, where I am the Domestic Violence Specialist. I work very closely with the City Prosecutor to help victims of domestic violence crimes have access to court information and a voice in the criminal justice process. As such, Angela and I are usually on opposite "sides" of our adversarial criminal justice system.

I have found Angela to be consistently thoughtful and respectful in her interactions with her clients, with court staff, and with victims and witnesses. While strongly representing her clients, she has been responsive to the wide range of concerns raised by victims in different domestic violence cases, from serious fears for physical safety to hopes for reconciliation with the defendant. She has also been interested in exploring ways we might expand options for our response to domestic violence, including potential development of restorative justice approaches in certain cases.

Angela began working in Lynden after several transitions in the Public Defender contract had resulted in a significant backlog of cases. She appeared to "hit the ground running," so that many cases that had been repeatedly postponed seemed to be quickly resolved.

In all of my interactions with Angela, I have found her to be professional, friendly, respectful, thoughtful, and interested in ways to make our criminal justice system function more effectively for the sake of all participants – defendants, crime victims, court staff, and the broader community. I believe she would make an excellent judge.

Sincerely,

Caryl Dunavan  
[REDACTED]

## Monica Rouse

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**From:** Fred Heydrich [REDACTED]  
**Sent:** Sunday, June 27, 2021 4:52 PM  
**To:** Council  
**Subject:** Whatcom County District Court Judge appointment

Dear Council Members:

I write on behalf of Angela Anderson, who is applying for appointment to the position of Whatcom County District Court Judge.

I have known Angela since she came to work for the Whatcom County Public Defender's Office in 2006. I was serving as a Whatcom County Superior Court Commissioner during her entire time as a deputy public defender and she appeared and handled cases in my courtroom innumerable times. Ms Anderson was at all times prompt and well prepared. Her dealings with the Court, counsel, clients and all others in the room were at all times professional, courteous and respectful. I never saw her lose her temper or get flustered under even the most trying circumstances. In my 38 yrs of legal experience, including 21 + yrs on the bench, I would rate her as one of the finest lawyers I have ever known.

I also had the pleasure of working with Angela on the Whatcom County Incarceration and Reduction Task Force, a duty that involved working with many people with widely differing views as to what course should be pursued and how to get where we needed to go. I can say that Ms Anderson was always able to express her position clearly and without rancor, even when others in the room were not on their best behavior.

Finally, I personally know and have worked with all the other applicants for the job and can confidently state that none of them possess the combination of experience, knowledge and demeanor that Angela would bring to the job of District Court Judge. If appointed, I am sure she would provide the citizens of our county with many years of superior and outstanding service.

Respectfully,

Alfred L. Heydrich  
Whatcom County Superior Court Commissioner (ret.)

Sent from my iPad



Wesley B. Vanderheyden

June 25, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Dear Council Members:

I am writing to request your consideration and endorsement of Angela Anderson for the position of Whatcom County District Court Judge.

I have personally known Angela for over ten years and have been fortunate to provide investigative support to her in her law practice. I have found Angela to be the consummate professional and I know she is well respected throughout the justice system in Whatcom County. She has a keen intellect and an uncanny ability to communicate effectively with people from all walks of life. She is honest, sincere and has impeccable integrity.

Angela has a vision for addressing issues within the justice system as a District Court Judge. She would like to increase access to the court for rural residents through enhanced on-line filing, Zoom hearings and electronic records. She envisions refocusing probation efforts away from first-time offenders to get them out of the system thereby enhancing the ability of the probation office to more effectively administer recidivists. She also believes in increased education of defendants in vacating their convictions once they have paid their debt to society.

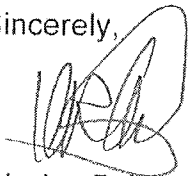
I believe strongly that Angela Anderson would excel at being a Whatcom County District Court Judge and I respectfully request your support for her.

Council Members

June 25, 2021

Page 2

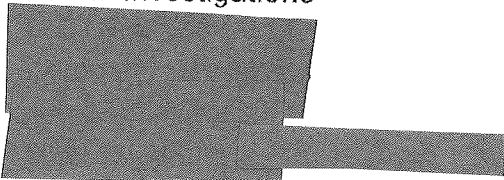
Sincerely,

A handwritten signature in black ink, appearing to read 'Wesley B. Vanderheyden', written over a large, dark, rectangular redacted area.

Wesley B. Vanderheyden

Owner/Investigator

Van D Investigations



# Stephen W. Jackson

Attorney at Law



To Whom It May Concern,

My name is Stephen Jackson and it is my pleasure to recommend Ms. Angela Anderson to the appointment of Whatcom County District Court Judge. I have known Ms. Anderson for several years and trust that she would be an excellent candidate for this position.

I first met Ms. Anderson when I was a Rule 9 Intern at the Whatcom County Public Defender's Office. Ms. Anderson was always willing to offer a helping hand for any legal issues and questions I had. As my internship came to an end, Ms. Anderson invited me to assist her in a jury trial, which became the highlight of the experience. After law school, I returned to the public defender's office and Ms. Anderson eventually became my supervisor. I have always thought of Ms. Anderson as a mentor and someone who was willing to the trade and help me improve.

Ms. Anderson has been a tremendous public servant to this community. She was a public defender for several years, a member of the Incarceration Reduction Task Force, a member of the Pickford Theater's board, and the current public defender for the City of Lynden. During her time at the Whatcom County Public Defender's Office, Ms. Anderson was a supervisor – first for attorneys assigned to the District Court, and later for all attorneys in the office.

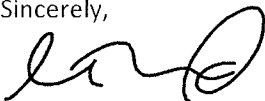
As an attorney who has moved through the ranks of the county's court system, I think people forget the important role District Court judges play in mentoring young attorneys. The lessons I learned from Judges Grant and Elich have proved invaluable in my current practice. Ms. Anderson will continue providing that service to this community – she was an excellent supervisor and I know she will be an excellent judge.

Ms. Anderson has significant experience working with disparate communities. Her ability to connect with her clients is a trait that is not easily emulated. She treats people with compassion and dignity and I am confident will maintain that respect for the people who appear before her as a judge. She is fair, deliberative, and extraordinarily intelligent. I am confident that this community will be well-served with Ms. Anderson on the bench.

I am happy and answer any further questions you may have. Feel free to contact me by email at



Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen W. Jackson'.

Stephen W. Jackson  
Attorney  
Bellingham, Washington

To; Kathy Kershner  
Whatcom County Council District 4  
[KKershne@co.whatcom.wa.us](mailto:KKershne@co.whatcom.wa.us)

CC: [rbrowne@co.whatcom.wa.us](mailto:rbrowne@co.whatcom.wa.us), [tdonovan@co.whatcom.wa.us](mailto:tdonovan@co.whatcom.wa.us),  
[tbyrd@co.whatcom.wa.us](mailto:tbyrd@co.whatcom.wa.us), [BElenbaa@co.whatcom.wa.us](mailto:BElenbaa@co.whatcom.wa.us),  
[bbuchanan@co.whatcom.wa.us](mailto:bbuchanan@co.whatcom.wa.us), [cfrazey@co.whatcom.wa.us](mailto:cfrazey@co.whatcom.wa.us),  
[council@co.whatcom.wa.us](mailto:council@co.whatcom.wa.us)

Re: Angela Anderson, candidate for Whatcom County District Court Judge

Councilperson Kershner,

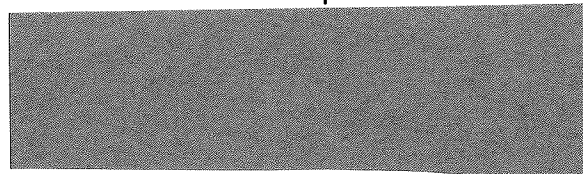
I am reaching out to you as a member of your district and as a person who is very familiar with the workings of the criminal justice system. I am recently retired, 2017, after a 40 year career as a criminal defense investigator, the last 35 years as the senior investigator for the Whatcom County Public Defenders.

I have Known Angela Anderson since 2006 and worked with her on almost a daily basis until my retirement. I have seen Angela deal with clients suffering from a myriad of issues including drug dependence, mental health issues, homelessness and bad life decisions. She has interacted with veterans and the support agencies that provide help to the veterans in need. Angela worked on many mental health cases where the client was suffering from grave mental defects. She is familiar with the resources available to be able to utilize the tools for alternatives in the disposition of cases. Angela was particularly effective in Drug Court where she helped to make successful one of the first tools in the criminal justice system to effect alternative dispositions. She treats everyone with dignity and respect.

Angela has seen first hand how the system impacts those who find themselves dealing with courts, lawyers and probation officers. She is uniquely qualified to listen and to make judgment to reach a reasonable outcome that is both fair and equitable for the client and community.

I would welcome any contact to answer any questions you may have, thank you for your time

Michael Sparks



## Jacqueline Lassiter

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**From:** Council  
**Sent:** Thursday, July 1, 2021 10:06 AM  
**To:** Kristi Felbinger; Jill Nixon; Jennifer Schneider; Jacqueline Lassiter  
**Subject:** FW: Support for District Court Judge applicant - Angela Anderson

**From:** Michelle Malone <[Michelle.Malone@co.whatcom.wa.us](mailto:Michelle.Malone@co.whatcom.wa.us)>  
**Sent:** Thursday, July 1, 2021 9:15 AM  
**To:** Todd Donovan <[TDonovan@co.whatcom.wa.us](mailto:TDonovan@co.whatcom.wa.us)>; Council <[Council@co.whatcom.wa.us](mailto:Council@co.whatcom.wa.us)>  
**Subject:** Support for District Court Judge applicant - Angela Anderson

Dear Mr. Donovan,

It is my understanding that the County Council will be appointing a judge to complete the term for retiring judge Dave Grant. As a resident of your district in North Bellingham (and your Columbia neighborhood), I would like to bring an applicant for District Court Judge to your attention. Angela Anderson is a friend of mine, and is the type of high-quality candidate that would serve our community with honor as a district court judge. While I am sure that you will hear from her colleagues about her professional qualifications, I can speak to her quality of character, dedication to her practice of law, and her care for our community members.

In my conversations with Angela about her work as a public defender and private practice attorney, her dedication to her community members and serving in the justice system has been evident. In addition to her work as an attorney, Angela has also served on the Incarceration and Reduction Task Force and the Health Department Opiate Use Prevention Task Force. She is interested in working with community members and organizations to find preventative measures to reduce crime and incarceration, balancing the needs of at-risk populations and community safety. She is an advocate of exploring drug and alcohol programs for misdemeanor offenses to help treat people with substance use challenges and hopefully prevent felonies or lifelong addiction. Angela has also talked about ideas to increase efficiency in the district court system, helping people move through the process of small claims, protection orders, name changes, and low-level offenses quickly and easily. She believes that technology could be useful to make court access easier for rural community members or victims of crime that may feel uncomfortable being in the courtroom.

Since Angela has served as a public defender in Bellingham and Lynden for 15 years, she is familiar with and well respected by the prosecutors, defenders, treatment providers, police and probation officers, and staff members of the jail and court. Having experience as Chief Deputy, she is known for her ability to work collaboratively with others and her problem solving skills. Angela's skill sets and connections would be strong assets as a judge on the District Court.

Thank you for your time and consideration,

Michelle Malone

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

## APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name: Royce Buckingham  
Street/Mailing Address: [REDACTED]  
City/State: [REDACTED] Zip Code: [REDACTED]  
Day Telephone: [REDACTED] Evening Telephone: [REDACTED]  
Fax Number: [REDACTED] E-mail Address: [REDACTED]

**A. Qualifications:** Per RCW 3.34.060, to be eligible to serve as a district court judge, a person must:

1. Be a registered voter of the district court district and electoral district, if any; and
2. Be a lawyer admitted to practice law in the state of Washington.

Are you a registered voter of Whatcom County? ☒ Yes ( ) No

Are you a lawyer admitted to practice law in the state of Washington? ☒ Yes ( ) No

**B. Resume:** A resume up to two (single-sided) pages in length may be attached to address the following:

- Occupation (if retired, please indicate occupation prior to retirement).
- Professional/Community Activities.
- Education.
- Qualifications related to the position of Whatcom County District Court Judge.

**C. References:**

- Please provide three letters of reference.

**D. Questions:** No more than two sheets of paper (single-sided) may be attached to address the following:


1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.
2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?

3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.
4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.

**E. Essay:** Please describe your familiarity with the current problems, litigation, rules, regulations, and policies of the Whatcom County District Court Office. Provide a one-page (single-side) summary of your top three concerns regarding the above issues.

**F. Certification:** I certify that this application and any other submitted materials contain no misrepresentations or falsifications and that the information given by me is true and complete. I hereby authorize Whatcom County to verify or supplement information given by me in this application and any other submitted materials. I hereby release any and all of my employers or references from any liability or claim that I might have as a result of disclosure of information. I further understand that should investigation at any time disclose any misrepresentation or falsification, I may be disqualified from appointment to the office of Whatcom County District Court Judge.

**As a candidate for appointment as District Court Judge to fill the vacancy, I understand the above information and any other materials submitted with this application will be available to the County Council, County Executive, any County department, and the public.**

Signature of applicant:  Date: 6-28-21

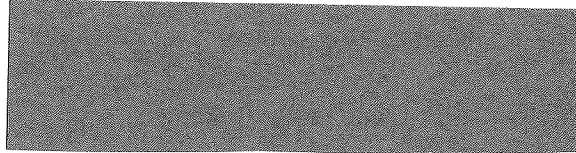
***Applications must be submitted to the Clerk of the Whatcom County Council by 4:00 p.m. on June 28, 2021***

Your application may be no more than thirteen single-sided pages total, composed of the following maximum number of pages (all single-sided).

Application	2 pages
Resume	2 pages
Reference Letters	6 pages
Question Responses	2 pages
Essay	1 page



# ROYCE BUCKINGHAM



## EXPERIENCE

May 1993 – Present - WHATCOM COUNTY PROSECUTING ATTORNEY'S OFFICE

Current Position - Senior Deputy, Civil Division. Legal Advisor to the Whatcom County:

Planning Department – Current Planning, Long Range Planning, Building & Codes,  
Fire Marshal, Land Division, Planning Commission

Auditor – Elections, Licensing, Recording

Health Department – Water Law, Sewers, Public Health

Treasurer – Local Tax Law, Collections, Finance, Investment, Foreclosure

Ethics Commission – Ethics Code Violations (Elected Officials)

Boundary Review Board – Annexations

Other Positions Held:

District Court Deputy I – Adult Misdemeanors

Juvenile Court Deputy II – Juvenile Misdemeanors and Felonies

Superior Court Senior Deputy – Adult Felonies

Criminal law responsibilities included: charging decisions, jury trials, pleas, sentencing, motions, appeals, driving offenses, property crimes, assault, child abuse, domestic violence, sexual abuse, sexual assault, arson, homicide, and other crimes. Significant criminal cases include the arson that destroyed the Mason building in downtown Bellingham and the Denton Hendricks murder in Lynden.

Legal advisor to all other Whatcom County departments as needed:

Council, Executive, Assessor, Prosecuting Attorney, Parks and Recreation, Public Works, Superior Court Clerk, District Court Probation, Sheriff.

## COURTS

I have practiced before the following courts and administrative boards over the last 28 years:

District Court, Juvenile Court, Superior Court, Washington State Court of Appeals, Hearing Examiner, Mental Health Commitment Hearings, Whatcom County Ethics Commission, Shoreline Hearings Board, Canvassing Board, Boundary Review Board, Growth Management Hearings Board, Board of Tax Appeals, Washington State Public Disclosure Commission, Building & Codes Board of Appeals.

Other jurisdictions: King County, Snohomish County, Skagit County, Lane County, OR.

## RELEVANT CERTIFICATIONS AND TRAINING

Certified Public Official (CPO) – WA certificate program, County Development Institute.  
Washington State Bar Association (WSBA) – member in good standing for 28 years.  
Admitted to the United States Federal District Court in 2005.  
Continuing Legal Education (CLE) – 28 years annual certified education with the WSBA.  
Groundwater Training (Structural Racism) – Racial Equity Institute, host Heather Flaherty.  
Implicit Bias Training – host Washington Supreme Court Justice Raquel Montoya-Lewis.

## EDUCATION

Bachelor of Arts – English, Whitman College  
Doctor of Jurisprudence – University of Oregon School of Law  
Willamette Law Review Article – *The Erosion of Juvenile Court Judge Discretion*

## PERSONAL

Whatcom County resident for 28 years. Married with two children—ages 17 and 20. Eagle Scout, college athlete (baseball), published author (13 novels), runner, past board member of Big Brothers/Big Sisters, AAU basketball coach, rec baseball coach. My first job out of law school was with Whatcom County.

## PRIMARY REFERENCES

Below are my primary references—people with whom I currently work most closely or who are most relevant to the District Court Judge position:

Eric Richey	Whatcom County Prosecutor	[REDACTED]
Flo Simon	Chief, Bellingham Police Department	[REDACTED]
Mark Personius	Director, Whatcom County Planning	[REDACTED]
Diana Bradrick	Whatcom County Auditor	[REDACTED]
John Wolpers	Manager, Whatcom County Environmental Health	[REDACTED]
Anna Webb	Paralegal, Whatcom County Prosecutor's Office	[REDACTED]

## LOCAL ATTORNEY REFERENCES

Below is a short list of opposing counsel with whom I work often. I regularly resolve client conflicts with these attorneys, and each has agreed to be speak with you about working with me.

Brad Swanson	Attorney	[REDACTED]
Jon Sitkin	Attorney	[REDACTED]
Bob Carmichael	Attorney	[REDACTED]

#### **D. Questions:**

##### **1. Why I am interested in serving as District Court Judge and qualifications.**

Greetings Council,

I am Royce Buckingham, and I'm seeking the District Court judicial appointment in order to put my twenty-eight years of courtroom experience and career-long commitment to public service to their best use serving Whatcom County.

I'm a senior attorney for Whatcom County and have spent my entire adult working life in public service. I've prepared myself for the bench by making difficult legal decisions on behalf of the citizens of Whatcom County for the last three decades.

I have over thirteen years of experience practicing criminal law and fifteen practicing civil law. I've practiced in numerous courts and administrative forums and represented many clients in a wide variety of legal areas. I've practiced before, or worked with, every judge and commissioner in Whatcom County's courts, including former Judges Grant, Montoya-Lewis, Garrett, Snyder, Mura, Moynihan, Nichols, and judges from King, Snohomish, Skagit and Lane (Oregon) Counties.

#### *About Me*

My parents grew up on Montana farms (with outhouses), and both were first-generation college students. I grew up in Richland, Washington, where my father worked in public service for the federal government. I was an Eagle Scout, played sports, and was a good student. My parents sent me to Whitman College in Walla Walla, where I played collegiate baseball and studied abroad. When I graduated, I took out student loans to study law at the University of Oregon. During law school I interned with the King County and Lane County (Oregon) Prosecutor's Offices and published an article in the Willamette Law Review on juvenile court judges.

#### *Early Career*

After I passed the bar, my first interview was with the Whatcom County Prosecutor in 1993. I interviewed in a storage closet/conference room on the fifth floor of the "old" courthouse. After doing a mock trial in front of the entire attorney staff, I was offered a job by Dave McEachran and started working in District Court with another new attorney, Eric Richey.

I began my career in misdemeanors, practicing before Judge Dave Rhea and Judge Ed Ross. I then spent 13 years practicing criminal law in Whatcom County's District, Juvenile and Superior courts, with occasional trips to the State Court of Appeals. I handled everything from shoplift to homicide.

#### *Personal*

In 1997, I married KGMI crime reporter Cara Landi, and we now have two boys—Aspen, a junior at Northwestern University in Chicago, and Aiden, a senior at Bellingham High. Along the way, I volunteered with Big Brothers/Big Sisters, coached AAU basketball, coached children's rec baseball, and published 13 novels.

#### *Civil Law Career*

As a Senior Deputy Prosecutor, I was promoted to the Civil Division of our office and inherited the job of Dave Grant, who had been appointed District Court Judge. I've now spent 15 years practicing civil law. My primary clients are the Planning Department, the Auditor, the Treasurer, and the Health Department, but I've advised nearly every department in Whatcom County at one

time or another, including the Executive and the Council. The Planning Department is my busiest client. In this unique year, the Health Department and Elections were also challenging. I continually train and study law, and I've completed Certified Public Official training in preparation for a leadership position in our County. District Court Judge is exactly such a position.

### *Judicial Philosophy*

I believe in a professional, welcoming courtroom where everyone has an opportunity to be heard and feels they have been treated fairly. The atmosphere in District Court should be respectful, efficient and not intimidating. The judge should work to maintain the dignity of citizens appearing before the court and treat the staff with courtesy.

A judge is different from a prosecutor, who is often an advocate. A judge must be impartial both in fact and in appearance.<sup>1</sup> Indeed, an unbiased judiciary is the foundation of our justice system. To that end, recognizing and eliminating bias are core functions of a judge right along with the safety of the community.

### *Summary*

My references will tell you that I'm good to work with and that I have a sense of humor, a professional demeanor and high ethics. I believe my extensive and varied experience is what will set me apart from most of the (also excellent) other candidates. Citizens come to District Court to have their legal matters decided, and I've been making difficult legal decisions that affect the lives of the people of Whatcom County for going-on three decades. Thank you for your consideration.

### *Additional References<sup>2</sup>*

The following co-workers and community members have all agreed to act as additional references:

Satpal Sidhu	Executive	[REDACTED]
Bill Elfo	Sheriff	[REDACTED]
Sarah Rothenbuhler	Owner/CEO, Birch Equipment	[REDACTED]
Evan Jones	Superior Court Judge	[REDACTED]
Dave Freeman	Superior Court Judge	[REDACTED]
Tyler Schroeder	Director of Administrative Services	[REDACTED]
Steve Oliver	Treasurer	[REDACTED]
Erika Lautenbach	Director, Whatcom County Health Department	[REDACTED]
John Romaker	Chief Deputy Assessor	[REDACTED]
Dave McEachran	Former Elected Prosecutor, Whatcom County	[REDACTED]
Dona Bracke	Assistant Chief Deputy / District Court Supervisor	[REDACTED]
Amy Keenan	Senior Planner, Whatcom County	[REDACTED]

- 2. Do you intend to run for the office of District Court Judge in the next general election? Yes.**
- 3. Are you currently seeking, or have you sought a business relationship with Whatcom County? No.**
- 4. Have you had a sustained complaint against you by the Bar or Judicial Conduct Commission? No.**

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<sup>1</sup> This is a non-partisan position, and I have refrained from actively participating in politics as a prosecutor for my entire career, except to support the campaign of my own employer, the elected Prosecutor.

<sup>2</sup> Note: all of my references are happy to discuss my attributes, but a number of them do not wish to "endorse" a single candidate.

**E. Essay: Current problems, litigation, rules, regulations, and policies of the Whatcom County District Court Office. Summary of three concerns.**

**Concern #1 – Access to justice.**

Providing access to justice involves eliminating barriers and delivering fair outcomes, including for people facing financial, language or other disadvantages. District Court is often a “pro se” courtroom where citizens either don’t or can’t pay for a lawyer. I have a concern that District Court moves fast and can be confusing. For example, I’ve seen judges use complex legalese or berate litigants for not knowing the law. A judge’s job is to help people understand the law and to help them resolve their criminal and civil issues. As judge, I anticipate meeting with staff and stakeholders to review procedures to help remove institutional barriers and assist pro se citizens in understanding, navigating and trusting the court to handle their business. One of my favorite quotes from former District Court Judge Rhea is “let’s get your business taken care of.”

**Concern #2 – How is pretrial monitoring working in District Court?**

Our District Court has a robust pretrial monitoring system to reduce the use of cash bail and to ensure defendants appear in court.<sup>3</sup> District Court uses a risk assessment tool, and the results are provided to the judicial officer before the first appearance of a defendant.<sup>4</sup> The assessment is based on “static” information (such as criminal history) and does not require questioning of defendants, which might violate their pretrial right to silence.<sup>5</sup> Risk assessments provide judges and probation officers with an objective tool to evaluate release and require pre-trial conditions.

Static risk assessments rely upon information that has been statistically shown to correlate with risk of non-appearance and re-offense, but these tools have also been criticized as being based on information that statistically disadvantages certain groups. Thus, when a judge uses the risk tool, that judge must consider dynamic factors beyond the tool when setting bail and release conditions. These additional factors can be supplied by a defense attorney.

Pretrial, District Court Probation also meets with defendants to discuss the “unmet needs” they may have, including shelter, health care, dental, food, clothing and others. This is an opportunity for the court system to intervene and offer solutions to underlying problems that contribute to criminal behavior. This protocol echoes the LEAD program, in which law enforcement diverts suspects to services at the point of contact on the street. District Court monitoring has evolved in recent years,<sup>6</sup> and it works well, according to staff. Our County’s pretrial monitoring is something we can be proud of and something I will promote as judge, refining and expanding when needed.

**Concern #3 – Is District Court putting too many people in jail?**

One of my concerns was the number of defendants District Court refers to our aging jail facility. However, Wendy Jones, the supervisor of the jail, explained to me that “District Court is not the problem.”<sup>7</sup> District Court currently imposes low or no bail, utilizes sentencing alternatives and prioritizes monitoring and services over incarceration as methods of crime reduction. I am on-board with continuing this philosophy and reserving jail as a tool for public safety.

---

<sup>3</sup> Bruce VanGlubt, District Court Probation Administrator.

<sup>4</sup> Discontinued for in-custody hearings during the pandemic (but still used for pre-trial monitoring after in-custody hearings).

<sup>5</sup> Upon any conviction, a “dynamic” tool involving interviews is used for post-conviction probation.

<sup>6</sup> Other additions include the pretrial unit, a behavioral health unit, a DV unit and text reminders for court.

<sup>7</sup> Wendy Jones is Chief of Corrections.

## WHATCOM COUNTY PROSECUTING ATTORNEY

### CHIEF CRIMINAL DEPUTY

Erik Sigmar

### ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

### CRIMINAL DEPUTIES

David Graham  
Kellen Kooistra  
Benjamin Pratt  
Gordon Jenkins  
Kacie Emerick  
Christina Garcia  
Jesse Corkern  
Evan Sterk  
Nicole Meyer  
Julia Monroe  
Maggie Peach  
Andrew Bogle  
Kayleigh Mattoon

### Eric Richey

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

### CHIEF CIVIL DEPUTY

Karen Frakes

### CIVIL DEPUTIES

Royce Buckingham  
Christopher Quinn  
George Roche  
Brandon Waldron

### CIVIL SUPPORT ENFORCEMENT DEPUTIES

Janelle Wilson/Lead  
Dionne Clasen

### APPELLATE DEPUTIES

Kimberly Thulin  
Hilary Thomas

### ADMINISTRATOR

Vanessa Martin

June 28, 2021

RE: District Court Judge Appointment

Dear Honorable County Council Members,

I recommend that you appoint Royce Buckingham to District Court Judge. This is an opportunity for Whatcom County to have a great judge in District Court.

Here's why:

I've been working with Royce since he and I passed the bar in 1993. We have moved up through the Whatcom County Prosecutor's Office together, and in every decision I've seen him make—three hundred and sixty-five days a year for almost thirty years—he has always focused on “doing what's right.” He's one of the people I go to talk to about really difficult cases and sticky problems. And after we've talked through all of the facts and legal issues from every angle, he'll often ask, “okay, given all of that, what's the *right* thing to do?” In short, good ethics and a strong personal moral compass. It makes complete sense that he was an Eagle Scout.

Royce is also the classic quick study when presented with a case, the facts, the law or just a problem—he listens and comprehends things right away. Then he makes prompt, well-reasoned judgments, which I trust. When we disagree, he appropriately questions my logic, and when confronted with different facts or a different point of view, he is willing to change his position. All of these attributes are exactly what we want in a judge.

Royce was an excellent trial attorney in our criminal division for thirteen years, where he tried all kinds of cases, including our most serious felonies. He's currently a Senior Civil Deputy and a voice of reason and practicality in our civil division, where he represents the County on some of its most important issues,

including health and elections this year. And everyone knows he's one of the best writers in my office. I often go to him on important matters to articulate our office's position in writing.

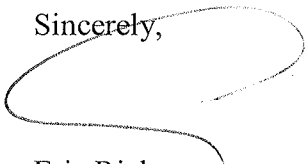
District Court Judge is an important position, because the District Court handles a high volume of cases affecting a large number of our citizens. It is a highly visible position to the public. It demands a thoughtful person with a professional demeanor who does the right thing every time, even in small cases. We need to promote and sustain public trust in our legal system in this way. We owe this to our citizens, especially during these times when public confidence in its own government has been shaken. Royce will be a stabilizing and calm presence as judge, and he has attended trainings to stay abreast of new ideas and to understand change so that the District Court can evolve as society's expectations evolve.

I think it's worth highlighting that Royce has three decades of experience and has handled an incredibly wide variety of cases—pretty much every criminal charge we have and fifteen years of civil issues covering nearly all of our County departments. His resume should cover this, but in case it doesn't, there you go.

I know that you will have several good candidates, which is great! Actually, I know and have worked with almost all of them. It is my opinion that Royce is the best choice among them, and I know I'm not alone in thinking this.

Good luck with your decision,

Sincerely,

A handwritten signature in dark ink, appearing to read "Eric Richey". The signature is fluid and cursive, with a large loop at the end.

Eric Richey  
Whatcom County Prosecutor



Flo Simon

June 16, 2021

Whatcom County Council  
311 Grand Ave, Suite 105  
Bellingham, WA 98225

Dear County Council,

It is my pleasure to offer a reference letter for Royce Buckingham for the position of District Court Judge,

I have known Royce for 28 years, beginning when he got hired as a prosecutor in the Whatcom County Prosecutors office. Royce spent 13 years prosecuting cases in District court as well as Superior court and Juvenile court. As a patrol officer I had occasion to testify on cases that Royce was prosecuting. Royce always made sure that I was prepared in the cases we worked together. Royce was fair and professional when dealing with victims as well as defendants and witnesses.

Royce then transitioned to the Civil Division at the Prosecutors office and has been working with the Planning Department, the Treasurer, the Health Department and the Auditor. The opportunity to work both criminal and civil cases has given Royce a broad perspective and a solid foundation to work from.

Royce and his wife Cara enjoy running and I have often run across them in my neighborhood. Family has always been important to Royce and Cara, who have two sons. Royce volunteered with various organizations that nurtured and mentored youth in our community. Royce also found the time to publish 13 novels, 3 of which are for middle school age children.

I find Royce to be highly ethical, competent and intelligent. He has a quick wit about him and enjoys interacting with people.

As the Chief of Police I want a judge who has the knowledge, skills and abilities that Royce consistently demonstrates and I highly recommend him for District Court Judge. He believes that recognizing and eliminating bias are core functions of a judge and I agree. I'd be happy to answer any questions that the Council might have. Please feel free to call me at [REDACTED]

Sincerely,



Flo Simon

25 June 2021

Nate Reiss, PhD  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

To: Whatcom County Council

From: Dr. Nate Reiss, PHD  
Clinical Psychologist  
Peace Health St. Joseph Medical Center- Behavioral Health Unit

**Re: District Court Judge Position**

Dear Councilmembers,

I am writing to strongly recommend Royce Buckingham for District Court Judge. I am a Licensed Clinical Psychologist for the Behavioral Health Unit at PeaceHealth St. Joseph Medical Center in Bellingham. Our mission is to treat and stabilize patients in behavioral health crisis and find outpatient resources to help them continue their wellness after discharge. Some of our patients are involuntarily detained under RCW Chapter 71.05 (Behavioral Health Law) after they experience a serious episode that endangers themselves or others. Our goal is to get our patients back to baseline functioning so that they can safely return to their daily lives. Until then, they are held in our care and given the right to court hearings if they wish to challenge their detention (on various legal timelines). My job involves the evaluation, treatment and expert testimony at court hearings regarding the diagnosis, condition, and prognosis of these patients.

Royce Buckingham routinely acts as our attorney at these hearings for the four years that I have worked here. He currently works with us approximately one week each month. His job is to represent the hospital on behalf of the State of Washington and legally defend medical decisions to involuntarily detain patients, when appropriate. Royce is a pleasure to work with professionally and personally.

I know Royce to be of strong character and professional excellence. As an attorney, he is knowledgeable, experienced, and able to integrate complex material efficiently. We have court three times a week, often with three to five cases on a single day, any of which can go to hearing right up to the moment the commissioner takes the bench. We typically provide Royce with case reports the day before (or the day of) the hearings, with little or no time to interview witnesses before the hearings. Commonly, Royce handles several hearings in a single day, involving multiple witnesses and aggressive opposing attorneys, even with little preparation time.

If our staff has a more complex legal question regarding RCW 71.05 (Behavioral Health Law), he is always happy to research the issue and answer questions. We call him on his personal cell phone number, and he is prompt, responsive and friendly every time we call to ask him for help.

Moreover, the most notable trait I have observed in Royce, and one of the most important in our profession, is compassion. Royce sincerely seeks positive outcomes for our patients to get the help they need, not just “win” cases. I routinely talk to him about legal strategies for court orders that help our patients navigate the complicated behavioral health system.

A good example of Royce’s soft touch is his approach to cross-examination of patients and questioning of family members. This can be a sensitive time and a traumatic experience. When Royce cross-examines, he does so thoughtfully and empathetically. He typically explains in a soft tone that people are concerned and asks if they can simply explain problematic behavior; or their willingness to engage in treatment or take medication. If a patient is really struggling on the stand, Royce often asks no questions at all, but simply lets them have their say. As the Clinical Psychologist at the Behavioral Health Unit, I very much appreciate an attorney with empathy representing us.

When making legal argument to the commissioner, Royce is articulate, integrative, succinct, and honest. If you appoint Royce as judge, I am confident you will see the same high level of skill and integrity. If you have any questions, feel free to reach out to me for more information.

Sincerely,

A handwritten signature in black ink that reads "Nate Reiss, PhD". The signature is written in a cursive, flowing style.

CLERK OF THE COUNCIL  
Dana Brown-Davis, C.M.C.  
  
COUNTY COURTHOUSE  
311 Grand Avenue, Suite #105  
Bellingham, WA 98225-4038  
(360) 778-5010



RECEIVED  
JUN 28 2021  
WHATCOM COUNTY  
COUNCIL

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

## APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name: Lisa M. Keeler  
Street/Mailing Address: [REDACTED]  
City/State: [REDACTED] Zip Code: [REDACTED]  
Day Telephone: [REDACTED] Evening Telephone: [REDACTED]  
Fax Number: [REDACTED] E-mail Address: [REDACTED]

**A. Qualifications:** Per RCW 3.34.060, to be eligible to serve as a district court judge, a person must:

1. Be a registered voter of the district court district and electoral district, if any; and
2. Be a lawyer admitted to practice law in the state of Washington.

Are you a registered voter of Whatcom County? (✓) Yes ( ) No

Are you a lawyer admitted to practice law in the state of Washington? (✓) Yes ( ) No

**B. Resume:** A resume up to two (single-sided) pages in length may be attached to address the following:

- Occupation (if retired, please indicate occupation prior to retirement).
- Professional/Community Activities.
- Education.
- Qualifications related to the position of Whatcom County District Court Judge.

**C. References:**

- Please provide three letters of reference.

**D. Questions:** No more than two sheets of paper (single-sided) may be attached to address the following:

1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.
2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?



**EXPERIENCE:**

**Carmichael Clark, P.S.**

Bellingham, WA

*Associate Attorney*, June 2015 – present

Civil litigation practice has included appearances in or assisting on cases before Whatcom, Skagit, San Juan, Island, Mason, Thurston, King, and Clallam Counties, the Office of Administrative Hearings, the Board of Industrial Insurance Appeals, the Pollution Control Hearings Board, and the Court of Appeals.

Litigation and/or transactional practice have included tort, insurance defense, employment, business/corporate, administrative/ licensing, property and real estate, guardianship, probate, Consumer Protection Act, and Public Records Act.

Have represented defendants, plaintiffs, large and small employers, employees, State agencies, and individuals.

Assist with blogging and marketing for the firm.

*Prosecutor (backup) for City of Lynden*, June 2015 - present

Lynden, WA

Prosecute misdemeanor cases for the City of Lynden as needed.

**Whatcom County Superior Court**

Bellingham, WA

*Pro tem commissioner*, February 2016 – present

Conduct hearings as judicial officer as needed, including Criminal First Appearances (setting pretrial release conditions and/or bail/bond); Uncontested Pro Se Dissolution matters, Child Dependency hearings, Juvenile Detention hearings, and Involuntary Civil Commitment hearings.

*MAR/SSCAR Arbitrator*, October 2018 – present

Conduct arbitration proceedings as assigned, including hearing testimony in case, ruling on evidentiary matters, issuing award, and ruling on any motions regarding discovery and fees and costs.

**Washington State Attorney General's Office, Regional Services**

Bellingham, WA

*Assistant Attorney General*, June 2008 – June 2015

Represented various State agencies including: Labor and Industries, Licensing, Employment Security, and Social and Health Services, both Adult Protective Services and Child Protective/Welfare Services. Occasionally assisted on research and advice projects for Western Washington University and Bellingham Technical College.

Trained, mentored, and aided in hiring Assistant Attorneys General, recruited law clerks for the Attorney General's Office, and aided in hiring and supervising law clerks for the Bellingham office.

Co-chaired Diversity Committee in Bellingham office planning events, speakers, a book club, and other Diversity related activities.

**Assumption Catholic Church**

Bellingham, WA

*Substitute director/conductor* (paid position)

*Volunteer choir member and cantor*, 2009 – present; occasional flautist and pianist.

Previously assisted in music ministry at Sacred Heart Church as a cantor and pianist.

**EDUCATION:**

**Gonzaga University School of Law**

Spokane, WA

*Juris Doctor, cum laude*, May 2007

Linden Cup Champion (2006); National Appellate Advocacy Competition (2006-07); Moot Court Honors Council (2006-07); Women's Law Caucus Political Action Committee Chair (2006-07).

**Gonzaga University**

Spokane, WA

*Bachelor of Arts in Political Science and Philosophy, cum laude*, May 2004

**Oxford University**

Oxford, England

*Study Abroad, Politics and Philosophy*, January – July 2003

**PROFESSIONAL LICENSES AND AFFILIATIONS:**

- Washington State Bar Association, admitted to practice in 2007
- Supreme Court of the United States, admitted to practice in 2013
- American Bar Association, member since 2006
- Whatcom County Bar Association, member since 2010; Young Lawyers Committee 2012-17
- Skagit County Bar Association, member since 2015
- Washington Defense Trial Lawyers, member since 2015
- Washington Women Lawyers, member since 2014

**AWARDS AND RECOGNITION**

- American Bar Foundation Fellow
- 2019 Judicial Institute Fellow
- Super Lawyers Rising Star, 2017
- Washington Women Lawyers, Chapter Member of the Year – Whatcom 2019
- At the Attorney General's Office, earned Excellence Award for co-chairing a strategic planning committee that successfully created uniform training materials for social workers.

**COMMUNITY ACTIVITIES:**

- **Washington Women Lawyers**, *Public Service VP*, 2020 – present; *Whatcom County Chapter*, member since 2014; Previously *President, Immediate Past President, President-Elect, Treasurer, Membership Co-VP, Judicial Evaluation Committee for Whatcom, Skagit, and San Juan Counties*.
- **LAW Advocates**, *Secretary*, 2020 – present; *Board Member*, 2013 – present; *Marketing Committee*, 2018 – present; *Street Law volunteer lawyer*, 2013 – present. While Board Chair, successfully guided the organization through the development and execution of a strategic plan in 2016-18 that included the introduction of a new fundraising event (Law Day Breakfast) and 30<sup>th</sup> Anniversary marketing campaign.
- **High School Mock Trial**, *Volunteer scoring judge*, 2013 – 2016. Rate students during and provide feedback following trial competition in February each year.
- Member: **Bellingham Regional Chamber of Commerce**, *Active participant*, **League of Women Voters of Bellingham/Whatcom County**; **Whatcom County National Adoption Day**, *Planning Committee*.



Leon F. Henley, Jr



June 24, 2021

Dear Whatcom County Councilmembers,

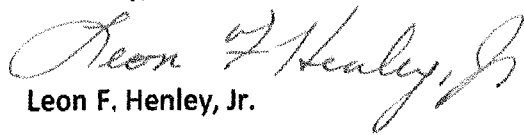
As a part-time and full-time court commissioner for the Whatcom County Superior Court for the last 15 years, I fully support Lisa Keeler's application for Whatcom County District Court Judge. From her days as Assistant Attorney General (AAG), through her private practice and community service leadership, and now for the many years she has served as a pro tem court commissioner, I have watched her grow to be one of the most trusted, qualified and experienced judicial candidates we could welcome to the bench. Always prepared, respectful to everyone, and extremely efficient in how she presented cases, Lisa appeared in front of me many times as an Assistant Attorney General. Few attorneys are as popular a choice to fill in when court commissioners like me are unavailable to conduct hearings in family law cases, child welfare dependency cases, criminal first appearances, and mental health civil commitments.

Given her long history and good work as a pro tem court commissioner and her broad legal background, I recently asked her to start conducting judicial settlement conferences for children's dependency matters. The AAGs, parent's attorneys, guardians ad litem, social workers and I meet regularly to improve this process. Recently we discussed attempting judicially-led settlement conferences in hopes of resolving disputes instead of going to trial. Lisa was a natural choice to conduct these conferences on behalf of the court. When all these different, and often opposing sides in such contentious cases, were all so supportive of Lisa's involvement, it is high praise.

Lisa has always been active in Whatcom's volunteer culture, especially when it involves the courts. For years, Lisa volunteered as a rating judge for the high school mock trial competition. It is often students' first introduction to the court system and many lawyers recall this longtime competition as when they first considered becoming lawyers. Lisa provided great feedback for the students and treated them with the same respect as she does her attorney peers. Lisa also spent years helping to plan and organize Whatcom County's National Adoption Day celebration. She began that work while an AAG handling family and children's cases and continued to make it her commitment in private practice. In securing community donations (gifts for the adoptees, family reception refreshments, etc.), Lisa's volunteer efforts are infectious and show her service side, both in and out of the courtroom.

Working closely with her, I can attest to her ability to focus on the law and not be sidetracked by emotional situations, political influences, or insider systemic biases. She is unafraid of change – in fact, she inspires and tackles it head on. Her writing is clear and direct; her compassion is honest but professional – and her commitment to high ethical standards is exemplary. Lisa would be an invaluable addition to the Whatcom County District Court bench.

Sincerely,

A handwritten signature in cursive script that reads "Leon F. Henley, Jr." in dark ink. The signature is fluid and elegant, with a large initial 'L' and a prominent 'H'.

Leon F. Henley, Jr.

Dear Whatcom County Councilmembers,

I recently retired after working for many years as a Project Manager for BP, and I am an enthusiastic supporter of Lisa Keeler in her efforts to fill the open seat on the Whatcom County District Court. I come to you as someone who, with my wife, Elsie, learned first-hand how knowledgeable, hard-working and committed Lisa is to justice for all.

About three years ago, we came to Lisa in a complicated vulnerable adult matter; we were desperate for help and facing very tight timelines. Another family member was making false claims about our relationship with Elsie's mother, Dora, and trying to restrict us and others from having contact with Dora. They were also trying to gain control over her finances for their own benefit.

From the moment we first met Lisa we knew we were in good hands. She clearly explained the law, the process, and all our options for addressing the issue. She even helped my mother-in-law get her own attorney to fight what was going on and take other steps to protect herself and her finances moving forward. Most importantly, Lisa's strength and calm demeanor were infectious making the whole family feel at ease even as we sat through multiple meetings and hearings to resolve the issue.

Lisa came up with a very well thought out, strategic plan to work through our case and then executed it beautifully. You may be in the right, but you still need to effectively navigate the system to succeed; and Lisa did just this. I want a judge who understands both the law and process like Lisa. She was respectful to everyone, even our opposing family members who were causing all the trouble. She made us feel empowered and safe as we worked through a very emotional court process. In the end, the baseless claims against us were thrown out by the court. But Lisa reminded us to be, and gave us opportunities to be, compassionate to the family members causing all the trouble. Again, I want a judge to be like Lisa, compassionate and respectful to all.

We came into the legal system upset, confused, and angry. Lisa's confidence and her extraordinary legal experience gave us the power to take action, and allowed us to see beyond the immediate turmoil to focus on what really mattered – making sure Dora was okay. My daughter, Kimberly – then a college student and now an engineer – was so impressed with Lisa that she expressed an interest in possibly becoming an attorney. Lisa immediately offered her mentorship and to answer any questions Kimberly had.

Lisa is older than her years – with wisdom that allows her to see the big picture: she really listens to all sides. So many people listen defensively and, in their heads, begin countering before the other side barely begins. Lisa is a good listener and is able to explain extremely complicated legal issues in clear, direct terms. It is obvious that she cares about the law and having an accessible, strong judicial system.

Lisa is an excellent attorney and would make a great judge. Her fairness and compassion – without compromising the law – made us better people and a better family. Whatcom County would be lucky to have her as a District Court Judge.

Sincerely,



Scott Hazlett

Dear Whatcom County Council Members,

It is an honor to write this letter in support of Lisa Keeler for Whatcom County District Court. I served for many years alongside Lisa on the board of LAW Advocates. LAW Advocates is a non-profit that provides legal assistance to low-income community members. I have seen Lisa in action through various community outreach activities of LAW Advocates and her leadership abilities when as President of the board of LAW Advocates, she successfully led the organization's long term strategic plan. That was no easy feat! As one of only a few non-lawyers on the board, I was always fascinated by the lively legal conversations when discussing our mission and the issues. Managing those strategic planning conversations with a board of primarily lawyers took an *extraordinary* amount of listening skills, focus, diplomacy and critical thinking to arrive at our end result – a plan that would successfully lead LAW Advocates for years. It was a lot of work but the whole board was profoundly satisfied with the result as it gave direction to the work and inspired us all to continue the commitment of providing legal assistance to those in need. Lisa's masterful leadership was critical in accomplishing this goal. For me, my participation on this board has one of the most fulfilling experiences I have had in my 30+ years in Bellingham.

In addition to Lisa's unwavering commitment of access to justice, she also demonstrates that same commitment to the community. I too am very involved in my community and have served on multiple boards and I constantly see her at Chamber events, fundraisers for non-profits (like Lydia Place which serves homeless families) and other community gatherings. Having a deep connection to community gives a context for the nuances of life that confront our citizens. And wouldn't we want someone on the bench who not only is brilliant in the practice of law but also committed to equal justice, diversity and an openness to hear all sides and then with a disciplined methodology, to arrive at the best conclusion? The answer is of course – yes!

From a non-lawyer standpoint, I would want someone to judge a case not only with a thorough understanding of the law, but also with the wise discretion that comes from a variety of experiences in life and in community service. That approach is essential in breaking down barriers to justice and providing access to justice. This is exactly what Lisa has done in her professional life and in her service to community. Her diplomacy as President of LAW Advocates leading a very diverse board that was not shy in expressing those various opinions speaks not only to her effectiveness in the legal community but also her autonomy of staying true to doing 'the right thing' and her approachability, and thus electability in the public arena. That is the kind of judge I want in my community. That is the kind of justice that benefits our community. And that is why I jumped at the opportunity to write this letter in support of Lisa Keeler for Whatcom County District Court Judge.

Sincerely,



Mary Kay Robinson  
Windermere Real Estate Realtor Broker  
2021 Vice President Elect, Washington Realtors Government Affairs  
2019 Chair, Washington Realtors Legislative Steering Committee  
2017 Realtor of the Year  
2016 President, Whatcom County Association of Realtors



**D. Questions**

1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.

My primary motivation as a person and an attorney has always been to serve others and our community. I recognize what privilege I have and work to ensure all of us – not just some of us – have meaningful access to the legal system. Serving as a judge on the Whatcom County District Court would allow me to tackle this issue in a new and more impactful way. Given my broad legal experience – from substituting as a Prosecutor for the City of Lynden to litigating family law and civil cases to serving as a Commissioner for the County – and my long and varied community service which includes leading strategic improvement initiatives, I am uniquely qualified to immediately take on the work of a judge in and out of the courtroom.

As an attorney in private practice, I have handled civil cases in Whatcom County District Court and stay abreast of the rules and procedures of the Court because I often have to evaluate whether to file cases there or in Superior Court. I have handled the same type of criminal and civil infraction cases that come before District Court as the back-up Prosecutor for the City of Lynden. As a volunteer lawyer I have assisted clients with questions related to District Court matters from medical and credit card debt collection matters to small claims cases for minor car accidents. As an Assistant Attorney General, I stayed informed about District Court process in order to assist others with vehicle impound cases involving the Washington State Patrol, and I regularly handled the civil side of DUI cases (driver's license suspensions and revocations) which are similar to cases appearing in District Court. And through my volunteer board work, I have participated in many discussions about the work of the District Court and how access, support, and representation for people appearing in that court can be improved and increased.

I am particularly drawn to the work of District Court, often called the "people's court," given the closer connection to residents of our County. It includes small claims court (monetary claims up to \$10,000 by natural persons and \$5,000 for other entities), civil infractions (such as driving without insurance), criminal misdemeanors including the Mental Health Court program (like assault 4 and shoplifting charges), civil monetary claims (up to \$100,000, such as medical debt collection and wage withholding claims), and even name changes. Many of the issues that arise in District Court are the same questions I am presented with when volunteering as an attorney for LAW Advocates of Whatcom County, which especially for civil matters is no surprise given the results of the most recent 2015 Washington State Civil Legal Needs Study Update showing huge increases in individuals with legal problems related to employment and consumer/financial services/credit card and health/medical debt.

Because of the close relationship to individuals and type of legal issues that can be raised in these courts, District and Municipal Courts around the country are often where community and alternative courts are developed and find their greatest successes. There is a great opportunity to continue working towards court improvements that can have a vast impact on people in our County. It is important for the Court to take time to evaluate its work, bring together and collaborate with the stakeholders, and lead the team to create news systems and projects. I have done this work for other

## **Lisa M. Keeler**

organizations, specifically leading LAW Advocates in a very successful strategic plan while serving as its Board Chair.

I stay up-to-date on civil legal needs information and criminal court improvements projects as a director with the LAW Advocates Board, as a member of the American Bar Association (which reports on civil and criminal justice reforms around the United States), and as a Fellow of the American Bar Foundation (which conducts evidence-based legal research around the world). The work of the Court must first be committed to serving our community, but much can be learned from others courts and communities. And through my professional and volunteer work, I have sharpened my ability to lead strategic improvement initiatives, created cooperative system changes, and met the judicial challenges of today's society in dealing with poverty and limited access to justice.

Not only do I have the skills to conduct the hearings of the District Court, but I have the skills and experience in managing the judicial work outside the courtroom, from personnel management to long-term strategic planning. I hope to serve our community as the next District Court Judge, and I am committed to continuing the good work the Court is doing and always finding ways to do it better.

2. Do you intent to run for the office of District Court Judge in the next general election...?

Yes, that is my intent; I have run for and managed a campaign for public office twice previously.

3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the filed of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with the County? If so please explain.

I am an officer and director of non-profit volunteer legal services provider LAW Advocates of Whatcom County. That program currently has two contracts with Whatcom County, one related to the Access ID program (assisting residents in getting government-issued identification) and one related to Veterans Assistance. We have had prior contracts/grants with the County.

4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.

No. I am not aware of any grievances, of any kind, ever being raised against me. (Please note, the WSBA Office of Disciplinary Counsel receives grievances that are dismissed without investigation and the subject attorney is never notified of the grievance.)

## **Lisa M. Keeler**

### **E. Essay regarding familiarity with and top three concerns for Whatcom County District Court.**

I have handled Whatcom County District Court civil matters as a private and volunteer attorney, and I generally stay informed about the rules and procedures of the Court. As the back-up Prosecutor for the City of Lynden, I handle similar misdemeanor criminal cases and civil infractions cases as come before this Court, and I did comparable and related work as an Assistant Attorney General. In my work in the access to justice arena, I have participated in discussions on how to improve access to and representation for parties in District Court.

My top three concerns for the District Court are:

1. How can the Court meet the increased litigation needs of the public and grow community courts? Our local courts will continue to have opportunities to increase or develop new community courts to play its role in addressing increased criminal cases related to social needs such as housing, substance use, and mental health treatment. The recent civil legal needs study showed ever growing civil legal issues facing our residents, especially the types of cases filed in District Court like medical debt collection and wage withholding claims. The study also showed people are unaware that their issues are even legal issues or how to address them. The better informed individual litigants are, the smoother the process goes. The District Court will, and should, play a key role in increasing public awareness of its work and availability to Whatcom residents for resolving disputes, growing and updating community courts, and constantly working to improve courtroom efficiency and equity. These strategic initiatives are exactly the type of work I excel in conducting.

2. How can the Court improve communication with the public about its work and how to navigate the Court system? People do not know there is a District Court or how it fits in with all the other courts in our County. This is even more problematic when someone finds themselves in front of our District Court as a pro se litigant (representing themselves without an attorney). With little or no familiarity with the Court, people face increased stress and more time and expense in trying to understand the process and piecing together strategies and responses. And all levels of the District Court system spend more and more time trying to bring parties up to speed on what is needed, why it is needed, and the consequences of making an uninformed decision. It is a system change needed everywhere; preparing people with few resources to understand the basics of the process so they have a fair chance at presenting their side. My communication, mediation, and marketing skills would allow me to quickly tackle these issues.

3. How does the Court embrace new technologies without abandoning people who do not have access to these technologies? Frustratingly, attorneys and courts are often slow to embrace innovation and new technology. The “lock down” during COVID forced the legal profession and courts to take big leaps forward in using audio-video technology, conducting remote hearings, and using online/electronic filing. It is very important that courts continue to explore and improve courtroom and clerk technology, which can improve efficiency and broaden access for all. However, especially in a vast geographic county like Whatcom, it is essential that courts do not abandon in-person document filings and court hearings because not everyone has access to this technology, or even reliable internet or phone service. It is essential that the Court ensure everyone has access to information, can proceed with filings, present their case, and conduct settlement negotiations. The goal should be to invest in infrastructure that allows improved digital access, maintains “analog” access, and allows the two modes to interface as seamlessly as possible. It will be a hard goal to achieve, but recently I conducted a settlement conference where I did just that: conducted the conference over Zoom, but provided an in-person location with access to the technology so all the parties could interact together. I can help the Court advance forward without leaving anyone behind.



## Jacqueline Lassiter

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**From:** joan jimenez <  
**Sent:** Tuesday, July 6, 2021 5:03 PM  
**To:** Council  
**Subject:** Lisa M. Keeler, endorsement for Whatcom County District Court Judge

Council members, it is with great confidence and assurance that I endorse your consideration for the appointment of Lisa M. Keeler to the position of District Court Judge in Whatcom County.

I am proud to say that I have known Lisa her entire life. She is a person of great integrity, intelligence and compassion. Lisa's educational background, work experiences and community involvement have given her a broad perspective to the issues and situations at hand. She is quite capable of dealing with people from various backgrounds and circumstances providing the support and direction that is needed.

Thank you for reading and considering my endorsement for the appointment of Lisa M. Keeler.

Sincerely,  
Joan Jimenez

CLERK OF THE COUNCIL  
Dana Brown-Davis, C.M.C.  
  
COUNTY COURTHOUSE  
311 Grand Avenue, Suite #105  
Bellingham, WA 98225-4038  
(360) 778-5010



RECEIVED  
JUN 28 2021  
WHATCOM COUNTY  
COUNCIL

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

## APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name: Jeffrey A. Lustick

Street/Mailing Address: [REDACTED]

City/State: [REDACTED]

Day Telephone: [REDACTED]

Fax Number: [REDACTED]

**A. Qualifications:** Per RCW 3.34.060, to be eligible to serve as a district court judge, a person must:

1. Be a registered voter of the district court district and electoral district, if any; and
2. Be a lawyer admitted to practice law in the state of Washington.

Are you a registered voter of Whatcom County? (X) Yes ( ) No

Are you a lawyer admitted to practice law in the state of Washington? (X ) Yes ( ) No

**B. Resume:** A resume up to two (single-sided) pages in length may be attached to address the following:

- Occupation (if retired, please indicate occupation prior to retirement).
- Professional/Community Activities.
- Education.
- Qualifications related to the position of Whatcom County District Court Judge.

**C. References:**

- Please provide three letters of reference.

**D. Questions:** No more than two sheets of paper (single-sided) may be attached to address the following:

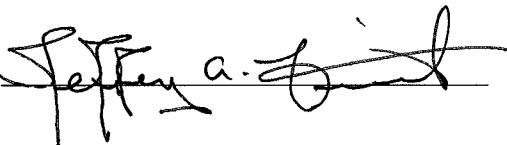
1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.
2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?

3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.
4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.

**E. Essay:** Please describe your familiarity with the current problems, litigation, rules, regulations, and policies of the Whatcom County District Court Office. Provide a one-page (single-side) summary of your top three concerns regarding the above issues.

**F. Certification:** I certify that this application and any other submitted materials contain no misrepresentations or falsifications and that the information given by me is true and complete. I hereby authorize Whatcom County to verify or supplement information given by me in this application and any other submitted materials. I hereby release any and all of my employers or references from any liability or claim that I might have as a result of disclosure of information. I further understand that should investigation at any time disclose any misrepresentation or falsification, I may be disqualified from appointment to the office of Whatcom County District Court Judge.

**As a candidate for appointment as District Court Judge to fill the vacancy, I understand the above information and any other materials submitted with this application will be available to the County Council, County Executive, any County department, and the public.**

Signature of applicant:  Date: June 28, 2021

***Applications must be submitted to the Clerk of the Whatcom County Council by 4:00 p.m. on June 28, 2021***

Your application may be no more than thirteen single-sided pages total, composed of the following maximum number of pages (all single-sided).

Application	2 pages
Resume	2 pages
Reference Letters	6 pages
Question Responses	2 pages
Essay	1 page

# Jeffrey A. Lustic

A twenty-five-year career of richly diverse legal practice, including extensive service as a Judge *Pro Tempore* in District and Municipal Courts, criminal prosecutor at the city, state, federal, and military levels, and public and private defense counsel to the public at large. Skilled and experienced in a wide spectrum of criminal and civil legal matters, engaged in national and local news media as an ambassador of the legal profession, and providing volunteer service in leadership roles within the Whatcom County legal community and across Washington State.

## JUDICIAL EXPERIENCE

### **Judge *Pro Tempore* – Whatcom County, WA**

Whatcom County District Court: August 2005 – 2006, October 2019 – present  
City of Bellingham & City of Ferndale: October 2019 – present

- Provides average of 4.8 hours of judicial service at Whatcom County District Court weekly, presiding over various criminal and civil cases as assigned.
- Presides over criminal judicial matters in District and Municipal Courts, including arraignments and first appearances, bail hearings, warrant quashes, motion hearings, change of plea hearings, sentencing hearings, restitution hearings, jail reviews, indigency reviews, and jury and bench trials.
- Presides over post-conviction judicial matters in District and Municipal Courts, including fine payment reviews, probation violation hearings, assessment and treatment plan reviews, probation sanction hearings, contested probation violation trials, and probation termination hearings.
- Presides over various civil judicial matters in District Court, including anti-harassment and domestic violence hearings, name change petitions, dangerous dog appeals, vehicle impound hearings, traffic mitigation hearings, traffic infraction trials, small claims trials, and civil jury and bench trials.
- Periodically presides over specialized Mental Health and Domestic Violence Courts, conducts in-court reviews of participants' progress.
- Maintains professional working relationships with judges, commissioners, probation officers, court administrators, and court clerks; adheres to Rules of Professional Conduct and the Code of Judicial Conduct; participates in continuing judicial legal education.

## LEGAL EXPERIENCE

### **Criminal Defense Attorney – Bellingham, WA**

Lustick, Kaiman & Madrone, PLLC: May 2004 – present

- Founder, operator, and manager of a regional law firm located in Whatcom County, with three full-time attorneys and two legal assistant staff members.
- Represents clients in civil and criminal matters in municipal, state, tribal nation, federal, and military courts throughout the State of Washington.
- Defends clients litigated bench and jury trials in cases involving traffic infractions, misdemeanors, gross misdemeanors, and felonies.
- Prepares legal memoranda, motions, and appellate briefs, and makes arguments regarding criminal and civil matters before the court.
- Serves as a conflict defense council in Superior Court and as a contract Federal Public Defender in U.S. District Court in Bellingham and Seattle, WA.
- Drafts wills, powers of attorney, and trust documents; assists clients with formation of business entities and LLCs; and provides notary services.

### **Legal Services Panel Attorney – Washington State**

Aircraft Owners and Pilots Association: 2010 – present

- Serves on nationwide panel of recognized aviation legal experts who provide on-call legal advice and services to a 384,000+ member organization.
- Represents aviators in legal matters, including airmen defense before the Federal Aviation Administration and National Transportation Safety Board.
- Advises aviators regarding purchase and sale agreements, escrow transactions, and establishing LLCs, partnerships, and aircraft ownership entities.
- Attends periodic nationwide aviation legal education seminars and provides instruction to fellow attorneys; comments in news media on aviation topics.

### **Radio Legal Commentator – Bellingham, WA Seattle, WA**

KGMI Radio 790-AM: March 2003 – present  
KOMO Radio 1000-AM: 2008 – present

- Content provider for national and local news talk radio stations on issues of constitutional law, criminal law, criminal procedure, and current events.
- Speaks on broadcasts to inform and educate the public on important legal topics and current events involving area courts and national legal issues.

### **Cable Television Legal Commentator – Seattle, WA Manhattan, NY**

NBC and CBS Regional: 2008 – present  
Turner Broadcasting Systems (TBS): February 2008 – April 2010

- Content provider for national and local television stations on issues of constitutional law, criminal law, criminal procedure, and current events.
- Appeared on television broadcasts providing legal analysis and commentary of noteworthy trials to nationwide audience on TruTV (formerly Court TV).
- Served as guest panelist and expert legal commentator for national broadcast of Don Lemon Tonight and Anderson Cooper 360° on CNN.

### **Criminal Litigation Associate – Bellingham, WA**

Childress Law Firm: March 2003 – May 2004

- Represented clients in misdemeanor, gross misdemeanor, and felony criminal matters in local municipal, state, tribal nation, and federal courts.
- Defended clients at criminal jury and bench trials and provided *pro bono* legal services to indigent community members in Whatcom County.
- Prepared legal memoranda, motions, and appellate briefs, and made arguments of criminal matters before courts and administrative appeal boards.

### **Assistant City Attorney & Lead City Prosecutor – Bellingham, WA**

City of Bellingham: September 2001 – March 2003

- Supervised all legal, personnel, and budgetary functions of the city attorney's criminal division, and led a prosecution team of two staff attorneys, two legal assistants, and one paraprofessional victim advocate; appraised and evaluated subordinates and assisted the city attorney in hiring decisions.
- Prosecuted infraction, misdemeanor, and gross misdemeanor criminal offenses charged under the Revised Code of Washington and Bellingham Municipal Code, exercised full discretionary decision-making powers as a municipal prosecutor, and managed appeals to Superior Court.
- Served on county-wide committee to synchronize law enforcement response in domestic violence cases, collaborated with county prosecutors and sheriff's office officials to maximize prosecution of domestic violence offenders, and contributed to training of victim advocates and first responders.
- Produced valuable results by holding offenders accountable, reducing caseloads, utilizing jail alternatives programs, and promoting treatment services.

**Staff Judge Advocate & State Defense Counsel – State of Washington**

Washington Air National Guard: September 2001 – September 2009

- Served as principal military legal advisor, military prosecutor, and state defense counsel for Air Force Reserve Component of over 15,000 personnel.
- Established a new and innovative nationwide military defense counsel system that was adopted by the National Guard Bureau, enabling National Guard Legal Officers to act as uniformed defense counsel for military members accused of criminal offenses under state and national military justice codes.
- Deployed to support contingency combat operations, drafted wills, trusts, and powers of attorney for National Guardsmen assuring wartime readiness.

**Judge Advocate General Officer – United States Air Force**

Various Duty Stations Worldwide: October 1997 – September 2001

- Held Secret (S/SBI), Top Secret (TS), Sensitive Compartmented Information (TS/SCI), and Special Category (TS/SPECAT) security clearances.
- Appointed as Command Legal Advisor to military commanders with operational control and responsibility over thousands of personnel and millions of dollars in military assets and spending authority, provided important legal services to military members to maintain national wartime readiness.
- Litigated hundreds of military felony and misdemeanor courts-martial as military prosecutor, area defense council, and circuit military defense counsel; prosecuted homicide and child abuse offenders, defended military service members in courts-martial and discharge boards & termination proceedings.
- Promoted to Chief of Operations Law for elite Air Force Special Operations Wing, prepared classified rules of engagement, instructed unit commanders and operators on Status of Forces Agreements, and coordinated threat assessment and military targeting on warfighting commander's special staff.
- Participated in joint Department of Defense and State Department civil affairs and benevolent missions in Central and South America.
- Reviewed government contracts, authorized payment of military claims, and represented the U.S. Government on labor and environmental issues.
- Managed Air Force Legal Assistance Program by drafting wills, powers of attorney, and trust documents, and providing general legal advice and military notary services to thousands of military personnel and their families; certified by the Judge Advocate General to act as Trust Specialist.

**Special Assistant U.S. Attorney – United States Department of Justice**

United States Attorney District of Nebraska: August 1998 – December 1999

- Concurrent to military assignment, appointed as prosecutor for criminal offenses committed by civilians on federal reservations throughout Nebraska.
- Prosecuted 15 criminal misdemeanor drug, trespassing, and theft cases in the Magistrate's Division of the United States District Court in Omaha, NE.
- Conducted arraignments, bench trials, sentencing hearings, and probation violation hearings under supervision of District Attorney.
- Worked on regional task force with FBI and DEA special agents to secure sealed indictments from a Federal Grand Jury in a drug conspiracy case.

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**EDUCATION**


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**U.S. Air Force Judge Advocate General School** – Maxwell AFB, Montgomery, Alabama: Feb – July 1997, various courses 1998 – 2008

- Certified under UCMJ and designated as Military Lawyer.

**Gonzaga University School of Law** – Spokane, Washington.

- Juris Doctorate with Honors (*cum laude*): May 10, 1997; class rank: 12th out of 162. Dean's List 4 semesters.

- Phi Delta Phi academic honor fraternity: Chapter President 1996-97, Chapter Clerk 1995-96, awarded Balfour Service Scholarship 1997.

**Western Washington University** – Bellingham, Washington.

- Bachelor of Arts Degree, School of Arts and Science: June 1993.
- Academic majors: Sociology and Criminology.
- Legal Information Center volunteer, Reporter for The Western Front.

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**PUBLIC SERVICE, MEMBERSHIPS, & AWARDS**


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- **President, Vice President, Secretary, and Member** – Whatcom County Bar Association, Bellingham, WA: 2001 to present. President 2005 – 2006; VP 2004 – 2005; Secretary 2003 – 2004. As President, revised constitution and bylaws and reinvigorated membership by creating and promoting a monthly lunch speaker program and offering Continuing Legal Education seminars to members. Promoted WCBA charitable fundraising activities.
- **Newsletter Editor** – Whatcom County Bar Association: 2002 – 2004. Reduced publication costs by streamlining publishing process and generated revenue by selling advertisement space for the first time in the newsletter's history.
- **Pro Bono Service Award Recipient** – Washington State Bar Association: Awarded for years 2016 – 2020 for direct *pro bono* legal services.
- **Volunteer & Ex Officio Chairperson** – Law Advocates, Bellingham, WA: 2005 – 2006. Provided direct *pro bono* legal assistance to the general public as part of the Street Law Program on Saturday mornings in downtown Bellingham. Assisted in Law Advocates' annual charitable fundraising efforts.
- **President and Vice President of the Board** – Baker Creek Neighborhood Council, Bellingham, WA: 2003 to 2005. Elected to neighborhood council with responsibility of enforcing covenants and maintaining neighborhood quality of life. Founded Baker Creek Neighborhood Block Watch in 2006.
- **Volunteer Member, Legal Officer, and Search & Rescue Pilot** – U.S. Air Force Auxiliary, Civil Air Patrol. Member since age 12 (1983). Awarded Civil Air Patrol Bronze Medal of Valor for lifesaving action, October 28, 2017. Currently ranked as Lieutenant Colonel. Qualified in Cessna 182 and 206 aircraft.
- **Volunteer Pilot for Experimental Aircraft Association** – Burlington, WA: May 2005 to present. Donates hundreds of free airplane flight hours to local youths in personally owned Cessna 182. Instructs aerospace education to middle school students in Skagit County as part of Young Eagles Program.
- **Volunteer Member and Legal Officer** – American Legion Post # 7, Bellingham, WA: 2010 to present. Served as Post Legal Officer from 2010 – 2014, helped veterans obtain benefits from the Department of Veterans' Affairs and advised Post Officers regarding personnel and operations matters.
- **Volunteer Member** – Sons of the American Legion, Post # 7, Bellingham, WA: 2010 to present. Advocates for veterans' benefits to state agencies.
- **Youth Volunteer** – Sacred Heart Parish, Bellingham, WA: 2015 – 2019. Assisted with presentation of religious education curriculum.
- **Teen Court Program Advisor** – Lynden High School: 2019 – 2020. Provided feedback & information on legal proceedings to student participants.
- **Top-100 Award Recipient** – National Trial Lawyers Association: Awarded for years 2016 – 2019 for outstanding achievements in trial advocacy.
- **Member** – Phi Delta Phi, Legal Service Honor Fraternity: 1995 – present. Offers academic and career mentorship to law students nationwide.
- **Member** – Washington Pilots Association: 2005 – present. Provided relief flights during COVID-19 pandemic. Assisted in raising charitable donations.

If there is anything I have learned in 24 years of law practice, it is that nothing is more personally and professionally satisfying than helping to change someone's life for the better. Lawyers generally see such cases only a few times in a legal career, but as a judge, opportunities to work for positive outcomes come along almost every week. More than anything else, this is why I want to be a judge; I want to make a positive difference in people's lives.

I want to be a Judge in the District Court (rather than Superior Court or any other court) because it is the true court of the people. About two-thirds of all matters heard in District Court involve litigants who are not represented by an attorney. These individuals may be seeking an order of protection from a family member, or they may have been wronged by a landlord in a lease transaction, or they may have been caught speeding on the freeway. If they are facing a criminal misdemeanor or gross misdemeanor charge, they come to court on their own and will maybe get a lawyer to represent them later.

With over three years of recent experience serving in Whatcom County District Court as a Judge *Pro Tempore*, I enthusiastically understand that most litigants need some level of support and guidance to succeed in their individual legal matters. I have repeatedly demonstrated through my *Pro Tempore* work that I have a good judicial temperament and disposition to be welcoming, accommodating, and patient to all individual *pro se* litigants and to the attorneys who practice in court while ultimately maintaining judicial fairness and impartiality. I have presided over every variety of case that occurs in this Court. I am proud that I have strong and productive working and personal relationships with the court staff, the administrators, and the other judicial officers. Based on all of this, I know I am prepared to succeed as a judge if I receive the appointment.

I began my legal career in 1997 by volunteering for service as a U.S. Air Force Judge Advocate Officer. My first duty assignment was as a military prosecutor where I rapidly learned trial advocacy, and litigation skills and mastered the rules of evidence and criminal procedure. I volunteered to prosecute the toughest cases and became a well-known prosecutor throughout the military, handling 200 litigated cases in just three years. My reward for all this hard work was to be competitively selected to serve as a Military Defense Counsel, and later as a Circuit Defense Counsel, I traveled the East Coast handling defense cases while training and mentoring young defense lawyers all around the Air Force. My military service also led into an appointment as a Special Assistant U.S. Attorney, where I prosecuted civilians who committed offenses on Federal installations.

In 2001, I transferred my commission to the Washington Air National Guard after being hired as the Lead Prosecutor in Bellingham Municipal Court. This is where I first regularly encountered unrepresented defendants, and I quickly realized that I enjoyed working with these defendants at the misdemeanor level criminal practice. In this role, I was immersed in the prosecution of DUIs, domestic violence assault, theft, and traffic cases, not unlike the cases that are regularly handled in the District Court every day. I represented the City of Bellingham in several litigated jury trials and worked on committees with county prosecutors and victim advocates to protect victims' rights and coordinate handling of domestic violence cases.

On top of my work for the City of Bellingham, my military legal career continued with the Washington Air National Guard where my first assignment was as the Chief Defense Counsel for the entire State of Washington. In 2003, I was selected to lead a nationwide team to study problems in the military justice system. My work on the team resulted in the creation of a new program to provide conflict-free, independent legal counsel to all Army and Air National Guard personnel who are facing military prosecution or involuntary separation. This innovative program was later implemented nationwide by the National Guard Bureau, and that experience gives me confidence that I could create similar programs, such as specialized courts or community treatment programs, while serving as a district court judge.

In 2004, I returned to the criminal defense side of the courtroom when I joined the law firm of a senior DUI defense lawyer who took the time to teach me a whole new perspective of defending individuals. I attended a national-level training course on working with disadvantaged clients and earned certifications in the use of the breathalyzer and police field sobriety testing. I started handling civil cases as well as defending suspended drivers in litigation with the Department of Licensing. This is when I began to fully understand the impacts prosecution can have on ordinary people. It is also when I really started to see the inequities in the system and began working with the County Bar Association taking pro bono defense cases.

In 2005, I founded my own law firm in Bellingham, and after a few years I became an employer and gained law partners. My practice began to focus on the most severe crimes, like homicide and serious assault cases. Over the years, I have represented a total of about six thousand men and women at all levels of court including persons of color and persons from diverse ethnic backgrounds, people without permanent housing, and people from marginalized segments of society. That year, I was also appointed by Judge Ira J. Uhig and served my first term as a Judge *Pro Tempore* in Whatcom District Court.

In one memorable defense case in 2008, I was asked by a Court Administrator to accept an appointment to represent an undocumented immigrant from Namibia, a country in south-west Africa, who had been arrested for aggressively panhandling and trespassing in Sunset Square. I was this gentleman's third lawyer because he refused to plead guilty despite the best attempts of his previous lawyers to get him to do so, who claimed his case was unwinnable. Although the client could not speak much

English, he was able to communicate he was innocent and not a threat to anyone. I studied the evidence and agreed with him. I was also facing a hyperaggressive city prosecuting attorney, determined to prosecute the man so he would be deported. During the six-hour trial, I argued the defendant had never been given a legally binding trespass notice to stay away from the square. However, when deliberating its verdict, the jury disregarded this and unanimously convicted the defendant in just 15 minutes. After the verdict was read, I made a motion to set aside the verdict, and for the next 20 minutes, I passionately and vigorously argued the point of law to the judge. The trial judge agreed and did something that rarely happens in trial courts: she overturned the jury's verdict and acquitted the gentleman. To this day, this tenacious defendant from Africa, with his "unwinnable" case and his special acquittal, serve as a constant reminder to me of the hidden bias that sometimes sits just under the surface, even in our local courts. This case also inspires me at times when I am serving as a judge to be intentionally and deliberately fair, to be courageous and willing to do what is right and just. This single case is one of the proudest moments in my entire legal career.

As my career has progressed, I have also volunteered in community-based organizations, providing pro bono legal services to indigent and marginalized communities. I was president of my neighborhood counsel and founded a block watch. I served as an officer of the Whatcom County Bar Association and participated in Street Law with LAW Advocates. I have handled about 100 cases as a contract public defender. I have worked *pro bono* with disabled veterans in the American Legion to get their health benefits. I appeared on nationwide and local TV and radio as a legal commentator, helping the public to better understand the American legal system and legal news issues. All my service activities served to promote the public's trust and confidence in our legal system, which is also a duty I have when serving as a *pro tempore* Judge.

Currently, I also have over 17 years of experience building two separate successful businesses. I have developed and honed my management and organizational skills, which I learned from work inside government, the military, and in the private sector. I am a trained organizer and communicator. I have experience hiring and promoting employees and managing employee benefits. I know how to effectively motivate people to reach their peak efficiency and their maximum potentials. If appointed judge, I will be able to draw from my experiences, lessons learned, talents, and skills to ensure that I help in leading the District Court Team.

In the fall 2018, when Judge Grant appointed me to a second term as a Judge *Pro Tempore*, I accepted the opportunity with great honor and respect for the responsibility entrusted to me. This time, because of my additional years of professional experience and given where I was in my personal life, I was much more mentally present in this role than before. This time, I realized that I could help people every day when serving as a judge, and I began to savor every opportunity to do just that.

I spent my first year of the term promising myself I would not get too attached to the job, because it was supposed to be temporary, but the truth is being a judge really clicked with me. I can say that few things have given me more joy and personal fulfillment at this stage of my life than being asked to cover the bench and to be the best judge I can be. I have prioritized serving the District Court over work in my two businesses and often reschedule my calendar items to fill in when a new opportunity is offered. I have done this because I enjoy this work more than I could have ever anticipated. When I wear the robe, I do so with honor, and I carry out my duties with patience, compassion, fairness, and an understanding that the persons before me seek justice, understanding, redemption, and grace. It is important to me that all litigants before me feel seen and respected, and I ensure that I have fulfilled my duty by summarizing my rulings in a way that is understandable, informative, and educational, so that they may walk away knowing the rule of law was applied and justice was served.

Members of the Council, I am respectfully asking that you please weigh my qualifications and unequivocal commitment to serve our community and appoint me to fill the position of District Court Judge. Whatcom County has already made an investment in me as a judge *pro tempore* with all the on-the-job training I have received in the last three years. My work in the law is well-rounded and diverse, having served as a prosecutor, public defender, civil attorney, criminal defense counsel, and most recently, as a part time Judge. The culmination of my legal work has well prepared me to dedicate my future as a District Court Judge.

2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?

Yes, if appointed, I will run in the election of 2022 to retain the District Court Judge position.

3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.

Yes, in 2005, I was appointed a Judge Pro Tempore by Judge Ira Uhrig in Whatcom District Court and was in a business relationship with the County in my individual capacity. Between 2008 and 2012, my law firm was an independent contractor for Public Defense Services with Superior Court, and I was assigned numerous cases as a Conflict Defense Counsel. From 2018 to the present, I have served as a Judge Pro Tempore in my individual capacity.

4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial conduct? If so, please explain.

No.



I am very familiar with all aspects of the Whatcom County District Court. I have worked as a defense attorney, a contract public defender, and as a Judge *Pro Tempore* in District Court for 17 years. However, over the past 2½ years, I have not taken any District Court criminal or civil cases so I can focus on my service as Judge *Pro Tempore*, avoid conflicts of interests, and maintain fairness to all parties. Presently, I serve an average of 4-5 hours per week, every week as a Judge *Pro Tempore*. In this role, I regularly apply the District Court Local Rules, the State Rules of Evidence, the Civil and Criminal Rules for Courts of Limited Jurisdiction, the Supreme Court General Rules, all relevant provisions of the U.S. and State Constitutions, the Revised Code of Washington, the Washington Administrative Code, and County Ordinances. I read Court of Appeals and Supreme Court decisions that may influence or impact on my duties as a Judge *Pro Tempore*. I frequently review the Washington Rules of Professional Conduct and the Code of Judicial Conduct and abide by them. I am also familiar with the Clerk's Office operating procedures, including the Clerk's policies on scheduling hearings and assigning personnel. Based on my experience, my top three concerns facing Whatcom County District Court are:

**(1) Access to Justice.** This topic encompasses a broad range of important social justice issues that the Whatcom County District Court should now address. It starts with removing systematic barriers that discourage or prevent persons of all ethnicities and languages from feeling welcomed in court or from receiving the maximum access and benefits from their court. The pandemic showed that ZOOM and phone conferences are highly effective substitutes to removing some barriers to participation and facilitating more in-person appearances. It also allowed many people to feel more safe appearing without encountering barriers to access. The Court experimented with these systems but is now scaling them back. If appointed, I will preserve video and phone appearances since they increase user participation at almost no cost. The Court must also start offering access to services in languages other than English. For example, all rights advisement forms and guilty plea statements in our courtrooms for criminal defendants are 100% in English. These forms are among the most important forms needed to preserve the rights of the accused in criminal cases. Also, the court sometimes has difficulty scheduling interpreters in person, and on 20+ occasions while on the bench, I have had to call my wife who is a fluent Spanish speaker to act as an interpreter because none were available. We must, at a minimum, begin allowing interpreters to appear over Zoom or telephone. The Court should also prioritize hiring clerks who are fluent in Spanish, Russian, or Punjabi so that non-English speaking persons can receive services from the court in their own language. There is nothing worse than having a Court system limit access because of a language or cultural barrier, or fear from being at court. If I am appointed judge; I pledge to fix this.

**(2) Assessment & Treatment Services.** After the State Supreme Court's *Blake* decision decriminalized felony drug possession and with the State Legislature's new drug crimes act, the court should prepare for an increase of misdemeanor drug cases. My approach as Judge will be on assessing and treating drug defendants and making treatment services available to pre-trial defendants who need them. District Court's Mental Health Court has been very successful, and I would relaunch it with the less-stigmatizing name of "Treatment Court," and I would expand it to include a drug treatment category. Drug offenders would have the chance to complete treatment as an alternative to convictions and jail for their substance use. Another area of concern in Whatcom County is the lack of availability of domestic violence assessment and treatment services. Presently, there is only one part-time DV assessment agency which is unable to provide assessment or treatment to indigent or non-English speaking clients. For DV cases, I envision creating a Community Court concept where judges, attorneys, and probation officers all work together and standardize DV assessment and treatment in Whatcom County courts. I have already discussed a Community Court concept with Judge Lev (Bellingham), Judge Lewis (Lynden) and Judge Kaiman (Ferndale) who are willing to work together and form collaborative partnerships.

**(3) Bail and Alternatives to Corrections.** Bail is an issue that some social justice commentators have called *ground zero* for systemic discrimination in the courts. People who are presumed innocent under the law should not languish in jail simply because they cannot afford to pay bail. A person's inability to pay bail must not be coercive, forcing them to forego legal defenses and plead guilty just to get out of jail. Prosecutors sometimes recommend a bail amount, but ultimately the Judge sets the bail. Presently, District Court has no unified policies or guidelines for judges to use for determining fair bail, and this often results in setting arbitrary bail amounts. I will create risk assessment tools and use functional substitutes to bail, such as electronic monitoring and book and release orders. If a bail must be set, each defendant's socio-economic circumstances and ability to pay bail will be considered. I will create a new process to review all cases where a defendant is being held on bail every two weeks. When it comes to serving a post-conviction jail sentence, I will expand the use of jail alternatives programs. Currently, the Court does not permit the use of alternative programs that are not managed by the Sheriff's Office. Valuable, secured, and verified community-based, non-government, user-funded, lower cost alternative programs, such as Friendship Diversion Services which is used extensively by other local courts, are not currently being allowed in District Court. If appointed Judge, use of these jail alternatives programs will be authorized, making them more available to socially disadvantaged, unemployed, and indigent defendants. My approach will ensure that our jail is utilized primarily for violent and repeat offenders, and those who pose a serious danger to community safety if released.

WHATCOM COUNTY  
SHERIFF'S OFFICE

**BILL ELFO**  
SHERIFF



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

June 28, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 92885

RE: Endorsement of Jeffrey A. Lustick for Appointment as Whatcom County District Court Judge

Dear Councilmembers,

I am writing to recommend the Whatcom County Council's appointment of Judge *Pro Tempore* Jeffrey A. Lustick as the next Whatcom County District Court Judge. In my opinion, Mr. Lustick is exceptional qualified and will be able to fulfill the duties of judge immediately after being appointed.

I have known Mr. Lustick since 2003 when I was first elected as sheriff. At that time, he was an Assistant City Attorney and Lead City Prosecutor for the City of Bellingham. Although his duties focused on the prosecution of DUI cases, domestic violence assaults, thefts, and other misdemeanor and traffic cases in the Bellingham Municipal Court, I was fortunate to have frequent positive and productive interactions with him. During his employment, Mr. Lustick's handling of the City Prosecutor's Office showed me that he had integrity, intellectual honesty, fairness, good judgment, and good common sense. This was readily apparent from his excellent service on an interagency committee that worked to coordinate law enforcement response and victim advocacy in all domestic violence cases county-wide. While working on this committee, Mr. Lustick readily established himself as a strong leader and helped the committee establish new community policies in support of domestic violence victims. He also worked to create outreach among local domestic violence support agencies and facilitated training of victim advocates for service in the Superior, District, and Municipal Courts.

After leaving his position with the City of Bellingham, Mr. Lustick entered private practice in Bellingham and opened a criminal defense law firm. Over the past 15 years, while managing his law firm, Mr. Lustick has donated his time to the local community by volunteering to defend indigent and marginalized clients for no fee and serving as a conflict attorney for the Whatcom County Superior Court and for the Office of the Federal Public Defender in Seattle. He has also volunteered for the Western Washington University Legal Information Center where he has given public talks on Constitutional Rights and has acted as a mentor for students interested in attend law school. All these activities demonstrate Mr. Lustick's commitment to equal justice under the law, and his fairness and open-mindedness with sensitivity to and respect for all persons, regardless of race, color, gender, sexual orientation, and national origin.

I have seen Mr. Lustick professionally and vigorously defend clients against charges ranging from misdemeanors to serious felonies. As a defense counsel, he never shies away from the most difficult and controversial cases. This is what has made Mr. Lustick one of the most outstanding attorneys in Whatcom County. In one notable case, Mr. Lustick defended the International and National President

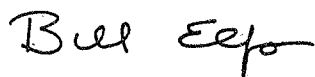
and controversial cases. This is what has made Mr. Lustick one of the most outstanding attorneys in Whatcom County. In one notable case, Mr. Lustick defended the International and National President of an outlaw motorcycle gang in Federal District Court in Seattle. The defendant lived in Bellingham and was charged with 34 counts of racketeering, attempted murder, witness intimidation, and criminal conspiracy in federal court in Seattle. One may assume that when a defense attorney takes on an unpopular case such as this one, that their reputation may suffer or they may be subject to social consternation, but that is not what happened. Mr. Lustick's work on the case resulted in the federal prosecutor agreeing to dismiss 33 of the charges in exchange for a plea by his client to one conspiracy count. His client received credit for time served and was placed on probation. The way that Mr. Lustick handled this case with his professionalism and integrity earned him high praise from the legal community and resulted in a just result for his client.

Currently serving in his second term as a Judge *Pro Tempore* in Whatcom District Court for Judges Matthew Elich and David Grant, Judge Pro Tempore Lustick is a highly respected part-time judge. He regularly serves several hours per week on the bench, and has demonstrated the competence, ability, and experience needed to manage pretrial and trial proceedings. When he has presided over litigated trials, he readily demonstrates an ability to address diverse legal issues, to weigh conflicting testimony, fairly apply the law to the facts, and master the dynamics of the trial process. I have also heard excellent feedback from county prosecutors and my deputies that he runs a respectful and dignified court and is fair and welcoming to all who appear before him.

Over the years, I have also gotten to know Mr. Lustick personally, and I can confidently attest to his character for honesty, integrity, and hard work. He is a dedicated servant leader with a long history of personally volunteering in our community, including founding a neighborhood block watch, and serving as the Board President of the Baker Creek Neighborhood Association. Mr. Lustick loves this community and if you appoint him as the next Whatcom District Court Judge, he will serve this community with pride and dignity, hopefully for many years to come.

Judge *Pro Tempore* Jeffrey Lustick is the only candidate for the open position who has served as a federal, military, and city prosecuting attorney, as a private, public, and military defense attorney, and recently and frequently as a *pro tempore* criminal and civil trial judge in Whatcom District Court and for two area municipal courts. His unique set of qualifications and experience make him extremely experienced, and he is a well-rounded applicant to fill Judge Grant's shoes. Judge *Pro Tempore* Lustick will fit into the position right away with no learning curve. With his 24 years of service to this community, I believe that Mr. Lustick has earned your highest consideration, and I sincerely urge you to appoint him as our next District Court Judge without hesitation.

Very Sincerely,

A handwritten signature in black ink that reads "Bill Elfo". The signature is written in a cursive, slightly stylized font.

Sheriff Bill Elfo

June 27, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

RE: Appointment of Jeffrey A. Lustick for District Court Judge, Position 1

Dear Members of the Whatcom County Council:

It is my pleasure and honor to recommend Judge *pro tempore* Jeffrey A. Lustick, for the position of District Court Judge presently filled by retiring Judge David Grant. Mr. Lustick is the most qualified person in our community who could fill this position and appointing him to serve in this capacity would be a tremendous benefit for the people of Whatcom County. It is noteworthy that Judge *pro tem* Lustick is particularly familiar with District Court operations from years of service there and thus, ready and able to step in with the utmost smooth transition.

I have been serving as the Judge for Bellingham Municipal Court since first taking office in 2002, when I became the first woman to ever be elected to court since the founding of Whatcom County in 1890. I have now been serving as the Bellingham Municipal Court Judge for almost 20 years, and during this time I have had numerous opportunities to become familiar with Judge *pro tem* Lustick's legal abilities and character. I first met Mr. Lustick when I was the Court Commissioner at Bellingham Municipal Court prior to my election, when he was working as the Lead City Prosecutor for the City of Bellingham. Over the years, I have been impressed by Mr. Lustick's courtroom presence, vast knowledge of the law, and his good judgment and communication skills.

There is a perception in the legal community that a district court judge seat is an entry level position for which no training or experience is required. Nothing could be further from the truth. The District Court is an essential community institution, as it is a place that addresses issues of public safety, supports those who are in the process of changing their lives for the better through post-conviction supervision, and performs other important duties. In this regard, Judge *pro tem* Lustick has proven through his experience as a former prosecutor, public and private defense attorney, and work as a *pro tem* judge, that he is exceptionally well qualified to fulfill the critical duties of this position.

In terms of public safety, some of the most important hearings conducted in the district court are petitions for domestic violence protection orders, sexual assault protection orders, and anti-harassment orders. Nationwide, violence against women, black and indigenous people of color, minority populations, and members of the LGBTQIA+ community—most notably against transgendered women of color—is on the rise. As community leaders and as private citizens, it is our duty to protect and advocate for victims to the best of our abilities. When we fail these individuals, they are vulnerable to repeated abuse, which can and too often leads to death. This is not acceptable. The District Court is often the last resource that victims have when they have tried everything else to receive relief and protection, and they deserve to feel confident that they will be heard and that an experienced and discerning judge will be fair and effective.

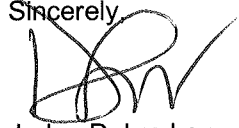
Over the past three years, Judge *pro tem* Lustick has heard about 50 petitions for protection orders initiated by members of high-risk populations; in each case he has applied his expertise in the law and in identifying patterns of victim and predatory behaviors to provide relief to the parties. In the summer 2019 I presided over the arraignment of a person charged with domestic violence where the defendant pled not guilty, and I issued a pre-trial protection order between the defendant and named victim. I was surprised to later learn that the city prosecutor had dropped the charges against this man, and I felt genuine concern over the well-being of this alleged victim. Since the City prosecutor chose not to prosecute, the victim sought protection and filed for a Domestic Violence Anti-Harassment Order in Whatcom County District Court. The matter was assigned to be heard by Judge *pro tem* Lustick. His ability to break through the respondent's testimony and pick up on the nuances of deflection tactics used by perpetrators, his ability to quickly and accurately assess that the petitioner was in a critical situation, and his ruling to grant the order in this case represents

a level of understanding that is hard to find even amongst seasoned judges. His keen ability to weigh testimony and cut to the heart of the matter is precisely what the community needs in this judicial position.

Another important way that the District Court has an opportunity to positively influence the community is through its probation program. Without reservation from my decades of experience, I believe that Whatcom County has one of the best probation departments in this state. At this time, it is my understanding that the post-conviction sentencing options through WDCD are jail, work-release, work-crew, electronic home monitoring, and probation. Probation is the best option offered at this time that focuses on helping a convicted person to make positive changes in their life. Judge *pro tem* Lustick has a committed judicial philosophy that rehabilitative efforts, when appropriate, far outweigh incarceration. Judge *pro tem* Lustick always makes genuine attempts to inspire and connect with these individuals. While probation hearings can often feel rushed, impersonal, and recriminatory, Judge *pro tem* Lustick consistently conducts these calendars with patience, empathy, grace, and steadfast leadership. He makes it a priority to ensure that each person on probation understands that they have a support system in their probation officers and in the court, and he invites them to reach out for help and utilize the resources available to them to facilitate their success in the program. Likewise, Judge *pro tem* Lustick energizes the probation officers and encourages them to feel supported in their work. Fueled by his experience advocating for his defense clients, Judge *pro tem* Lustick's investment in the satisfactory completion of probation requirements from those in his courtroom demonstrate that he understands the long-term impacts of this program on a person's life. Our community needs a district court judge who focuses on rewarding the positive behavior of those in the probation program and inspires them to go above the minimum requirements for completion, and Judge *pro tem* Lustick has proven that he is more than capable of accomplishing this.

Also, in terms of public safety, is the issue of Driving Under the Influence. Presiding as a judge in DUI cases is not easy, as there are several important points to consider—the most complex being *proof* of the driver's impairment level. The law and procedure behind admissibility of a chemical breath or blood test requires a precise understanding of principles of scientific evidence, balanced between protections of constitutional and statutory law. It's my understanding that Judge *pro tem* Lustick has received Breath Test Trial Evidence Training from the Washington Prosecutors Association and completed the Breathalyzer Technical Course from the Washington State Patrol. As a defense counsel, he also attended seminars encompassing the administration of the standardized field sobriety test and went through the accreditation process for board certification as a DUI defense attorney. As Judge *pro tem*, he draws on his experience both defending and prosecuting these cases when hearing and making rulings in DUI cases; this fundamental understanding of all aspects of DUI laws and evidence standards make him exceptionally well-qualified to fill the position of District Court Judge.

In my experience, the best trial judges often come from the best trial lawyers. For the past 17 years, day in and day out, Jeffrey Lustick has made his career as a successful trial lawyer, by prosecuting and defending cases in district, municipal, and superior courts all around the state, and federal and military courts around the country. A good trial judge must be able to draw on years of trial experience and participating in jury trials. They must know the laws and criminal procedures that are used in every case from arraignments to pre-trial hearings, to jury trials, to sentencing hearings. Trial judges must be able to referee the handling of witnesses testifying on the witness stand and have a razor-sharp ability to make decisions about objections and admissibility of testimony. Judges must balance the interest of public safety and the defendant's right to fairness and due process. Jeffrey Lustick meets and exceeds all of these requirements, has a temperament and demeanor that is conducive to efficiency and accessibility in all legal proceedings before him, treats everyone with impartiality and respect, and carries out the duties of District Court Judge fairly and without prejudice. Please do not hesitate to appoint Jeffrey Lustick to serve as the next District Court Judge of Whatcom County.

Sincerely,  
  
Judge Debra Lev  
Presiding

June 22, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Subject: Appointment to District Court Judge to replace Judge David Grant.

Dear County Council Members:

I wish to offer my strong recommendation of Jeffrey A. Lustick for the Whatcom County District Court Judge appointment.

I have been employed by the Whatcom County District Court for the past five years; two years as a clerk-cashier and the past three years as a Deputy Court Clerk under Presiding Judge Dave Grant, Judge Matt Elich, and Commissioner Tony Parise. My current duties include working in the courtroom and directly assisting the presiding judicial officer during all criminal and civil hearings, bench trials, jury trials and traffic court cases. I have had the pleasure of being the courtroom clerk assigned to Jeffrey Lustick hundreds of times over the last two and a half years in his role as Judge Pro Tempore in District Court.

Jeff is a take charge person who can successfully manage court proceedings in a respectful, thorough, just, and orderly manner. With his positive attitude, he is a motivator with exceptional leadership qualities. Jeff is a compassionate person who cares deeply for others. He has a natural outreach to others and is an adept listener. All these character traits make him an excellent person to become a judge.

Everyone can see that Jeff strongly supports District Court and he enjoys serving in the role of Judge. He is especially willing to help whenever help is needed. He has served as a pro tempore Judge regularly on average 3 to 4 hours every week over the last two and a half years. Also, sometimes, when our office finds out that a judicial officer is ill or unavailable, we call him on the phone, and he always comes right over to serve in the Court. I know that he has made pro tempore judge service a priority, and his strong commitment and dedication to serving the community is palpable and obvious.

Jeff is also adept and skillful at being a judge. He has years of experiences as both as defense counsel and a prosecutor handling the same kinds of cases we have here. He conducts all the typical functions of a District Court judge with dignity and respect. At times he seems so experienced, that it is hard to remember that he is temporary fill-in judge. I have clerked for him during every kind of hearing there is in District Court,

including arraignments, pre-trial omnibus hearings, criminal motions, traffic infractions (mitigations, contested and deferred), domestic violence anti-harassment order hearings, vehicle impounds, and small claims trials. He has also handled jury and bench trials as a pro tempore judge.

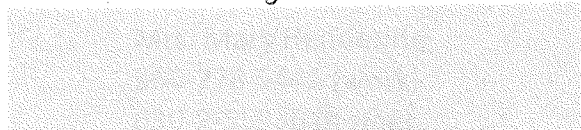
Jeff is a very smart and fair person in all matters. He is an exceptional listener to all parties: defendants, defense attorneys, prosecutors, witnesses, victims, spectators, and court staff. He has an excellent rapport with people and treats everyone with equity and respect. He has a welcoming smile and is easy to approach. He is well loved by the court staff and always conducts himself as a model judge.

A courthouse and a courtroom involve many people. With his incredible knowledge of the law, his positive attitude, and his passion for court, Jeffrey Lustick works well in this sometimes challenging and critical environment. His drive and his leadership abilities will be an asset to Whatcom County, and he is the exact person to fill Judge Grant's shoes right now. For these reasons, without any reservations, I give you my highest recommendations of Jeff to become our next judge.

If you have any questions regarding this recommendation, please contact me.

Very Sincerely,

*Mary Henderlite*





DISTRIBUTED TO

Mick Moynihan

Retired Judge

JUN 6 2021

ALL COUNCIL MEMBERS  
WHATCOM COUNTY COUNCIL

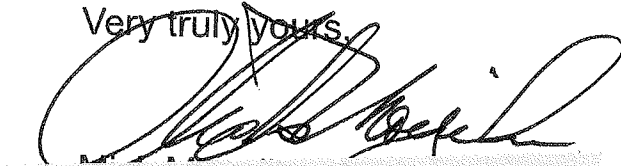
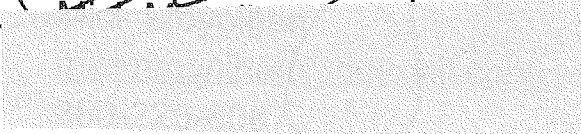
Barry Buchanan, Council Chair  
Members of the County Council

RE: Whatcom County District Court

I have just learned that Dave Grant has indicated that he will be stepping down as District Court Judge. Of course the duty to replace him falls upon the County Council and the purpose of this letter is to recommend that Jeff Lustick be appointed to replace him.

Jeff Lustick would be an excellent candidate for the position. He has served as a Judge Pro-Tem in the District Court and, from my perspective, he appeared in front of me when I served as a judge several years ago, and he acquitted himself well. My opinion of Mr. Lustick is that he is honest, straight-forward and has a complete and comprehensive knowledge of the law.

Very truly yours,

DISTRIBUTED TO

JUN 07 2021

ALL COUNCIL MEMBERS  
WHATCOM COUNTY COUNCIL

June 5, 2021

Ms. Kathy Kershner  
Whatcom County Council  
311 Grand Ave.  
Bellingham, WA 98225

RE: District Court Judge vacancy

Dear Ms. Kershner,

I'm writing to share with you my recommendation on who should be appointed to fulfill the remainder of Judge David Grant's term as District Court Judge.


I strongly recommend that Mr. Jeff Lustick be your choice for appointment. In my 20 years of service on the Superior Court bench I had the pleasure of having Mr. Lustick appear in my court on numerous cases beginning soon after he entered private practice in Bellingham. I found him to be an outstanding intellect and amazing advocate for his clients. His courtroom demeanor was of the highest caliber. His courtroom ability, honesty and temperament ranks him at the very top of the local bar association.

I am also aware that for the past three and a half years he has acted as pro-tem judge in Judge Grant's courtroom presiding over both judge-alone and jury trials and has performed in an outstanding manner. This would permit him to judge in an excellent manner from day 1 without months in a learning curve.

My recommendation is based entirely on his professionalism and intellect. I have never gone out with him on a social basis at any time. Our relationship has been purely professional. I urge you to appoint him, and know that you will be extremely pleased with how he conducts himself as judge.

Please feel free to contact me at any time should you have any questions about my recommendation.

Sincerely,

  
Steven J. Mura

RECEIVED

JUN 28 2021

WHATCOM COUNTY  
COUNCIL

## Superior Court of the State of Washington

Hon. Evan Jones, Dept. 2

Email: [cmartin@whatcomcounty.us](mailto:cmartin@whatcomcounty.us)

(360) 778-5632

Fax: (360) 778-5561

Judge's Chambers and Courtroom on  
2<sup>nd</sup> floor



Whatcom County Courthouse

311 Grand Avenue, Suite 301  
Bellingham, Washington 98225

June 8, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225  
ATTN: District Court Judicial Appointment

### RE: Application of Jeffrey Lustick

Councilmembers,

I understand that Council is now engaged in the important process of filing the expected vacancy in Whatcom County District Court Judge. By offering my comments below, I hope simply to add my experience with certain candidates to that discussion. Please accept my comments in the helpful manner in which they are intended.

I have known Jeff Lustick for nearly 15 years. For the majority of that time, I worked criminal cases opposite him in Municipal, District and Superior Court. In addition to these courtroom interactions, Jeff and I regularly spoke about cases, discussed the law, and negotiated settlements. Jeff is a great attorney. He displays a calm and thoughtful approach to the law that can only come from true understanding and gained perspective. He has "seen" just about everything. This demeanor has only increased in the last few years as Jeff has served as a *pro tem* judge in District Court.

Probably more importantly however, Jeff has extensive experience working directly with individuals in the court process. I have witnessed him on numerous occasions explain complex matters in an understandable and relatable way to his clients. Jeff demonstrates patience and compassion. These interpersonal skills, along with his knowledge of the law, will greatly benefit the people of Whatcom County and the District Court judiciary. I have complete confidence that, if selected, Jeff would be a great judge.

Please feel free to follow up with any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Evan Jones", written in a cursive style.

Judge Evan Jones  
Whatcom County Superior Court, Dept. 2

13  
**HIGGINSON BEYER**  
A PROFESSIONAL SERVICES CORPORATION

June 6, 2021

**REPLY TO: FRIDAY HARBOR OFFICE**

WHATCOM COUNTY COUNCIL MEMBERS  
311 Grand, Suite 105  
Bellingham, WA 98225

Dear Council Members:

I am writing this letter in support of Jeffrey A. Lustick as the next Whatcom County District Court judge. I am an attorney in private practice with 40 years of experience. I also served as a municipal court judge for eight years during that time. I am currently serving on the Washington State Bar Association Board of Governors, an association that oversees the 40,000 attorneys in this state.

As a former municipal court judge myself and a long-time attorney, I am very familiar with the matters handled by District Courts. I believe that Jeff could "hit the ground running" as a judge. He has served as a District Court judge pro tem for the past three plus years handling both civil and criminal matters that are a routine part of the court's docket. During that time, he has developed a good working relationship with the court staff, probation office, and law enforcement. This greatly assists in the administrative aspect of the court's operation. Jeff is also familiar with the attorneys who regularly appear in District Court including both prosecutors and defense counsel, and this is a helpful aspect of being a judicial officer.

As both an attorney and as a judge pro tem, Jeff has handled the many different types of matters that are routinely seen in District Court, such as domestic violence petitions, criminal jury trials, traffic infractions, anti-harassment orders, civil disputes and small claims. This is a broad range of matters, each with its own special court rules, laws, and regulations that must be followed to insure the proper administration of justice and the rights of the parties.

Jeff is an extremely experienced criminal law attorney having served both as a prosecutor and as a defense attorney. It is very important to have a judge who understands the nuances of

criminal law in order to insure a fair process that complies with the law. This cannot really be learned except through experience, which Jeff has in abundance after handling hundreds of criminal cases during his career to date.

Over the years, Jeff has represented clients from many diverse populations including those who have traditionally received disparate treatment in the judicial system due to ethnicity, sexual orientation, mental health disabilities, and socio-economic backgrounds. He understands the needs and the concerns of these marginalized groups and will bring that sensitivity to his position as a judge.

Throughout his career, Jeff has been a champion of justice. The citizens of Whatcom County would be well-served with him as your next District Court judge and I unhesitatingly recommend him to you for that position.

If I may provide any further information, I would be pleased to do so.

Very truly yours,

HIGGINSON BEYER

  
Carla J. Higginson

cc: Jeffrey A. Lustick, Esq.

June 06, 2021

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

Dear Council Members,

I am writing this letter to endorse Jeffrey Lustick for the vacant District Court Judicial position for the remainder of the current term.

During my 3 years of employment at the Whatcom County District Court, I had the pleasure of working with Mr. Lustick for the entire duration. He served as a pro tempore in the District Court frequently and heard all types of court hearings. I was able to assist Mr. Lustick in the courtroom many times and was always impressed by his even temper, thoughtful decisions and his empathy for the defendants. I also worked with him outside of the courtroom and he was always reliable and dedicated to assisting us with anything that we requested of him. He was willing to put in the hours and consideration it took to properly prepare for any hearing that he was covering. He has also maintained a good working relationship with the clerks and is comfortable with the courtroom procedures.

Mr. Lustick has the education, experience and qualifications to serve in this position and I feel that he would make an excellent Judge. I strongly recommend him to be appointed for this position.

Respectfully,

Carrie D. O.





LAW OFFICES OF  
ALEXANDER RANSOM, PLLC

June 4, 2021

Judicial Nomination Commission  
311 Grand Avenue  
Suite #105  
Bellingham, WA 98225

**RE: Nomination of Attorney Jeffrey A. Lustick for Whatcom County District Court Vacancy**

To Whom It May Concern,

I am writing this letter of recommendation for Jeffrey A. Lustick for Whatcom County District Court Judge. He is more than qualified to preside over the District Court's small claims, criminal and civil trials and hearings.

I have known Mr. Lustick for 15 years; first as a colleague in the criminal defense bar, later as an associate of his law firm and afterward when I opened my own law firm on 2008. Mr. Lustick is highly respected by both the prosecution and the defense bar. For years, he's managed Lustick Kaiman & Madrone, PLLC, a highly successful private criminal defense firm in Whatcom County.

Mr. Lustick would make a fine District Court Judge. He's served his country as a commissioned officer in the U.S. Air Force Judge Advocate General (JAG) Corps. After leaving active military duty as a JAG officer, Jeffrey was selected as the first person to be the Lead Municipal Prosecutor for the City of Bellingham. In 2005, he opened his law firm. Since then, Mr. Lustick has become a fine, well-rounded lawyer, and is already a fine Judge Pro Tempore for District Court.

I've observed Mr. Lustick exhibit excellent judicial temperament in court. He has a good sense of humor, self-discipline and varied interests outside of law (which are extremely important). He loves his family and is a good husband and father. Mr. Lustick has a keen legal mind. He has demonstrated his ability to analyze complicated legal issues and apply the law appropriately. He makes decisions that are just and fair. He is unbiased and impartial. He is intelligent, wise and patient.

Jeffrey Lustick has all of the credentials, experience and wisdom to be a fine District Court Judge. I hope the Judicial Nominating Commission will consider placing him on its short list for recommendation. Thank you for your consideration.

Sincerely Yours,

  
ALEXANDER F. RANSOM, ESQ.

June 28, 2021

Dear Whatcom County Council:

I am honored by the opportunity to endorse Jeffrey Lustick for the vacant District Court Judicial position, whom I feel is exceptionally well qualified. No doubt there are other qualified candidates but I am confident they will not possess Jeff's affable demeanor and his combination of experience, skill and integrity.

I practiced law in Whatcom County for 38 years, spending 18 years in private practice doing criminal defense, personal injury and judge pro tem work, and 20 years with the County Prosecutor's Office, the last 16 of which as the Assistant Chief Criminal Deputy. My daily responsibilities involved supervising the District Court Division and working with Judges Elich and Grant, as well as other district court personnel. Since my February 28, 2021 retirement, I have been appointed a judge pro tem, periodically sitting on the District Court Bench.

I first met Jeff in 2001 in his capacity as a Bellingham Assistant City Attorney. As a defense attorney, I negotiated many criminal cases with Jeff and soon learned that he could be taken at his word and that he was a prosecutor driven by fairness and justice. During my many years in the prosecutor's office, I resolved countless cases with Jeff, where he was the defense attorney, and his motivation always remained fairness and justice.

There are three essential requirements that make for an exceptional judge: The first is possessing a pleasant and steady courtroom presence; The second is being an expert on evidence (or as close as one can be), and lastly, carefully reading the submitted materials and attentively listening to all oral remarks in a given case. If a judicial officer maintains these standards, all parties, regardless of the outcome, will feel as though the system has treated them with respect and that they have been heard. Over the last few years, I have watched Jeff preside as a pro tem judge in the district court and have been nothing short of impressed. He is always prepared, approaches each matter with a respectful, straightforward tone and his concluding remarks always reflect an inherent sense of justice tempered with compassion.

It is not always the case that attorneys, such as Jeff, with successful and long-running careers will seek judicial office. This appointment offers the Council a unique opportunity to fill this position with a candidate who will serve the residents of Whatcom County with integrity, fairness and justice.

Respectfully,

A handwritten signature in black ink, appearing to read 'Warren J. Page', with a stylized flourish extending to the right.

Warren J. Page

June 28, 2021

Whatcom County Council Members  
311 Grand Avenue, Suite A  
Bellingham, WA 98225

Subject: Letter of Recommendation for Appointment of Judge Pro tempore  
Jeff Lustick to the position of Whatcom County District Court Judge

Dear County Council Members:

My name is Jonathan Rands. I am a criminal defense attorney in private practice located in Bellingham, WA. I am writing to endorse Mr. Jeff Lustick, who has served extensively as two-term a Judge Pro tempore in Whatcom District Court, as he is the most qualified choice to fill the judge position which is soon to be vacated by Judge Grant.

I have practiced criminal defense exclusively for 20 years. The focus of my work has been on defending people charged with criminal offenses involving substance and alcohol use, specifically cases of impaired and intoxicated driving. I have served as a criminal defense counsel in over 4,000 infraction, misdemeanor, gross misdemeanor, and felony cases, trying about 250 of these cases to jury of six or twelve jurors.

I have appeared before approximately 200 different judges in my career. I have also represented about 300 people in administrative drivers licensing appeal cases before the Washington Department of Licensing, and I have appeared before 30 different Administrative Law Judges. Through the many years of legal practice, my caseload has taken me to every District and Municipal Court within in Whatcom, Skagit, Snohomish, Island, and San Juan Counties. I have also served as a Judge Pro Tempore in the Municipal Courts of Bellingham, Blaine, and Ferndale.

Bases on my career experiences, I am absolutely certain that Judge Pro Tempore Jeff Lustick is exceptionally well qualified to serve as the next District Court Judge. Of all the judges that I have observed in my career, Judge Pro Tempore Lustick ranks in the highest tier because of his professional demeanor and his judicial temperament as a judge.

I have noticed that when presiding over cases in court, he is constantly respectful of the citizens, lawyers, victims, law enforcement officers, probation officers, and litigants who appear before him. He is also always highly prepared for whatever kind of case he is presiding over, whether it be as basic as a contested traffic infraction motion or something as complex as a motion to suppress chemical breath testing evidence in pending DUI case.

At all times, Judge Pro Tempore Lustick seems to be a step ahead of the attorneys and litigants in his court, which is a quality that he no doubt developed from his own experience as a prosecutor a trial defense counsel. He is also highly committed to being prepared, fair, and above all, committed to being an impartial jurist who follows the law and uses his discretion wisely. I have never seen any favoritism in any of his decisions to one party or the other, rather, Judge Pro Tempore Lustick also follows the rules, the statutes, and the legal precedents.

Another reason why the appointment of Judge Pro Tempore Lustick is so important, is that the Whatcom District Court presently has looming backlog of criminal cases which will be headed to a jury trial in just a few weeks once the fully court reopens after COVID. As our elected Council members, you have a responsibility to the community to maintain consistency in our justice system. You are responsible for appointing a qualified judge who is most capable to taking on this busy and difficult case backlog beginning starting day one.

Maybe some other Pro tempore Judges can cover traffic court for a day or two but Judge Pro Tempore Lustick is the one applicant for this position who has significant experience presiding over jury and bench trials as a judicial officer in *this* court. I speak for many of my colleagues who believe that if appointed, Judge Pro Tempore Lustick will make a seamless transition to successfully address the backlog of case while leading the court into development of updated processes addressing inclusiveness and access to justice.

I have also had the pleasure of knowing Judge Pro Tempore Lustick on a personal level. He is kind and generous. He is levelheaded and well mannered. Whenever serving on the bench, he is inviting and welcoming to the public.

For all these reasons, I urge you to make your pick based on the candidate who is the most qualified and experienced in the job and based on who will be the best fit for the job right now. That person is Judge Pro Tempore Jeff Lustick, and I urge you to appoint him as District Court Judge.

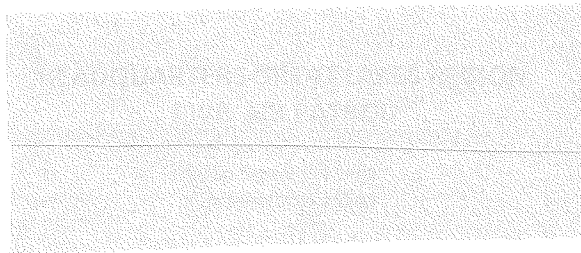
Very Sincerely Yours,

*Jonathan Rands*

Attorney at Law

*Please accept this electronic signature during these days of COVID where electronic communication is becoming the normal*

cc: Judge Pro Tempore Jeffrey Lustick



5 Jun 2021

Whatcom County Council Members  
311 Grand Avenue  
Bellingham, WA 98225

RE: Letter of Recommendation for Lt Col Jeffrey A. Lustick, CAP in support of Judicial Appointment  
as a Whatcom County District Court Judge

Dear Honorable Members of the Whatcom County Council:

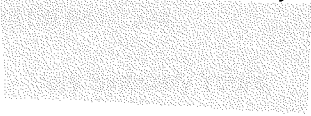
My name is Colonel Matthew R. Creed, CAP, and I am the commander of one of eight Civil Air Patrol regional commands. The Civil Air Patrol is the national civilian auxiliary of the United States Air Force and is comprised of highly dedicated volunteers who fulfil vital local, state, and nationwide missions of emergency services and disaster relief, aerospace education of the public, and a cadet program to develop and motivate youth. In my role as a CAP Region Commander, I directly oversee and control all mission operations, aviation activities, personnel management, and logistical functions of over 6,000 volunteers and 200 groups and squadrons across six states comprising the Civil Air Patrol Great Lakes Region.

It gives me great pride to recommend the Whatcom County Council's appointment of Lt Col Jeffrey A. Lustick, CAP, of Bellingham, WA, for the position of Whatcom County District Court Judge. Lt Col Lustick has been a CAP volunteer for an outstanding total of 38 years, having first joined as a cadet in 1983 in Skagit County, WA. As a cadet, he showed incredible potential for leadership and eventually rose to be the highest-ranking cadet in the United States in 1989, when he was promoted to the prestigious grade of Cadet Colonel. As a cadet, he completed flight training on a CAP scholarship and earned a private pilot's license. He was awarded the CAP Certificate of Recognition for Lifesaving in 1985, and he was recognized as the Cadet of the Year Award for the Pacific Region. Later as an adult member of CAP, he was recognized as the Idaho Wing Senior Member of the Year Award and he served as Idaho Wing Director of Cadet Programs. This he did while attending Gonzaga University Law School fulltime from 1994 to 1997. After his graduation with honors from law school in 1997, Lt Col Lustick joined the United States Air Force Judge Advocate General's Corps where he would go on to serve a total of 12 years on active duty and in the Air National Guard as a commissioned officer and lawyer. During this entire period, Lt Col Lustick remained active in Civil Air Patrol and made valuable contributions to the cadet programs in the Nebraska and Florida Wings. I am pleased to also mention that in 2018, Lt Col Lustick was awarded the Civil Air Patrol Bronze Medal of Valor for saving the life of an elderly citizen who struck by a reckless driver and almost killed in a crosswalk in Bellingham. Lt Col Lustick's distinctive accomplishment and his illustrious volunteer career in the CAP make Lt Col Lustick one of the most highly decorated CAP officers currently serving in CAP.

For the past four years, Lt Col Lustick has served on my staff as my Command Legal Advisor. In this role, he greatly assists my staff and me by providing timely and sage legal advice and real-world expertise whenever he is needed. When the Civil Air Patrol had a need for a qualified attorney to litigate a high-level membership review board, Lt Col Lustick was the first and obvious choice, and was appointed to fulfill this role by our National Vice Commander. He is also a faculty member of the Civil Air Patrol National Legal Officer's College and trains other volunteer CAP legal officers from across the country. Lt Col Lustick is held in high esteem as the recognized subject matter expert on membership quality actions, and he has

recently called upon by the CAP's National Personnel Officer to write policy manuals that have become mandatory regulations for the entire CAP. In these roles, Lt Col Lustick is in contact with me on a weekly basis where I have observed the exceptional and impressive quality of his legal acumen on numerous occasions.

Lt Col Lustick and I have also often talked about his service to Whatcom County and various local municipalities as a Pro Tempore judge, a role that I know he undertakes frequently and thoroughly enjoys serving in. From all that I know about Lt Col Lustick and my many positive experiences with him, there is no doubt that if appointed, Lt Col Lustick he will be an incredibly fair, thoughtful, ethical, kind, and patient jurist. Lt Col Lustick is a selfless servant leader who is worthy of your trust and reliance as the next Whatcom County District Court Judge.

If you would like to discuss my recommendation with me or if you desire any further information about Lt Col Lustick, please do not hesitate to contact me at 



Matthew R. Creed, Colonel, CAP  
Commander:

cc: CAP/JA  
Lt Col Jeffrey A. Lustick, CAP



**ANIMAL LAW OFFICES  
OF ADAM P. KARP, JD, MS**

**By Email**

Tuesday, June 8, 2021

Whatcom County Council  
311 Grand Ave., Ste. 105  
Bellingham, WA 98225  
360.778.5010  
[council@co.whatcom.wa.us](mailto:council@co.whatcom.wa.us)

**Ref.: *Recommendation of Jeffrey A. Lustick for District Court Judge***

Dear Council:

I write to offer my enthusiastic endorsement of Jeffrey A. Lustick for appointment to fill Judge David Grant's position on the Whatcom County District Court bench.

Mr. Lustick and I have practiced roughly the same period of time (I have been licensed since 1998, Mr. Lustick since 1997). Last year I appeared before him as a *pro tem* judge in district court and found his demeanor, quality of judging, and fairness to a cantankerous *pro se* opponent to be above reproach and eminently measured. He showed no bias, or even appearance of bias, despite my having known him for years prior to that hearing. I primarily came to know Mr. Lustick in his capacity as a criminal defense attorney to whom I would consult on various cases, and always found his advice to be judicious.

Having practiced in Whatcom County for the last 18 years and appeared before nearly every jurist in district and superior court over that tenure, having represented hundreds of individuals throughout dozens of jurisdictions within Washington, Oregon, and Idaho, including state and federal courts, having taught as an adjunct professor at two law schools for many years, and having authored a hornbook and several annotations, treatises, and articles on various aspects of civil and criminal law, I believe I have a good background from which to draw in rating Mr. Lustick as exceptionally qualified.

I hope you appoint him in Judge Grant's stead.



Respectfully,

ANIMAL LAW OFFICES



Adam P. Karp, Esq.



June 28, 2021

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

RE: Letter of Support of the Appointment of Jeffrey Lustick as District Court Judge

Dear Whatcom County Council Members

My name is James Heintz and I am a small business owner and licensed real estate Broker in Bellingham, WA. I have lived and raised my family in the great community for nearly 30 years. I care about our community and have taken a great interest and concern of the wellbeing of Whatcom County. For this reason, I am contacting you with my resounding endorsement of Jeffrey Lustick as the next Whatcom County District Court Judge.

I have known Jeffrey both personally and professionally for about 20 years. Over this time, I have always found Jeffrey to be one of the most levelheaded thinkers that I know and a trusted advisor on a range of subjects, not just the law. He is honest, committed to social justice and is professional in everything he does. I am aware that he has already been serving as a part-time judge in District Court on top of his responsibilities as a managing partner in his busy law firm.

Prior to coming to Bellingham, Jeffrey served our country as a commissioned officer and lawyer in the US Air Force right after graduating with honors from Gonzaga University Law School. He is talented and well-rounded and has served as a federal prosecutor in Nebraska, a city prosecutor in Bellingham Municipal Court and a public and private defense counsel in the county, state & federal court systems. Jeffrey is also a strong communicator and business leader and has worked awfully hard to establish his law firm and his aircraft brokerage into two innovative and extremely successful local small businesses.

As a business owner, father and active member of the Whatcom County real estate and business communities, I know that we would be lucky to have Jeffrey Lustick serve on the Bench. Jeff would bring a tremendous amount of professionalism and dedication to the Whatcom County District Court and I am pleased to give him my strongest recommendation. I sincerely hope the Whatcom County Council will appoint him without delay.

Respectively Yours,

A handwritten signature in dark ink, appearing to read 'James Heintz', with a stylized flourish at the end.

James Heintz  
Broker and Co-Founder

DAVID R. OSGOOD  
NEW CENTURY LEGAL CO, INC.

June 28, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, Washington 98225

Re: Recommendation of Jeffrey Lustick for Appointment as District Court Judge

Dear Distinguished Councilmembers:

I am writing to give you my highest endorsement of Mr. Jeffrey Lustick for appointment as Whatcom County District Court Judge. I believe that Mr. Lustick's decades of trial practice, combined with his thoughtfulness, skill and temperament will make him an excellent judge and an asset to your Bench. Mr. Lustick's successful service as Judge Pro Tempore in the Whatcom County District Court has demonstrated his worth and is earning him the respect and recognition of prosecutors, defense counsel, and other judges on the court.

My practice is in Seattle, Washington, and I have an extensive background on Civil Rights issues going back twenty-five years, working with the ACLU, National Black Chamber of Commerce, Lambda Legal Defense and Education Fund, and Human Rights Campaign, among others. Over time, I have had occasions to consult with Mr. Lustick on issues as diverse as veterans service issues, mental health treatment issues, and anti-harassment orders affecting members of the LGBTQ+ community. During the course of our dealings, I have come to appreciate Mr. Lustick's awareness and sensitivity to social justice; his keen insight, as well as the depth of Mr. Lustick's knowledge and an honest perspective that can only be offered after thousands of hours of courtroom experience.

I have also witnessed Mr. Lustick interact with clients with calmness, patience, and compassion, while maintaining the strict ethical integrity of the justice system. Knowing of his history, and the scope of his legal career, especially his service as a Judge Pro Tempore, I cannot help but think that he is the ideal candidate for the Whatcom County District Court judicial position. I am therefore very happy to strongly recommend you appoint him District Court Judge.

Very Sincerely Yours,

*David R. Osgood*

David R. Osgood, Attorney at Law

Law Office of John R. Guardi

June 7, 2021

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

**Re: Letter of Recommendation for Jeff Lustick  
for District Court Judge**

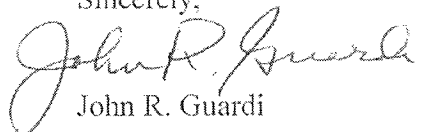
I write this letter to the Council in support of Mr. Jeff Lustick for the District Court judge position following Judge's Grant's retirement. I have known Mr. Lustick for almost 20 years, first when he was a Bellingham prosecutor and then as a private attorney. In addition, I have appeared before him many times when he has served as a *pro tem* judge in various courts.

I support Mr. Lustick for the position because I believe he possesses the qualities I like to see in a judge in general. First, I believe he has the proper judicial temperament overall. He listens to all parties and counsel, is polite and patient, and treats each person before him as a judge with consistent courtesy and respect. I have observed Mr. Lustick on the bench showing such restraint, patience and courtesy also when provoked. Second, his legal experience is extensive – as JAG officer, federal magistrate and judge in Whatcom County, and as a private attorney with his own law firm. I observe him apply the law to the facts in a manner that shows his general understanding of community and society dynamics – law enforcement, racial and cultural diversity, and most fundamentally, the rights and obligations of parties before the court. I also would add I think Mr. Lustick is reasonable in his judicial decisions on matters before him.

I think Mr. Lustick has demonstrated over the years he has behaved professionally and ethically and has been a leader in general, including of his law practice. He is predictably the same person in every setting in which I have known him, and shows himself and character as such.

For these reasons, I highly recommend him for the District Court judge position.

Sincerely,

  
John R. Guardi

**TORY F. JOHNSON, P.S.**  
*Attorney-at-Law*

Tory F. Johnson

Please reply to: Bellingham Office

June 7, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, Washington 98225

Re: Jeffrey A. Lustick

Dear Whatcom County Council Members:

I have known Jeffrey Lustick as a colleague for many years, and I highly recommend him to be appointed to the position of Judge in the Whatcom County District Court. Throughout the many years I have known him, Jeffrey has always shown a high regard for our profession as well as respect for the law.

Jeffrey has a bright legal mind which he uses daily to advocate for his clients; I have no doubt he will do the same as a Judge. In addition, Jeffrey's tremendous work ethic and diligence to his clients will serve him well as a Judge.

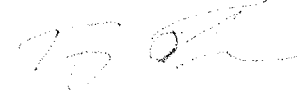
I have no reservations recommending Jeffrey for this esteemed position, and know that he will serve the residents of Whatcom County with faithfulness and diligence to the law.

If you require any additional information or would like to discuss Jeffrey's recommendation further, please do not hesitate to contact me.

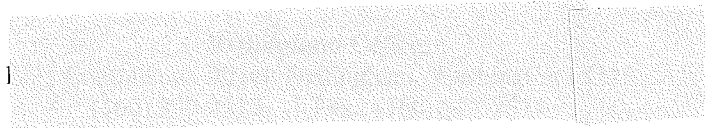
Thank you for your consideration.

Very truly yours,

TORY F. JOHNSON, P.S.



Tory F. Johnson



James T. Hulbert

[jamesthulbert@gmail.com](mailto:jamesthulbert@gmail.com)

June 24, 2021

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

*Re: Jeffrey Lustick Application for Whatcom County District Court Vacancy/Appointment*

Dear Members of the Whatcom County Council.

My name is James T. Hulbert. I have practiced law in Whatcom County for twenty-four years. I spent the first eighteen years of my practice in the office of the Whatcom County Prosecuting Attorney, and I now practice as an associate attorney at Adelstein, Sharpe & Serka in Bellingham.

I have known Jeffrey Lustick since the early 2000s when he was hired as an assistant City Attorney Prosecutor for Bellingham. During my time with the Whatcom County Prosecutor's Office, I attended a weekly domestic violence task force meeting with Mr. Lustick, and observed him to be highly knowledgeable regarding the challenges faced by domestic violence survivors as they seek help from the legal system. In my experience, Whatcom County District Court has a high volume of domestic violence-related cases, and I am confident that Mr. Lustick will be able to continue the strong work started by Judge's Elich and Grant to serve those touched by domestic violence without missing a beat.

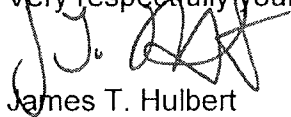
When I moved to the felony division of the Whatcom County Superior Court, I prosecuted many criminal defendants who were represented by Mr. Lustick, who had by then moved to the private bar. Mr. Lustick and I dealt with many serious cases, the results of which would impact the accused for decades to come. Despite these high stakes, and the high-pressure environment, I consistently observed Mr. Lustick to display unflappably-calm demeanor, sterling communication skills and a shrewd legal mind as he argued successfully for clients who came from all portions of the socioeconomic spectrum.

Over numerous hours in court, I have observed Mr. Lustick's legal acumen to be impeccable, and his verbal presentation skills to be without peer. Whether forced by circumstances to be quick on his feet, or given the luxury of time to reflect, his decision making skills consistently enable him to pursue justice across a wide scope of legal issues. I have no doubt that Mr. Lustick is well prepared for the intellectual rigors of the Whatcom County District Court bench.

Stated simply, the citizens of Whatcom County deserve Mr. Lustick's wisdom, intelligence and leadership on the bench as their local legal community continues to evolve.

Mr. Lustick's application represents an exciting opportunity for the Whatcom County Counsel to ensure justice for those who have business in Whatcom County District Court. Please do not hesitate to contact me if you would like further information regarding any of the above.

Very respectfully yours,

A handwritten signature in black ink, appearing to read 'J. Hulbert', with a stylized flourish extending from the end.

James T. Hulbert



## WHATCOM COUNTY PROSECUTING ATTORNEY

### CHIEF CRIMINAL DEPUTY

Erik Sigmar

### ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

### CRIMINAL DEPUTIES

David Graham  
Kellen Kooistra  
Benjamin Pratt  
Gordon Jenkins  
Kacie Emerick  
Christina Garcia  
Jesse Corkem  
Evan Sterk  
Nicole Meyer  
Julia Monroe  
Maggie Peach  
Andrew Bogle  
Kayleigh Mattoon

### Eric Richey

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

### CHIEF CIVIL DEPUTY

Karen Frakes

### CIVIL DEPUTIES

Royce Buckingham  
Christopher Quinn  
George Roche  
Brandon Waldron

### CIVIL SUPPORT

### ENFORCEMENT DEPUTIES

Janelle Wilson/Lead  
Dionne Clasen

### APPELLATE DEPUTIES

Kimberly Thulin  
Hilary Thomas

### ADMINISTRATOR

Vanessa Martin

June 24, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Dear Council Members,

My name is Benjamin Pratt. I am a Senior Criminal Deputy Prosecutor with the Whatcom County Prosecutor's Office, and have worked for the county since 2017. I'm writing to you in support of Jeffrey Lustick's bid for appointment to the Whatcom County District Court bench. I've known Mr. Lustick since the beginning of my employment with the county, and have had the opportunity to observe firsthand his thorough grasp of the law, easy command of the courtroom, and overall skill as a legal practitioner. I strongly recommend him for judgeship.

I initially met Mr. Lustick in 2017, when I began prosecuting criminal cases in District Court and he was serving as a defense attorney. Despite the adversarial nature of our roles, we had a strong professional relationship and I always found Mr. Lustick to be respectful, persuasive, and effective as an advocate for his clients. He built a solid reputation among my coworkers for his candor and professionalism. And while working with Mr. Lustick as defense counsel was always a positive experience, it was his prowess behind the bench that compelled me to write this recommendation on his behalf.

During the 2018 calendar year, I recall Mr. Lustick beginning to express an interest in becoming a Judge. As a first step down that path, he began appearing as a Judge Pro Tem. He was appointed to make limited appearances to fill in for sitting District Court Judges Grant and Elich when they were unable to hear certain matters (due to recusal, disqualification, or other unavailability). I initially had my reservations about whether a practicing Criminal Defense attorney would be fair and impartial while serving on the bench part time -- especially one I'd personally worked with on multiple cases. Those reservations were dispelled by the end of my first hearing before Judge Pro Tem Lustick. At that hearing, and all the ones that followed, I felt heard, respected, and treated fairly. While I didn't win every argument or motion I had before him, I never left a hearing without understanding Judge Pro Tem Lustick's ruling and the case law he'd relied upon to arrive at his conclusions.

In his role as a Judge Pro Tem, Mr. Lustick had the somewhat unusual opportunity to preside over a trial. In a criminal jury trial, a Judge Pro Tem can only preside when both the prosecution and the defense agree to it; such an agreement is a rarity, and it speaks to Mr. Lustick's reputation for fairness and skill that when, in late

September of 2018, I brought a criminal defendant to jury trial on two counts of Assault in the 4th Degree - Domestic Violence, both parties consented to Mr. Lustick's appointment as trial judge. Presiding over a trial is a demanding exercise; a trial judge must simultaneously maintain a levelheaded demeanor, command authority over his or her courtroom and the people in it, and protect the integrity of the defendant's right to due process. It requires exceptional grasp of the rules of evidence and the ability to conduct rapid legal analysis to make near-instantaneous rulings, all the while bearing in mind that a person's liberty is at stake. In my view, that trial in 2018 was the first true test of Mr. Lustick in his role as a judge.

At trial, Mr. Lustick put on a master class. Whether speaking to the jury or to the parties, Mr. Lustick made absolutely certain to speak in a way that would be easily understood by lawyers and non-lawyers alike -- deftly avoiding the kind of 'legalese' that attorneys are known for that can cause confusion and disengagement from the process. When issues arose in litigation, he fairly weighed the positions of both sides and ruled appropriately based on the law. When he needed to control his courtroom, Mr. Lustick spoke with clear direction that commanded respect. And when the jury rendered a verdict of guilty, Mr. Lustick imposed a fair and just sentence, complete with an explanation for the record that was both stern and victim-centric.

In my years in Whatcom, I have known and worked with many of the candidates who are asking your consideration for appointment to the District Court bench. What sets Mr. Lustick apart from the others is not just that he has the necessary judicial temperament, or that his grasp on the case law and court rules is stellar; it is that he has already spent years demonstrating those things by doing the job, and doing it well. I have every confidence that if you appoint Mr. Lustick to the bench, he will transition into the role seamlessly, and that his experience and discernment will be of great service to the people of Whatcom County.

Thank you for your time,

A handwritten signature in dark ink, appearing to read "B. Pratt", written over a horizontal line.

Benjamin Pratt  
Senior Criminal Deputy Prosecuting Attorney

June 10, 2021

Whatcom County Council  
311 Grand Ave.  
Bellingham, WA 98225

Dear Council Members,

I am writing to recommend Jeffrey Lustick for the office of Whatcom County District Court Judge. As a judicial officer, I am not permitted to use my Court's letterhead, and this recommendation is based on my personal experience as an attorney and Bellingham Municipal Court Commissioner, having known Mr. Lustick for approximately twenty years.

I first met Mr. Lustick when he was a new prosecutor in the Bellingham City Attorney's Office. Mr. Lustick was diligent, highly organized and committed to seeing justice done. He created many of the pleadings, such as plea forms, that we still use today in the Bellingham Municipal Court. Mr. Lustick was also a Judge Advocate, like myself and former Whatcom County Superior Court Judge Mura, and served our country and its service members in the reserves while excelling as a civilian attorney. Mr. Lustick transitioned from the public sector to become a private attorney, where he founded a successful law firm and frequently appears before me as defense counsel in criminal cases and civil infractions. Mr. Lustick is consistently well-prepared, insightful, and creative in finding appropriate outcomes in these cases. One example is that, when representing a criminal defendant with mental health issues, he proposed a mental health deferred prosecution, which I granted. What's remarkable about that is that few attorneys I see in court seem to know that this option is even available in cases involving mental illness, much less how much it can help their clients address core causes of criminal behavior and achieve a successful outcome for them and the community.

While Mr. Lustick's legal abilities are exceptional, his recent interest and experience in working in the judiciary should set him apart from other candidates. Judges are not simply lawyers in robes. Being an effective judicial officer means setting aside the biases that many lawyers acquire, particularly when one has spent most of their career in one role, such as a prosecutor or defense attorney. Mr. Lustick has served in both those roles, and then shown objectivity as a Judge Pro Tem in Whatcom County District Court and Bellingham Municipal Court. He is well-respected by the bar, court staff, and the judiciary as Judge Pro Tem. I strongly recommend Mr. Lustick for the position of District Court Judge.

Respectfully,

A handwritten signature in dark ink, appearing to read "P. Smiley", written over a horizontal line.

Pete Smiley

From the Desk of Gene Knutson

**DISTRIBUTED TO**

**JUN 14 2021**

June 11, 2021

**ALL COUNCIL MEMBERS  
WHATCOM COUNTY COUNCIL**

Whatcom County Council Members

311 Grand Avenue

Bellingham, WA 98225

Dear Whatcom County Council,

I am writing you as both a citizen of Whatcom County and as a City Council member. I strongly endorse Jeffery Lustick for the position of Whatcom District Court Judge. I first met Jeff nineteen years ago when he worked in our municipal court as a prosecutor. I always valued Jeff's work, he was straight forward in his approach and worked well with all. He was in front of council often and always handled himself well. Often times government does not always agree with the legal staff, but he was very convincing on what was the right thing to do. Jeff applied the law on all his decisions. As a Judge Pro Tempore he is ready on day one for the job. His experience is very impressive and speaks volumes on how he is qualified for this position. His years as a military prosecutor and defense counsel and all his work locally readies him for the Judge position. He is a dedicated public servant who would make a great Judge for years to come. During his time as city prosecutor he had to tell us things we did not want to hear but things we needed to hear and that is what leaders need to do. Jeffery Lustick is the right person for this position. I hope you see that to.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Knutson". The signature is fluid and cursive, with a large loop at the end.

Gene Knutson Bellingham City Council 2<sup>nd</sup> Ward

Paul Richmond Law

RECEIVED

JUN 15 2021

WHATCOM COUNTY  
COUNCIL

BY HAND

TO

Whatcom County Council Members  
311 Grand Avenue  
Bellingham, WA, 98225

June 11, 2021

**Letter in Support of Jeffrey Lustick for District County Judge**

I am writing a letter in support of Jeffrey Lustick as District Court County Judge.

I am familiar with Mr. Lustick both as Court Commissioner and Counsel.

Jeffrey Lustick presided over a trial involving a restraining order that involved members of the homeless advocacy community and involved issues of potential civil liberties and of import to the public. This hearing largely filled the court room with interested observers. Jeffrey Lustick was what you would hope for in a Judge, cognizant of the law, fair to all sides, and giving all an opportunity to be heard. I have also observed Jeffrey Lustick in other shorter hearings. Our office has also been involved in one contentious matter with Mr. Lustick and found him to be fair and interested in the rights of all parties.

We hope that you will consider Jeffrey Lustick for this position.

Respectfully submitted

Paul Richmond, WSBA 32306

June 4, 2021

Whatcom County Council  
311 Grand Street, Suite 105  
Bellingham, WA 98225

Dear Council Members:

It gives me great pleasure to write a letter of recommendation on behalf of Mr. Jeffrey Lustick, who is the founding partner of the Lustick, Kaiman and Madrone PLLC Law Firm in Bellingham, WA. I have known Jeff for over 18 years, since the time he served as my Judge Advocate Officer when I was Commander of the 262 Information Warfare Aggressor Squadron at McChord AFB, WA. He worked as both a military and federal prosecutor.

He graduated from the Gonzaga Law School Cum Laude in 1997 and was admitted to the Washington State Bar that same year. Over the years, I have known Jeff to work in all aspects of law. He worked as a prosecutor for the City of Bellingham for three years, where he was as a public defender and defense counsel.

Jeff has also served as a Judge Pro Tempore in Whatcom County District Court, Bellingham Municipal Court, and Ferndale Municipal Court for over three and a half years. In this capacity, he has successfully handled every type of case ranging from small claims, criminal jury trials, criminal motion hearings and anti-harassment hearings.

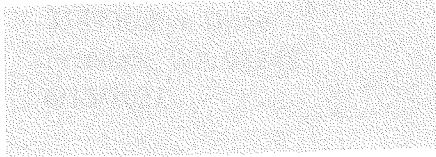
As a part-time job, he fills in several times a month and is very familiar with his responsibilities and duties. He has a close working relationship with the clerks and court staff. Recognizing that there is a large backlog of cases due to the Covid-19 Pandemic, Jeff is committed to leaving his private practice immediately, in order to serve Whatcom County in the capacity of a District Court Judge for many years.

In my opinion, Jeff has both the professional skills and abilities, together with his personal qualifications of honesty, commitment, vision, and accountability to make him a preeminent candidate for the position of District Court Judge. Please give him your serious consideration as you make your selection to fill this most important position.

Respectfully,

HERBERT G. PORTER  
Ferndale City Council  
Position # 1

Kasie Wagner



Whatcom County Council Members  
311 Grand Avenue, Suite A  
Bellingham, WA 98225

Dear Whatcom County Council Members :

As a court clerk, it has been an absolute pleasure to work with Jeffrey Lustick. In my nine years at the Court, I have observed Mr. Lustick to be exceptionally professional as an attorney. More recently, I've been graced with the opportunity to work with him as a protem judge. In that time, Mr. Lustick has shown himself to be honest, patient, impartial, and highly ethical.

Jeffrey Lustick is originally from Mount Vernon and graduated with honors from Gonzaga in 1997. He was admitted to the bar in Washington in October of 1997 and has remained in good standing ever since. His experience as a prosecutor for the City of Bellingham, his time as a military prosecutor and defense counsel with the U.S. Air Force/Air National Guard and his service as a federal prosecutor for the U.S. Attorney's Office in Omaha, NE has earned him the reputation of a highly esteemed and seasoned attorney.


Mr. Lustick has made a career of serving the community. Not only has he devoted 17 years as a private defense attorney in Bellingham, he has also served as a Judge pro tempore in Whatcom County District Court, Bellingham Municipal Court and Ferndale Municipal Court. His combined experience and contribution to the legal profession has earned the respect of his peers, fellow clerks, and court staff.

In summary, I believe Jeffrey Lustick would make an excellent judge and fully support his appointment.

Sincerely,



Kasie Wagner







## FERNDALE MUNICIPAL COURT

P.O. Box 291

Ferndale, WA 98248-0291

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3 June 2021

Whatcom County Council  
311 Grand Ave. Suite 105  
Bellingham WA 98225

*RE: Letter of Support for Judicial Candidate Jeffrey Lustick*

Dear Council Members:

I am writing to express my support for Mr. Jeffrey Lustick's application for appointment to the Whatcom County District Court. Mr. Lustick would serve the people of Whatcom County exceedingly well, and I strongly recommend that he be appointed.

Mr. Lustick has been the preferred judge pro tem in Ferndale Municipal Court since I took office in 2019. Mr. Lustick has all the qualities that a judge needs. He knows the applicable statutes and court rules. He has a patient and calm judicial demeanor, and he strives to provide litigants with fair and well-reasoned rulings. He is decisive and maintains the appropriate decorum in the courtroom. The clerks and other staff in Ferndale Municipal give his performance as a pro tem rave reviews, and he has been asked back many times when I have been unavailable. In addition to serving as a pro tem in Ferndale, Mr. Lustick has spent hundreds of hours as a pro tem for Whatcom County, and has accumulated a tremendous amount of experience on the bench. Mr. Lustick is friendly and approachable, but also has the leadership qualities that make him an outstanding candidate to supervise the staff at District Court.

On a personal note, I have known Mr. Lustick for 18 years. You would be hard pressed to find a more ethical or hard-working attorney to appoint to the bench. In my opinion, Whatcom County is fortunate that a candidate of his caliber is willing to leave private practice and devote himself full time to public service. Once again, I strongly recommend that he be appointed. If you would like any further information, please feel free to contact me.

Sincerely,



Judge Mark A. Kaiman

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**Court Office Location**  
2220 Main Street  
Ferndale, WA  
Phone: (360) 384-2827  
Fax: (360) 312-0106

**Courtroom Location**  
5694 Second Avenue  
Ferndale, WA

**Website**  
[ferndalecourts.org](http://ferndalecourts.org)  
[info@ferndalecourts.org](mailto:info@ferndalecourts.org)

LAW OFFICES  
OF  
MICHAEL K. TASKER

---

June 8, 2021

Whatcom County District Court  
311 Grand Ave. Suite 401  
Bellingham, WA 98225

Re: Endorsement of Jeffrey Lustick for District Court Judge

Dear Selection Committee:

I have practiced in this jurisdiction for over fifteen years. During this time I have had an opportunity to get to know Jeffery Lustick. I believe Jeffery possesses the temperament, intelligence, legal knowledge, and wisdom to be an excellent judge. If he is appointed, I believe he will diligently serve, and do his best to render fair and thoughtful rulings.

Should you find it important to understand my perspective regarding this endorsement in greater detail, I will make myself available to provide the same upon request. My email is [REDACTED]

Best Regards,



Thomas Dunn

June 8, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Dear Council Members:

I am writing to express my support for Jeff Lustick to be appointed to serve the remainder of Judge David Grant's term in Whatcom County District Court. I have worked for the Whatcom County Public Defender's Office since November 2019 and have practiced almost exclusively in district court during that time. Prior to working here in Whatcom County, I was a public defender in Spokane County and a judicial clerk for the Washington State Court of Appeals.

There have been numerous occasions in our district court where Mr. Lustick has served as judge pro tempore and presided over my cases. It has always been clear from his conduct in court and rulings from the bench that Mr. Lustick strives to properly follow and apply the law. Where some judicial officers will substitute their personal feelings in place of the law, Mr. Lustick does not. He also places a strong emphasis on having litigants and lawyers conduct themselves professionally, and show respect for all, while in court.

Further, Mr. Lustick has always been willing to balance the needs and concerns of the community, with the needs and concerns of a defendant. He carefully listens to arguments from both sides, and makes a fair decision based on the information provided to the court. Importantly, Mr. Lustick is willing to make use of alternative sentences (such as our jail alternatives program) to ensure that appropriate sentences are imposed without also crippling a defendant's livelihood. It is my experience that this type of thoughtful and balanced approach boosts public confidence in the courts, improves community safety, increases the court's efficiency, and reduces recidivism.

Also, I have been part of the Mental Health Court (MHC) team since August 2019. Mr. Lustick has served as judge pro tempore in MHC and has demonstrated the type of temperament and patience needed in an MHC judge. If appointed to the bench, I believe this experience greatly enhances Mr. Lustick's ability to preside over our MHC program, should Judge Elich want to step back from the program.

Overall, I believe Mr. Lustick has the necessary experience, knowledge, and temperament to be an effective district court judge. I support his application to be appointed to serve the remainder of Judge David Grant's term in Whatcom County District Court. I believe he has been, and will continue to be, a fair, thoughtful, and ethical judicial officer.

Respectfully,



Stuart A. Cassel

**From the Desk of  
Skagit County Superior Court Judge  
Thomas L. Verge**

---

June 29, 2021

Whatcom County Council Members  
311 Grand Avenue  
Bellingham, WA 98225

Dear Council Members:

My name is Tom Verge and I currently serve as an elected Superior Court Judge in Skagit County. I write this letter in support of Jeffrey Lustick to be appointed to fill the position of Whatcom County District Court Judge, filling the vacant seat from Judge David Grant's retirement.

I am currently serving my 17<sup>th</sup> year on the bench: 11 years as a Whatcom County Superior Court Commissioner (2005-2016); 5 years as a Skagit County District Court Judge (2016-2020); and in November 2020, I was elected to my current position. So, I feel I am qualified to assess the suitability of a person to become a judge.

I've known Mr. Lustick professionally for nearly 20 years. He has appeared before me numerous times, always prepared, always pleasant, all the while zealously advocating for his client's interests. As a judge, I always appreciated such thorough professionalism.

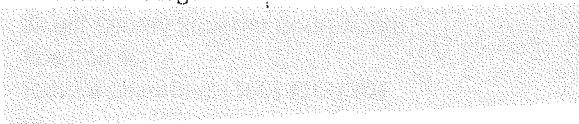
Mr. Lustick is precisely the type of attorney you want to see move onto the bench. He is empathetic, quietly professional and kind. Judges represent the community that they serve and I can think of no better person to serve and represent the citizens of Whatcom County. His knowledge of the law, his integrity and his ability to listen will serve Whatcom County citizens well. I believe that all appearing before him will literally leave the courtroom feeling that they were heard and treated with compassion and respect.

I urge you to appoint Jeffrey Lustick as your next Whatcom County District Court Judge. I thank you for your time.

Best Regards,



Thomas L. Verge



## Monica Rouse

---

**From:** [REDACTED]  
**Sent:** Tuesday, June 29, 2021 9:22 AM  
**To:** Council  
**Subject:** District Court Judge

Hello Council Members-

It has come to my attention that Judge David Grant is retiring and a new appointment by this Council to the Whatcom County District Court bench will soon be taking place. I would encourage the council to strongly consider Attorney Jeffrey Lustick to be appointed as Judge Grants replacement.

I am a lifelong resident of Whatcom County and have known Jeff for 14 years through aviation. Jeff has always been extremely personable and professional with my interactions with him for various reasons. His listening and communication abilities are superb both professionally and personally. Jeff serves on the Board of Directors of the Strato Airport Condo Association and even before that he has helped bring many people together with different opinions and come to great solutions that benefit all.

I see no better person who has served our country, is a local resident with local knowledge, and who already knows how our judicial system works then Jeff Lustick.

It would be a great benefit to Whatcom County to have Jeff as our next Whatcom District Court Bench Judge.

Thank you for your consideration of Jeffrey Lustick.

/s  
Brett Milewski

[REDACTED]

June 28, 2021

Members of the Whatcom County Council  
311 Grand Ave  
Bellingham, WA 98225

Dear Council Members:

My name is Brent Papineau and I am an author, writer, and blogger. I lived in Bellingham and Ferndale for several years in the 90's and have resided in various places around the country, such as North Dakota, Wyoming, and now I reside in Jacksonville, Florida.

During the COVID19 pandemic as my business slowed down, I took up a new hobby of "court watching." In my spare time, I started watching video feeds of the small courts which were putting up feeds of their court trials and hearings. Because of my past ties to Whatcom County, I noticed that Whatcom County District Court was broadcasting live feeds of its hearings, and so I subscribed to the court's YouTube channels and started regularly watching. I receive alerts on my phone when the court is in session.

I remember a while ago on the channel, I overheard Judge Grant talking about his retirement. This made me curious, and I found out via the Whatcom County Council website that you are soliciting applications from candidates to fill Judge Grant's position. I am writing to you today to put in my two cents worth about a pro tem judge that I have seen frequently on the channel named Jeff Lustick. After watching him on the feed for several months, I really think he should be someone you seriously consider for this position, and I hope that he will apply.

Whenever I see that Judge Lustick is presiding in court, I do my best to watch because he is always very interesting. He is pleasant and cheerful and runs the court hearings in a fair and respectful way. Of all the other judges I watch, Judge Lustick is noticeably more respectful and patient, even when he is faced with an unruly or disrespectful person in court.

One case that really sticks out in my mind is when Judge Lustick was handling a small claims case. The plaintiff was the mother from a Mexican American family who were throwing a Quinquennia for their 15-year-old daughter. They were suing a photographer who did not provide professional quality video and photography services for the event. Basically, the pictures turned out all yellowish and were unfocused and the video never got produced. Judge Lustick found in favor of the Plaintiff, and I remember the ruling he made in the case. Judge Lustick gave the family reimbursement for the photographic services and took the time to sympathize and soothe the mother who was noticeably

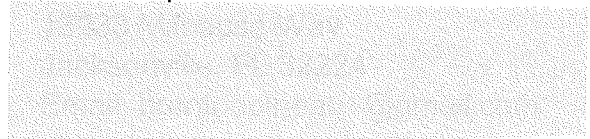
crying and heartbroken. She was upset because the photographs of her daughter were done so poorly, and she felt responsible for hiring the bad photographer. Judge Lustick obviously understood this and told her that he understood how important the daughter's Quinquennia was to the mother and her family, and took extra time to comfort the lady in a very professional and heartwarming way.

In another case I watched, I remember Judge Lustick ruling in favor of one party in a way that I didn't see coming. He denied the plaintiff's claims, but Judge Lustick also took a lot of time to explain his ruling to the plaintiff and state why the Plaintiff did not win his case. Judge Lustick mentioned that even though, in his opinion, the law probably should be changed at the Legislative level, he could not and would not rule against the current law. In my opinion, this is a completely appropriate thing to do as a judge, and it gives the average citizen faith in the justice system.

If you get a chance to appoint pro tem judge Jeff Lustick to a permanent seat on the Whatcom County District Court, you really should do so. Your citizens deserve a continuation of the fair, honest, and correct judgements that he provides as a judge.

In Thankful Regards,

Brent Papineau





From: Steven Burger, Contact Counseling Recovery Services

To: Whatcom County Council Members;

I am submitting this letter in support of the appointment of Jeffrey Lustick to the Whatcom County District Court Bench. I have worked as a Substance Use Disorder Professional since 1989. In that time I have provided addiction counseling services to clients in various settings. I have worked in inpatient and outpatient treatment centers, public and tribal schools, hospitals, jails, and prisons. This includes 4 years providing treatment and assessment services to clients incarcerated and/or under supervision with the Washington State Department of Corrections, as well as working for 5 years at Lummi Counseling Services serving Native Americans under the jurisdiction of the Lummi Tribal Court. For the past 12 years I have provided assessments at Contact Counseling for persons who were arrested for DUI or Domestic Violence offenses. It is in my role at Contact Counseling where I have gotten to know Jeffrey Lustick.

In my experience, Mr. Lustick has been a strong advocate for his clients as well as supporting the necessity of them following through with treatment services when necessary. I have found him to have a very good understanding of the issues surrounding Substance Use Disorders, and the need for appropriate treatment. As a person who was born in Mt. Vernon, and having a well-established law firm representing residents of Whatcom and Skagit Counties, Mr. Lustick has a firm grasp of the needs of our community.

I am impressed with Mr. Lustick's desire to improve access to services for DUI and Domestic Violence offenders. Access to services is an especially difficult obstacle for people overwhelmed with their legal problems as well as existing substance use disorder, and mental health issues.

Mr. Lustick has a great deal of integrity. I see this in his willingness to leave a successful private practice to serve our community on the bench. He has extensive past experience as a public defender, military defense counsel, as well as a private DUI, DV and criminal defense attorney. He has past experience as a federal military prosecutor, judge pro tempore for Whatcom County District Court, the Bellingham Municipal Court, and the Ferndale Municipal Court. He has also has filled in for the Whatcom District Court Mental Health Court. This well rounded resume' offers Whatcom County residents the opportunity to be immediately served by someone with unparalleled qualifications.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Burger', with a stylized flourish at the end.

Steven R. Burger, BA SUDP

6/23/2021

# CITY OF LYNDEN

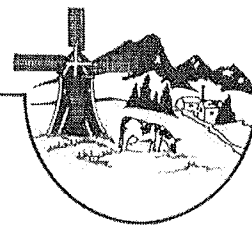
## LYNDEN MUNICIPAL COURT

Terrance G. Lewis, Judge

Greg Greenan, City Prosecutor: (360) 647-1500

Angela Anderson, Public Defender: (360) 483-5200

Court Office: (360) 354-4270



June 9, 2021

Whatcom County Council Members  
311 Grand Avenue  
Bellingham, Washington 98225

*Re: Recommendation of Jeffrey Lustick for Whatcom County District Court Judge*

Dear Whatcom County Council Members:

It is my pleasure to recommend local attorney Jeffrey Lustick to fill the Whatcom County District Court judicial position soon to be open due to the impending retirement of Judge David Grant.

I have been fortunate to live and practice law in Whatcom County for over forty years. As such, I am familiar with all the courts in Whatcom County. Today, I am in my nineteenth year as Municipal Court Judge in Lynden.

I have known and worked with Jeff Lustick for the past twenty years. Jeff is smart, reliable, polite, and works well with others. Jeff was a city prosecutor for Bellingham, and both a military and federal prosecutor. He has worked as a public defender and private defense counsel. Notably, for the past 3 ½ years, he has served as judge *pro-tem* in Whatcom County District Court, hearing all manner of cases.

The day-to-day work of a District Court Judge is challenging. David Grant did a terrific job for eighteen years. Jeff Lustick has the broad range of experience to assume that challenging role.

I would be happy to answer any questions concerning my recommendation of Jeffrey Lustick for your consideration as Whatcom County District Court Judge. I can be reached at (360) 354-4270 by email at [terrance.lewis@cityoflynden.org](mailto:terrance.lewis@cityoflynden.org)

Sincerely,

A handwritten signature in black ink, appearing to read "Terrance G. Lewis".

TERRANCE G. LEWIS  
Lynden Municipal Court Judge

## Jacqueline Lassiter

---

**From:** Bob Delgatto <[REDACTED]>  
**Sent:** Tuesday, June 29, 2021 12:50 PM  
**To:** Council  
**Subject:** Whatcom District Court Judge appointment

Whatcom County Council Members-

My name is Bob Delgatto and I have been a resident of Bellingham and Whatcom County for 22 years. I am employed as a project manager for a local corporation and I work on public and government projects throughout the United States. I am writing today to give you my strongest endorsement in favor of the County Council appointing Attorney Jeffrey Lustick as the District Court Judge to replace Judge Grant who is retiring.

I have personally known Jeffrey for over 12 years. Jeffrey's daughter and my daughter have been friends since 2014, and I know Jeffrey as a friend, a fellow father, an enthusiastic aviator, and a well cultured professional person with strong values. He isn't in law for the money. Rather, he is completely dedicated to helping others and serving our community. He is a man of great moral fiber who has a strong work ethic. He is a proven leader in his career field and has excellent organizational and communication skills.

Jeffrey has expressed to me on numerous occasions how much he has enjoyed serving as a part time Judge for the court over the last 2.5 years, and how proud he has been of his service. I know that he fills in very frequently whenever one of the other judges is absent or otherwise busy. When he talks about serving as a judge his whole face lights up, his tone of voice is positive and serious, and I can see he is meant to be a judge. Obviously, with all of the real-world practical experience that Jeffrey has as a fill-in judge, I have no doubts that he will be able to function as a fulltime judge without needing any training or having a delay in service caused by a learning curve.

As someone living in this community for decades and who is very concerned with public safety, I think it's imperative that this Council choose our next judge based on their experience and qualifications and based on their willingness to serve for all of the right reasons. We deserve a qualified person who can act as our judge right away, and someone who will use the judge seat to protect the community while promoting the rule of law. My honest assessment is that Jeffrey Lustick meets all of these descriptions and should be appointed judge right away.

Thank you for your consideration,

Bob Delgatto

[REDACTED]

## Jacqueline Lassiter

---

**From:** Perry Eskridge [REDACTED]  
**Sent:** Tuesday, June 29, 2021 1:52 PM  
**To:** Council  
**Subject:** District County Judicial Appointment

Council Members,

You have before you one of the most important appointments you will, perhaps, make during your tenure on the Council. The appointment of judges is a function that impacts not only the single judge you appoint, but the function and management of that court for the judge's tenure and for all Whatcom County citizens who appear in that court.

I confess that I was surprised watching the conversation the Council had concerning the gender of the people who have served as District Court Judge and the suggestion that the Washington Women Lawyers would be reviewing applications. That discussion has the tinge of unlawful hiring on the basis of sex and should have been avoided at all costs. Viewing the Committee of the Whole discussion including your own legal counsel discussing only "white males" serving as judges on the District Court was disconcerting, say nothing of the discussion of the legal profession generally.

If the Council seeks to *recruit* under-represented populations to submit application for appointment, that is certainly different from how the instant discussion seemed to proceed. In that instance, it would be entirely appropriate to solicit applications from the Washington Women Lawyers. That was not, however, the discussion that seemed to be taking place and the appearance is that the Council is moving toward the singular path of appointing a woman to improve demographics.

The appointment of a judge is serious business. Only the most qualified should be interviewed and, from amongst those (hopefully) highly qualified candidates should Council choose the most qualified candidate. Selection could nearly be accomplished by removing all identifying information from the application materials and review conducted solely on experience as outlined in the application materials.

I would suggest that, in addition to the Whatcom County Bar Association and the County Prosecutor's Office, you might confer with the Washington Criminal Defense Lawyers Association ( <https://www.wacdl.org/>) as members of that Association are most likely to have worked closely with the applicants whom I know have applied and would be able to provide insight into those applicants' level of professionalism. I personally would be seeking information on caseload management, office management (this applicant will manage an entire court!), collegiality, legal knowledge, etc. It is one thing to successfully litigate in court, it is quite another to manage a legal practice including administrative matters and, more importantly, successfully build that practice.


To that end, I would strongly encourage the consideration of Jeffrey Lustick. I have known Jeff for over 20 years and know that he has an excellent reputation state-wide for professional criminal defense. I refer my own clients who face criminal actions to Jeff and, without exception, Jeff has secured excellent outcomes for every client I have referred. His knowledge of criminal law is encyclopedic and he is likely one of the premier criminal defense attorneys in Washington. My clients speak very highly of Jeff and I know my referrals and trust in Jeff are not misplaced.

Jeff's reputation exceeds that of the criminal law and extends to civil law matters. While I am familiar with Jeff's criminal law work, it is his work in civil aviation law that also is commendable. My colleagues at the Federal Aviation Administration hold Jeff in very high regard for the caliber of legal work he performs on civil aviation matters including representation of mechanics, pilots, and aircraft owners. Jeff is known for his comprehensive knowledge of aeronautical regulations, civil legal proceedings, and the manner in which he treats both administrative law personnel and the FAA legal staff.

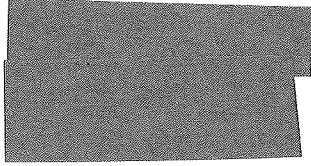
Perhaps the singular experience that provides me certainty that Jeff is the most exceptional candidate is answered from the perspective of, "Who did Judge Grant rely on to help with the administration of the District Court?" Judge Grant, despite who he may endorse now, appointed Jeff as Judge Pro Tempore with all the powers and duties of the elected judge over the administration of cases before that court. Jeff, who was chosen by the departing judge to serve in that judge's absence, is the best candidate to assume that judge's position upon vacation of the bench; Judge Grant's actions speak louder than his words.

I wish you the best with your deliberations. If I can be of any assistance, please do not hesitate to contact me.

Law Office of R. Perry Eskridge

A large rectangular area of the document is redacted with a dark, textured pattern, obscuring the signature and any contact information that might have been present.

John Stark



June 4, 2021

To members of the Whatcom County Council

Greetings.

Jeff Lustick has asked me to contact you about his application to be appointed to the Whatcom County District Court bench to fill a vacancy of about one year.

Based on my dealings with Jeff during my years as a reporter for The Bellingham Herald, I'm confident that he is a solid candidate for this responsibility.

As you know, he has already been serving regularly on the District Court bench in a pro-tem capacity.

I interviewed Jeff on several occasions during his years with the City Attorney's office, and later discussed newsworthy cases with him during his years in private practice. Jeff impressed me as an intelligent, articulate attorney with a gift for explaining legal matters to laymen like me. The ability to do that is valuable in a court setting in which judges often deal with citizens directly, rather than with other lawyers.

I hope you will give his application strong consideration.

Sincerely,

John Stark

**Law Office of Aaron M. Lukoff**  
**& Associates, PLLC**

215 Flora St.  
P.O. Box 1153 Bellingham, WA 98227  
Ph.: (360) 647-5251 Fax: (360) 933-4361  
Email: aaron@lukofflegal.com

**June 29, 2021**

**Sent Via: Email**

**Jeff Lustick**  
**222 Grand Avenue, Suite A**  
**Bellingham, WA 98225**  
**(360) 685-4221**

**Re: Recommendation for Whatcom County District Court position as Judge**

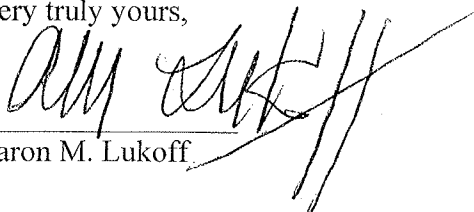
To whom it may concern,

I am writing today to recommend Jeff Lustick for the position of Judge that is opening up at the Whatcom County District Court. This position was held by the honorable David Grant. Over the past several years Jeff Lustick has acted as a Judge pro tem on the bench at Whatcom County District Court and he has always done a good job of being fair and thoughtful in this capacity.

I wholeheartedly endorse Jeff Lustick for this position as Judge. I believe he will do a good job of being fair to defendants and will make sure that their rights are upheld.

Should you have questions feel free to contact our office.

Very truly yours,

  
Aaron M. Lukoff



222 Grand Avenue, Suite A  
Bellingham, WA 98225  
360.685.4221  
www.Lustick.com



Jeffrey A. Lustick, Esq.  
Mark A. Kaiman, Esq.  
Adrian M. Madrone, Esq.

June 30, 2021

Whatcom County Council  
311 Grand Avenue Suite 105  
Bellingham, WA 98225

To the Whatcom County Council:

I am writing in support of Jeffrey A. Lustick's application for appointment to serve as Judge in Whatcom County District Court. I am Jeffrey's current law practice partner along with Mark Kaiman. Jeff hired me as an associate in 2010 and we became partners in 2014. I have worked very closely with Jeff for over a decade. We have co-chaired jury trials together and have worked on many complex and challenging cases. Over the past three years, I have spoken with Jeff often as he has been sitting as Judge *Pro Tem* in District Court. I have seen his thoughtfulness in this position, his desire to do the right thing, and his focus on treating all courtroom litigants with dignity and respect. He has taken this role quite seriously, and the feedback I have heard from prosecutors, defense attorneys, and court clerks has been overwhelmingly positive.

In my opinion, Jeffrey is the single candidate who can enter this position and be fully prepared to hit the ground running at full speed. Because he has been serving as judge *pro tem* for the last three years, he will require little time to familiarize himself with the role and the obligations of the job. His *pro tem* service has demonstrated that he already knows how to do the job well. This is important when considering a position on a court that operates at such high volume. The right candidate must not only be thoughtful, knowledgeable, and considerate, but must also be efficient and expeditious in their administration of justice. Jeffrey Lustick is this candidate.

I urge you to appoint Jeffrey A. Lustick as our next Judge in Whatcom County District Court. I am confident he will serve this community with integrity and dignity.

Please do not hesitate to contact me if you would like any further information.

Sincerely,

Adrian Martinez Madrone



June 30, 2021

In re: Letter of Recommendation for Judge Pro Tempore Jeff Lustick

Dear Whatcom County Council Members,

My name is Jason Smith and I am the owner of Law Offices of Jason Ans. Smith and North County Public Defense, PLLC. I am writing to express my support for Judge Jeff Lustick.

Judge Lustick possesses a voluminous knowledge of the law, a caring and compassionate temperament, and a sincere desire to connect with the attorneys and defendants who appear before him. Judge Lustick would be the ideal choice to fill any vacancy on the bench and would be uniquely qualified to serve on the Whatcom County District Court.

I have personally appeared before Judge Lustick numerous times throughout my career and I have always found him to be a fair, impartial and knowledgeable judicial officer. Judge Lustick considers issues from all sides and balances the rights of criminal defendants with the interests of the State in a manner consistent with the highest standards of the legal profession.

I am proud to endorse Judge Lustick in any bid he makes for a permanent judicial position. If you have any questions please don't hesitate to contact me.

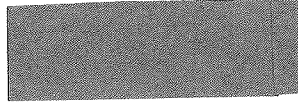
Sincerely,

Jason Ans. Smith

Owner – North County Public Defense, PLLC

July 3, 2021

Elliott Korona, JD



Whatcom County Council Members  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

VIA E-MAIL TRANSMISSION

Dear Honorable Councilmembers:

My name is Elliott Korona and I am writing you today to recommend the appointment of Jeffrey Lustick as the next Whatcom County District Court Judge.

I am an attorney admitted to the State Bar of Arizona and U.S. Supreme Court. I am a 2012 graduate of Phoenix School of Law, where I earned a Juris Doctor degree. I also graduated from Embry-Riddle Aeronautical University with a Bachelor of Science in Global Security and Intelligence Studies in May of 2008. I am presently serving as a Banking Secrecy Act/Anti Money Laundering ("BSA/AML") Deposits Line of Business Director for First Republic Bank in New York, New York. I have been employed in the banking industry within the BSA/AML field since October of 2012. I am also a volunteer legal officer for the United States Air Force Auxiliary, better known as the Civil Air Patrol ("CAP"), where I presently serve as the primary legal advisory to the state-level commander of the CAP's Ohio, New Hampshire, and Virginia Wings. I have served as a faculty member of for the CAP National Legal Officers College. I have an additional duty assignment as the assistant command legal advisor to the Great Lakes Region, which comprises the states of Michigan, Wisconsin, Illinois, Indiana, Kentucky, and Ohio. I started serving in CAP as a cadet in 2001, and presently hold the grade of Lieutenant Colonel.

I have known Jeffrey Lustick from his extensive volunteer legal work done on behalf the national command-level of the Civil Air Patrol. As a volunteer CAP legal officer, all Jeffrey's legal work is strictly *pro bono*, and is not compensated. Very few CAP volunteers ever have an opportunity to serve at this high level, and Jeffrey's service is a testament to the excellence in legal advice and assistance that he always provides. In role as a fellow regional command legal advisor, he has given sage and timely advice regarding the CAP's emergency service and disaster relief missions. He has participated on teams of other lawyers to solve important legal issues related to property use and personnel matters.

Since 2018, Jeffrey has served as a member of faculty for the CAP National Legal Officers College where he has instructed other volunteer legal officers on how to respond in cases of Federal Aviation Administration Enforcement Actions. He also authored a training program to teach other

volunteer CAP legal officers around the nation how to litigate personnel action and termination appeals before an administrative board. Jeffrey is widely revered as the legal subject-matter expert in the Civil Air Patrol in the field of adverse membership actions and litigated membership termination appeals. His work has been used in almost state level headquarters around the country. He is a highly reliable and sought-after legal expert.

I have also gotten to know Jeffrey personally during our mutual service in CAP, and I can tell you without a doubt, he is of the highest moral character. He is ethical; he possesses sound legal and practical judgement; and has the temperament needed to serve in this position with the court with care and compassion.

I am also aware that Jeffrey has frequently served (as in on a weekly basis) as a judge pro tempore in the court where he is applying to become a fulltime judge. If he is his selected, he will be giving up his part of an extremely successful and lucrative law firm in Bellingham, just to serve the public. That is a measure of his dedication to service, and it matches the level of commitment that Jeffrey puts into any community service he is providing.

In this day and age when there are so may outside influences on our decision makers, however, I urge the County Council to realize and place premium value on Jeffrey's current and recent service as a Judge Pro tempore and to place a great weight to Jeffrey's experience as a former prosecutor and great work as a defense counsel. Jeffrey is the most well-rounded attorney I have seen in years and his talents will make him a resounding success if appointed to the District Court bench fulltime.

It has been my pleasure recommending the appointment of Jeffrey Lustick for the position or District Court in Whatcom County. If you have any further questions, I may be reached at

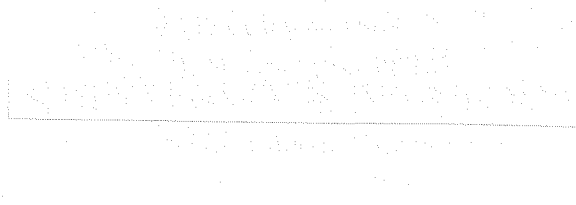
[REDACTED]

Very Truly Yours,

*Elliott Korona*

Elliott Korona, JD  
Attorney at Law

## **Rick H. Merrill**



Whatcom County Council Members  
311 Grand Ave, Suite #105  
Bellingham, WA 98255

RE: Jeffrey Lustick

Dear Council Members,

I am writing to support Mr. Lustick for appointment to the District Court Bench.

I am bumping up against being a Washington State Bar member for 30 years and close to 40 years working in the Washington State Courts.

I have known Mr. Lustick through the Bar and Court system for approximately 2 decades. I have watched him in court as an advocate for his client and for the last few years as a judicial officer.

Rarely have I seen a person that is more suited for the position of Judge then Mr. Lustick. In fact, as I sit here reflecting, I cannot think of anyone that would be a better fit.

He has always presented himself in respectful manner and has a superior command of the law, keeping abreast of current changes as the appellate courts direct us.

I believe Mr. Lustick to be a person that continuously strives to do his job to the best of his ability.

Judge Grant was a very well-respected judicial officer and I believe Mr. Lustick would continue that tradition.

Respectfully,

Frederick H. Merrill  
WSBA#21088

Nancy C. Ivarinen  
Attorney at Law

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June 14, 2021

TO: Whatcom County Council

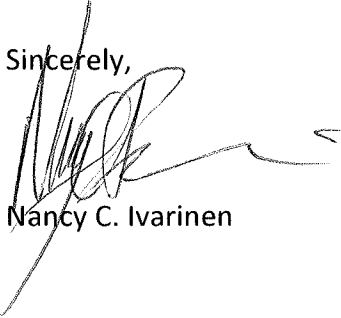
RE: District Court Judge

RECEIVED  
JUL 06 2021  
WHATCOM COUNTY  
COUNCIL

Jeff Lustick would be an excellent choice for appointment to the District Court bench.

Judicial temperament is critical when dealing with members of the public. District Court cases frequently involve *pro se* litigants who may not fully understand the court process or courtroom decorum. When I have been in his courtroom Jeff Lustick, as a pro tempore judge, has exhibited exceptional skill when dealing with difficult people. He listens to the parties and conducts his court hearings in a way that makes both sides feel like they had their day-in-court. Citizens' access to justice includes their opportunity to tell their side of the story to an impartial and knowledgeable judge. Jeff Lustick is that kind of judge.

Sincerely,



Nancy C. Ivarinen

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

RECEIVED

JUL 06 2021

WHATCOM COUNTY  
COUNCIL

RE: WHATCOM COUNTY DISTRICT COURT POS 1;  
Reference for appointment of Jeffrey Lustick.

To the honorable council members of Whatcom County:

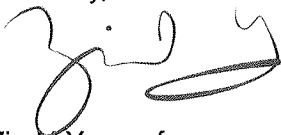
I would like to take a brief moment to explain why I have no reservations in recommending my friend, colleague, rival, mentor, and peer, Jeffrey Lustick, for appointment to the District Court position soon to be vacated by the Honorable Judge David Grant.

In the simple words of a dear friend who described Jeff, "he's one of us." He's one of the very well educated, very well trained, very experienced professionals who understands the common person's legal issues. And although many of us think of District Court as the home of misdemeanors and domestic violence cases, it's also the court where the average citizen will have their small claim heard or their speeding ticket contested or mitigated. It is the people's court much more than almost any other court in our State.

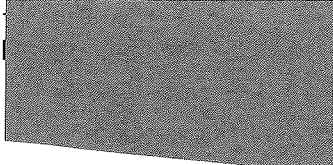
I have observed my colleague Jeff wear the prosecutor hat and the defense attorney hat and the judicial hat, (and also a western style hat very similar to the Honorable Judge Ira Uhrig). And, in every one of those rolls he has maintained a respect for the person on the opposite end and for those around him and has never let power or the authority granted to us by the constitution go to his head. More importantly, prior to writing this letter I had a chance to express to him that access to justice and race equity are both important to me and I was encouraged not only by the lack of resistance but the receptiveness that he expressed.

Jeff is not afraid to confront difficult issues, rise to the challenges and succeed where others may not. He has proven that in his career and his reputation among colleagues and peers. For these reasons and more, I am encouraging you to appoint Jeff Lustick for the position of District Court Judge.

Sincerely,



Ziad I Youssef,  
Attorney and Citizen in Whatcom County  
Founder of MyTrafficMan.NET







Serving Washington  
for Over 30 Years

2 Prospect St  
Bellingham, WA. 98225  
360-734-1111

July 5, 2021

Angela Luke  
2 Prospect Street  
Bellingham, WA

Whatcom County Members  
311 Grand Avenue #105  
Bellingham, WA. 98225

Dear County Councilors,

It is my pleasure to send you my highest recommendation for Jeff Lustick, who is applying for the vacant judge seat on the Whatcom County District Court. My name is Angela Luke, and I am a 40 year resident of Whatcom County. I am a small business owner and a licensed bonding and recovery agent. I regularly work in a position where I get to observe a lot of criminal court hearings, and I deal directly with individuals facing criminal charges as part of my job. I have known Jeff for over 20 years both as a member of the local bar and as a friend. I have also had opportunities to see Jeff serving as a substitute judge in district court, and I could not be happier to recommend him for this appointment.

When Jeff is serving as a fill-in judge, he is so professional and at ease in the job that it is impossible to tell that he is not already a full-time elected judge. Jeff is always a wise kind, and careful judge. It is his nature to speak very respectfully to all the litigants and he is extremely professional. Whenever he sets a pretrial bail or bond amount, he methodically and carefully goes through the required steps under the law of balancing community safety and ensuring that a bail is set at an appropriate limit. I can say from personal experience, that the defendants who appear before him when Jeff is serving as fill-in judge, uniformly respect him and know that he is very fair.

Jeff has also been very successful as a small business owner and private defense attorney. I knew him when he first launched his criminal defense law firm here in Bellingham and have enjoyed watching him build his firm into what it is today. Jeff also built a positive reputation all around Whatcom County as a reliable and trustworthy defense attorney. He is a quintessential trial attorney with a very fast wit and an encyclopedic knowledge of the law. No case was too big for him to handle, and whatever case he handled, turned out well because he always put the hard work in. It only makes sense that he would now be ready to take the next step forward and enter public service as a trial judge.

If you want the best person for this judge position, in my opinion, that is without question, Jeff Lustick. Whatcom County deserves a judge with the caliber of experience and legal and judicial qualifications that only Jeff has. Please feel free to contact me at ~~206.223.4500~~ if you have any questions.

Very Truly,

A handwritten signature in dark ink, appearing to read "Angela Luke". The signature is fluid and cursive, with the first name "Angela" being more prominent than the last name "Luke".

Angela Luke  
Bellingham, WA. 98225

July 6, 2021

Dear County Council Members:

My name is Corwin McCaig, and my family and I have been residents of Whatcom County since 2007. We presently live in Lynden, WA and are very involved in the aviation community. I am writing today to strongly recommend Jeffrey Lustick for the vacant judge position which the Council will soon be filling by appointment.

I am a commercial airline pilot, a flight instructor, and a corporate manager, and I recently started up two new aviation companies in Whatcom County in the past two years. One of these aviation companies is Lynden Aviation Services, LLC and the other is CK Aviation Holdings, LLC. All my business is local and is within the greater Whatcom County area, and I make a point of buying in our local community.


I have known Jeff Lustick since 2016. When I needed business legal advice, I sought out Jeffrey's legal counsel because he is one of the foremost aviation law attorneys in the state. He is also well versed in civil litigation and extremely knowledgeable when it comes to advising businesses on how to avoid lawsuits. Jeff even made it possible for my companies to establish important local connections which have helped us grow and flourish in the business community. During all my dealings with Jeff, I always found him to have an authentic and real character with an uncompromising commitment to the law. Thanks in part to his great and timely advice, my companies are now on a firm footing and are moving forward financially.

Jeff not only has an impressive resume and list of achievements, service as a military and federal prosecutor and recent service as a part-time judge, but he also has what very few others can offer. He has a rare ability to determine a great pathway forward for a commonsense solution to any problem. Moreover, the intangible talents that Jeff possesses only come from experience and empathy within. He has a well-defined sense of integrity, a strong character, and a wealth of real-world practical assistance where it really matters.

Council members do not be tricked into thinking that experience, qualifications, and a strong character are not needed to be a judge. They are dearly needed! As a small business owner and resident of this treasured community, I want judges in this county who have "been there and done that" like Jeff has. The entire community benefits when a person with Jeff's background and positive spirit moves into an important job like being a district judge. I for one, am looking forward to seeing Jeff move on to further serve our community in such a critical and important judicial role. Jeff has proven his commitment and has the experience we would like to see in such in our judicial system.

Please contact me at:  if you would like any further information.

Best Regards,



Corwin McCaig

Lynden, WA

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

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



RECEIVED  
JUN 28 2021  
WHATCOM COUNTY  
COUNCIL

COUNCILMEMBERS  
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## APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name: Melissa Nelson

Street/Mailing Address: [REDACTED]

City/State: [REDACTED] Zip Code: [REDACTED]

Day Telephone: [REDACTED] Evening Telephone: [REDACTED]

Fax Number: [REDACTED] E-mail Address: [REDACTED]

**A. Qualifications:** Per RCW 3.34.060, to be eligible to serve as a district court judge, a person must:

1. Be a registered voter of the district court district and electoral district, if any; and
2. Be a lawyer admitted to practice law in the state of Washington.

Are you a registered voter of Whatcom County? (x) Yes ( ) No

Are you a lawyer admitted to practice law in the state of Washington? (x) Yes ( ) No

**B. Resume:** A resume up to two (single-sided) pages in length may be attached to address the following: **See attached.**

- Occupation (if retired, please indicate occupation prior to retirement).
- Professional/Community Activities.
- Education.
- Qualifications related to the position of Whatcom County District Court Judge.

**C. References: See attached.**

- Please provide three letters of reference.

**D. Questions:** No more than two sheets of paper (single-sided) may be attached to address the following: **See attached.**


1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.
2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?

3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.
4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.

**E. Essay:** Please describe your familiarity with the current problems, litigation, rules, regulations, and policies of the Whatcom County District Court Office. Provide a one-page (single-side) summary of your top three concerns regarding the above issues. **See attached.**

**F. Certification:** I certify that this application and any other submitted materials contain no misrepresentations or falsifications and that the information given by me is true and complete. I hereby authorize Whatcom County to verify or supplement information given by me in this application and any other submitted materials. I hereby release any and all of my employers or references from any liability or claim that I might have as a result of disclosure of information. I further understand that should investigation at any time disclose any misrepresentation or falsification, I may be disqualified from appointment to the office of Whatcom County District Court Judge.

**As a candidate for appointment as District Court Judge to fill the vacancy, I understand the above information and any other materials submitted with this application will be available to the County Council, County Executive, any County department, and the public.**

Signature of applicant:  Date: 6/27/21

***Applications must be submitted to the Clerk of the Whatcom County Council by 4:00 p.m. on June 28, 2021***

Your application may be no more than thirteen single-sided pages total, composed of the following maximum number of pages (all single-sided).

Application	2 pages
Resume	2 pages
Reference Letters	6 pages
Question Responses	2 pages
Essay	1 page

## **MELISSA L. NELSON**

### **JUDICIAL EXPERIENCE**

Judge Pro Tem, Whatcom County District Court, 2005-Present  
Judge Pro Tem, Bellingham Municipal Court, 2010-2018  
Commissioner Pro Tem, Whatcom County Superior Court, 2011-2016

### **PROFESSIONAL EXPERIENCE**

**Senior Counsel and Assistant Attorney General, 1990-Present**  
Washington State Attorney General's Office, Bellingham Regional Services Office

**Associate Attorney, 1988-1990**  
Brett & Dugert, Bellingham, WA

**Judicial Law Clerk, 1987-1988**  
The Honorable Judge John A. Petrich  
Washington State Court of Appeals, Division II

### **EDUCATION**

**Santa Clara University School of Law, J.D. 1987**  
Top 15% of Class; Dean's list; Comments Editor, Santa Clara Law Review

**Seattle Pacific University, B.A. 1984**  
Magna Cum Laude

### **EXPERIENCE WITHIN THE ATTORNEY GENERAL'S OFFICE**

#### **General Counsel to Western Washington University, 2018-present**

- Full time legal representative to Western Board of Trustees, President, Provost, Vice Presidents and Directors
- Responsible for litigation and client advice in multiple areas of law, including risk management, personnel, discrimination, ADA, Title IX, student discipline, contracts, public records and open public meetings
- Member of Western's Covid-19 Incident Management Team

#### **Litigation—1990-2018**

- Tried over 100 juvenile dependency and termination of parental rights cases in four counties; efficient high-volume litigator; experienced in alternative dispute resolution; recognized as state expert in juvenile litigation
- Five years as lead attorney in Bellingham; trained staff and attorneys and coordinated juvenile litigation
- Ten years as team member of the Whatcom County Family Treatment Court; participated in planning, policy development and implementation of the therapeutic court; attended National Drug Court implementation training
- 2005-2007 member of Torts Division, defending multiple state agencies in civil litigation, including jury trials

#### **Appeals—2010-2018**

- Regional Services Appellate Coordinator responsible for seven Division offices
- Primary editor for all juvenile appellate briefs arising out of the Division, ensured that briefs and oral arguments were persuasive, timely, and consistent with statewide legal positions
- Trained and mentored new and experienced attorneys in appellate writing and oral argument
- Briefed and argued multiple appeals in the Court of Appeals
- First chair on two successful Washington State Supreme Court cases



## **Administrative Law**

- Three years as team leader responsible for implied consent appeals and employment security judicial review cases
- Ten years representing the Department of Licensing and Department of Employment Security in superior court appeals
- Ten years representing the Department of Social and Health Services in day care and childcare center licensing administrative hearings

## **Additional Higher Education**

- Eight years General Counsel for Whatcom Community College; three years General Counsel for Skagit Valley College; three years General Counsel for Bellingham Technical College

## **OTHER EXPERIENCE**

- Past member of the leadership team of the Whatcom County Domestic Violence and Child Maltreatment Coordinated Response Committee
- 2001 Attorney General Conference Committee, Co-Chair 1999 and 2006 Regional Services Conference Committees
- Presenter at multiple trainings regarding appeals, trial practice, and therapeutic courts
- Faculty at Attorney General Basic Litigation training

## **HONORS**

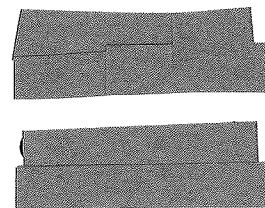
- 2021 President's Team Recognition Award, WWU Covid-19 Incident Management Team
- 2016-2020 Performance Plus Award
- 2015 Senior Counsel Award
- 2013 Attorney General's Office Excellence Award Winner
- 2005 Recognition Award from DSHS Children's Administration
- 2001 Commendation Letter from Attorney General Christine Gregoire
- 1999 Letter of Recognition from Governor Gary Locke
- 1998 Outstanding Employee/Team Award

## **COMMUNITY ACTIVITIES**

- Past President, Whatcom Women Lawyers
- Past board member, Whatcom County Humane Society
- Past WSBA Young Lawyers Network Representative
- YMCA Mock Trial Competition organizer and judge
- Past member of WCBA Law Related Education and Judicial Selection Committees
- Law Day participant
- 1999-2003 Sehome High School assistant cross country and track coach
- Member of Brigid Collins Family Support Center founding advisory board
- YMCA youth soccer and T-ball coach
- Northern Heights Elementary School PTA member and school volunteer
- WFC Rangers soccer team manager

## **REFERENCES**

Bob Ferguson, Attorney General  
Hon. David Grant, Whatcom County District Court  
Melynda Huskey, Ph.D., Vice President, Enrollment and Student Services,  
Western Washington University  
Sarah Reyes, Bellingham Office Section Chief



## Application for Appointment as Whatcom County District Court Judge

Melissa Nelson

### Question D.1

In 2005, the first time I sat as a pro tem judge in District Court, I felt a weight of responsibility, but also the joy of opportunity. The responsibility to act with the utmost integrity, to listen carefully to each person and to treat them fairly and with dignity. The opportunity to use my experience, analytical skills, intelligence and compassion to impact the both the community and individuals in a positive way.

The many professional challenges and opportunities I have faced across the ensuing 16 years, both as a pro tem judge and as an Assistant Attorney General, have taught me a great deal. Time has only enhanced my vision for how a District Court Judge can impact our community. Today, as a candidate for appointment, I bring forward my 33 years of public service legal practice, combining litigation, appeals and advising Western, the second-largest employer in Whatcom County. I understand and value the duty to provide ethical and just treatment to all. I also bring forward the energy and enthusiasm to develop creative solutions to problems, but I respect the practices that are already working. I will bring an independent, efficient, practical and compassionate voice to the bench.

Judges make decisions that truly impact people's lives. Making such decisions requires a deep sense of fairness, humility and responsibility. I want to carry forward these traits, my depth of experience and my devotion to public service to serve the people of Whatcom County as the next District Court Judge.

District Court appeals to my practical nature. It is often the primary entry point of Whatcom County citizens into the judicial system. Some may enter because they received speeding tickets, fished without a license, had disputes with neighbors or were victims of harassment. Others enter when mental illness results in poor choices leading to trespass, shoplifting or fights. Another group arrives due to substance use, from under-aged drinkers to people with serious addiction issues, whose actions place the community at risk. Still others desire to resolve complex civil cases.

I bring to the court a perspective that is highly relevant, but different from that of prosecutors and defense attorneys. The parents and families I worked with for over 25 years in the dependency court system face the same issues as many District Court litigants. Their lives are impacted by substance abuse, mental illness, violence and poverty. As an Assistant Attorney General, a large portion of my work involved collaborative efforts with people across the aisle to develop and implement court ordered service plans addressing the issues that were endangering children. But rather than resolving criminal cases, our task involved identifying and remediating safety and behavioral issues so that families could be reunited. My experience puts me in the position to enable District Court to move forward with County's goals of reduced recidivism and incarceration while creatively exploring ideas that maintain accountability and victim safety, including therapeutic interventions such as treatment courts.

As a judge, I want every person to be heard, feel heard, and believe they have meaningful access to justice. Access to justice requires the Court be aware of and responsive to the needs of the disabled. It means attention to language and reading ability. Victims need safe access to the courthouse or alternative ways to appear. Offenders need accountability, but that accountability must include tailored services, including alternatives to incarceration that will assist in rehabilitation. The court must remain mindful that often less advantaged people are disproportionately impacted by multiple court appearances and sentences imposed. I want to ensure that every person receives just and equal treatment by the Court and their constitutional rights are honored.

Representing Western has immersed me in a wide range of complex legal issues, akin to representing a small city. Working with such a large, diverse client requires clarity, patience, flexibility and humor. My work on issues such as the Covid-19 pandemic response, the Americans with Disabilities Act, laws against discrimination, and human resources is particularly relevant to the management of the Court.

Whatcom County District Court is efficiently run and well-placed to continue promoting the County's goals of public safety, justice, fiscal responsibility, harm reduction, healing and prevention. The Court also faces challenges as it responds to lingering Covid-19 issues, works to improve access for disabled individuals and continues to seek evidence-based solutions for issues relating to substance abuse, violence and mental illness. Finally, although the past and present judges and commissioners have done an outstanding job with the Court's work, women and other diverse groups are notably absent from the District Court bench.

My high level of combined experience inside and outside of the courtroom positions me well to assist the Court as it moves forward with continued efficiencies and new challenges. I have the intelligence, grit, optimism, and creativity to continue the Court's excellent work and assist in effecting the changes necessary to navigate the complex and critical times facing Whatcom County.

#### Question D.2

Yes. I intend to run for the office of District Court Judge in the next general election.

#### Question D.3

I have never been an employee, agent, consultant, or officer of any business or agency that has or anticipates having a business relationship with Whatcom County. I have received payment from the County as a District Court Pro Tem Judge and a Superior Court Pro Tem Commissioner.

#### Question D.4.

I have never had any type of complaint against me by the State Bar Association or the Commission on Judicial Conduct.

District Court has a complex management structure. The Court's authority is created by the legislature while the responsibilities of its judges and staff, including hiring and oversight authority, are defined by the State Supreme Court. However, the same staff are Whatcom County employees subject to a collective bargaining agreement. Administrators are exempt Whatcom County employees. In practice, personnel issues relating to staff are handled by the Whatcom County Human Resources Office. Just like other County departments, the District Court has a long record of working collaboratively with Human Resources and I anticipate that continuing in the future.

My sixteen years serving the Court as a pro tem judge have familiarized me with its day-to-day operations, policies and practices. During this time, I have seen the Court evolve and improve its practices by adding text and phone reminders for appointments and court dates, alcohol monitoring bracelets, and the expanded use of jail alternatives. I understand and laud the goals and purposes behind these improved technologies.

When identifying issues facing an organization, I find it essential to speak to the people doing the work. Three primary issues arose in my conversations with people who manage and interact with the Court: Covid-19 recovery, administrative impacts from new legislation and information system upgrades, and the need for continued improvement in accessibility.

The Court administration, staff and Probation Department are highly efficient and effective. Despite the pandemic-related limitations, the District Court staff have remained current in most of their work. Jury trials, however, were paused for fifteen months. As of May 25, 2021, the Court resumed one jury trial per week, half of its usual capacity. Governmental lifting of Covid-19 restrictions appears imminent, but it is vital that the Council appoint a judge qualified to step in and hear trials on day one.

District Court Probation has also been deeply impacted by pandemic restrictions. Probationers are behind in sentencing requirements due to unavailability of many direct services. New people are arriving for pretrial monitoring and probation, possibly suffering from more severe mental health or substance abuse issues due to the pandemic. The Probation Department will be challenged with increased workload at a time when they are recovering from an unprecedented year and processing recent and pending retirements.

In 2021, the Legislature passed major changes in the way the Court addresses victims of domestic violence, sexual assault and harassment. A crucial safety improvement allows petitioners to appear remotely commencing July 25, 2021. Covid has provided an entry into Zoom and other technologies, but remote hearings are more time and resource intensive. My work advising Western as they moved to fully remote operations would enable me to help the Court evaluate and improve operational efficiencies relating to on-line hearings. I also want to explore collaboration with County libraries, the Northwest Justice Project and DVSAS to establish safe log-in spaces for petitioners. The legislature also passed a comprehensive bill relating to the *Blake* Supreme Court decision. Simple possession is now a misdemeanor and District Court may soon see an influx of these charges. Beneficially, this legislation opens the door to research and funding focused on reducing barriers to accessing behavioral health and recovery support systems for people with untreated substance abuse. I am especially inspired that it includes money to fund grants for therapeutic courts within district and municipal courts. One of my goals is to re-start a therapeutic domestic violence docket and to explore establishing a sobriety court for DUI defendants. Mental Health Court is already strong, and I would welcome the opportunity to serve there. The challenge for Court administration will be adjusting to and processing these changes, while facing state-mandated upgrades to its information systems.

Finally, the Department of Justice settlement relating to accommodations for the deaf and hard of hearing raises the specter on County-wide ADA issues. Citizens will be looking for new areas to challenge. My work advising the Office of Civil Rights and Title IX Compliance at Western positions me particularly well to assist the Court in the complexities of ADA compliance.



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**  
**1125 Washington Street SE – PO Box 40100 – Olympia, WA 98504-0100**

June 21, 2021

Whatcom County Council  
Attn: Dana Brown-Davis, Clerk  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225-4038

**RE: Reference for Melissa L. Nelson, Applicant for Whatcom County District Court**

Dear Councilmembers:

This letter is written in support of Melissa Nelson's appointment to the Whatcom County District Court.

Melissa joined the Attorney General's Office (AGO) in 1990, and has dedicated her career to serving the people of Whatcom, Skagit, Island, and San Juan Counties. She is a skilled attorney with experience in a broad range of subject matters, and has been selected as a Judge or Commissioner Pro Tempore by three different courts.

Much of Melissa's legal practice has been focused on child abuse and neglect cases in Whatcom County. This work is driven by her passion and empathy for child victims and their parents, as well as her devotion to the community in which she works and resides.

One of many examples of Melissa's commitment to building community and improving the lives of Washingtonians is her involvement with Whatcom County's Family Treatment Court (FTC). She was part of the team that developed and implemented FTC as a grass roots volunteer effort with no funding. Years later, the program is fully funded and going strong. It promotes stable, long-term family reunification by helping parents address substance abuse issues, improve their parenting skills, and access services.

District courts handle misdemeanor and gross misdemeanor criminal cases, as well as civil and small claims matters. Many of the psychological issues are similar with the population Melissa has served in the dependency arena. This includes substance abuse and DUI cases, domestic violence and child abuse, mental illness, and poverty-related issues such as lack of housing and reliable transportation and the inability to pay fines. Melissa's experience with Family Treatment Court demonstrates her commitment to therapeutic options and alternatives to incarceration, as well as her ability to build a program from the ground up.

# ATTORNEY GENERAL OF WASHINGTON

Whatcom County Council  
June 21, 2021  
Page 2

In addition to Melissa's expertise in juvenile dependency and termination matters, she serves as general counsel to Western Washington University and provides legal advice on subjects including contracts, compliance with state and federal law, labor and employment issues, the Public Records and Open Public Meetings Acts and Title IX compliance. In all matters, she is dedicated to providing her clients with sound legal advice and diligent representation.

Melissa is also a seasoned appellate attorney with experience in brief writing and oral arguments. She works and interacts regularly with our Solicitor General's Office, which assists the AGO in preparing and presenting appellate cases in state and federal courts.

Melissa is well liked and respected by her supervisors and colleagues, and is the recipient of numerous accolades including an AGO Excellence Award for achievement, professional conduct, client and customer service, leadership, initiative, and innovation. In 2015, she received the "Senior Counsel" designation, which recognizes the significant and important contributions of senior attorneys in our office. Melissa is widely regarded as an excellent writer, critical thinker, and consummate professional.

Beyond her career and professional achievements, Melissa is actively engaged in her community, which includes service as past president of Washington Women Lawyers, as an organizer and judge for the YMCA Mock Trial Competition, and as a past member of the Whatcom County Bar Association's Law Related Education Committee.

We are confident that Melissa has the intellect, temperament, and integrity required for this important position. She would bring a valuable and respected voice to the Whatcom County bench.

Thank you for your consideration. If we can provide additional information, please contact us at (360) 664-9083.

Sincerely,



BOB FERGUSON  
Attorney General



NOAH G. PURCELL  
Solicitor General

RWF/NGP/jlg

**WHATCOM COUNTY  
DISTRICT COURT**

Whatcom County Courthouse  
311 Grand Avenue, Suite 401  
Bellingham, WA 98225-4081

**BRUCE VANGLUBT**  
Administrator



**MATTHEW S. ELICH**  
**DAVID M. GRANT**  
Judges

**ANTHONY S. PARISE**  
Commissioner

June 24, 2021

Whatcom County Council  
311 Grand Ave., Suite  
Bellingham, WA 98225

Dear Councilmembers:

I write to recommend Melissa Nelson for appointment to the District Court bench. Melissa is no stranger; I've known her personally and professionally for over twenty years. I know she would be a great fit. She has a wonderfully diverse skill set and professional resume. Equally important, she is a caring, intelligent and open-minded individual. She is an exceptionally skilled and knowledgeable attorney who's well-versed in the law. She's a critical thinker with a good sense of justice. She is a person of integrity. One who is ethical and strives to do what is right for individuals and the community as a whole. Essentially, she has all the right tools and attributes to be a great District Court judge.

The District Court is more than a traffic court. The Court handles a wide array of cases both criminal and civil in nature. Civil cases can range from small claims up to \$10,000 with parties representing themselves to full-blown jury trials with claims up to \$100,000 in value. These civil cases can present issues such as personal injury, breach of contract, damages to personal property and even debt collection and garnishment. In addition to these actions for monetary awards, the District Court is a place people can turn for protection from acts of harassment, domestic violence or sexual assault. On the criminal side of the spectrum, the Court handles all the misdemeanor and gross misdemeanor criminal prosecutions (punishable by up to 364 days of incarceration) pursued by the Whatcom County Prosecutor's Office. The Court also staffs and manages a Probation Department that provides pretrial and post-conviction supervision services for the Court and the cities of Bellingham, Lynden, Sumas, Everson, and Blaine. When combined, the Clerk's Office and Probation employ 32 people. As you may know from the recent events surrounding the Bellingham Municipal Court, judicial oversight of court staff is an important facet of being a judge.

Being a judge is much more than presiding over hearings and trials, and issuing rulings. The job requires not only a command of both civil and criminal law, but an ability to manage people. When on the bench the judge must manage the courtroom and the people who come before the Court to assure their voices and concerns are heard and addressed in a fair, just and meaningful way. Ms. Nelson has already demonstrated an ability to do all that. When off the bench, the judge must help manage the professional and clerical staff members of the Court and Probation Department. Melissa can do that. She brings to the table an impressive array of managerial skills and knowledge. She has years of experience counseling managers of large public institutions in just such affairs. She stands prepared and ready to assist Mr. Van Glubt in working with the staff of the court and probation from a managerial perspective.

Ms. Nelson has the disposition and interpersonal skills needed to properly manage a courtroom. In District Court we retain electronic video records of all our proceedings. As a judge I can replay any proceeding of the Court whenever I wish. Across the years, I've had the luxury of observing Melissa and all the other *pro tempore* judges employed by the District Court, whether I was present in the courtroom or not. Doing this has been a part of my role as presiding judge the past 12 years. I have a good feel for her work and the work of others on the bench. I've always found myself impressed with her courtroom demeanor and performance. Proceedings were always conducted fairly, competently and without bias or prejudice. She was decisive and yet patient, compassionate and respectful to all. She demonstrated a clear understanding



of the issues and the law surrounding the cases before her. Moreover, she was sensitive to and able to accommodate the needs of those who appeared in court without the benefit of counsel in order to make sure their matters were fairly heard.

From her work as an appellate attorney, Melissa understands the importance and methodology of properly recording judicial decisions in and out of the courtroom. It's a question of accountability and necessary for appellate purposes. As a judge she'd be called upon to do this from the bench as trials and hearings unfold before her, and while off the bench in the operation of the Court for case management purposes. Her understanding of appellate work and proper managerial process will empower her to ensure the records of her proceedings will meet the needs of all parties who appear before her and the public. From an appellate perspective, it's a valuable skill to bring to the bench; a skill she already possesses.

One shouldn't overlook Ms. Nelson's 27 years of litigation experience. She's handled large scale and complex civil litigation. She's helped train staff attorneys. She became an expert in litigating juvenile dependency and parental rights cases. Her practical knowledge of the rules of evidence, criminal and civil procedure puts her in a great position to handle evidentiary and procedural questions as a District Court judge. Moreover, given her experience, she is certainly well suited to assist from the bench in the professional development of the many new attorneys who routinely appear in the District Court.

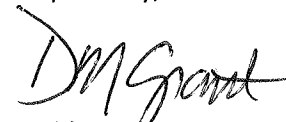
I am familiar with the personal and professional demands of the office. I have a sense of what more I wished I could have brought to the job myself. I believe Ms. Nelson can readily fill my shoes and meet the needs of the Court now and in the future. Given her track record for developing new court programing, I have no doubt that she'll advance the structure and offerings of the Court to better meet the current challenges and changing needs of the public and judicial system. She'll bring a renewed vigor and vision to the court. If she's on the bench, you'll likely see a more robust approach in the Court's response to the many issues surrounding domestic violence and the processing of civil protection orders. She will champion greater access to the Court. I'm confident she'd be an excellent judge.

Speaking of my thoughts, I think it is important for you to understand that the thoughts expressed in this letter are my own. They should not be implied to the Court itself, other judicial officers of it, or staff. However, having said that, I am pleased to say Melissa has always received great reviews from staff. I am confident she would be readily accepted as a judge and welcomed by Court and Probation staff. She has always received praise as a *pro tem* judge, and I'd expect nothing different in the future.

In sum, Ms. Nelson has the breadth of knowledge and experience needed to excel on the bench. With her energy, skill set, personality, sense of justice, personal and professional ethics, as well as her visions for the Court, and her desire to serve the public, I am convinced Melissa would do wonderfully both on the bench and in the management of the Court. I would feel honored to have her replace me.

Please don't hesitate to contact me should you have any questions or need for additional information or insight. While I'll be unemployed beginning July 1<sup>st</sup>, Mr. Bruce Van Glubt has my personal contact information and can share that with you as needed.

Respectfully,

A handwritten signature in black ink, appearing to read "DM Grant", written in a cursive, flowing style.

David M. Grant

OM 445, MS 9001  
516 High Street  
Bellingham, Washington 98225  
(360) 650-3839  
www.wvu.edu

23 June 2021

Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

Dear Council Members:

I write in support of Melissa Nelson's application for District Court Judge. Melissa has been the lead Assistant Attorney General for Western Washington University for the past three years, and the nature of my work as Vice President for Enrollment and Student Services has kept us in very close contact during that time. I suspect that a week has not gone by since December of 2018 that we have not talked—and there have been weeks where we talked several times each day. I have come to rely on Melissa's legal advice during our 3 years as colleagues. Student Affairs is a never-ending source of complicated and challenging legal matters—sometimes tragic, sometimes humorous, often highly implausible. Melissa has been unflappable in matters as serious as murder or rape, and as wearisome as how best to reconcile two apparently contradictory clauses in a Federal financial aid regulation. She brings a calm and interested attitude to every problem I present. Her legal advice is always presented with clarity, intelligence, and deep engagement.

I have watched her navigate extremely challenging situations involving many internal and external constituents, and been envious of her ability to maintain a clear position on the law without unnecessarily irritating colleagues who wanted to hear something different. Her ability to articulate and carefully re-articulate a position to powerful colleagues pressuring her for a change she isn't prepared to advise is admirable. She is, in a word, judicious.

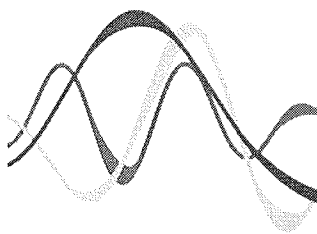
Melissa is also highly principled, a quality absolutely essential in any judicial appointment. I have found her to be ethical and humane in her professional role, as well as a fine colleague. Despite the extreme pressure of COVID, rapidly changing federal directives, complex interactions of Federal and state law, and the very wide range of legal issues on which she advised us, Melissa met every deadline, answered every question, and found time to be an encouraging leader on the institutional COVID-19 response team. Her expertise in the full range of legal questions confronting us has been invaluable.

I believe she would bring to the bench the same qualities she has brought to our work together: a wide-ranging intelligence, a compassionate understanding of complex human problems, and an unflinching commitment to the ethical practice of the law. I strongly recommend her, despite the gap her elevation to the bench would leave in my daily work. And if I can answer any questions, or provide any other information, please don't hesitate to contact me, either at [REDACTED] or on my mobile at [REDACTED]

Sincerely,



Melynda Huskey, Ph.D.  
Vice President, Enrollment and Student Services  
Western Washington University



EVANFREEDMAN<sup>PhD, ABPP</sup>  
Board Certified Forensic Psychologist

Forensic Mental Health Evaluations for Courts, Institutions, and Legal Professionals

06/23/21

Dear County Council Member,

I am writing in support of Melissa Nelson as Judge for the Whatcom County District Court.

I became acquainted with Ms. Nelson in my role as a Forensic Psychologist, testifying as an Expert Witness in Child Dependency cases. I was immediately impressed with Ms. Nelson's intelligence, command of the law, and her competency as a litigator. In preparing for cases I noted her focus on detail, willingness to learn, and ability to quickly understand complex psycho-legal issues. In her direct examination she asked clear and pointed questions, designed to support her case without dramatics or exaggeration. Her treatment of parents accused of having abused or neglected their children was both fair and simultaneously protective of the vulnerable children involved in these difficult cases.

Over the ensuing 20 years I have shared cases and consulted on legal matters with Ms. Nelson on numerous occasions. During this time I have observed her balanced and consistent temperament, her commitment to ethical practice, and her ability to do the right thing, even when her position may be difficult or unpopular. She has an exceptional sensitivity to the needs and challenges of marginalized populations, be those victims of domestic violence, those with substance use problems, or those with chronic mental illness. In my experience working with dozens of attorneys, it is rare to find a potential jurist with such compassion and intellectual clarity.

The Whatcom County District Court would be fortunate to have its first female jurist in Ms. Nelson. She will bring an objective and decisive presence to the bench. She will improve access to justice for all citizens of Whatcom County. In a time of social upheaval, global pandemic, and societal transformation, Ms. Nelson is exactly the type of person who should be providing legal opinions for our County.

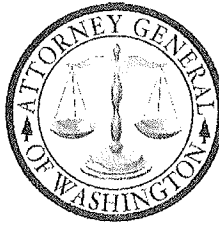
Sincerely,

Evan B. Freedman, PhD, ABPP

Licensed Psychologist #2306

Board Certified in Forensic Psychology, American Board of Professional Psychology





**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**  
**1125 Washington Street SE – PO Box 40100 – Olympia, WA 98504-0100**

June 21, 2021

RECEIVED

JUN 24 2021

WHATCOM COUNTY  
COUNCIL

Whatcom County Council  
Attn: Dana Brown-Davis, Clerk  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225-4038

**RE: Reference for Melissa L. Nelson, Applicant for Whatcom County District Court**

Dear Councilmembers:

This letter is written in support of Melissa Nelson's appointment to the Whatcom County District Court.

Melissa joined the Attorney General's Office (AGO) in 1990, and has dedicated her career to serving the people of Whatcom, Skagit, Island, and San Juan Counties. She is a skilled attorney with experience in a broad range of subject matters, and has been selected as a Judge or Commissioner Pro Tempore by three different courts.

Much of Melissa's legal practice has been focused on child abuse and neglect cases in Whatcom County. This work is driven by her passion and empathy for child victims and their parents, as well as her devotion to the community in which she works and resides.

One of many examples of Melissa's commitment to building community and improving the lives of Washingtonians is her involvement with Whatcom County's Family Treatment Court (FTC). She was part of the team that developed and implemented FTC as a grass roots volunteer effort with no funding. Years later, the program is fully funded and going strong. It promotes stable, long-term family reunification by helping parents address substance abuse issues, improve their parenting skills, and access services.

District courts handle misdemeanor and gross misdemeanor criminal cases, as well as civil and small claims matters. Many of the psychological issues are similar with the population Melissa has served in the dependency arena. This includes substance abuse and DUI cases, domestic violence and child abuse, mental illness, and poverty-related issues such as lack of housing and reliable transportation and the inability to pay fines. Melissa's experience with Family Treatment Court demonstrates her commitment to therapeutic options and alternatives to incarceration, as well as her ability to build a program from the ground up.

# ATTORNEY GENERAL OF WASHINGTON

Whatcom County Council

June 21, 2021

Page 2

In addition to Melissa's expertise in juvenile dependency and termination matters, she serves as general counsel to Western Washington University and provides legal advice on subjects including contracts, compliance with state and federal law, labor and employment issues, the Public Records and Open Public Meetings Acts and Title IX compliance. In all matters, she is dedicated to providing her clients with sound legal advice and diligent representation.

Melissa is also a seasoned appellate attorney with experience in brief writing and oral arguments. She works and interacts regularly with our Solicitor General's Office, which assists the AGO in preparing and presenting appellate cases in state and federal courts.

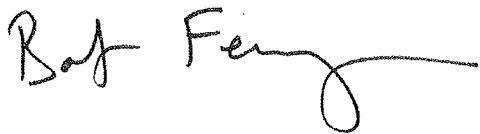
Melissa is well liked and respected by her supervisors and colleagues, and is the recipient of numerous accolades including an AGO Excellence Award for achievement, professional conduct, client and customer service, leadership, initiative, and innovation. In 2015, she received the "Senior Counsel" designation, which recognizes the significant and important contributions of senior attorneys in our office. Melissa is widely regarded as an excellent writer, critical thinker, and consummate professional.

Beyond her career and professional achievements, Melissa is actively engaged in her community, which includes service as past president of Washington Women Lawyers, as an organizer and judge for the YMCA Mock Trial Competition, and as a past member of the Whatcom County Bar Association's Law Related Education Committee.

We are confident that Melissa has the intellect, temperament, and integrity required for this important position. She would bring a valuable and respected voice to the Whatcom County bench.

Thank you for your consideration. If we can provide additional information, please contact us at (360) 664-9083.

Sincerely,



BOB FERGUSON  
Attorney General



NOAH G. PURCELL  
Solicitor General

RWF/NGP/jlg

## Monica Rouse

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**From:** riseandfish \_nish <[REDACTED]>  
**Sent:** Monday, June 28, 2021 8:57 PM  
**To:** Council; Rud Browne; Todd Donovan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Barry Buchanan; Carol Frazey  
**Subject:** Letter of Recommendation for Melissa Nelson

Dear County Council,

I apologize for the late submission, and respectfully ask that you consider this letter. I am writing in full support of Melissa Nelson's appointment for District Court Judge. I currently work with Melissa. Previously, I served as the interim vice provost for equal opportunity and employment diversity at Western Washington University and benefited immensely from Melissa's advice while serving in that office. During that time, she provided me with outstanding legal service and advice on the wide-ranging issues my office manages. While her legal acumen and professionalism alone are enough to elevate her to the top of the list, I want to highlight her commitment to equal opportunity, diversity, and inclusion, which I believe make her an ideal candidate for the bench. One particular example that comes to mind was developing a procedure to satisfy a critical accessibility issue. Melissa's sage guidance provided timely support and insight so that my office could respond to an emerging issue regarding technology and accessibility that directly impacted students and faculty.

Furthermore, as a former military trial attorney, I understand the importance of having a judge that is fair, neutral, and impartial, not just for the client's sake, but for the integrity of the entire judicial system. While she has served Western, I have seen firsthand how Melissa approaches legal issues with an open mind, and I have benefited immensely from her awareness of the impact biases and preconceived notions have on the integrity and legitimacy of policies and processes. As a result, her advice and counsel are steeped in the principles of ensuring access and due process regardless of one's identity or background. I have full confidence that Melissa would serve as a judge in a fair and equitable manner and that she would ensure access to all who come before her.

I am more than happy to further discuss Melissa's commitment to diversity, equity, and inclusion as well as her qualifications for this esteemed office. Please do not hesitate to contact me at [REDACTED] should you wish to do so. Thank you.

Sincerely,  
Drew Nishiyama

## Monica Rouse

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**From:** Anne Egeler [REDACTED]  
**Sent:** Wednesday, June 23, 2021 8:48 PM  
**To:** Council; Rud Browne; Todd Donovan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Barry Buchanan; Carol Frazey  
**Subject:** Whatcom County District Court Judicial Applicant Melissa Nelson

Good evening,

I'm writing to express my strong support for Whatcom County District Court Judicial Applicant Melissa Nelson. I worked with Melissa for many years while I was a Deputy Solicitor General for the Washington Attorney General's Office. Melissa is a leader in the Attorney General's Office, widely respected for her expansive legal acumen and work ethic. I know with certainty that she is well equipped for the intellectual challenge of being a district court judge.

But there's an additional reason that I'm reaching out. After decades of working for the Attorney General's Office, I accepted a position as a Deputy Prosecuting Attorney. In this role, I see each day how critically important it is that our judges be not just smart, but also mindful of the racial, economic, and ethnic differences in our communities. Melissa has built her reputation on fighting for the rights of those most in need of protection. And she had been equally tenacious in pursuing alternative solutions to problems and bringing people together. I have often watched her reach out to her opponent and find a compromise solution that was respectful of everyone's needs. In a number of cases, for example, she resolved conflicts between State and Tribal leaders. Melissa will bring this respect and awareness to the bench, and strengthen the community's faith in the courts' ability to provide justice to all--not just the powerful.

Thank you for your consideration.

Anne Egeler



## Monica Rouse

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**From:** Jon McGough [REDACTED]  
**Sent:** Monday, June 21, 2021 7:41 AM  
**To:** Council; Rud Browne; Todd Donovan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Barry Buchanan; Carol Frazey  
**Subject:** District Judge Appointment - Melissa Nelson

### Whatcom County Council

311 Grand Avenue

Suite 105

Bellingham, WA 98225

To Whom It May Concern:

Thank you for taking the time to read this letter in support of Melissa Nelson's application for the vacant district court judgeship. As a Whatcom County resident, colleague, and disability rights advocate, I have had the privilege of working together with Melissa on many occasions and know her to be caring, wise, and highly-qualified to fill this important role. As county leadership seeks to build trust with disabled community members in light of recent events, the importance of a disability positive judiciary cannot be overstated.

In my role as Director of the Disability Access Center at Western Washington University I have come to rely on Melissa's advice on a wide range of issues. Recently, the University has been working to resolve a complaint regarding the inaccessibility of the institutional webpages for blind and low-vision community members who rely on assistive technology to access website content. As General Counsel, Melissa played an essential role in guiding us through a voluntary resolution agreement with the U.S. Department of Education, Office for Civil Rights. This was a complex process requiring research, policy development, and ultimately leading stakeholders across campus to change the way we do business. Western's website went from being an institutional liability to an accessibility ranking in the top 5% of homepages across the internet. The sound policy Melissa guided us toward, has been the foundation of an inclusive online presence, and I am so grateful for her help in making this important change possible. As the pandemic forced us to transition to online education, having an accessible digital platform could not have come at a more important time!

Now as a university and a community we emerge from the pandemic, many within the disability continue to face challenges in accessing basic services for mental health and substance abuse treatment. Already, a concerning number of disabled and low-income people have been incarcerated in our state. This is such an important time in Whatcom County to empower local leaders like Melissa, who have developed and advocated for therapeutic courts. As a community of disability and non-disabled people, we need therapeutic courts now more than ever!

In short, Melissa has demonstrated in these ways, and so many more that she is committed to the well-being of all community members—including those of us who are disabled. I have benefited from the expanse of her legal knowledge and ask that you appoint her to this important role in such a critical time in our community. If there is anything else I can do to support her application, please do not hesitate to reach out.

Warm regards,

Jon McGough



Orrick, Herrington & Sutcliffe LLP  
701 Fifth Avenue  
Suite 5600  
Seattle, WA 98104-7097  
+1 206 839 4300  
orrick.com

Rob McKenna

June 28, 2021

*Via Email*

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225-4038

Re: Letter in Support of Melissa Nelson, Applicant for Whatcom County District Court Judge

Dear Council Members:

I am writing in support of the appointment of Melissa Nelson to the Whatcom County District Court Bench. Melissa has dedicated her legal career to public service for the people of the State of Washington. Consistently, and over time, she has demonstrated the integrity, intelligence, and ability to fairly analyze and apply the law that is essential to serving as a judge.

During my tenure as Washington State Attorney General from 2005-2013, Melissa showed herself to be a highly skilled litigator and appellate advocate in the Attorney General's Office. She served as a civil litigator in our Torts Division and as a high-volume trial lawyer in our Regional Services Division.

I came to know Melissa best, however, through her appellate advocacy. In 2011 and 2012, Melissa was selected by the Office as first chair for two Washington State Supreme Court cases. Only the strongest advocates and writers are approved to handle Supreme Court cases and, even then, advocates are trained and mentored through a rigorous process by the Solicitor General's Division. The Supreme Court dismissed Melissa's first case after her brief was filed—a tribute to her writing skills. In her second case, I met personally with Melissa prior to her oral argument. She presented as extremely well-prepared, calmly and effectively answering each difficult question I posed. She went on to successfully argue her case before the nine-member Court.

Appellate work requires intense analysis of legal nuances. An advocate also must step back from the analysis and write in a persuasive but clear and straightforward manner. This ability to understand and explain the law plainly and directly is also central to the work of a judge. In addition, Melissa has authored and edited briefs that address constitutional issues of great importance to the courts—the right against self-incrimination, the right to counsel, court room closure, competency to stand trial, the appearance of fairness and judicial bias.



Whatcom County Council  
June 28, 2021  
Page 2

Melissa's litigation and appellate background, combined with her years of pro tem experience, have prepared her well for the bench. Over a successful career in public service, she has repeatedly demonstrated the character, sense of justice, and commitment to treating every person equally that the bench requires. I strongly support her appointment to the District Court.

Sincerely,

A handwritten signature in cursive script that reads 'Rob McKenna'.

Rob McKenna



# Washington State Court of Appeals

## Division Two

909 A Street, Suite 200, Tacoma, Washington 98402  
REBECCA R. GLASGOW, JUDGE

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June 28, 2021

Re: Recommendation for Melissa Nelson

Dear Whatcom County Council:

I am writing in support of Melissa Nelson's application for the district court position in Whatcom County. Melissa possesses a combination of longstanding pro tem experience, skill, good judgment, and unflappable demeanor that I think you will find compelling.

I have no doubt that Melissa would be an excellent judge. I had the pleasure of working with her at the Attorney General's Office where we worked together on appeals. The Attorney General's Office assigns only its best attorneys to manage appellate cases, and it was clear to all of us that Melissa has a brilliant legal mind. She quickly understands the crux of any legal issue and she has excellent judgment. I have watched her navigate complex legal issues with ease, she is always able to clearly articulate legal concepts both verbally and in writing, and she was always firm and clear about the limits of our clients' legal authority and arguments. In my experience, people at the highest levels of government trust Melissa's judgment and seek her counsel when a difficult decision needs to be made.

Melissa has a strong work ethic and I am confident that she will be both efficient and compassionate. Melissa has an even and pleasant temperament and her friendly nature will likely put people at ease in her courtroom. She is an excellent communicator. I also have no doubt that Melissa can control a courtroom. She has the ability to make sure people feel heard while also ensuring a calendar moves efficiently.

Melissa would bring the kind of perspective to the Whatcom County bench that is especially valuable. She is deeply involved in her community and her experience in juvenile dependencies and terminations means that she deeply understands the complex and difficult dynamics that bring people into contact with the courts. I believe that she would bring a valuable perspective to the Whatcom County bench.

Whatcom County would undoubtedly benefit from Melissa's appointment.

Whatcom County Council

June 28, 2021

Page 2

Please feel free to contact me at [REDACTED] if you have questions.

Sincerely,

/s/ Rebecca R. Glasgow

Judge, Court of Appeals, Division II

\*\* This letter is based on my personal experience working with Melissa and under Canon 1.3 of the Code of Judicial Conduct, I do not speak on behalf of the Court of Appeals.

June 28, 2021

Whatcom County Council  
311 Grand Avenue, Suite #105  
Bellingham, WA 98225

RE: Letter of Reference for **Melissa Nelson**, Whatcom County District Court Judge Applicant

Dear Council Members:

I am writing this letter of reference for Melissa Nelson for Whatcom County District Court Judge. I have known Melissa since she became General Counsel to Western Washington University in December 2018. In my role as Associate Director of Human Resources at Western, I have had the pleasure of working with Melissa on a wide variety of legal matters.

In my opinion, Melissa would make an excellent judge in Whatcom County's District Court. Melissa's extensive legal experience and expertise, along with the care and balanced approach she brings to each situation, make her a trusted and valued advisor at Western. She has consistently shown her ability to analyze complex legal issues, identify best options through appropriate application of the law, and communicate in a clear manner that is easy to understand.

Melissa's time and expertise are in high demand in her current role with the Attorney General's Office. However, I am continually impressed with her ability to be efficient and responsive, all while maintaining a thoughtful approach. Melissa works well under pressure; exhibiting composure, attentiveness, and active listening to those with whom she is working. She has a calm and trusted presence that supports her ability to successfully work with a wide variety of individuals with diverse backgrounds and personalities. In addition, Melissa is fair, ethical and integrous; qualities that would serve her well in the role of Whatcom County District Court Judge.

I cannot speak highly enough of Melissa; she is respected, trusted, and valued. Thank you for your consideration of appointing her as Whatcom County District Court Judge.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lea Aune".

Lea M. Aune, MBA, CLRP, SHRM-CP

Monica Rouse

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**From:** Angela Cuevas <[REDACTED]>  
**Sent:** Sunday, June 27, 2021 3:21 PM  
**To:** Council; Rud Browne; Todd Donovan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Barry Buchanan; Carol Frazey  
**Subject:** District Court Judicial Appointment - Melissa Nelson

To the Whatcom County Council:

I have known Melissa Nelson since 1990 when we both started working for the Washington State Attorney General's office. Since then we have had opportunities to work together on state-wide projects across agencies we both represented. We were part of a Statewide Dependency Workgroup tasked with improving coordination between dependency cases and paternity testing. These issues greatly impact court participants.

Melissa was also on the team that started Family Treatment Court in Whatcom County. An innovative therapeutic court at the time and even more valuable now.

I have known her to have a professional and kind demeanor in our interactions and to treat others with respect.

I am aware that she has been a regular *pro tem* judge for district court for some time, and although I have not personally observed her, she has a reputation for being fair.

Melissa's vast experience working in dependency cases has exposed her to issues that routinely appear in district court cases. Issues such as domestic violence, mental health issues, substance abuse, homelessness and poverty involving families. With this knowledge and experience,



Melissa has a grasp of the issues and barriers that face litigants in district court.

Melissa has long had an interest in improving the court process by the implementation of therapeutic courts. Her wide-ranging legal experience will help ensure innovation and access to district court for the community.

I am not endorsing any candidate for District Court Judge. I will say, however, that if Melissa Nelson is appointed to replace the honorable David Grant, that she would be a highly capable and competent replacement and jurist.

Angela A. Cuevas  
Commissioner  
Whatcom County Superior Court

## Monica Rouse

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**From:** John Meyer <[REDACTED]>  
**Sent:** Sunday, June 27, 2021 6:36 AM  
**To:** Council  
**Subject:** Melissa Nelson, District Court

Dear Councilpeople:

Please strongly consider Melissa Nelson for the pending appointment to Whatcom County District Court. You have read her application and know that, on paper, she is immensely qualified. I have known and observed Melissa professionally for numerous years in her role as an Assistant Attorney General. First, she staffed the Skagit Valley College Administration and Board of Trustees during the time that I served as a member of that Board. It was a difficult time during the presidency of a person who was not a fit for the school. Ms. Nelson gave good, sound advice and was never intimidated or less than totally professional.

Next, she appeared in front of me several times during my twenty-plus year service on the Skagit County bench. She was always well-prepared and armed with good, clear, and logical arguments. Now, she is the Assistant AG for Western Washington University, where I serve as Chair of the Board of Trustees. Nothing has changed; in fact, Ms. Nelson has accumulated years of wisdom and experience in a broad variety of situations which would benefit the citizens of Whatcom tremendously.

Ms. Nelson has all the qualities necessary to be an outstanding District Court Judge. I have seen dozens of judges over the years from both sides of the bar, so I feel confident in that assertion. She is intelligent, wise, measured, pleasant, kind, and respectful. She will study and listen to all sides of any argument before making a decision. Litigants, both Plaintiff and Defendant, would leave her courtroom always believing that they received a fair shake. She has reached the stage of her career where this would be a logical next step. She would do you and the entire County proud were she to receive this appointment. Thank you.

John M. Meyer, Judge (Ret.)  
Skagit County Superior Court  
Langley, WA

June 24, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

**Re: Support of Melissa Nelson for Whatcom County District Court Judge Position**

Dear Whatcom County Councilmembers:

I am writing to enthusiastically recommend Melissa Nelson for appointment as Whatcom County District Court Judge. I have worked with, and as opposing council to, Melissa for almost fifteen years and admire her fierce commitment to justice and her exceptional legal mind.

I first met Melissa when she served as the lead juvenile attorney for the Attorney General's Office and I represented the Nooksack Indian Tribe in state court dependency proceedings. While there were times when the Tribe's interests were in harmony with the state's and other times when our client's positions were averse to each other, Melissa advocated zealously and was a respectful and responsive partner in seeking solutions in the best interest of children and their families.

More recently, I had the opportunity to join Melissa at the Attorney General's Office. During our shared time at the AGO, Melissa served as the Appellate Specialist and provided invaluable assistance to me. Not only did elucidate various complicated nuances of the law, but she also offered effective practical courtroom pointers that could only have been gleaned from years of experience sitting as a judge and litigating as an attorney.

Melissa's commitment to the larger Whatcom County legal community is unparalleled. Not only has she practiced as an attorney for over thirty years in Bellingham, and served as a pro tem judge or commissioner for sixteen years, she has also been instrumental in the founding of the Brigid Collins Family Support Center and Whatcom Women's Lawyers.

Melissa's varied legal experience makes her an exceptional candidate for the District Court Judge position. As an executive member of the Bellingham-Whatcom Commission on Sexual and Domestic Violence and a past member of the DVSAS board, Melissa's foundational work on the Whatcom County Family Treatment Court is particularly significant to me. Finally, as a tribal attorney, Melissa's expertise in the field of Indian Child Welfare makes her uniquely qualified for this position.

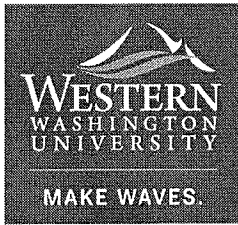
In short, Melissa is an exceptional applicant to be appointed to the Whatcom District Court bench.

Please don't hesitate to contact me if I can provide any other information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Levinson".

Ken Levinson  
Nooksack Child Support Director/Staff Attorney



Sabah Randhawa, President

Old Main 450 MS 9000  
516 High Street, Bellingham, Washington 98225  
(360) 650-3480 - Fax (360) 650-6141  
[www.wvu.edu](http://www.wvu.edu)

June 25, 2021

Whatcom County Council  
311 Grand Ave #108  
Bellingham, WA 98225

Subject: Melissa Nelson, District Court Judge Applicant

I am writing in support of Melissa Nelson's application for a Whatcom County District Court Judge position that is becoming available due to a retirement.

Ms. Nelson has served as the Senior Counsel and Assistant Attorney General with the Washington State Attorney General's Bellingham Regional Services Office since 1990. In particular, I have worked closely with Ms. Nelson since 2018, when she was appointed to serve as the General Counsel to Western Washington University.

Ms. Nelson's legal analysis and advice on a wide variety of topics and issues have been exemplary. She seeks to identify viable options on complex matters and analyze their relative merits and potential risks and consequences. Ms. Nelson's legal analysis is thorough, based on the relevant understanding of the law and sound professional judgment. Her work considers the impact on a particular department, as well as the broader and long-term impact on the university.

I have been impressed with Ms. Nelson's ability to engage in difficult conversations and actively listen to all parties before sharing her perspectives. In addition to the consideration of law, Ms. Nelson is savvy in considering and assessing the broader socio-economic and political aspects that impact a situation. She is thoughtful and thorough and open to having her work stand up to outside scrutiny.

Ms. Nelson is deeply committed to equity, diversity, and inclusivity. This commitment is reflected in her personal values and in her work and interactions. Even in situations where Ms. Nelson disagrees with other's perspectives, her interactions are based on respect, kindness, and humanity.

Ms. Nelson brings a steady temperament to all situations. Her ability to listen, consider all aspects of a complex matter, and do thorough research based on case law are an asset to Western Washington University in a wide range of issues that we encounter as a large, complex organization. I strongly recommend Ms. Nelson for the Whatcom County District Court Judge position.

Please do not hesitate to contact me if I can provide additional information.

Sincerely,

Sabah Randhawa  
President

June 22, 2021

Whatcom County District Court  
RE: Applicant Melissa Nelson

It is with great pleasure I write this letter of support for Melissa Nelson. I am the Assistant Vice President for Human Resources at Western Washington University and have been working at Western for over 34 years in Human Resources. I have been working with Melissa Nelson since December 2018.

Melissa brings a unique quality to her position as General Counsel to Western. After a number of Assistant Attorney General personnel while at Western I have often stated to Melissa, that "I deserve her". The reasons for this comment begin with her talent for listening. Simply said, in every conversation, I feel heard. She is prompt to respond when reaching out and follows up quickly.

Melissa presents with a calm demeanor, which welcomes a productive conversation. When emotions run high in a group meeting, I can be assured Melissa will work to focus the conversation on the subject at hand, all while validating the concerns of the people in the room.

She is a kind individual! It is clear she models respect and appreciation for all people. Melissa recognizes individual need for fair treatment and justice, and is committed to work through the issues presented to her with a desire to seek resolution.

It truly amazes me the sheer volume of work she expects from herself and yet is quick to respond and provide her level of expertise with such ease.

Melissa is a treasure for any organization. While I wish you the very best in your endeavors, you would be fortunate to call Melissa, an employee!

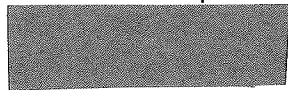
My very best,

Chyerl Wolfe-Lee



June 22, 2021

Dr. Janis Velasquez Farmer



Dear Whatcom County Council members:

My name is Dr. Janis Velasquez Farmer and I currently serve the community as the director of equity, diversity, and inclusion for Bellingham Public Schools. I write this letter to you to demonstrate my belief that Melissa L. Nelson will bring unparalleled leadership and equitable access to justice to the district court.

It has been my honor to live and learn alongside Melissa, both personally and professionally, for over 10 years. On a personal level, I've seen her show love and dedication to the educational community and the community at large. She is kind, caring, and, when in her presence, everyone is their best selves.

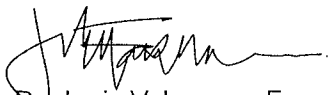
As a professional, not only does she exceed the expectations of this position in experience, this is the work of her dedication and spirit. As founder and co-owner of Emerge Strategic Designs, I have worked with many local organizations and leaders. Melissa brought my colleague and I to her office to facilitate a conversation to increase connection and further the work of diversity and inclusion. She added this facilitation to promote creative opportunities for learning and engagement, demonstrating a keen awareness of her professional environment. Additionally, she stands out from other candidates based on her ability to creatively and intentionally increase access to the justice system.

- Melissa creates and develops ideas to increase awareness and understanding of equity by modeling effective inquiry. She motivates, inspires, and challenges colleagues to grow, while advocating for systemic fairness centered on community voices.
- Melissa has begun exploring opportunities to increase access to the justice system. The pandemic provided a time to pause and reflect on access, not only to the system, but to language, transportation, computers, and the internet. In our conversations, she has shared ideas to engage local interpreters, work with our library system, and improve accommodations for community members.
- As a problem solver, Melissa relies on her past work experience, coupled with current learning in equity, diversity, and inclusion, to ensure that each individual and each issue receives her dedication, integrity, and critical compassion. With these lenses, she is an advocate for constitutional rights and justice.

Melissa's wealth of experience from different courtrooms and environments adds value to the team of judges in Whatcom County. In our frequent discussions of racial equity and access to justice, she reflects on her work with various attorneys, court systems, the Attorney General's office, and in education. She encourages critical approaches and utilizes her knowledge of judicial affairs to further collective understanding.

As a community member and servant leader in Whatcom County, I appreciate your full consideration of Melissa L. Nelson for the Whatcom County District Court. Her addition to the bench will demonstrate the County's commitment to equity and fairness.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Velasquez Farmer', with a stylized, flowing script.

Dr. Janis Velasquez Farmer

Director of Equity, Diversity, and Inclusion - Bellingham Public Schools

Founder, Co-Owner of Emerge Strategic Designs





**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

Regional Services Division  
2211 Rimland Drive, Suite 325, Bellingham, WA 98226

June 30, 2021

Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Re: Melissa Nelson, Applicant for District Court Judge

Whatcom County Councilmembers:

I am writing in reference to Melissa Nelson and her application for the Whatcom County District Court Judicial position. I currently serve as Section Chief of the Bellingham location of the Office of the Attorney General, and supervise all AGO staff in Whatcom County. I have worked with Ms. Nelson for 17 years. Ms. Nelson is a valued member of the Bellingham Office of the Attorney General, and our most experienced attorney at this location. Ms. Nelson has represented many of our state agency clients in the Bellingham Office of the Attorney General, has served in a statewide appellate advisor capacity, and serves as a mentor and leader among our team of 12 attorneys. She currently represents Western Washington University, which requires expertise in a variety of practice areas, including advising on law enforcement issues, personnel matters, contract issues and most recently the legal challenges posed during the COVID-19 pandemic.

Ms. Nelson has worked closely with the courts during her time in our office. From actively participating in Court Improvement meetings and Table of Ten meetings with the Washington Court Improvement Training Academy to improving local Dependency Court practice in both Whatcom and Skagit Counties, to being a member of the team that founded the first Dependency Family Treatment Court in Whatcom County, Ms. Nelson has been a leader in implementing best practices in our courts.

Ms. Nelson is highly regarded by her peers at the Attorney General's Office and has developed strong working relationships with both attorneys and professional staff during her time with our office. Ms. Nelson always has an open door to mentor newer attorneys and staff in our office, answering questions and discussing challenging legal issues. She excels in both identifying all sides of a legal issue and to helping newer attorneys anticipate and understand opposing positions they may encounter.


I believe that Ms. Nelson would bring all of these attributes to the bench if selected for this position. Her legal expertise, experience, and knowledge of the local bench, bar, and community,

ATTORNEY GENERAL OF WASHINGTON

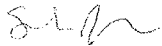
June 30, 2021

Page 2

as well as her demonstrated ability to work with professional legal staff make her an excellent candidate for a judicial position. Ms. Nelson has dedicated her career to public service, and this position would be an excellent opportunity to continue to serve the local community.

If you would like any additional information, please do not hesitate to contact at 

Sincerely,



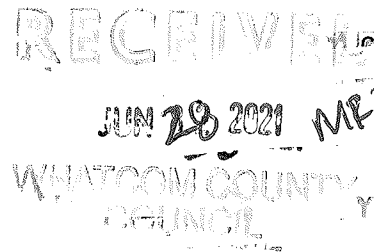
Sarah J. Reyes

Section Chief

Office of the Attorney General-Bellingham

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

## APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name: Shoshana Paige

Street/Mailing Address: [REDACTED]

City/State: [REDACTED] Zip Code: [REDACTED]

Day Telephone: [REDACTED] Evening [REDACTED]

Fax Number: n/a E-mail Address: shoshpaige@gmail.com

**A. Qualifications:** Per RCW 3.34.060, to be eligible to serve as a district court judge, a person must:

1. Be a registered voter of the district court district and electoral district, if any; and
2. Be a lawyer admitted to practice law in the state of Washington.

Are you a registered voter of Whatcom County? (X) Yes ( ) No

Are you a lawyer admitted to practice law in the state of Washington? (X) Yes ( ) No

**B. Resume:** A resume up to two (single-sided) pages in length may be attached to address the following:

- Occupation (if retired, please indicate occupation prior to retirement).
- Professional/Community Activities.
- Education.
- Qualifications related to the position of Whatcom County District Court Judge.

**C. References:**

- Please provide three letters of reference.

**D. Questions:** No more than two sheets of paper (single-sided) may be attached to address the following:

1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.
2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?

3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.
4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.

**E. Essay:** Please describe your familiarity with the current problems, litigation, rules, regulations, and policies of the Whatcom County District Court Office. Provide a one-page (single-side) summary of your top three concerns regarding the above issues.

**F. Certification:** I certify that this application and any other submitted materials contain no misrepresentations or falsifications and that the information given by me is true and complete. I hereby authorize Whatcom County to verify or supplement information given by me in this application and any other submitted materials. I hereby release any and all of my employers or references from any liability or claim that I might have as a result of disclosure of information. I further understand that should investigation at any time disclose any misrepresentation or falsification, I may be disqualified from appointment to the office of Whatcom County District Court Judge.

**As a candidate for appointment as District Court Judge to fill the vacancy, I understand the above information and any other materials submitted with this application will be available to the County Council, County Executive, any County department, and the public.**

Signature of applicant:  Date: 6/28/21

***Applications must be submitted to the Clerk of the Whatcom County Council by 4:00 p.m. on June 28, 2021***

Your application may be no more than thirteen single-sided pages total, composed of the following maximum number of pages (all single-sided).

Application	2 pages
Resume	2 pages
Reference Letters	6 pages
Question Responses	2 pages
Essay	1 page

# Shoshana L. Paige

## Experience

Whatcom County Public Defender | Bellingham, WA

Deputy I, Deputy II, Senior Deputy, Senior Deputy II *July 2006* – Present

- Represent adults and juveniles charged with misdemeanors and felonies in the Superior Courts of Whatcom County, including extensive experience representing individuals with developmental disabilities, mental health disorders, and substance use disorder.
  - Representation includes: representing clients in court at first appearance, arraignment, juvenile decline hearings, all pre-trial hearings, evidentiary and non-evidentiary motion hearings, competency proceedings, plea hearings, jury and bench trials, sentencing hearings, revision hearings, sentence reviews, restitution hearings, probation violation hearings, and sentence modification hearings; conducting thorough case evaluation and preparation for resolution, including directing investigation, interviewing witnesses, consulting with experts, and developing mitigation evidence; and plea negotiation and advisement.
  - Served as first chair in numerous jury and bench trials for a variety of felony offenses, including numerous Class A felonies. Recently served as second chair on a jury trial for a charge of Murder in the First Degree, where my focus was on the medical examiner evidence and other DNA evidence.
- Supervise juvenile court, where I am responsible for attorney case assignment, as well as direct supervision of the other juvenile public defender, in juvenile offense and truancy proceedings. I also work with supervisors in juvenile court services and the Prosecuting Attorney's Office on issues of policy and procedure in juvenile court. Within the Public Defender's Office, I work with the Director, Chief Deputy, and District Court Supervisor on policy and management issues and attorney hiring.
- Represent all participants in the Superior Court Adult Drug Court, including advising clients on all manner of issues that arise as part of their drug court participation. As a member of the drug court team, I participate in the discussion and decision-making for all participants in regards to phase advancement, imposition of sanctions, granting incentives, and general progress review. Represent participants at termination hearings and stipulated bench trials. Participate in drug court policy reviews and advocate for stronger participation in the drug court program.
- Represent juveniles in truancy petition and contempt hearings, and, previously, in At-Risk-Youth and Child in Need of Services petitions and contempt proceedings.
- Represent adults subject to petitions for involuntary civil mental health commitments, including in adversary hearings.

## Dallas County Public Defender's Office | Dallas, TX

Assistant Public Defender *September 2001 – March 2006*

- Represented adults charged with misdemeanors and felonies in Dallas County criminal courts.
  - Representation included: representing clients in court at pre-trial hearings, evidentiary and non-evidentiary motion hearings, competency proceedings, plea hearings, bench and jury trials, sentencing hearings before juries and judges, and probation violation hearings; conducting thorough case evaluation and preparation for resolution, including directing investigation, interviewing witnesses, consulting with experts, and developing mitigation evidence; and plea negotiation and advisement.
  - Tried numerous cases to juries on guilt/innocence and punishment, including serving as second chair on two murder cases, and a case involving multiple counts of aggravated assault of an elderly person with a successful insanity defense.

## Education

The University of Texas School of Law, Austin, Texas

*May 1999 J.D., with honors*

- Order of the Coif
- Board member, Texas Law Fellowships
- Board member, Public Interest Law Association
- Founding member, Law Students for Diversity
- Staff member, The Review of Litigation
- Staff member, American Journal of Criminal Law

Ambassador University, Big Sandy, Texas

*May 1996 B.A., with highest distinction, Liberal Studies*

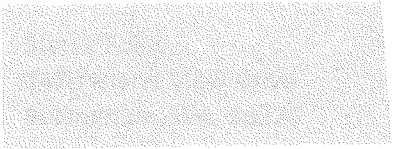
- Student Body Secretary (1 year), Outreach Public Service Organization (4 years), Ambassador Public Speaking Club (3 years), Academic Achievement Award

## Community

- Board member, Nooksack Salmon Enhancement Association, January 2016 – Present (Treasurer, January 2018 – December 2018; President, January 2019 – Present)
- Member, Judicial Candidate Evaluation Committee, Whatcom County Bar Association, January 2019 – May 2020

## Licenses

- Washington State Bar Association, Admitted 2006, #38056
- State Bar of Texas, Admitted 1999 (currently inactive), #24013283



Whatcom County Council  
311 Grand Avenue  
Bellingham, WA 98225

**Re: Shoshana Paige, Candidate for Appointment to Whatcom District Court**

Dear Council:

I have been asked to provide a reference for Shoshana Paige in her candidacy for Judge, Whatcom County District Court. Shoshana has been employed at the Whatcom County Public Defender for fifteen (15) years and is currently one of our two Senior Deputy II Defenders. I directly supervised Shoshana from 2011 to 2018 as Chief Deputy here, and have been her Director since my appointment in late 2017.

Shoshana has one of the highest senses of justice I have ever seen. She quickly and rightly identifies right from wrong and is very adept at stating her point of view in a forceful, creative, and understandable way. She listens to others and has the ability to cut to the central issues involved. All of these traits are characteristics of a great judge.

Her background is varied and complex. She started practice in a civil firm in Texas before she realized her true calling of public defense. She had been a defender in Texas for several years before relocating to Washington to be near family. Texas' loss has been our gain as Shoshana had excelled as a defender of the citizen accused in Whatcom County.

I consider Shoshana one of the best-read lawyers in the office and her intellect is second to none. I have been practicing criminal law for 35 years and find myself going to Shoshana for assistance on the law and tactics over and over again. She is a mentor to young lawyers in our office and is well-respected for her legal knowledge. The defenders maintain various list-serve sites and Shoshana is one of the frequent responders to the sites, providing her insight to lawyers around the state. We have had weekly felony meetings where the entire felony team comes together and Shoshana frequently shares her knowledge and intelligence to the entire team and is respected by all.

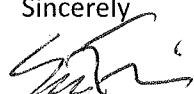
Shoshana has worked primarily in Superior Court defending adult felonies. However, she has also handled (and is currently handling) Whatcom County Drug Court as the designated defender. She has served in Whatcom County Juvenile Court and is currently the Supervising Attorney in Juvenile Court. She has appeared in Whatcom County District Court on numerous occasions throughout her tenure in the office.

Many serious cases have been assigned to Shoshana. I can think of at least four homicide cases she has handled and she has been assigned many of the more serious felonies in the office. In 2019 she tried a homicide with me that lasted three weeks in trial and her contributions were invaluable.

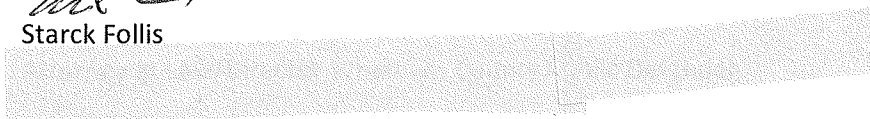


As much as it would pain me to lose Shoshana from the Whatcom County Public Defender, I can wholeheartedly recommend her for consideration. She would make a fine judge.

Sincerely

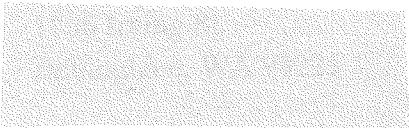
A handwritten signature in black ink, appearing to read 'Starck Follis', written in a cursive style.

Starck Follis



Kellen B. Kooistra

June 22, 2021



Whatcom County Council  
311 Grand Ave.  
Bellingham, WA 98225

Dear Councilmembers:

I am writing to enthusiastically recommend Shoshana Paige for the position of Whatcom County District Court Judge. In her nearly 15 years of service to Whatcom County, Ms. Paige has shown through her integrity, knowledge, and commitment to the rule of law that she would be an excellent District Court Judge.

As a Deputy Prosecuting Attorney in the Whatcom County Prosecutor's Office, I have been opposing counsel to Ms. Paige for the past eight years. For the six years prior to that, I had the opportunity to observe her work in the courtroom as a fellow public defender. I have seen Ms. Paige demonstrate her skills as a courtroom litigator, her comprehensive knowledge of the law and the court rules, and her steadfast commitment to the ideals of justice and equity. She has consistently shown the judgment and knowledge required to be a capable and committed judicial officer.

Perhaps the most important skill for a judge is presiding over and conducting jury trials. There is simply no substitute for courtroom experience when it comes to ensuring trials are conducted efficiently, fairly, and according to the rules. Ms. Paige has spent her entire career arguing the law and trying cases in a courtroom. She has a deep understanding and familiarity with the rules governing court procedure and this wealth of experience makes Ms. Paige uniquely suited to the position of District Court Judge.

Throughout her career, Ms. Paige has always practiced law with a deep commitment to the values of fair play and equity. As a deputy prosecutor, Ms. Paige and I have found ourselves on the opposite sides of legal issues on many occasions. At all times she has represented her clients ethically, fairly and zealously, in all the best traditions of legal practice. She has devoted her practice to aiding and assisting the citizens of Whatcom County as a public defender, and in doing so has ensured the integrity of our criminal justice system. I am certain that she would make the Whatcom County District Court a court that ensures the fair and equitable treatment of every person who comes before it.

The job of District Court Judge requires integrity, knowledge, courtroom skill, and a deep appreciation of the power and importance of our legal system. At every stage of her career, Shoshana Paige has embodied and represented those skills and values. Her extensive practice in the litigation of criminal law gives her a wealth of experience that would make her a fantastic judge. I strongly recommend that this council appoint Ms. Paige as our next District Court Judge.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Kooistra', written in a cursive style.

Kellen B. Kooistra

**Superior Court of the State of Washington  
For Whatcom County**

**311 Grand Avenue, Bellingham, Washington 98225**

**Chambers of  
Judge Lee Grochmal**

**Department 3**



**Brooke Anderson,  
Judicial Assistant  
(360) 778-5604**

**banderso@co.whatcom.wa.us**

**June 18, 2021**

**Dear Council Members:**

I am writing to express my personal support for Shoshana Paige's application for the position of Whatcom County District Court Judge. I have known Ms. Paige both professionally and personally since 2006. In fact, I was on the hiring committee at the public defender's office when she was selected, and I was her supervisor in juvenile court. I then worked alongside her for many years as a defense attorney, and I work with her currently as part of the Whatcom County Drug Court team.

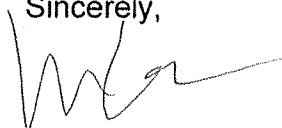
Ms. Paige has one of the brightest minds of any attorney I have known. As an advocate for the accused, she understands the barriers to justice that many of our citizens face and is dedicated to eradicating those barriers. Specifically, as an advocate in drug court, she displays creativity in addressing the individual needs of her clients. I would look forward to collaborating with her to increase the use of safe alternatives to incarceration in both superior and district courts, particularly now that drug possession has been reclassified as a misdemeanor. Ms. Paige's training and experience in drug court for the last three years puts her in an ideal position to bring those programs to district court.

Ms. Paige's substantial trial experience sets her apart from other candidates for the position. As a trial judge, it is imperative to make quick decisions on evidentiary and substantive issues which arise during trial. Ms. Paige's experience trying many challenging cases gives her a good foundation for presiding over trials in district court.

As a judge, I am well aware of the personal commitment that is required of judges, and I have spoken with Ms. Paige at length about that. I know her to be of strong character and excellent judgment both personally and professionally.

If there is any additional information that would help you to reach a decision, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Grochmal', with a stylized, cursive script.

Lee Grochmal

## **D. Questions**

### **1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.**

I have the experience, skills, work ethic, integrity, empathy, and commitment to public service that this important position requires, and my many years serving as a public defender in Whatcom County would enable me to bring a depth of knowledge and experience, and an important perspective to the bench.

Almost 20 of my 22 years of legal experience, including 15 here in Whatcom County, have been dedicated to serving my community as a public defender. This work has provided me with a keen understanding of the impact the legal system, particularly the criminal justice system, can have on the members of our community. That impact can be especially profound on those who are dealing with poverty, physical and developmental disabilities, mental health issues, substance use disorder, trauma, and homelessness. As a public defender, I have zealously advocated for all my clients, including many dealing with one or more of these challenges. Many of my clients have themselves been victims of crime and suffered trauma as a result. Whatever my clients' circumstances, I fought to ensure that their constitutional rights were upheld, that their voice was always heard throughout the legal process, and that their lives remained free of government intrusion unless the high legal burden for such intrusion was met. Just as importantly, I always sought to ensure that those making decisions about any punishment my clients would receive, be they prosecutors or judges, had a better understanding of my clients' lives and circumstances in order to make a more fair and equitable decision. I would bring the same commitment to public service and to ensuring a fair and equitable judicial system to the position of district court judge.

It is essential that a district court judge have a depth of knowledge of the procedural rules and substantive law she will be applying in court proceedings of all kinds, including jury trials. No judge or attorney can know everything there is to know about the law which is why the ability to identify issues that require further study and to apply appropriate legal reasoning to novel situations is equally important. Throughout my career, I have devoted substantial time to learning and understanding the law, both through self-study, continuing legal education, and substantial legal research done on issues arising in my cases. I have also spent considerable time working with experts in a number of forensic disciplines such as pathology, toxicology, DNA evidence, and psychology and psychiatry. As one of the most senior attorneys in my office, I have always been available to colleagues with questions about the law and procedure, as well as assisting with case strategy and preparation. Perhaps nothing has provided as great an education as the many trials I have conducted in front of juries and judges, and the substantial preparation for those trials and the many other cases that ultimately resolved without the need for a trial. I have handled trials for juveniles and adults for offenses ranging from minor in possession of alcohol to first degree murder. In addition, I have litigated numerous substantial pre-trial hearings ranging on issues ranging from whether evidence should be suppressed due to violations of the state and federal constitutions to whether the government had a right to force a legally incompetent client to take psychotropic medications against his will. The knowledge and experience I bring from my years of practice will be a strong asset I bring to the bench.

One of the most valuable experiences I have had as a public defender has been to serve as the assigned public defender in the adult drug court in Whatcom County Superior Court. Drug court provides an alternate model for dealing with defendants whose criminal conduct is related to substance use disorder, and particularly for those for whom traditional criminal justice interventions,

including incarceration and probation, have proven ineffective. The role of the public defender in a drug court is unique. While we are there to advocate for our clients' wishes and interests, we are also part of a team that includes the judge, prosecutor, treatment provider, and case managers. Together, by each team member bringing their diverse perspectives from their different roles, we work to respond to participants' positive and negative behaviors in order to incentivize better choices and assist them in meeting the progressive requirements of the program. This requires considering the individual risks and needs of each individual, and balancing concerns for individual and public safety and accountability. Through my work with drug court, I have had a front row seat to the profound change that is possible when the criminal justice system is willing to look at different ways to address criminal behavior with a goal of reducing recidivism, and the substantial costs, both financial and otherwise, of that behavior. I have also used my role to advocate to expand eligibility for the drug court program and greater use of other alternatives to traditional criminal penalties. As a district court judge, I would bring both the deep knowledge of the workings and value of a therapeutic court, but also a belief that the system should be open to innovative ways to effectively respond to criminal behavior.

Outside of the legal system, my commitment to justice and serving my community also extends to preserving our environment, and especially a healthy watershed here in Whatcom County. I have served on the board of the Nooksack Salmon Enhancement Association for over 5 years, including as Treasurer for a year, and as President for the past two-and-a-half years. This work has involved leading strategic planning and budget oversight of the organization, and engaging with the thousands of diverse donors and volunteers who have a shared interest in preserving salmon and their waterways.

My legal knowledge, skills, and experience, from over 20 years of work as a public defender, advocating for my individual clients and for a more fair and effective approach to responding to criminal behavior, make me well qualified to be a district court judge. I have a demonstrated commitment to upholding the constitutional rights of all, and to serving the community through my professional legal advocacy and volunteer work. I would bring that same passion and commitment to serving all the people of Whatcom County as a district court judge.

- 2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?**

Yes.

- 3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.**

No.

- 4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.**

No.



## E. Essay

The most pressing, immediate issue in the District Court is the backlog of cases created by the COVID-19 pandemic. The suspension of jury trials for over a year meant that those cases that could only be resolved by jury trial simply could not be resolved. For an even greater number of cases, the lack of any real, impending trial date meant that many of the incentives for parties on both sides to reach agreed resolutions were not present. Added to this existing backlog is the unknown impact of the change of possession of controlled substance from a felony to a misdemeanor, meaning these cases will now be filed in district and municipal courts. Large case backlogs mean the accused carry the burdens of the pending case for a longer time, victims wait longer for justice, and the potential needs of defendants for appropriate interventions are delayed. Backlogs also mean attorney caseloads on both sides are likely to be extraordinarily high, making it difficult to devote sufficient time and thought to the investigation and preparation of cases, and the prudent analysis necessary to reach reasonable plea agreements. If selected, I would work with my fellow District Court judge and other courthouse and county staff to efficiently try as many cases as possible, consistent with appropriate public health protocols, while maintaining all necessary safeguards of due process.

Although a large amount of attention that is paid to the criminal justice system is focused on felony cases, most individuals who encounter the criminal courts do so at the misdemeanor level in district and municipal courts. This is where most driving offenses (including driving under the influence), domestic violence offenses, theft, and property damage cases are litigated. Although a judge does not decide what individuals and what crimes to prosecute, a judge can have a profound impact on what the experience in the criminal justice system is like for both victims and accused individuals, and whether that experience ultimately proves effective at providing justice to victims and reducing the likelihood of future criminal behavior. If selected as a judge for the District Court, one of my major priorities would be to promote greater participation in the existing therapeutic program (Mental Health Court), and to implement other proven, cost-effective therapeutic courts for those for whom traditional criminal justice interventions have proven ineffective, and for those whose known risks and needs indicate a therapeutic program is more likely to reduce future criminal behavior and promote public safety.

For individuals on probation and in therapeutic courts, a major issue continues to be the availability of affordable, community-based resources that are crucial to increasing the likelihood those convicted of offenses will not reoffend. For most individuals who already have the resources and ability to comply with the law and conditions of probation, the threat of incarceration and other potential consequences of further violations is more than enough to change behavior. But for those for whom trauma, poverty, substance use, mental illness, lack of stable housing, or a combination of two or more of these issues, are key factors in their criminal justice involvement, no amount of “locking them up” or threats to do so are likely to reduce criminal behavior without the supportive services necessary to address those key factors. As a judge, I would be a strong advocate for increased resources to provide treatment and case management for individuals with mental illness and substance use disorder, as well as affordable education and vocational programs, and to increase the availability of safe, affordable housing in our community.

I am familiar with the jurisdiction, statutes, rules, and policies of the Whatcom County District Court. Although the court has jurisdiction for a variety of civil matters, small claims cases, and infractions, a substantial amount of the docket of the court involves the litigation of criminal misdemeanors and gross misdemeanors. The vast majority of my legal experience is in the litigation of criminal offenses, including litigating felonies in Superior Court, and felonies and misdemeanors in Superior Court’s juvenile division. With limited exceptions, however, the constitutional rights that are relevant in criminal cases apply with equal force to misdemeanors as they do to felonies. The rules of evidence, burdens of proof, and rights to due process are the same. No lawyer is versed in every area of law, but my extensive knowledge and experience enable me to be ready for this position on day one.

**Whatcom County Superior Court  
Therapeutic Treatment Court**

311 Grand Avenue, 3<sup>rd</sup> Floor, Suite 301  
Bellingham, Washington 98225  
(360) 676-6754, FAX (360) 676-7634

Lee Grochmal, Superior Court Judge  
Eric Richey, Prosecuting Attorney  
Stark Follis, Public Defender



A. Christine Furman, MMHS, MHP, CDP  
Therapeutic Court Coordinator  
[Cfurman@co.whatcom.wa.us](mailto:Cfurman@co.whatcom.wa.us)

RECEIVED

JUN 24 2021

WHATCOM COUNTY  
COUNCIL

6/23/21

Re: Letter of recommendation for Shoshana Paige for District Court Judge

Dear Kathy Kershner,

I am writing this letter to Whatcom County Counsel members to recommend Shoshana Paige for Whatcom District Court Judge.

I have worked closely with Shoshana Paige since her assignment to Drug Court in February of 2018. Shoshana's Drug Court role is to represent and defend those individuals being served in Whatcom Adult Drug Court, advocating for their fair and equal treatment. She collaborates with the Judge, prosecution and the clinical team to determine the best course of action for each participant. Additionally, Shoshana contributes to policy decision making that guides the program toward continued best practices.

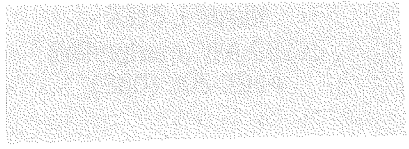
I have been consistently impressed with Shoshana's command of the law and her familiarity with the myriad of issues our clients bring to the court. Shoshana is able to expand her role to include recommendations which may fall outside of the traditional advocacy role of a Public Defender. She seeks solutions that are in the best interest of the client, fair and balanced, while considering the health and safety of the community.

Shoshana is passionate concerning criminal justice reform and seeking alternatives to incarceration. She understands the benefit to the overall community for those criminally justice involved individuals presenting with public health problems; problems best served with advocacy, treatment and close supervision.

Shoshana's temperament is commensurate with a Judicial position. She is highly intelligent and self-disciplined. She is open-minded with a great sense of humor. Her work is essential to the operations of Drug Court and she performs her work with effective communication, sensitivity, timely decisions and recommendation, and overall professional accountability to the Drug Court Team and her clients.

A. Christine Furman, MMHS, MHP, SUDP  
Therapeutic Court Coordinator  
Whatcom Superior Court

**STEPHEN GOCKLEY**



June 28, 2021

Whatcom County Council Members  
Bellingham, WA 98225  
(Submitted by collective and individual email)

Re: Application of Shoshana Paige for appointment as District Court Judge

Dear Council Members:

I am writing to extend my support for the application from Shoshana Paige for appointment to the open position of Whatcom County District Court Judge. From my first-hand experience, I believe Ms. Paige would be a capable, fair, and effective judge in service to the District Court and the Whatcom County community.

I spent my career as a civil legal aid lawyer representing low-income people in Whatcom County. For the past five years, I have been a leader in our local Incarceration Prevention and Reduction Task Force. I know the role of the District Court in our judicial system and I am increasingly aware of the value it can lend to improvements in our local efforts.

My discussions with Ms. Paige indicate that she is knowledgeable about the letter of the law and court procedures. Within the task force's work, I have primarily talked with Ms. Paige about her representation of defendants participating in drug court and her contributions as a member of the team coordinating that program. Drug court is not, of course, a District Court responsibility but mental health court, a kindred therapeutic approach, is. The parties who come into District Court both civilly and criminally often struggle with similar disruptive pressures from economic stress, unstable housing, and multiple health complications. It is clear that Ms. Paige understands the circumstantial factors that can lead individuals into our courts and she is thoughtful about ways in which the court can effectively respond to such individuals. The District Court is a promising setting for humane individualized interventions because it deals with criminal and civil cases that are less serious in nature, and thus more amenable to positive redirection. Ms. Paige is prepared to carry out such interventions.

Based on the above, I am confident Shoshana Paige would be a strong choice to serve us as the next District Court Judge for Whatcom County.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Gockley".

Stephen Gockley  
Attorney at Law

**From:** Angela Cueva  
**Sent:** Sunday, June 27, 2021 3:53 PM  
**To:** Council; Rud Browne; Todd Donovan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Barry Buchanan; Carol Frazey  
**Subject:** District Court Judicial Appointment - Shoshana Paige

## To the Whatcom County Council:

I first had Shoshana Paige appear before me in Juvenile Court about a year and a half ago in my capacity as a Juvenile Court Commissioner.

I am impressed with her command of the law and familiarity of the issues before the court. Shoshana treats her clients and their family members with respect and empathy and is a zealous advocate for them. The issues in juvenile court range from truancy to serious sexual offenses. In all these matters she has understood the law and its application.

Shoshana is always respectful to the court and also informational and instructive in the law and procedure. She has a grasp on emerging issues before the court and policies affecting not just Whatcom County but also the State of Washington.

Shoshana is the lead attorney for the Juvenile Court - Public Defender's Office Division. Shoshana and those attorneys working under her supervision are well prepared when they appear before me.

I am not endorsing any candidate for District Court Judge. I will say, however, that if Shoshana Paige is appointed to replace the honorable

David Grant, that she would be a capable and competent replacement and jurist.

Angela A. Cuevas

Commissioner

Whatcom County Superior Court

*-From the Private Desk of-*

RECEIVED  
JUN 24 2021  
WHATCOM COUNTY  
COUNCIL

To the Honorable Barry Buchanan, Chair, and the Whatcom County Council:

I am writing this letter of reference on behalf of Ms. Shoshana Paige, Attorney at Law, who is pursuing appointment to Whatcom County District Court. The ethical considerations for judicial officers require that I preface this letter by saying that the observations and opinions expressed herein are personal to me, and should not be considered an endorsement by the court itself.

I have known Ms. Paige since 2006 when we served together in the Whatcom County Public Defender Office. Ms. Paige was my good colleague and we shared a number of both challenging and rewarding experiences in our work together. My relationship with Ms. Paige was that of peer and workplace friend and I came to admire both her tenacity and her diligence in representing her many clients. In 2010 I left the Public Defender Office and did not have regular contact until I was appointed to the Superior Court bench in 2018.

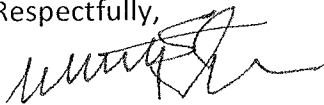
Since my appointment I have had ample opportunity to observe Ms. Paige in court. Not only has she demonstrated her perseverance in representing public defender clients over these many years, but it is clear that her courtroom skills have become well-polished, and she demonstrates a thorough understanding of court rules and the rules of evidence which is absolutely vital for a District Court judge. As a public servant attorney, she is also intimately familiar with carrying a heavy caseload, which is a necessary understanding in order to manage the large dockets our county courts all face.

Ms. Paige has been instrumental in developing and sustaining the primary incarceration alternative program in Whatcom County Superior Court – Whatcom County Drug Court. It is my observation that Ms. Paige has the combination of the right personality and the right skill sets to help Drug Court and other incarceration reduction and alternative adjudication programs be successful.

Finally, Ms. Paige brings her unique life and professional experiences to her work, whether as an attorney or as a judge. Her unique perspective would help enrich the judicial culture in Whatcom County District Court in a way that will ultimately benefit our whole community.

Please do not hesitate to contact me should you require any further information.

Respectfully,



Robert E. Olson

REO/-

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

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



RECEIVED  
JUN 25 2021  
WHATCOM COUNTY  
COUNCIL

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

## APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name: Kimberly Thulin

Street/Mailing Address: \_\_\_\_\_

City/State: \_\_\_\_\_ Code: \_\_\_\_\_

Day Telephone: \_\_\_\_\_ Evening Telephone: \_\_\_\_\_

Fax Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

**A. Qualifications:** Per RCW 3.34.060, to be eligible to serve as a district court judge, a person must:

1. Be a registered voter of the district court district and electoral district, if any; and
2. Be a lawyer admitted to practice law in the state of Washington.

Are you a registered voter of Whatcom County? (X) Yes ( ) No

Are you a lawyer admitted to practice law in the state of Washington? (X) Yes ( ) No

**B. Resume:** A resume up to two (single-sided) pages in length may be attached to address the following:

- Occupation (if retired, please indicate occupation prior to retirement).
- Professional/Community Activities.
- Education.
- Qualifications related to the position of Whatcom County District Court Judge.

**C. References:**

- Please provide three letters of reference.

**D. Questions:** No more than two sheets of paper (single-sided) may be attached to address the following:

1. Describe why you are interested in serving as Whatcom County District Court Judge. In narrative fashion, relate your qualifications to this position.
2. Do you intend to run for the office of District Court Judge in the next general election (see RCW 3.34.100, RCW 29A.24.050, 1973 AGO No. 76, and 1975 AGO No. 73 for meaning of "next general election" in this instance)?



3. Are you currently, or have you in the past been an employee, agent, consultant, or officer of any business or agency (including the field of law enforcement or corrections) that is currently or in the future potentially seeking to establish a business relationship with Whatcom County? If so, please explain.
4. Have you ever had a sustained complaint against you by the State Bar Association (Office of Disciplinary Counsel) or the Commission on Judicial Conduct? If so, please explain.

**E. Essay:** Please describe your familiarity with the current problems, litigation, rules, regulations, and policies of the Whatcom County District Court Office. Provide a one-page (single-side) summary of your top three concerns regarding the above issues.

**F. Certification:** I certify that this application and any other submitted materials contain no misrepresentations or falsifications and that the information given by me is true and complete. I hereby authorize Whatcom County to verify or supplement information given by me in this application and any other submitted materials. I hereby release any and all of my employers or references from any liability or claim that I might have as a result of disclosure of information. I further understand that should investigation at any time disclose any misrepresentation or falsification, I may be disqualified from appointment to the office of Whatcom County District Court Judge.

**As a candidate for appointment as District Court Judge to fill the vacancy, I understand the above information and any other materials submitted with this application will be available to the County Council, County Executive, any County department, and the public.**

Signature of applicant: \_\_\_\_\_

Date: \_\_\_\_\_

***Applications must be submitted to the Clerk of the Whatcom County Council by 4:00 p.m. on June 28, 2021***

Your application may be no more than thirteen single-sided pages total, composed of the following maximum number of pages (all single-sided).

Application	2 pages
Resume	2 pages
Reference Letters	6 pages
Question Responses	2 pages
Essay	1 page

## **Professional Experience**

### **SENIOR APPELLATE DEPUTY PROSECUTOR**

**Whatcom County Prosecutor's Office • Bellingham, WA • 2001- Present**

- Represent the State of Washington, Whatcom County in felony, misdemeanor criminal appeals and collateral attacks filed in Whatcom County Superior Court, Division One of the Courts of Appeals and State Supreme Court; responsibilities require research, brief writing, presentation of oral argument; and
- Manage all criminal appeals arising out of Whatcom County District Court; and
- Provide legal advice and in-house training to trial deputies; and
- Washington Association of Prosecuting Attorneys State Appellate Committee member.

**1999-2000**      **LAW Advocates**, Attorney. Represented victims of domestic violence in dissolution, child custody and paternity proceedings.

**2001**            **Whatcom County Prosecutor's Office**, Special Deputy Prosecutor. Represented the State Division of Child Support and wrote contract briefs for criminal appeals.

**1996**            **Skagit Valley Community College**, Constitutional Law Instructor.

**1991-1999**      **Skagit County Prosecutor's Office**, Deputy Prosecutor, Special Assistant Attorney General.

- Represented the Washington State Division of Child Support in modification, dissolution, and civil proceedings in Skagit and Whatcom Counties (1996-1999).
- Trial deputy in District, Juvenile, and Superior Court; responsible for review of criminal referrals, training/advising law enforcement officers and agencies, represented the County in behavioral health hearings, and the State in criminal trials and motion hearings (1992-1999).

## **Education**

**2002**            **National District Attorneys Association**

- Intensive Appellate Advocacy Training Program

**1998**            **University of Washington Law School Foundation**

- Certified in Professional Mediation Skills

**1991**            **Willamette University, School of Law** Juris Doctorate

- Client Counseling Competition Winner and Moot Court

**1988**            **University of Washington** B.A. Psychology

## **Community Leadership**

**2018**            Co-presenter on 'Ethics and the Appellate Lawyer,' Washington State Prosecuting Attorneys Appellate Conference, Leavenworth, Washington.

**2015-2017**      President, Squalicum High School Band Booster Club, Bellingham.

**2013-2016**      Chair, Squalicum Boys Tennis Parent Athletic Activities Club, Bellingham.

**2014, 2015**      Judge, Future Business Leaders of America, Northwest Region of Washington State.

**2005-2007**      President, Vice-President, Parkview Elementary Parent Teacher Association, Bellingham.

**1995-1996**      Board Member, Whatcom County Crisis Services, Bellingham.

June 21, 2021

Members, Whatcom County Council  
County Courthouse  
311 Grand Avenue, Suite #105  
Bellingham, Washington 98225-4038

RE: Application of Kimberly Thulin for appointment as District Court Judge

Dear Members of the Whatcom County Council:

From 1994 to 2019, I was a judge on the Washington State Court of Appeals, Division One. I became acquainted with Kimberly Thulin in 2001, when she began to represent the State of Washington in appeals from criminal cases decided in Whatcom County. Over the next twenty years she responded to well over 150 appeals. I personally sat on panels in dozens of cases that she briefed and argued on behalf of the State. Her professional skills were consistently impressive. She wrote well, she was honest and straightforward in argument, she was punctual, she remained composed and competent under pressure, and she always displayed a comprehensive command of the law.

Ms. Thulin's skill with appeals shows that she will be an outstanding judge and will quickly earn the respect of the lawyers who practice before her. Mastering appellate practice requires not only diligence in keeping up with new developments in the law, but also careful study of older cases to understand where the law came from. I have confidence that her legal rulings will be solid.

For many citizens, being in District Court as a defendant, juror or witness is their first and sometimes their only contact with the judicial system. Ms. Thulin is a fair and open-minded person who will make that experience as positive as possible. She has a reassuringly calm demeanor. And with her experience as an instructor and trainer, she will be able to explain what is going on in the courtroom to people who are relatively unfamiliar with legal proceedings.

In short, I regard Ms. Thulin as superbly qualified for the appointment. She will be a stellar addition to the Whatcom County judiciary. If I can provide further information, please do not hesitate to call on me.

Very truly yours,

A handwritten signature in cursive script that reads "Mary Kay Becker". The signature is fluid and extends to the right with a long horizontal stroke.

Mary Kay Becker

Judge, Washington State Court of Appeals (Retired)

June 22, 2021

Dear members of the Whatcom County Council,

I met Kim Thulin a number of years ago through my daughter's involvement in the SQHS Marching and Concert band. When I joined the band booster program, I quickly saw how extremely capable Kim was in her role for 2 years as president of the group. It can be a challenging task to coordinate the efforts of parents with varied skill and motivation levels but Kim seemed do it both effectively and with grace.

We were continually looking for ways to grow and support the program and during these discussions I found that Kim was an imaginative and global thinker. She was quite resourceful in finding people and opportunities that would move the program forward and always open to the ideas of others as well.

I also found her to be quite diplomatic which was a particularly useful trait when dealing with the multiple personalities involved with the group. And, as anyone who has worked as a volunteer knows, there are the people who are mostly talk vs those who actually dig in and do the work. To my relief Kim fell in the second camp so we spent many long hours working together and, in my book, that speaks volumes.

As a community member, I have always appreciated Kim's willingness to explain and discuss issues as well as her ability to articulate her thoughts clearly. She is an astute thinker and level headed in her approach to things and is a great asset to any group.

In summary, I believe Kim Thulin would be an excellent choice to complete the remaining term of the Whatcom County District Court Judge position and hope she will be given the opportunity to contribute her many skills.

Please don't hesitate to contact me with any questions or for follow up information.

With regards,



Becky Brunk

Realtor; Coldwell Banker Bain

June 23, 2021

RE: Letter of Recommendation for Kimberly Thulin

To Whom It May Concern:

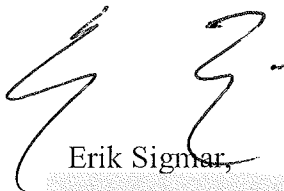
I enthusiastically recommend Kimberly Thulin for District Court Judge. I have had the distinct pleasure of working closely with Kimberly at the Whatcom County Prosecutor's Office over the course of the past five years. She is a trusted confidant, and a wise and measured attorney.

In regards to her judicial qualities, Kimberly is highly experienced and accomplished in the profession of criminal law. As an appellate attorney for the prosecutor's office, Kimberly handles criminal appeals, including appeals from District Court. Kimberly's responsibilities include assisting Deputy Prosecutors with legal issues that arise during trial, reviewing jury instructions, and conducting training. Therefore, Kimberly is uniquely qualified regarding the legal demands of a District Court judge.

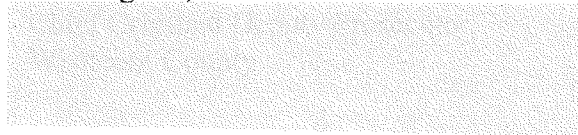
I can assure you that Kimberly would not only be exceptionally well informed, but she demonstrates higher qualities of judicial temperament. Kimberly is decisive and direct, while maintaining sensitivity. You can count on Kimberly to be fair, compassionate, and understanding of the big picture.

Thank you for your consideration, and please do not hesitate to call me if you have any questions, or if I can be of further service.

Sincerely,



Erik Signar,



Kimberly Anne Thulin

Members of the Whatcom County Council,

**WHATCOM COUNTY DISTRICT COURT JUDGE  
APPLICATION QUESTIONS**

1. I am seeking to be appointed the next Whatcom County District Court Judge because I have the legal experience, ability, temperament and, as my resume reflects, a committed interest in public service. Whatcom County District Court may be the only interaction community members have with our judicial system; as such, the position requires not only someone with legal education, but also, someone with a command of the local and state court rules, evidentiary rules and standards of review applicable to various types of decisions a judge will be required to make. The position further requires someone who is personable, to ensure all persons appearing in court whether a litigant, a witness, member of the public or attorney feel respected and meaningfully heard regardless of the outcome of a case. I am that candidate.

As a senior appellate attorney for the past twenty years, I have reviewed hundreds of trial transcripts from Whatcom Superior and District Courts which has given me the unique opportunity to understand the fundamental skills required to be an effective judge. In addition to my appellate work which requires understanding how to efficiently research, write and advocate legal positions, I have experience in litigating jury trials, representing clients in civil proceedings and have argued many times in the Courts of Appeal and Washington State Supreme Court. Success throughout my career has required an ability to work collaboratively with others, to listen thoughtfully, to consider legal positions meaningfully and to efficiently manage competing caseloads; skills a successful District Court judge should possess.

Notwithstanding my extensive legal experience, the moments of my career for which I am most proud are when I made a difference in someone else's life: the Rule 9 Intern I helped guide through the preparation of his first appellate brief and oral argument, a client for whom I was able to obtain visitation rights for after she successfully completed inpatient treatment, or the trial deputy I was able to quickly advise and reassure when a tricky legal issue arose mid-trial. These moments reflect that I will be a judge who cares deeply for those appearing in court, someone who will strive to uphold the law and procedure in an impartial manner and will do so with compassion, thoughtfulness and efficiency. I would be honored to be appointed to serve as the next Whatcom County District Court Judge.



2. If appointed, I will run for the office of Whatcom County District Court Judge in the next general election. While I have not previously sought an elected position, I understand the work and effort required to run and am fully committed to doing so.
3. No, I am not affiliated with any business or agency that is currently or in the future potentially seeking to establish a business relationship with Whatcom County.
4. I have not had any sustained Bar complaint by the Washington State Bar Association.

### **JUDICIAL APPLICATION ESSAY**

Whatcom District Court is a well-run, busy venue that presides over criminal misdemeanor and gross misdemeanor cases, civil cases, small claims court, civil infractions, requests for warrants and protection order hearings. Washington State Court rules, in addition to Whatcom County local court rules and our Federal and Washington State Constitutions, provide the framework within which cases are processed in District Court. Which set of court rules apply to a District Court hearing depends upon the nature of the proceeding before the court. In addition to processing a large volume of cases through the system, District Court is also responsible for running various probation services and therapeutic opportunities, managing and updating electronic files both in and out of the courtroom, and for processing civil and criminal fines and bail bonds. All of this, and more, is managed day-to-day by the District Court administrator under the direction of the presiding District Court Judge.

While District Court is managed well, it nonetheless faces several challenges. COVID-19, without question, has significantly strained our traditional court systems. Through the issuance of emergency District Court and Washington State Supreme Court COVID -19 Orders, and with the assistance of the County IT department, District Court ensured continued public access to our Courts through remote and limited, in person hearings. Criminal and civil jury trials however, were suspended. Consequently, cases have stacked up. As COVID-19 restrictions are lifted and courts work through the COVID-19 impacted cases in addition to current filings, District Court will face understandable pressure to increase jury trial and docket availability to assure litigants are afforded their right to a timely trial and resolution of their case.

Statutory changes expanding the scope of civil disputes that may be filed in District Court and the Washington State legislature's passage of Senate Bill 5476, effective May 13,<sup>th</sup> 2021, will also impact Whatcom County District Court in significant ways. In *State v. Blake*, 481 P.3d 521 (2021), the Washington Supreme Court found the strict liability possession of a controlled substance statute violated due process and was therefore, unconstitutional. In the wake of *Blake*, the Washington legislature passed Senate Bill 5476 making intentional possession of a controlled substance a misdemeanor offense and not a felony. While the bill requires diversion before charges can be filed, these drug cases *when filed*, will now be filed in Whatcom County District Court. Senate Bill 5476 will therefore necessarily increase both the scope of District Court judicial caseloads and require an increase in capacity of either law enforcement diversion assistance (L.E.A.D.) services or alternative

diversion programs to ensure compliance with the new law. Statutory amendments expanding the scope of civil disputes that may be filed in District Court will also significantly increase District Court filings. All of these challenges and changes will require thoughtful case management and efficient use of court resources by Whatcom County District Court Judges and administration.

Finally, while COVID-19 and statutory changes pose significant new challenges for Whatcom County District Court function, the next Whatcom County District Court Judge can and should prioritize community engagement. Community members are often unaware of how courts work, all the different types of cases the court hears and various therapeutic programs District Court administers. Educational outreach by the bench within the community will strengthen knowledge, accessibility and confidence in our judicial branch of government and importantly, Whatcom County District Court.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-345

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<b>File ID:</b>	AB2021-345	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/11/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

---

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

### TITLE FOR AGENDA ITEM:

Discussion regarding reopening Council operations to the public

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding reopening Council operations to the public

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### HISTORY OF LEGISLATIVE FILE

---

Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council Special Committee of the Whole	DISCUSSED	

---

**Attachments:** Draft Memo - Reopening, Draft Hybrid Meeting Diagram - Basic



## MEMORANDUM

**TO:** Whatcom County Council

**FROM:** Council Staff

**RE:** Discussion regarding reopening Council operations to the public

**DATE:** June 12, 2021

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Washington State plans to fully reopen on June 30<sup>th</sup>, which would require changes to Whatcom County Council meeting formats starting with the July 13<sup>th</sup> meeting. Staff would like to receive Council feedback and direction on logistics for reopening.

1. Council meetings

The attached chart shows three options for meetings and describes details for implanting each:

- Option 1: Remote Meeting
- Option 2: Hybrid Meeting
- Option 3: In-person Meeting

Options 1 and 3 can be implemented right away. Option 2 would require additional equipment, configuration and testing to make sure the existing Council Chambers sound system, presentation system and Granicus livestream encoder are properly integrated with additional cameras, laptops and the Zoom video conferencing platform. Effectively managing sound across all these systems will be challenging.

2. Masking guidance

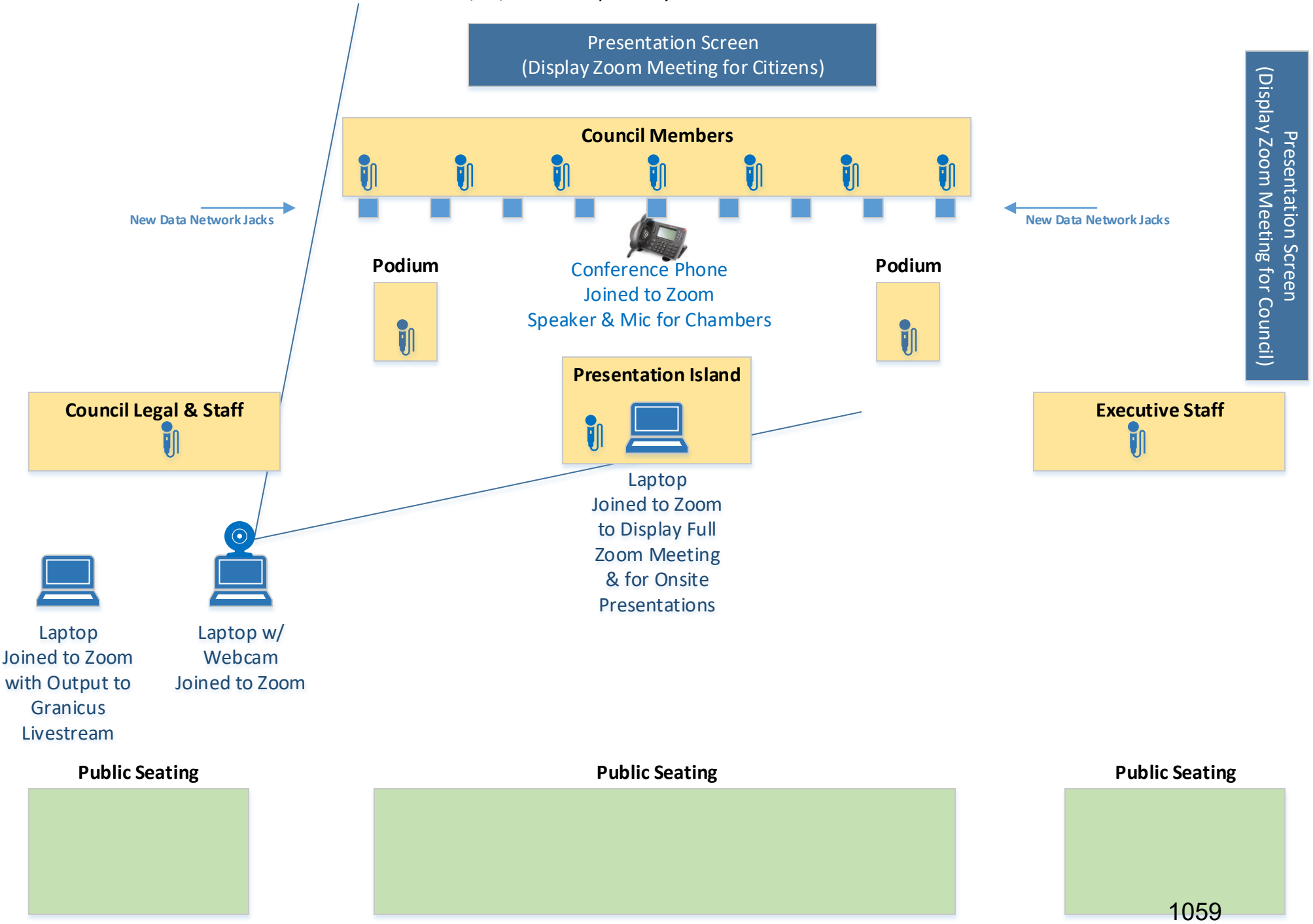
Please contact Dana Brown-Davis at x5015 with any questions you may have.

## COUNCIL MEETINGS: OPTIONS FOR REOPENING

	1 – Remote Meeting	2 – Hybrid Meeting ( <i>Not available at this time</i> )	3 – In-Person Meeting
Councilmembers	All participate remotely	Some participate remotely by zoom, some in person in the chambers	All participate in person in the chambers (Option to participate by phone)
Meeting hub	Zoom	Zoom	Chambers in person
Video/cameras	All via Zoom	<b>Option A:</b> One camera with view of dais only, streamed to zoom as one panelist (CMs in chamber) *requires camera set up in chambers	
		<b>Option B:</b> Individual cameras on each in-person councilmember at the dais and streamed to zoom as individual participants *Not available immediately - requires digital device at each seat at the dais (e.g. laptop with camera/mic)	
REMOTE Public participation	Remote participation on Zoom by phone or digital device (camera sharing not offered)		
IN-PERSON Public participation	View Zoom meeting live on projector in chambers	View Zoom meeting live on projector in chambers; View in-person councilmembers (and staff) in chambers.	View live meeting in chambers - all councilmembers and staff in chambers (no zoom broadcast to projector in chambers - remote callers heard via chambers sound system)
	Speak via laptop at podium in Council Chambers (no camera on speaker) (with sound management required)	Speak via laptop or phone at podium (optional camera on speaker) (with sound management required, assistance from vender/contractor)	Speak in-person in chambers (optional camera on speakers)
Sound	Remote meeting sound via zoom to chamber speakers; In-person sound from laptop mic to zoom; Manage chambers sound (e.g. turn off speakers when in-chambers mic is on (mic & speakers can't run at same)	Requires assistance from outside vendor/contractor to solve for sound challenge with reverberation	Sound from chambers broadcast via Legistar. Remote participation via zoom (by computer or phone) – sound received by chambers mic.
Staffing	Clerk; Zoom host; Legistar stream/actions/minutes; Encoder link/zoom broadcast to Chambers/sound board; In-person participation assistance at podium and sound management; Crowd management		Clerk; Zoom host; Legistar stream/actions/minutes; Crowd management <i>Note: Zoom participants need to be able to follow meeting live in real time.</i>

# Council Chambers “Basic” Setup for Hybrid Meeting Discussion

6/15/2021 – Prepared by P. Rice - Not to Scale





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-360

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<b>File ID:</b>	AB2021-360	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	06/15/2021	<b>Entered by:</b>	JLassite@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

---

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

### TITLE FOR AGENDA ITEM:

Ordinance to establish an independent review of the community response to the COVID-19 Pandemic

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance establishes a County Commission to review the community's response to the COVID-19 Pandemic. An independent Special Commissioner would be selected by the County Council and hired by Whatcom County. The Special Commissioner would be compensated at normal market rate and be provided appropriate resources and one or more full-time support person. The Special Commissioner would 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 their report to the County Council, Executive, and Sherriff by October 31, 2021.

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### HISTORY OF LEGISLATIVE FILE

---

Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council	INTRODUCED	Council Committee of the Whole

---

**Attachments:** Proposed Ordinance, AGENDA REVISION NOTICE FOR 6.15.2021



**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE TO ESTABLISH AN INDEPENDENT REVIEW  
OF THE COMMUNITY RESPONSE TO THE COVID-19 PANDEMIC**

**WHEREAS** on January 21, 2020, the Washington State Department of Health confirmed the first case of the novel coronavirus (COVID-19) in the United States in the State of Washington, and, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans, which easily spreads from person to person; and

**WHEREAS** on January 31, 2020, the United States Department of Health and Human Services secretary Alex Azar declared a national public health emergency arising from COVID-19; and

**WHEREAS** on March 11, 2020, the World Health Organization declared COVID-19 a pandemic with global spread, impacts, and health risks; and

**WHEREAS** in March 2020, Whatcom Unified Command (WUC) was activated to provide an integrated, coordinated, multi-jurisdictional response to the threat of COVID-19 locally, in partnership with the Whatcom County Health Department; and

**WHEREAS** the staff of the Whatcom County Government; the cities of Bellingham, Lynden, Ferndale, Blaine, Nooksack, Everson, and Sumas; the Lummi and Nooksack Nations; PeaceHealth; medical providers; fire districts; businesses; non-profit and faith-based organizations; community groups; and countless citizens all stepped forward to collectively fight the pandemic; and

**WHEREAS** in all prior emergencies the County has faced, we could rely on neighboring communities or states to provide us with materials and skilled workers to help us cope – but as this was a truly global disaster, for a time we had to rely on our own internal County sourced resources to manufacture PPE, distribute food etc.; and

**WHEREAS** Whatcom County can expect future emergencies to arise, of a yet unknown type, which could include future pandemics, floods, fire, earthquake, cyber-attack, widespread communications loss, and perhaps even things we have not yet imagined; and

**WHEREAS** in the book “The Great Influenza” the story of the Spanish Flu pandemic the author concludes:

*“The final lesson of 1918, a simple one yet one most difficult to execute, is that...those in authority must retain the public's trust. The way to do that is to distort nothing, to put the best face on nothing, to try to manipulate no one. Lincoln said that first, and best. A leader must make whatever horror exists concrete. Only then will people be able to break it apart.”; and*

**WHEREAS** this is not humanity’s first pandemic, nor will it be our last; and

**WHEREAS** citizens will be less likely to blame their government for future disasters caused by factors outside our control, but will have good reason to be critical if their government fails to plan, prepare and learn from past experiences; and

**WHEREAS** the Pandemic has truly tested our structures and processes for dealing with disaster, and in doing so has provided us an ideal opportunity to evaluate, to recognize what we did well and where we have an opportunity to improve; and

**WHEREAS** the Pandemic response has inspired various requests to review: the

makeup of the County Health Board; Unified Command; the County Emergency Management Plan; and County policy related to communications with the public; and

**WHEREAS** the people most qualified to provide feedback on our response are those who actively worked on answering the needs of the community; and

**WHEREAS** this year we will have several key members of our community retiring and we would like to hear from them before they become unavailable; and

**WHEREAS** the best way to determine the lessons to be learned from the Pandemic is to appoint a Special Commissioner to interview the key participants, to document the lessons learned, to better inform the community on how we can ensure the things we did right, what will be likely to occur again, where we need to improve, and what to avoid next time.

**NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council establishes a County Commission to review our community's response to the COVID-19 Pandemic; and

**BE IT FURTHER ORDAINED** that County Council shall select and Whatcom County shall hire, an independent Special Commissioner with the requisite qualifications (ideally a retired senior lawyer familiar with the county) to head the Commission; and

**BE IT FURTHER ORDAINED** that such Special Commissioner be compensated at the normal market rate for such work, and be provided the necessary resources including office space and one or more full-time support persons to manage meetings and documentation; and

**BE IT FURTHER ORDAINED** that they shall include, but not be limited to examining: 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 (i.e. manufacturing, logistics, communications) and the community sectors represented; and

**BE IT FINALLY ORDAINED** that the person shall complete and deliver their report to the County Council, County Executive and County Sheriff by October 31<sup>st</sup>, 2021 to enable the county to incorporate their findings in future updates to the county's existing emergency response plan.

**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 Sidhu, County Executive  
( ) Approved ( ) Denied

Date Signed: \_\_\_\_\_

**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  
AGENDA REVISION NOTICE  
FOR JUNE 15, 2021**

**VIRTUAL MEETING  
AGENDA REVISED 6.15.2021  
(TO PARTICIPATE, SEE INSTRUCTIONS AT  
[www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil)  
OR CALL 360.778.5010)**

**THE FOLLOWING ITEM HAS BEEN ADDED TO COUNCIL:**

**ITEMS ADDED BY REVISION**

1. [AB2021-360](#) Ordinance to establish an independent review of the community response to the COVID-19 Pandemic

**ITEM ADDED 6.15.2021 (FOR INTRODUCTION)**



# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2021-053

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File ID:	MIN2021-053	Version:	1	Status:	Agenda Ready
File Created:	07/02/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	07/13/2021			Enactment #:	

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

### TITLE FOR AGENDA ITEM:

Committee of the Whole for June 29, 2021

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

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Attachments: Draft Minutes Committee of the Whole Jun 29 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](http://www.whatcomcounty.us/joinvirtualcouncil) OR CALL 360.778.5010)  
Tuesday, June 29, 2021**

**2:15 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 12:17 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:

- The vaccination rate is likely within half a percentage of the 70% State threshold of those 16 years and over as of today
- Case rates are the lowest since November 2020
- Reopening of the state on June 30 and what that will mean
- Transitions for the COVID-19 pandemic including work to collapse some of the Unified Command and overall response operations and not getting a briefing from her every two weeks as she has been doing

She answered questions and Councilmembers discussed whether there is concern about the COVID-19 Delta variant in the state and county, the effectiveness of the COVID-19 vaccine against variants, and vaccination of children ages 17 and under.

**This agenda item was DISCUSSED.**

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

The following people briefed the Councilmembers on proposed changes as noted in "Proposed amendments Exhibit A 6.24.2021" and "Proposed amendments Exhibit B" and answered questions:

- Matt Aamot, Planning and Development Services Department
- Karen Frakes, Prosecuting Attorney's Office

**TIMESTAMP: 00:27:32**

**Donovan moved** and Frazey seconded to amend Proposed WCC 16.08.160.F.1.b.i(c)(1) (“Proposed amendments Exhibit B”) to add “and lifecycle” to line 133 as follows:

“... indirect and lifecycle emissions. Voluntary additional mitigation may occur, per WAC 197-11-660(1)(d) ... “

Councilmembers discussed the motion.

**TIMESTAMP: 00:34:38**

The additional following people spoke and answered questions:

- Brad Brown, Philips 66
- Alex Ramel, Stand.earth
- Satpal Sidhu, County Executive
- Dennis McLerran, Cascadia Law Group

Donovan restated his motion.

The motion failed by the following vote:

**Aye:** 2 - Donovan and Frazey

**Nay:** 5 - Kershner, Browne, Buchanan, Byrd, and Elenbaas

**Donovan moved** to direct the Planning and Development Services Department to get this to the Council in a single clean document ready for introduction. The motion was seconded by Buchanan.

Aamot answered a question about the timeline of having a document ready for introduction.

The motion carried by the following vote:

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**This agenda item was DISCUSSED AND MOTION(S) APPROVED.**

3. [AB2021-378](#) Discussion and request for direction regarding hearing examiner contract for 2022  
Cathy Halka, Council Legislative Analyst, briefed the Councilmembers and answered questions.

**Kershner moved** to continue the contract with the current contractor and put it out for Request for Proposal (RFP) next year when it is required. The



motion was seconded by Browne.

Halka and Dana Brown-Davis, Clerk of the Council, answered whether there have been any law suits against the County with the current Hearing Examiner's services, and Councilmembers discussed the motion.

The motion carried by the following vote:

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Kershner, and Browne

**Nay:** 0

**This agenda item was DISCUSSED AND MOTION(S) APPROVED.**

5. [AB2021-369](#) Discussion of proposed ordinance and program guide establishing a Commercial Assessed Clean Energy and Resiliency (C-PACER) Program in Whatcom County
- Donovan briefed the Councilmembers and they discussed how projects that come to the CPACER program would be evaluated for approval and how applications would be vetted.

The following people answered what obstacles may occur if this program is put in place, what risk there might be for the County, and whether this would be a hard sell for a bank:

- Rebecca Xczar, County Assessor
- Steve Oliver, County Treasurer

**This agenda item was DISCUSSED.**

### **Items Added by Revision**

There were no agenda items added by revision.

### **Other Business**

Tyler Schroeder, Executive's Office, answered whether the Executive has an update for Councilmembers regarding the Point Roberts grocery store which was discussed earlier in the Finance and Administrative Services Committee under Other Business. He stated it would be in the Executive's Report this evening.

### **Adjournment**

The meeting adjourned at 3:36 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: MIN2021-054

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<b>File ID:</b>	MIN2021-054	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/02/2021	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Regular County Council for June 29, 2021

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

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**Attachments:** Draft Minutes Council Jun 29 2021

# **Whatcom County Council**

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



## **Minutes - Draft**

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT  
[www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) OR CALL 360.778.5010)**

**Tuesday, June 29, 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 Business and Commerce Advisory Committee. The vacancy must be filled by someone who is involved in the food processing industry. If you're interested in participating in this group and meet the qualifications, please let us know at 360-778-5010 or email the Council at [council@co.whatcom.wa.us](mailto:council@co.whatcom.wa.us).

### COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive reported on the following:

- Governor Jay Inslee has agreed to allocate \$100,000 to the Point Roberts grocery store from the State's Strategic Reserve Fund.
- An unprecedented heat wave in our area causing dry surroundings and a heightened risk of fire. He plans to issue an Executive Order banning the use of fireworks on the Fourth of July.

He answered questions about a ban on the use of fireworks and whether a middle ground could be found such as allowing them over water.

### SPECIAL PRESENTATION

1. [AB2021-368](#) Report from the Health Department on the Behavioral Health Program Fund 2020 Annual Report

The following people reported:

- Anne Deacon, Health Department
- Chris Phillips, Behavioral Health Advisory Committee Chair

They answered questions about the statewide behavioral health workforce

shortage and whether there has been analysis of what can be done to address it, what jurisdictions that are not having this issue are doing differently than Washington state, matching the pay of workers to the training required, and the size of the gap between what the job pays and what it should pay.

**This agenda item was REPORTED.**

## **MINUTES CONSENT**

*Frazey moved* to accept the minutes consent items. The motion was seconded by Donovan (see votes on individual items below).

1. [MIN2021-050](#) Special Committee of the Whole for June 15, 2021

**Frazey moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

2. [MIN2021-051](#) Committee of the Whole for June 15, 2021

**Frazey moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

3. [MIN2021-052](#) Regular County Council for June 15, 2021

**Frazey moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

## **PUBLIC HEARINGS**

1. [AB2021-296](#) Ordinance adopting amendments to the Purchase of Development Rights Program  
Council staff played a short instructional video about how to speak at the meeting.

Becky Snijder van Wissenkerke, Planning and Development Services

Department, briefed the Councilmembers and answered whether there is any other organization that a program participant can work with other than the Whatcom Land Trust.

Buchanan opened the Public Hearing and the following people spoke:

- Veronica Wisniewski
- Alex Jeffers
- Paul Schissler
- Wendy Harris

Hearing no one else, Buchanan closed the Public Hearing.

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing 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 2021-037

### **OPEN SESSION (20 MINUTES)**

The following people spoke:

- Gloriann Tennyson
- Wendy Harris
- Kyler Danielson
- Kathy Sabel
- Misty Flowers
- Natalie Chavez
- Shean Halley
- Nancy Bergman
- Jean Purcell

Hearing no one else, Buchanan closed the Open Session.

### **CONSENT AGENDA (VOTE RETAKEN LATER)**

**(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 ten.



Clerk's note: Councilmembers voted on the Consent Agenda but later came back to it and reconsidered the vote. The vote on this round was 5-2 with Kershner and Elenbaas opposed but after reconsidering the vote it was 6-1 with Elenbaas opposed. See motion and votes for these items below in the second vote.

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
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
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
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
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
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
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
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
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
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

## **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

Donovan reported for the Natural Resources Committee.

Clerk's note: Councilmembers started to discuss this item but did not take a vote. See motion and vote on the item below.

2. [AB2021-366](#) Discussion and Motion for PLN2017-00004 Countywide Review of Designated Mineral Resource Lands

***Donovan moved*** to approve the Planning Commission's recommended motion that the 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.

Councilmembers did not vote on this item but went back to AB2021-364 to dispense with a motion from committee on that item.

Clerk's note: See motion and vote on AB2021-366 below after the Consent Agenda items.

1. [AB2021-364](#) Discussion and Motion to recognize the intent of PLN2019-00011 - Surface Mining of Dry Meander Zones has been achieved

***Donovan moved*** to accept the committee's recommendation to hold the item in committee.

Cathy Halka, Council Legislative Analyst, clarified that the motion was to hold for two weeks and Donovan confirmed that was the motion.

**Donovan's motion that the Request for Motion be HELD IN COMMITTEE for two weeks carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**CONSENT AGENDA (second vote)**

Kershner stated that she mistakenly voted against the Consent Agenda and would like to change her vote.

**Buchanan moved** to reconsider the vote on the Consent Agenda items. The motion was seconded by Browne.

The motion to reconsider carried by the following vote:

**Aye:** 7 - Kershner, Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

**Nay:** 0

**(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 ten.

Councilmembers voted on those items (see votes on individual items below).

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**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:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

Absent: 0

**OTHER ITEMS (continued)**

**(From Council Natural Resources Committee)**

2. [AB2021-366](#) Discussion and Motion for PLN2017-00004 Countywide Review of Designated Mineral Resource Lands

**Donovan** reported for the Natural Resources Committee and *moved* to approve the Planning Commission's recommended motion that the 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.

Councilmembers discussed and Donovan restated the motion.

**Donovan's motion (see notes) carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**(From Council Finance and Administrative Services Committee)**

3. [AB2021-327](#) Ordinance amending the Whatcom County Budget, request no. 10, in the amount of \$744,800

**Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2021-038

4. [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)

**Browne reported for the Finance and Administrative Services Committee and**

**moved that the Resolution (FCZDBS) 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 2021-022

5. [AB2021-340](#) Ordinance suspending Whatcom County Code 1.28 to update the Correctional Facilities operational standards

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Ordinance be ADOPTED.

Satpal Sidhu, County Executive, spoke about finding a consultant to help with the work and Councilmembers discussed the motion.

**Browne's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2021-039

6. [AB2021-342](#) Request authorization for the County Executive to enter into a Memorandum of Understanding between Whatcom County and Sudden Valley Community Association

**Browne reported for the Finance and Administrative Services Committee and moved that the Memorandum of Agreement be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

7. [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

***Browne moved*** that the Contract be AUTHORIZED.

Councilmembers discussed the motion.



**Browne's motion that the Contract be authorized FAILED by the following vote:**

**Aye:** 3 - Buchanan, Donovan, and Frazey

**Nay:** 3 - Byrd, Elenbaas, and Kershner

**Absent:** 0

**Abstain:** 1 - Browne

8. [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

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract be AUTHORIZED.

Councilmembers discussed the motion.

**Browne's motion that the Contract be AUTHORIZED carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

**Nay:** 2 - Byrd, and Elenbaas

**Absent:** 0

9. [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

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract be AUTHORIZED.

Tyler Schroeder, Executive's Office, answered a question about the difference in services between SeaMar Community Health Centers and the Lighthouse Mission.

**Browne's motion that the Contract be AUTHORIZED carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

**Nay:** 2 - Byrd, and Elenbaas

**Absent:** 0

10. [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

**Browne** reported for the Finance and Administrative Services Committee and **moved** that the Contract be AUTHORIZED.

Councilmembers discussed the motion.

Tyler Schroeder, Executive's Office, answered which fund the money is coming out of.

**Browne's motion that the Contract be AUTHORIZED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

### **COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**

1. [AB2021-303](#) Appointment of Starck Follis and Carolyn Mason to the Criminal Justice Treatment Account panel

**Donovan moved and Kershner seconded that the Council Appointment be APPOINTED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

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)

**Kershner moved** and Frazey seconded that the Council Appointment be APPOINTED.

Elenbaas asked if any applicants were on the call but there were none.

**Kershner's motion that the Council Appointment be APPOINTED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

## **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

**Donovan moved and Frazey seconded that the Executive Appointment be CONFIRMED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

2. [AB2021-379](#) Request confirmation of the County Executive's appointment of William Zidel to the Point Roberts Community Advisory Committee

**Kershner moved and Donovan seconded that the Executive Appointment be CONFIRMED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Abstain:** 1 - Byrd

Browne gave a point of order and stated he had a request for two members of the Lummi Nation (one elected official and one appointed by the Chairman) to talk about the fireworks issue and would like the Council to invite them to speak later. The Councilmembers concurred.

## **ITEMS ADDED BY REVISION**

There were no agenda items added by revision.

## **INTRODUCTION ITEMS**

**Donovan moved** to introduce items one through seven. The motion was seconded by Byrd (see votes on individual items below).

1. [AB2021-346](#) Ordinance amending the project budget for the Silver Lake Park Improvement Fund, request no. 3

**Donovan moved and Byrd 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

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

**Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [AB2021-365](#) Ordinance amending the Whatcom County Budget, request no. 11, in the amount of \$5,728,416

**Donovan moved and Byrd 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

4. [AB2021-370](#) Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

**Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

5. [AB2021-375](#) Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership

**Donovan moved and Byrd 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

6. [AB2021-380](#) Ordinance adopting amendments to the Whatcom County Comprehensive Plan relating to density credits, PDRs, and TDRs

**Donovan moved and Byrd 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

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

**Donovan moved and Byrd 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 reports from the committees.

The following people spoke:

- Satpal Sidhu, County Executive
- Tim Ballew, Lummi Indian Business Council representative
- Terrence Adams, Lummi Indian Business Council Member and firework representative
- Travis Brockie, Lummi Indian Business Council Vice Chair
- Karen Frakes, Prosecuting Attorney's Office

The speakers and Councilmembers discussed the current burn index conditions, limiting fireworks use to waterways or certain time periods, working cooperatively with firework vendors and the Lummi Nation on public education and clean-up, thinking long term to possibly transition away from fireworks, whether a ban would apply to just the unincorporated areas of the county or county-wide (including cities), what should be included in the Executive's press release concerning fireworks, and whether

there should be a total ban in forested areas.

Byrd spoke about taking legal action against YouTube for censorship of a Council meeting and Councilmembers discussed the issue.

Satpal Sidhu, County Executive, spoke about a recent flight around Whatcom County's boundary lines.

## **ADJOURN**

The meeting adjourned at 8:44 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: AB2021-363

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<b>File ID:</b>	AB2021-363	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	06/15/2021	<b>Entered by:</b>	JFleisch@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	07/13/2021	<b>Enactment #:</b>			

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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.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
06/29/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

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**Attachments:** Staff Memo, Proposed Ordinance, Staff Report



**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: PLN2019-00010 - Surface Mining Pipeline Buffer

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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."<sup>1</sup>

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)

<sup>1</sup> 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 scenario<sup>2</sup>

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.

<sup>2</sup> Wisner, Andy. "Earthquake Frequency." Received by Joshua Fleischmann, 6 Jun. 2019.

PROPOSED BY: Planning and  
Development Services  
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

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

\_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

/s/ Royce Buckingham, approved via email / JL

Royce Buckingham  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

(    ) Approved      (    ) Denied Date

Signed: \_\_\_\_\_

**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: AB2021-370

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<b>File ID:</b>	AB2021-370	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	06/17/2021	<b>Entered by:</b>	CHalka@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

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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

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
06/29/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

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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](http://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 be liable or members of 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

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## 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

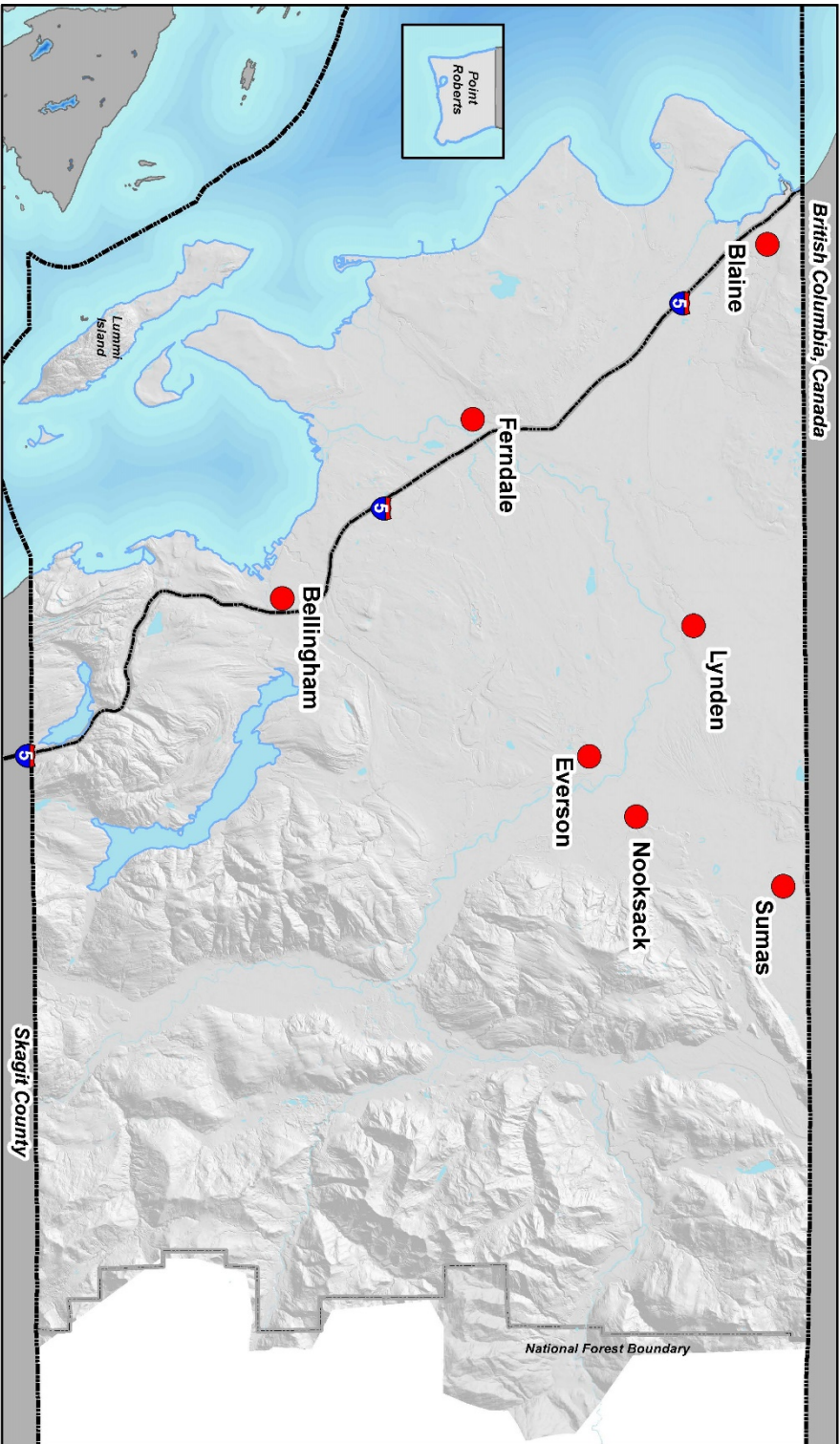
Neither Whatcom County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program.

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
- 5 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, completeness, or reliability of the information contained in this map. Any user of this map assumes all responsibility for use hereof, and further agrees to hold Whatcom County harmless from and against any damages, 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, <b>Recordation #</b> _____	<input type="checkbox"/>
<input type="checkbox"/>	8. Project completion certification (see Program Guide, Exhibit 8) Date received: _____	<input type="checkbox"/>
<b>C-PACER application complete</b>		

## 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*

1155

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**

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**Grantor(s) [PROPERTY OWNER]**

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**Grantee(s) WHATCOM COUNTY**

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**Legal Description** (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

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**Assessor's Tax Parcel ID Number**

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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**

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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

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**Reference Number(s) of Related Documents**

---

**Grantor(s)/Assignor** WHATCOM COUNTY

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**Grantee(s)/Assignee** [CAPITAL PROVIDER OR DESIGNEE]

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**Legal Description** (Abbreviated form is acceptable, i.e. Section/Township/Range/Section or Lot/Block/Subdivision)

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**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:	
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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: AB2021-392

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<b>File ID:</b>	AB2021-392	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/29/2021	<b>Entered by:</b>	JLassite@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Request for Motion		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request approval of a motion to authorize Chief Civil Deputy Prosecutor Karen Frakes to vote on behalf of Whatcom County in favor of the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors in re: Purdue Pharma, et al. Case No. 19-23649 (RDD), United States Bankruptcy Court of the Southern District of New York

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachment.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Purdue Pharma Ballot

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

PURDUE PHARMA L.P., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)

) Case No. 19-23649 (RDD)  
)

) (Jointly Administered)  
)

**BALLOT FOR VOTING TO ACCEPT OR REJECT  
THE FIFTH AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
PURDUE PHARMA L.P. AND ITS AFFILIATED DEBTORS**

**CLASS 4: NON-FEDERAL DOMESTIC GOVERNMENTAL CLAIMS**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY  
BEFORE COMPLETING THIS BALLOT.**

**THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO  
BE ACTUALLY RECEIVED BY PRIME CLERK LLC (“PRIME CLERK” OR THE  
“SOLICITATION AGENT”) BY 4:00 P.M. (PREVAILING EASTERN TIME) ON  
July 14, 2021 (THE “VOTING DEADLINE”).**

The Solicitation Agent, on behalf of Purdue Pharma L.P. (“**Purdue Pharma**”), its general partner Purdue Pharma Inc. (“**PPI**”), and Purdue Pharma’s wholly owned direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”), is soliciting votes to accept or reject the *Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors*, dated June 3, 2021 [D.I. 2982] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Plan**”<sup>2</sup>) from the holders of certain Impaired Claims against the Debtors.

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s registration number in the applicable jurisdiction, are as follows: Purdue Pharma L.P. (7484), Purdue Pharma Inc. (7486), Purdue Transdermal Technologies L.P. (1868), Purdue Pharma Manufacturing L.P. (3821), Purdue Pharmaceuticals L.P. (0034), Imbrium Therapeutics L.P. (8810), Adlon Therapeutics L.P. (6745), Greenfield BioVentures L.P. (6150), Seven Seas Hill Corp. (4591), Ophir Green Corp. (4594), Purdue Pharma of Puerto Rico (3925), Avrio Health L.P. (4140), Purdue Pharmaceutical Products L.P. (3902), Purdue Neuroscience Company (4712), Nayatt Cove Lifescience Inc. (7805), Button Land L.P. (7502), Rhodes Associates L.P. (N/A), Paul Land Inc. (7425), Quidnick Land L.P. (7584), Rhodes Pharmaceuticals L.P. (6166), Rhodes Technologies (7143), UDF LP (0495), SVC Pharma LP (5717) and SVC Pharma Inc. (4014). The Debtors’ corporate headquarters is located at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Plan or the Disclosure Statement and Solicitation Procedures Order (as defined herein), as applicable.



You are receiving this ballot (the “**Ballot**”) because you hold a Claim against the Debtors as of March 10, 2021 (the “**Voting Record Date**”). Your Claim is classified under the Plan in Class 4 (Non-Federal Domestic Governmental Claims). Except as otherwise set forth in the Bar Date Order, all timely filed Claims have been deemed filed against the Debtors, and, therefore, you are entitled to vote to accept or reject the Plan in Class 4.

The rights of holders of Claims in Class 4 are described in the Disclosure Statement for the Plan, filed on June 3, 2021 [D.I. 2983] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”) and the Order approving the Disclosure Statement and related solicitation procedures [D.I. 2988] (the “**Disclosure Statement and Solicitation Procedures Order**”). The Solicitation Package you are receiving with this Ballot provides instructions detailing how to access electronic versions, request hard copies or request flash-drive format versions of each of the Disclosure Statement Order as entered by the Bankruptcy Court (without any exhibits) and the Disclosure Statement as approved by the Court (with the Plan annexed thereto). If you need to obtain additional solicitation materials, you may contact the Solicitation Agent by (i) visiting the Debtors’ case website at <https://restructuring.primeclerk.com/purduepharma>; (ii) writing Purdue Pharma Ballot Processing, c/o Prime Clerk, LLC, One Grand Central Place, 60 East 42<sup>nd</sup> Street, Suite 1440, New York, New York 10165; (iii) emailing [purduepharmaballots@primeclerk.com](mailto:purduepharmaballots@primeclerk.com); or (iv) calling the Solicitation Agent at (844) 217-0912 (domestic toll-free) or (347) 859-8093 (if calling from outside the U.S. or Canada). You may also access these materials for a fee via PACER at <https://www.nysb.uscourts.gov/>.

Pursuant to the Disclosure Statement and Solicitation Procedures Order, the Bankruptcy Court has approved the Disclosure Statement as containing adequate information under section 1125 of the Bankruptcy Code. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. This Ballot may not be used for any purpose other than to vote to accept or reject the Plan. If you believe that you have received this Ballot in error, please contact the Solicitation Agent at the address or telephone numbers set forth above.

**For your vote to be counted, this Ballot must be properly completed, signed, and returned to the Solicitation Agent so that it is actually received no later than 4:00 p.m. (prevailing Eastern Time) on July 14, 2021.**

If a controversy arises regarding whether any Claim is properly classified under the Plan, the Bankruptcy Court shall, upon proper motion and notice, determine such controversy at the Confirmation Hearing. If the Bankruptcy Court finds that the classification of any Claim is improper, then such Claim shall be reclassified and the Ballot previously cast by the holder of such Claim shall be counted in, and the Claim shall receive the treatment prescribed in, the Class in which the Bankruptcy Court determines such Claim should have been classified, without the necessity of resoliciting any votes on the Plan. Notwithstanding the fact that your Claim would otherwise satisfy the definition of another type of Claim, or your receipt of a ballot or notice, which identifies your Claim as belonging to a specific Class for voting and distribution purposes, any Claim that satisfies the definition of Co-Defendant Claims under Sections 1.1 and 4.16 of the Plan shall be a Co-Defendant Claim and any Claim that satisfies the definition of an Other

Subordinated Claim under Sections 1.1 and 4.17 of the Plan shall be an Other Subordinated Claim.

If you have any questions on how to properly complete this Ballot, please call the Solicitation Agent at (844) 217-0912 (domestic toll-free) or (347) 859-8093 (international). **THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

**IMPORTANT NOTICE REGARDING CERTAIN RELEASE, EXCULPATION, INJUNCTION, AND CHANNELING INJUNCTION PROVISIONS IN THE PLAN**

Sections 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, 10.12, and 10.13 of the Plan contain release, shareholder release, exculpation, injunction, channeling injunction, MDT insurer injunction, Settling MDT insurer injunction and shareholder channeling injunction provisions. Thus, you are advised to review and consider the Plan carefully. For your convenience, such provisions are set forth on Exhibit 1 hereto. Below is a summary of the release provisions. For the avoidance of doubt, to the extent any provision of this notice conflicts with the terms of the plan, the terms of the plan will control. Capitalized terms used below and in Exhibit 1 have the meanings ascribed to such terms in the Plan.

**INFORMATION ABOUT RELEASE PROVISIONS, INCLUDING THIRD-PARTY RELEASES:**

Pursuant to the Plan, certain parties are releasing the Released Parties, which include certain third parties, and the Shareholder Released Parties (subject to and in accordance with the terms of the Shareholder Settlement) from certain Claims and Causes of Action.

The Releasing Parties include all holders of Claims and Interest under the Plan.

The Released Parties include, collectively, (i) the Debtors, (ii) each of the Debtors' Related Parties and (iii) solely for purposes of the Releases by the Debtors in Section 10.6(a) of the Plan, the Supporting Claimants, the Creditors' Committee and the Creditors' Committee's members and each of their respective professionals, in each case solely in their respective capacities as such; *provided, however*, that, notwithstanding the foregoing or anything herein to the contrary, no Excluded Party or Shareholder Release Snapback Party shall be a Released Party in any capacity or respect. For the avoidance of doubt, the Released Parties referenced in clause (ii) of this definition of Released Parties include Persons referenced in clause (ii) of the definition of Related Parties only to the extent (x) a claim arises from actions taken by such Person in its capacity as a Related Party of a Person referenced in clause (i) of the definition of Related Parties and (y) the underlying claim against the Released Party is released against the Person to which the Related Party is related. The Shareholder Released Parties are the beneficiaries of the separate shareholder release provisions in the Plan. The Plan Supplement will include the Shareholder Settlement, which will provide for, among other things, the settlement of claims against the Shareholder Released Parties.



## INSTRUCTIONS FOR COMPLETING THE BALLOT

This Ballot is submitted to you to solicit your vote to accept or reject the Plan. The terms of the Plan are described in the Disclosure Statement. **PLEASE READ THE PLAN AND THE DISCLOSURE STATEMENT CAREFULLY BEFORE COMPLETING THIS BALLOT.**

The Plan will be accepted by Class 4 if the Plan is accepted by the holders of at least two-thirds (2/3) in amount and at least one-half (1/2) in number of Claims in Class 4 that vote on the Plan in each such Class. In the event that Class 4 votes to reject the Plan, the Bankruptcy Court may nevertheless confirm the Plan and, thereby, make the Plan binding on the holders of Claims in Class 4 if the Bankruptcy Court finds that the Plan does not unfairly discriminate against, and accords fair and equitable treatment to, the holders of Claims in Class 4 and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code. If the Plan is confirmed by the Bankruptcy Court, all holders of Claims against, and Interests in, the Debtors (including those holders who abstain from voting on or vote to reject the confirmed Plan, and those holders who are not entitled to vote on the confirmed Plan) will be bound by the confirmed Plan and the transactions contemplated thereunder.

**To have your vote counted, you must complete, sign, and return this Ballot so that it is actually received by the Solicitation Agent no later than the Voting Deadline of July 14, 2021 at 4:00 p.m. (prevailing Eastern Time).** Ballots must be delivered to the Solicitation Agent at the appropriate address listed below:

If by E-Ballot:	If by standard or overnight:	If by hand delivery:
Visit <a href="https://restructuring.primeclerk.com/purduepharma">https://restructuring.primeclerk.com/purduepharma</a> and click on the "Submit E-Ballot" link	Purdue Pharma Ballot Processing c/o Prime Clerk, LLC One Grand Central Place 60 East 42 <sup>nd</sup> Street, Suite 1440 New York, NY 10165	Purdue Pharma Ballot Processing c/o Prime Clerk, LLC One Grand Central Place 60 East 42 <sup>nd</sup> Street, Suite 1440 New York, NY 10165
For your E-Ballot login credentials and further detail, please see page 7 below.		If you plan to hand-deliver your Ballot to Prime Clerk's office, please email <a href="mailto:purduepharmaballots@primeclerk.com">purduepharmaballots@primeclerk.com</a> at least twenty-four (24) hours in advance to arrange delivery.

**Class 4 Ballots will not be accepted by telecopy, facsimile, email, or other electronic means of transmission (other than by E-Ballot).**

You must properly complete the Ballot as follows:

- a. Item 1 (Amount of Claim). Make sure that the information contained in Item 1 below regarding the amount of your Claim is correct. **Please note that, except as otherwise set forth in the Disclosure Statement and Solicitation Procedures Order, each Claim in Class 4 has been allowed in the amount of \$1.00 for voting purposes only, and not for distribution, allowance, or any other purpose.**





- b. Item 2 (Vote on the Plan). Cast one vote to accept or reject the Plan by checking the appropriate box in Item 2 below. You must vote the entire amount of your Claim either to accept (i.e., vote in favor of) or reject (i.e., vote against) the Plan and you may not split your vote. Accordingly, any vote within a single Class that attempts partially to accept and partially reject the Plan will not be counted.
- c. If you hold Claims in a Class other than Class 4, you may receive more than one Ballot or Solicitation Package, labeled for a different Class of Claims. Your vote will be counted in determining acceptance or rejection of the Plan by a particular Class of Claims only if you complete, sign, and return the Ballot labeled for such Class of Claims in accordance with the instructions on that Ballot.
- d. If more than one timely, properly completed Ballot is received, unless the holder of the Class 4 Claim receives Bankruptcy Court approval otherwise, then the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot.
- e. If you fail to designate either an acceptance or rejection of the Plan or designate both an acceptance and rejection of the Plan, the Solicitation Agent may, in its discretion, either contact you to attempt to cure the defect or not count your vote as either an acceptance or rejection of the Plan.
- f. Item 3 (Acknowledgments and Certifications). Item 3 contains certain required certifications, which you are making by signing and returning the Ballot. Please ensure that you have read and understood the certifications prior to signing the Ballot and the certifications are correct for your Ballot. Provide your name, mailing address, and any remaining information requested in Item 3 below.
- g. If you are completing this Ballot on behalf of another claimant, indicate your relationship with such claimant and the capacity in which you are signing on the appropriate line in Item 3 below. By submitting the Ballot you are certifying that you have authority to so act and agree to provide documents evidencing such authority upon request (e.g., a power of attorney or a certified copy of board resolutions authorizing you to so act).
- h. Sign and date the Ballot.
- i. If additional space is required to respond to any item on the Ballot, please use additional sheets of paper clearly marked to indicate the applicable item of the Ballot to which you are responding. Do not include medical records with this Ballot. Medical records cannot be returned by the Solicitation Agent.
- j. Deliver the completed, executed Ballot so as to be **actually received** by the Solicitation Agent before the Voting Deadline.

**PLEASE NOTE:**

No Ballot shall constitute or be deemed a Proof of Claim or an assertion of a Claim. No fees, commissions, or other remuneration will be payable for soliciting votes on the Plan.

**NOTHING CONTAINED HEREIN OR IN THE SOLICITATION PACKAGES SHALL RENDER YOU OR ANY OTHER PERSON THE AGENT OF THE DEBTORS OR THE SOLICITATION AGENT, OR AUTHORIZE YOU OR ANY OTHER PERSON TO USE ANY DOCUMENT OR MAKE ANY STATEMENTS ON BEHALF OF THE DEBTORS OR THE SOLICITATION AGENT WITH RESPECT TO THE PLAN, EXCEPT FOR THE STATEMENTS CONTAINED IN THE SOLICITATION PACKAGES.**

**IF YOU (A) HAVE ANY QUESTIONS REGARDING THE BALLOT, (B) DID NOT RECEIVE A RETURN ENVELOPE WITH YOUR BALLOT, OR (C) NEED ADDITIONAL COPIES OF THE BALLOT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE SOLICITATION AGENT AT 844-217-0912 (DOMESTIC TOLL-FREE) OR 347-859-8093 (INTERNATIONAL), OR BY EMAILING PURDUEPHARMABALLOTS@PRIMECLERK.COM. PLEASE DO NOT DIRECT ANY INQUIRIES TO THE BANKRUPTCY COURT. THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**



**SUBMITTING BY E-BALLOT**

**PLEASE COMPLETE THE FOLLOWING:**

To submit your Ballot via the “E-Ballot” platform, please visit <https://restructuring.primeclerk.com/purduepharma>. Click on the “Submit E-Ballot” section of the website and follow the instructions to submit your Ballot.

**IMPORTANT NOTE:** You will need the following information to retrieve and submit your customized E-Ballot:

Unique E-Ballot ID#: 192364901232055

The Solicitation Agent’s “E-Ballot” platform is the sole manner in which your Ballot will be accepted via electronic or online transmission. Ballots submitted by telecopy, facsimile, email, or other electronic means of transmission will not be counted.

Each E-Ballot ID# is to be used solely for voting only those Claims described in Item 1 of your E-Ballot. Please complete and submit an E-Ballot for each E-Ballot ID# you receive, as applicable.

Holders who cast a Ballot using the Solicitation Agent’s “E-Ballot” platform should NOT also submit a paper Ballot.



**NON-FEDERAL DOMESTIC GOVERNMENTAL CLAIMS BALLOT****PLEASE COMPLETE THE FOLLOWING:**

**Item 1. Amount of Non-Federal Domestic Governmental Claims.** For purposes of voting to accept or reject the Plan, the undersigned certifies that as of March 10, 2021, the undersigned holds Class 4 Claims in the amount set forth below. **Please note that, except as otherwise set forth in the Disclosure Statement and Solicitation Procedures Order, each Claim in Class 4 has been allowed in the amount of \$1.00 for voting purposes only, and not for distribution, allowance, or any other purpose.**

**Claims Amount: \$1.00**

**Item 2. Vote on the Plan.** The undersigned holder of Class 4 Claims in the amount set forth in Item 1 above hereby votes to:

**Check one box:**

☐

**ACCEPT (I.E., VOTE IN FAVOR OF) the Plan**

☐

**REJECT (I.E., VOTE AGAINST) the Plan**

*[Remainder of Page Intentionally Left Blank / Certification Page to Follow]*

**Item 3. Acknowledgments and Certification.** By signing this Ballot, the undersigned certifies that the undersigned has been provided with a copy of the Disclosure Statement, including the Plan and all other exhibits thereto, the Disclosure Statement and Solicitation Procedures Order without exhibits and a Confirmation Hearing Notice. The undersigned further acknowledges that the solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement and Solicitation Procedures Order, and the procedures for the solicitation of votes to accept or reject the Plan contained therein.

Name of Claimant:

Whatcom County

Signature:

Name of Signatory (if different than Claimant):

If authorized by Agent, Title of Agent

Street Address:

Street Address:  
(continued)

City, State, Zip Code:

Telephone Number:

Email Address:

Date Completed:





**EXHIBIT 1****Section 10.6(a) Releases by Debtors**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the reorganization of the Debtors and the implementation of the Restructuring Transactions, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released by the Debtors and their Estates from any and all Claims, claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Liens, remedies, losses, contributions, indemnities, rights of subrogation, costs, liabilities, attorneys' fees and expenses, in each case, of any kind, character or nature whatsoever, including any derivative claims asserted or assertible by or on behalf of any Debtor or any of their Estates (including any Causes of Action arising under chapter 5 of the Bankruptcy Code) and including any claims that any Debtor or any of their Estates, or that any other Person or party claiming under or through any Debtor or any of their Estates, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Debtor or any of their Estates or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, choate or inchoate, whether in law or equity, whether sounding in tort or contract or based on any other legal or equitable theory or principle (including fraud, negligence, gross negligence, recklessness, reckless disregard, deliberate ignorance, public or private nuisance, breach of fiduciary duty, avoidance, willful misconduct, veil piercing, alter-ego theories of liability, unjust enrichment, disgorgement, restitution, contribution, indemnification, right of subrogation and joint liability), whether in rem, quasi in rem, in personam or otherwise, or whether arising under federal or state statutory or common law, or any other applicable international, foreign or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, regardless of where in the world accrued or arising, from the beginning of time, in each case, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (as such Entities existed prior to or after the Petition Date), their Estates or the Chapter 11 Cases, including, without limitation, (i) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, (ii) the business or contractual arrangements or interactions between any Debtor and any Released Party (including historical business or contractual arrangements or interactions, any direct or indirect distributions or transfers by any Debtor, and any exercise of any common law or contractual rights of setoff or recoupment by any Released Party at any time on or prior to the Effective Date), (iii) any employment or retention of any Released Party by the Debtors (including any service as a director, officer, executive, consultant or advisor to the Debtors or service in any similar capacity), (iv) any direct or indirect beneficial ownership of any equity interest in or debt obligation of the Debtors, (v) the Restructuring Transactions, (vi) the Pending Opioid Actions, (vii) Opioid-Related Activities or the Debtors' development, production, manufacture, licensing, labeling, marketing, advertising, promotion, distribution or sale of non-opioid products or the use or receipt of any proceeds therefrom, in each case, including the Debtors' interactions with regulators and regardless of where in the world any such activities or any result, loss, injury or damage resulting therefrom occurred, (viii) any past, present or future use or misuse of any opioid, whether sold by the Debtors or by NewCo or any of its Subsidiaries or otherwise, to the extent arising from an act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing, (ix) the restructuring of any Claim

or Interest before or during the Chapter 11 Cases, (x) the Disclosure Statement and the Plan and related agreements, instruments and other documents (including the Plan Documents) and the negotiation, formulation, preparation or implementation thereof, (xi) the solicitation of votes with respect to the Plan, or (xii) any other act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Releases set forth in this Section 10.6(a).

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim and (y) nothing in this Section 10.6(a) shall (A) release any Cause of Action against any Shareholder Release Snapback Party, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan or (C) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement.

#### Section 10.6(b) Releases by Releasing Parties

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, including, without limitation, the service of the Released Parties before and during the Chapter 11 Cases to facilitate the reorganization of the Debtors and the implementation of the Restructuring Transactions, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released by the Releasing Parties from any and all Claims, claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Liens, remedies, losses, contributions, indemnities, rights of subrogation, costs, liabilities, attorneys' fees and expenses, in each case, of any kind, character or nature whatsoever, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates (including any Causes of Action arising under chapter 5 of the Bankruptcy Code) and including any claims that any Releasing Party, or that any other Person or party claiming under or through any Releasing Party, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Releasing Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, choate or inchoate, whether in law or equity, whether sounding in tort or contract or based on any other legal or equitable theory or principle (including fraud, negligence, gross negligence, recklessness, reckless disregard, deliberate ignorance, public or private nuisance, breach of fiduciary duty, avoidance, willful misconduct, veil piercing, alter-ego theories of liability, unjust enrichment, disgorgement, restitution, contribution, indemnification, right of subrogation and joint liability), whether *in rem*, *quasi in rem*, *in personam* or otherwise, or whether arising under federal or state statutory or common law, or any other applicable international, foreign or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, regardless of where in the world accrued or arising, from the beginning of time, in each case, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (as such Entities existed prior to or after the Petition Date), their Estates or the Chapter 11



Cases, including, without limitation, (i) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, (ii) the business or contractual arrangements or interactions between any Debtor and any Released Party (including historical business or contractual arrangements or interactions, any direct or indirect distributions or transfers by any Debtor, and any exercise of any common law or contractual rights of setoff or recoupment by any Released Party at any time on or prior to the Effective Date), (iii) any employment or retention of any Released Party by the Debtors (including any service as a director, officer, executive, consultant or advisor to the Debtors or service in any similar capacity), (iv) any direct or indirect beneficial ownership of any equity interest in or debt obligation of the Debtors, (v) the Restructuring Transactions, (vi) the Pending Opioid Actions, (vii) Opioid-Related Activities or the Debtors' development, production, manufacture, licensing, labeling, marketing, advertising, promotion, distribution or sale of non-opioid products or the use or receipt of any proceeds therefrom, in each case, including the Debtors' interactions with regulators and regardless of where in the world any such activities or any result, loss, injury or damage resulting therefrom occurred, (viii) any past, present or future use or misuse of any opioid, whether sold by the Debtors or by NewCo or any of its Subsidiaries or otherwise, to the extent arising from an act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing, (ix) the restructuring of any Claim or Interest before or during the Chapter 11 Cases, (x) the Disclosure Statement and the Plan and related agreements, instruments and other documents (including the Plan Documents) and the negotiation, formulation, preparation or implementation thereof, (xi) the solicitation of votes with respect to the Plan, or (xii) any other act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing.

For the avoidance of doubt and without limitation of the foregoing, each Person that is a Governmental Unit or a Tribe shall be deemed to have released all Released Claims that have been, are or could have been brought by (1) such Governmental Unit or Tribe in its own right, in its *parens patriae* or sovereign enforcement capacity, or on behalf of or in the name of another Person or (2) any other governmental official, employee, agent or representative acting or purporting to act in a *parens patriae*, sovereign enforcement or quasi-sovereign enforcement capacity, or any other capacity on behalf of such Governmental Unit or Tribe.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim and (y) nothing in this Section 10.6(b) shall (A) release any Cause of Action against (I) any Shareholder Release Snapback Party or (II) any Holder of Co-Defendant Claims, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan or (C) be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement.

Notwithstanding anything herein to the contrary, the Debtors shall not be released from liability for any Claim that is or may be covered by any Purdue Insurance Policy; *provided* that recovery for any such Claim, including by way of settlement or judgment, shall be limited to the available proceeds of such Purdue Insurance Policy (and any extra-contractual liability of the Insurance Companies with respect to the Purdue Insurance Policies), and no Person or party shall execute, garnish or otherwise attempt to collect any such recovery from any assets other than the available proceeds of the Purdue Insurance Policies. The Debtors shall be released automatically from a Claim described in this paragraph upon the earlier of (x) the abandonment of such Claim and (y) such a release being given as part of a settlement or resolution of such Claim,



and shall be released automatically from all Claims described in this paragraph upon the exhaustion of the available proceeds of the Purdue Insurance Policies (notwithstanding the nonoccurrence of either event described in the foregoing clauses (x) and (y)).

#### **Section 10.6(c) Releases by Debtors of Holders of Claims**

As of the Effective Date, all Holders of Channeled Claims (excluding, in all respects, any Excluded Party, Shareholder Release Snapback Party, Co-Defendant or MDT Insurer) are hereby released by the Debtors and their Estates from any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, remedies, losses and liabilities for any Claim in connection with, or arising out of, (i) the administration of the Chapter 11 Cases; the negotiation and pursuit of the Restructuring Transactions, the Plan, the Master Disbursement Trust, the Creditor Trusts (including the trust distribution procedures and the other Creditor Trust Documents) and the solicitation of votes with respect to, and confirmation of, the Plan; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan and the property to be distributed under the Plan; and the wind-up and dissolution of the Liquidating Debtors and the transactions in furtherance of any of the foregoing or (ii) such Holder's participation in the Pending Opioid Actions. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Releases set forth in this Section 10.6(c).

As of the Effective Date, all Holders of PI Channeled Claims and Holders of NAS Monitoring Channeled Claims (excluding, in all respects, any Excluded Party, Shareholder Release Snapback Party, Co-Defendant or MDT Insurer) are hereby released by the Debtors and their Estates from any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, remedies, losses and liabilities for any Claim in connection with, or arising out of, the Debtors (as such Entities existed prior to or after the Petition Date), their Estates or the Chapter 11 Cases, including, without limitation, (i) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, (ii) the Restructuring Transactions, (iii) the Pending Opioid Actions, (iv) Opioid-Related Activities or the Debtors' development, production, manufacture, licensing, labeling, marketing, advertising, promotion, distribution or sale of non-opioid products or the use or receipt of any proceeds therefrom, in each case, including the Debtors' interactions with regulators and regardless of where in the world any such activities or any result, loss, injury or damage resulting therefrom occurred, (v) any past use or misuse of any opioid, whether sold by the Debtors or any of its Subsidiaries or otherwise, to the extent arising from an act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing, (vi) the restructuring of any Claim or Interest before or during the Chapter 11 Cases, (vii) the Disclosure Statement and the Plan and related agreements, instruments and other documents (including the Plan Documents) and the negotiation, formulation, preparation or implementation thereof, or (viii) any other act, conduct, occurrence or continuing condition in any way relating to any of the foregoing.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim and (y) nothing in this Section 10.6(c) shall (A) release any contractual Estate Cause of Action or any Estate Cause of Action that is commercial in nature and unrelated to the subject matter of the Pending Opioid Actions, (B) release any Estate Cause of Action against a Holder of a Claim against a Debtor, to the extent such Estate Cause of Action is necessary for the administration and resolution of such Claim solely in accordance with the Plan, (C) release any claim or right arising in the ordinary course of the Debtors' or NewCo's business, including, without limitation, any such claim with respect to taxes or (D) be construed to impair in

any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement.

#### Section 10.7(a) Shareholder Releases - Releases by Debtors

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Shareholder Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of this Section 10.7(a), by the Debtors and their Estates from any and all Claims, claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Liens, remedies, losses, contributions, indemnities, rights of subrogation, costs, liabilities, attorneys' fees and expenses, in each case, of any kind, character or nature whatsoever, including any derivative claims asserted or assertible by or on behalf of any Debtor or any of their Estates (including any Causes of Action arising under chapter 5 of the Bankruptcy Code) and including any claims that any Debtor or any of their Estates, or that any other Person or party claiming under or through any Debtor or any of their Estates, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Debtor or any of their Estates or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, choate or inchoate, whether in law or equity, whether sounding in tort or contract or based on any other legal or equitable theory or principle (including fraud, negligence, gross negligence, recklessness, reckless disregard, deliberate ignorance, public or private nuisance, breach of fiduciary duty, avoidance, willful misconduct, veil piercing, alter-ego theories of liability, unjust enrichment, disgorgement, restitution, contribution, indemnification, right of subrogation and joint liability), whether *in rem*, *quasi in rem*, *in personam* or otherwise, or whether arising under federal or state statutory or common law, or any other applicable international, foreign or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, regardless of where in the world accrued or arising, from the beginning of time, in each case, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (as such Entities existed prior to or after the Petition Date), their Estates or the Chapter 11 Cases, including, without limitation, (i) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, (ii) the business or contractual arrangements or interactions between any Debtor and any Shareholder Released Party (including historical business or contractual arrangements or interactions, any direct or indirect distributions or transfers by any Debtor, and any exercise of any common law or contractual rights of setoff or recoupment by any Shareholder Released Party at any time on or prior to the Effective Date), (iii) any employment or retention of any Shareholder Released Party by the Debtors (including any service as a director, officer, executive, consultant or advisor to the Debtors or service in any similar capacity), (iv) any direct or indirect beneficial ownership of any equity interest in or debt obligation of the Debtors, (v) the Restructuring Transactions, (vi) the Pending Opioid Actions, (vii) Opioid-Related Activities or the Debtors' development, production, manufacture, licensing, labeling, marketing, advertising, promotion, distribution or sale of non-opioid products or the use or receipt of any proceeds therefrom, in each case, including the Debtors' interactions with regulators and regardless of where in the world any such activities or any result, loss, injury or damage resulting therefrom occurred, (viii) any past, present or future use or misuse of any opioid, whether sold by the Debtors or by NewCo or any of its Subsidiaries or otherwise, to the extent arising from an act, conduct, omission, event, transaction, occurrence or continuing



condition in any way relating to any of the foregoing, (ix) the restructuring of any Claim or Interest before or during the Chapter 11 Cases, (x) the Disclosure Statement and the Plan and related agreements, instruments and other documents (including the Plan Documents) and the negotiation, formulation, preparation or implementation thereof, (xi) the solicitation of votes with respect to the Plan, or (xii) any other act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing. The Debtors, the Plan Administration Trust, the Master Disbursement Trust, the Creditor Trusts, NewCo, TopCo and any other newly-formed Persons that shall be continuing the Debtors' businesses after the Effective Date shall be bound, to the same extent the Debtors are bound, by the Shareholder Releases set forth in this Section 10.7(a).

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim; (y) nothing in this Section 10.7(a) shall be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements; and (z) upon the filing of a Notice of Shareholder Release Snapback, (A) the Shareholder Releases set forth in this Section 10.7(a) shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to all members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, (B) the *status quo ante* shall be restored in all respects for the Debtors and the Master Disbursement Trust with respect to the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties (C) the Master Disbursement Trust shall be deemed to have received and accepted all of the rights with respect to any member of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties, in each case, that the Debtors and their Estates had prior to the Effective Date and that the Master Disbursement Trust would have pursuant to the transfer of the MDT Shareholder Rights to the Master Disbursement Trust if the Shareholder Releases of this Section 10.7(a) had never been granted, which rights the Debtors and their Estates shall be deemed to have irrevocably transferred, granted and assigned to the Master Disbursement Trust; *provided that*, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the Shareholder Releases shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Shareholder Released Parties other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

#### **Section 10.7(b) Shareholder Releases - Releases by Non-Debtors**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Shareholder Released Parties shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of this Section 10.7(b), by the Releasing Parties from any and all Claims, claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Liens, remedies, losses, contributions, indemnities, rights of subrogation, costs, liabilities, attorneys' fees and expenses, in each case, of any kind, character or nature whatsoever, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates (including any Causes of Action arising under chapter 5 of the Bankruptcy Code) and including any claims that any Releasing Party, or that any other Person or party claiming under or through any Releasing Party or any other Person, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Releasing Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or

unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, choate or inchoate, whether in law or equity, whether sounding in tort or contract or based on any other legal or equitable theory or principle (including fraud, negligence, gross negligence, recklessness, reckless disregard, deliberate ignorance, public or private nuisance, breach of fiduciary duty, avoidance, willful misconduct, veil piercing, alter-ego theories of liability, unjust enrichment, disgorgement, restitution, contribution, indemnification, right of subrogation and joint liability), whether *in rem*, *quasi in rem*, *in personum* or otherwise, or whether arising under federal or state statutory or common law, or any other applicable international, foreign or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, regardless of where in the world accrued or arising, from the beginning of time, in each case, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (as such Entities existed prior to or after the Petition Date), their Estates or the Chapter 11 Cases, including, without limitation, (i) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, (ii) the business or contractual arrangements or interactions between any Debtor and any Shareholder Released Party (including historical business or contractual arrangements or interactions, any direct or indirect distributions or transfers by any Debtor, and any exercise of any common law or contractual rights of setoff or recoupment by any Shareholder Released Party at any time on or prior to the Effective Date), (iii) any employment or retention of any Shareholder Released Party by the Debtors (including any service as a director, officer, executive, consultant or advisor to the Debtors or service in any similar capacity), (iv) any direct or indirect beneficial ownership of any equity interest in or debt obligation of the Debtors, (v) the Restructuring Transactions, (vi) the Pending Opioid Actions, (vii) Opioid-Related Activities or the Debtors' development, production, manufacture, licensing, labeling, marketing, advertising, promotion, distribution or sale of non-opioid products or the use or receipt of any proceeds therefrom, in each case, including the Debtors' interactions with regulators and regardless of where in the world any such activities or any result, loss, injury or damage resulting therefrom occurred, (viii) any past, present or future use or misuse of any opioid, whether sold by the Debtors or by NewCo or any of its Subsidiaries or otherwise, to the extent arising from an act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing, (ix) the restructuring of any Claim or Interest before or during the Chapter 11 Cases, (x) the Disclosure Statement and the Plan and related agreements, instruments and other documents (including the Plan Documents) and the negotiation, formulation, preparation or implementation thereof, (xi) the solicitation of votes with respect to the Plan, or (xii) any other act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing.

For the avoidance of doubt and without limitation of the foregoing, each Person that is a Governmental Unit or a Tribe shall be deemed to have released all Shareholder Released Claims that have been, are or could have been brought by (1) such Governmental Unit or Tribe in its own right, in its *parens patriae* or sovereign enforcement capacity, or on behalf of or in the name of another Person or (2) any other governmental official, employee, agent or representative acting or purporting to act in a *parens patriae*, sovereign enforcement or quasi-sovereign enforcement capacity, or any other capacity on behalf of such Governmental Unit or Tribe.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim; (y) nothing in this Section 10.7(b) shall be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements; and (z) upon the filing of a Notice of Shareholder Release Snapback, (A) the Shareholder Releases set forth in this





**Section 10.7(b)** shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to all members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties and (B) the *status quo ante* shall be restored in all respects for the Releasing Parties with respect to the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the Shareholder Releases shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Shareholder Released Parties other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

**Section 10.7(c) Shareholder Releases - Releases by Shareholder Released Parties**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise explicitly provided in the Plan or in the Confirmation Order, the Reciprocal Releasees shall be conclusively, absolutely, unconditionally, irrevocably, fully, finally, forever and permanently released, subject to clause (z) of the last paragraph of this **Section 10.7(c)**, by the Shareholder Released Parties from any and all Claims, claims, counterclaims, disputes, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Liens, remedies, losses, contributions, indemnities, rights of subrogation, costs, liabilities, attorneys' fees and expenses, in each case, of any kind, character or nature whatsoever, including any derivative claims asserted or assertible by or on behalf of the Debtors or their Estates (including any Causes of Action arising under chapter 5 of the Bankruptcy Code) and including any claims that any Shareholder Released Party, or that any other Person or party claiming under or through any Shareholder Released Party or any other Person, would have presently or in the future been legally entitled to assert in its own right (whether individually or collectively) or on behalf of any Shareholder Released Party or any other Person, notwithstanding section 1542 of the California Civil Code or any law of any jurisdiction that is similar, comparable or equivalent thereto (which shall conclusively be deemed waived), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, choate or inchoate, whether in law or equity, whether sounding in tort or contract or based on any other legal or equitable theory or principle (including fraud, negligence, gross negligence, recklessness, reckless disregard, deliberate ignorance, public or private nuisance, breach of fiduciary duty, avoidance, willful misconduct, veil piercing, alter-ego theories of liability, unjust enrichment, disgorgement, restitution, contribution, indemnification, right of subrogation and joint liability), whether *in rem*, *quasi in rem*, *in personam* or otherwise, or whether arising under federal or state statutory or common law, or any other applicable international, foreign or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, regardless of where in the world accrued or arising, from the beginning of time, in each case, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (as such Entities existed prior to or after the Petition Date), their Estates or the Chapter 11 Cases, including, without limitation, (i) the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, (ii) the business or contractual arrangements or interactions between any Debtor and any Shareholder Released Party (including historical business or contractual arrangements or interactions, any direct or indirect distributions or transfers by any Debtor, and any exercise of any common law or contractual rights of setoff or recoupment by any Shareholder Released Party at any time on or prior to the Effective Date), (iii) any employment or retention of any Shareholder Released Party by the Debtors (including any service as a director, officer, executive, consultant or advisor to the Debtors or service in any similar capacity), (iv) any direct or indirect beneficial ownership of any equity interest in or debt obligation of the Debtors, (v) the Restructuring Transactions, (vi) the Pending Opioid Actions, (vii) Opioid-Related Activities or the Debtors' development, production,



manufacture, licensing, labeling, marketing, advertising, promotion, distribution or sale of non-opioid products or the use or receipt of any proceeds therefrom, in each case, including the Debtors' interactions with regulators and regardless of where in the world any such activities or any result, loss, injury or damage resulting therefrom occurred, (viii) any past, present or future use or misuse of any opioid, whether sold by the Debtors or by NewCo or any of its Subsidiaries or otherwise, to the extent arising from an act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing, (ix) the restructuring of any Claim or Interest before or during the Chapter 11 Cases, (x) the Disclosure Statement and the Plan and related agreements, instruments and other documents (including the Plan Documents) and the negotiation, formulation, preparation or implementation thereof, (xi) the solicitation of votes with respect to the Plan, or (xii) any other act, conduct, omission, event, transaction, occurrence or continuing condition in any way relating to any of the foregoing.

Notwithstanding anything herein to the contrary, (x) nothing in the Plan shall release any Excluded Claim; (y) nothing in this Section 10.7(c) shall be construed to impair in any way the Effective Date or post-Effective Date rights and obligations of any Person under the Plan, the Plan Documents, the Confirmation Order or the Restructuring Transactions, including the Shareholder Settlement Agreement and the Separation Agreements, and including the rights of any Shareholder Released Party that is a current or former director, officer or employee of the Debtors but is not a Sackler Family Member relating to plan treatment of any Claims held by such party; and (z) upon the filing of a Notice of Shareholder Release Snapback and the commencement or continuation of any action or proceeding against a member of a Breaching Shareholder Family Group or a Designated Shareholder Released Party by any Reciprocal Releasee, (A) the releases set forth in this Section 10.7(c) of any Reciprocal Releasee that has commenced or continued any such action shall be entirely null and void, revoked and invalidated, as of the Effective Date, with respect to the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties and (B) the *status quo ante* shall be restored in all respects for the members of the Breaching Shareholder Family Group and the Designated Shareholder Released Parties with respect to any Reciprocal Releasee that has commenced or continued any such litigation; *provided* that, for the avoidance of doubt, notwithstanding the nullification, voiding, revocation and invalidation pursuant to the foregoing clause (A), the releases set forth in this Section 10.7(c) shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Reciprocal Releasees, and shall be binding on, and enforceable against, all other Shareholder Released Parties, including any members of the Breaching Shareholder Family Group with respect to any Reciprocal Releasee that has not commenced any such litigation.

## Section 10.8

### Channeling Injunction

In order to supplement the injunctive effect of the Plan Injunction, the Releases and the Shareholder Releases set forth in Sections 10.5, 10.6 and 10.7 of the Plan, the Confirmation Order shall provide for the following permanent injunction to take effect as of the Effective Date:

(a) **Terms.** In order to preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary, the injunctive effect of the Plan Injunction, the Releases and the Shareholder Releases described in Sections 10.5, 10.6 and 10.7 of the Plan, and pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court under section 105(a) of the Bankruptcy Code, all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Channeled Claim shall be permanently and forever stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payments, satisfaction, recovery or



**judgment of any form from or against any Protected Party with respect to any Channeled Claim, including:**

- (i) **commencing, conducting or continuing, in any manner, whether directly or indirectly, any suit, action or other proceeding, in each case, of any kind, character or nature, in any forum in any jurisdiction with respect to any Channeled Claims, against or affecting any Protected Party, or any property or interests in property of any Protected Party with respect to any Channeled Claims;**
- (ii) **enforcing, levying, attaching, collecting or otherwise recovering, by any means or in any manner, either directly or indirectly, any judgment, award, decree or other order against any Protected Party or against the property of any Protected Party with respect to any Channeled Claims;**
- (iii) **creating, perfecting or enforcing, by any means or in any manner, whether directly or indirectly, any Lien of any kind against any Protected Party or the property of any Protected Party with respect to any Channeled Claims;**
- (iv) **asserting or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, in respect of any obligation due to any Protected Party or against the property of any Protected Party with respect to any Channeled Claims; and**
- (v) **taking any act, by any means or in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents, with respect to any Channeled Claims.**

**(b) Reservations. Notwithstanding anything to the contrary in this Section 10.8 or the Confirmation Order, this Channeling Injunction shall not stay, restrain, bar or enjoin:**

- (i) **the rights of Holders of Channeled Claims to the treatment afforded them under the Plan and the Plan Documents, including the rights of Holders of Channeled Claims to assert such Channeled Claims solely in accordance with Section 6.21 of the Plan, the Master TDP and the Creditor Trust TDPs, in each case whether or not there are funds to make Distributions in respect of such Channeled Claims and whether or not such rights entitle such Holders to Abatement Distributions or any other form of Distributions;**
- (ii) **the rights of Persons to assert any claim, debt, litigation or liability for payment of Creditor Trust Operating Expenses solely against the applicable Creditor Trust;**



- (iii) **the rights of Persons to assert any claim, debt or litigation against any Excluded Party;**
- (iv) **the rights of the Master Disbursement Trust to pursue and enforce the MDT Shareholder Rights, the MDT Insurance Rights and the MDT Causes of Action;**
- (v) **the rights of the parties to the LRP Agreement to enforce the terms thereof in accordance with the Plan;**
- (vi) **the Creditor Trusts from enforcing their respective rights against the Master Disbursement Trust under the Plan and the MDT Documents;**
- (vii) **the Master Disbursement Trust from enforcing its rights, on behalf of itself and the Private Creditor Trusts, against NewCo and TopCo under the Plan and the NewCo Credit Support Agreement; or**
- (viii) **NOAT or the Tribe Trust from enforcing their respective rights against TopCo under the TopCo Operating Agreement.**

(c) **Notice of Shareholder Release Snapback.** Upon the filing of a Notice of Shareholder Release Snapback, the Channeling Injunction shall terminate, be rescinded and have no application, without further order of the Bankruptcy Court, to any suit, action or other proceeding, in each case, of any kind, character or nature, brought against any member of the Breaching Shareholder Family Group or any Designated Shareholder Released Party; *provided, however*, that the extension of time provided by Section 10.9(a) of the Plan shall continue in effect in accordance with its terms; and *provided further* that, for the avoidance of doubt, notwithstanding the termination and rescission pursuant to this Section 10.8(c), the Channeling Injunction shall continue in effect for, and shall be fully enforceable by and for the benefit of, all other Protected Parties, including all other Shareholder Released Parties, other than the Breaching Shareholder Family Group and the Designated Shareholder Released Parties.

(d) **Modifications.** Except as expressly set forth in paragraph (c) of this Section 10.8, there can be no modification, dissolution or termination of the Channeling Injunction, which shall be a permanent injunction.

(e) **Non-Limitation of Channeling Injunction.** Except as expressly set forth in paragraphs (b) and (c) of this Section 10.8, nothing in the Plan, the MDT Documents or the Creditor Trust Documents shall be construed in any way to limit the scope, enforceability or effectiveness of the Channeling Injunction issued in connection with the Plan.

(f) **Bankruptcy Rule 3016 Compliance.** The Debtors' compliance with the requirements of Bankruptcy Rule 3016 shall not constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

#### **Section 10.9 Tolling of Shareholder Released Claims; Violations of Shareholder Releases and Channeling Injunction**



(a) **Tolling of Shareholder Released Claims.** If applicable law, an order in any proceeding or an agreement fixes a period for commencing or continuing an action or proceeding based on a Shareholder Released Claim and such Shareholder Released Claim is released pursuant to the Shareholder Releases or such action or proceeding is enjoined by the Channeling Injunction, then such period does not expire with respect to such Shareholder Released Claim with respect to the Master Disbursement Trust (or the MDT Trustees) or the Releasing Parties until the latest of (i) the end of such period; (ii) with respect to the applicable Shareholder Family Group, two hundred twenty-five (225) days after the filing of a Notice of Shareholder Release Snapback with respect to such Shareholder Family Group; and (iii) with respect to the applicable Shareholder Family Group, when such Shareholder Family Group fulfills its payment obligations under the Shareholder Settlement Agreement.

(b) **Violations of Shareholder Releases and Channeling Injunction.** In the event that any Person takes any action that a Shareholder Released Party believes violates the Shareholder Releases or Channeling Injunction as it applies to any Shareholder Released Party, such Shareholder Released Party shall be entitled to make an emergency application to the Bankruptcy Court for relief, and may proceed by contested matter rather than by adversary proceeding. The Bankruptcy Court shall have jurisdiction and authority to enter final orders in connection with any dispute over whether an action violates the Shareholder Releases or Channeling Injunction. Upon determining that a violation of the Shareholder Releases or Channeling Injunction has occurred, the Bankruptcy Court, in its discretion, may award any appropriate relief against such violating Person, including, but not limited to, (i) disgorgement from the violating Person of any funds, assets or other value received, directly or indirectly, pursuant to the Plan or Plan Documents (including fees and expenses paid pursuant to the Plan or Plan Documents on account of legal or other advisory services rendered to or for the benefit of the violating Person); (ii) the termination of any rights of the violating Person to receive any funds, assets or other value pursuant to the Plan or Plan Documents; (iii) the reduction of any payments owed by any Shareholder Released Parties under the Shareholder Settlement Agreement to the violating Person in an amount equal to the amount of disgorgement ordered from, or the reduction of future payments ordered to be made to, or on account of, the violating Person (subject to the right of the violating Person to request that any amounts actually disgorged from such violating Person offset any reduction of future payments ordered to be made to, or on account of, such violating Person); (iv) an admonition, reprimand or censure of, or citation of contempt by, the violating Person and its counsel; (v) a fine or penalty paid into the Bankruptcy Court; (vi) a bond or other security in an amount equal to any financial obligation ordered by the Bankruptcy Court in respect of the violation; (vii) an appropriate sanction on any attorney or law firm responsible for the violation; (viii) injunctive relief to prevent future violations by the Person or its counsel; and (ix) attorney and other professional fees incurred by any Shareholder Released Party arising from the violation. The provision of any one form of relief shall not preclude the provision of any other form of relief.

## **Section 10.10 MDT Insurer Injunction**

(a) **Terms.** In accordance with section 105(a) of the Bankruptcy Code, upon the occurrence of the Effective Date, all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Claim based on, arising under or attributable to an MDT Insurance Policy shall be, and hereby are, permanently stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payment or recovery on account of any such Claim based on, arising under or attributable to an MDT Insurance Policy from or against any MDT Insurer, including:

- (i) **commencing, conducting or continuing, in any manner any action or other proceeding of any kind (including an**



arbitration or other form of alternate dispute resolution) against any MDT Insurer, or against the property of any MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy;

- (ii) enforcing, attaching, levying, collecting or otherwise recovering, by any manner or means, any judgment, award, decree or other order against any MDT Insurer, or against the property of any MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy;
- (iii) creating, perfecting or enforcing in any manner any Lien of any kind against any MDT Insurer, or against the property of any MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy;
- (iv) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, against any obligation due to any MDT Insurer, or against the property of any MDT Insurer, on account of any Claim based on, arising under or attributable to an MDT Insurance Policy; and
- (v) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan applicable to any Claim based on, arising under or attributable to an MDT Insurance Policy.

(b) **Reservations.** The provisions of this MDT Insurer Injunction shall not preclude the Master Disbursement Trust from pursuing any Claim based on, arising under or attributable to an MDT Insurance Policy, any other claim that may exist under any MDT Insurance Policy against any MDT Insurer, or enjoin the rights of the Master Disbursement Trust to prosecute any action based on or arising from the MDT Insurance Policies or the rights of the Master Disbursement Trust to assert any claim, debt, obligation, cause of action or liability for payment against a MDT Insurer based on or arising from the MDT Insurance Policies. The provisions of this MDT Insurer Injunction are not issued for the benefit of any MDT Insurer, and no such insurer is a third-party beneficiary of this MDT Insurer Injunction. This MDT Insurer Injunction shall not enjoin, impair or affect (i) any claims between or among MDT Insurers that are not Settling MDT Insurers; (ii) the rights of current and former directors, officers, employees and agents of the Debtors that are not Sackler Family Members that are preserved under the Plan or (iii) the terms of the Shareholder Settlement Agreement with respect to the MDT Shareholder Insurance Rights.

(c) **Modifications.** To the extent the MDT Trustees make a good faith determination that some or all of the MDT Insurance Proceeds are substantially unrecoverable by the Master Disbursement Trust, the Master Disbursement Trust shall have the sole and exclusive authority at any time, upon written notice to any affected MDT Insurer, to terminate, reduce or limit the scope of this MDT Insurer Injunction with respect to any MDT Insurer, *provided* that (i) any termination, reduction, or limitation of the MDT Insurer Injunction (A) shall apply equally to all Classes of Claims, and (B) shall comply with any procedures set forth in the MDT Agreement and (ii) the termination, reduction or limitation of the MDT Insurer Injunction as it relates to the MDT Bermuda-Form Insurance Policies shall

be subject to the consent (not to be unreasonably withheld, conditioned or delayed) of the Creditor Trustee for the PI Trust.

(d) **Non-Limitation of MDT Insurer Injunction.** Except as set forth in paragraphs (b) and (c) of this Section 10.10, nothing in the Plan, the MDT Documents or the Creditor Trust Documents shall be construed in any way to limit the scope, enforceability or effectiveness of the MDT Insurer Injunction issued in connection with the Plan.

#### **Section 10.11                      Settling MDT Insurer Injunction**

(a) **Terms.** In accordance with section 105(a) of the Bankruptcy Code, upon the occurrence of the Effective Date, all Persons that have held or asserted, that hold or assert or that may in the future hold or assert any Claim based on, arising under or attributable to an MDT Insurance Policy shall be, and hereby are, permanently stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payment or recovery on account of any such Claim based on, arising under or attributable to an MDT Insurance Policy from or against any Settling MDT Insurer, solely to the extent that such Settling MDT Insurer has been released from such Claim under such MDT Insurance Policy pursuant to an MDT Insurance Settlement, including:

- (i) commencing, conducting or continuing, in any manner any action or other proceeding of any kind (including an arbitration or other form of alternate dispute resolution) against any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim based on, arising under or attributable to such MDT Insurance Policy;
- (ii) enforcing, attaching, levying, collecting or otherwise recovering, by any manner or means, any judgment, award, decree or other order against any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim based on, arising under or attributable to such MDT Insurance Policy;
- (iii) creating, perfecting or enforcing in any manner any Lien of any kind against any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim based on, arising under or attributable to such MDT Insurance Policy;
- (iv) asserting or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, against any obligation due to any such Settling MDT Insurer, or against the property of such Settling MDT Insurer, on account of such Claim based on, arising under or attributable to such MDT Insurance Policy; and
- (v) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the



**Plan applicable to such Claim based on, arising under or attributable to such MDT Insurance Policy.**

(b) **Reduction of Insurance Judgments.** Any right, Claim or cause of action that an Insurance Company may have been entitled to assert against any Settling MDT Insurer but for the Settling MDT Insurer Injunction, if any such right, Claim or cause of action exists under applicable non bankruptcy law, shall become a right, Claim or cause of action solely as a setoff claim against the Master Disbursement Trust and not against or in the name of the Settling MDT Insurer in question. Any such right, Claim or cause of action to which an Insurance Company may be entitled shall be solely in the form of a setoff against any recovery of the Master Disbursement Trust from that Insurance Company, and under no circumstances shall that Insurance Company receive an affirmative recovery of funds from the Master Disbursement Trust or any Settling MDT Insurer for such right, Claim or cause of action. In determining the amount of any setoff, the Master Disbursement Trust may assert any legal or equitable rights the Settling MDT Insurer would have had with respect to any right, Claim or cause of action.

(c) **Modifications.** There can be no modification, dissolution or termination of the Settling MDT Insurer Injunction, which shall be a permanent injunction.

(d) **Non-Limitation of Settling MDT Insurer Injunction.** Except as set forth in paragraphs (b) and (c) of this Section 10.11, nothing in the Plan, the MDT Documents or the Creditor Trust Documents shall be construed in any way to limit the scope, enforceability or effectiveness of the Settling MDT Insurer Injunction issued in connection with the Plan.

## **Section 10.12                      Exculpation**

To the maximum extent permitted by applicable law, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from: any Claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss and liability for any Claim in connection with, or arising out of, the administration of the Chapter 11 Cases; the negotiation and pursuit of the Disclosure Statement (including any information provided, or statements made, in the Disclosure Statement or omitted therefrom), the Restructuring Transactions, the Plan, the Master Disbursement Trust (including the Master TDP and the MDT Agreement), the Creditor Trusts (including the Creditor Trust TDPs and the other Creditor Trust Documents) and the solicitation of votes for, and confirmation of, the Plan; the funding of the Plan; the occurrence of the Effective Date; the administration of the Plan and the property to be distributed under the Plan; and the wind-up and dissolution of the Liquidating Debtors and the transactions in furtherance of any of the foregoing, in each case other than Claims or Causes of Action arising out of, or related to, any act or omission of an Exculpated Party that is a criminal act or constitutes fraud, gross negligence or willful misconduct. This exculpation shall be in addition to, and not in limitation of, all other Releases, indemnities, exculpations and any other applicable law or rules protecting such Exculpated Parties from liability. For the avoidance of doubt, this Section 10.12 shall not exculpate or release any Exculpated Party with respect to any act or omission of such Exculpated Party prior to the Effective Date that is later found to be a criminal act or to constitute fraud, gross negligence or willful misconduct, including findings after the Effective Date. Notwithstanding anything herein to the contrary, nothing in the Plan shall release any Claims or Causes of Action that may be asserted against any Excluded Party.

## **Section 10.13                      Injunction Related to Releases and Exculpation**

To the maximum extent permitted under applicable law, the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively

or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses or liabilities released pursuant to this Plan, including, without limitation, the Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities released or exculpated in this Plan and the Claims, Interests, Liens, other encumbrances or liabilities described in Section 5.3(b), 5.4(c) or 5.6(b) of the Plan.



Voter ID: 100458



19236490123459

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+++PPB 2325 SRF 54559 MMLID 11782364 PackID 4-083  
Whatcom County  
c/o Karen Frakes  
311 Grand Avenue  
Suite 201  
Bellingham WA 98225

Voter ID: 100458



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# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-384

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<b>File ID:</b>	AB2021-384	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/22/2021	<b>Entered by:</b>	SMildner@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Executive Appointment		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request confirmation of the County Executive's reappointments of David Warren and Daniel Larner to the Bellingham-Whatcom Public Facilities District

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memorandum

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff memo



*Satpal Singh Sidhu*  
*Whatcom County Executive*



## MEMORANDUM

**TO:** Members of the Whatcom County Council

**FROM:** Satpal Sidhu, County Executive

**DATE:** June 23, 2021

**SUBJECT:** **Public Facilities District Reappointments**

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David Warren and Daniel Lerner are serving terms on the Bellingham-Whatcom Public Facilities District board which will expire on July 30<sup>th</sup>, 2021. I and Mayor Fleetwood wish to reappoint both gentlemen for another term, and respectfully request your confirmation.

Both Mr. Warren and Mr. Lerner have been valuable assets and we believe their continued involvement will be beneficial to the PFD Board.



### Bellingham-Whatcom Public Facilities District Board

Member	Date Appointed	Term Expires
Daniel Larner	4/22/2013	7/30/2021
David Warren (Chair)	7/15/2002	7/30/2021
Brent Walker	8/7/2006	7/30/2022
Dunham Gooding	7/15/2002	7/30/2022
VACANCY		
VACANCY		
VACANCY		

#### Contact Information for the Public Facilities Board:

Bellingham-Whatcom Public Facilities District  
104 W. Magnolia Street, Suite 307  
Bellingham, WA 98225  
Phone: (360) 738-7403  
Email: [ahenshaw@cob.org](mailto:ahenshaw@cob.org)

Revised 4/11/18



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-403

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<b>File ID:</b>	AB2021-403	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/06/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

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

### **TITLE FOR AGENDA ITEM:**

Ordinance adopting amendments to the Whatcom County Comprehensive Plan and Whatcom County Code relating to the Cherry Point UGA fossil fuel facilities, renewable fuel facilities, piers, SEPA, greenhouse gas emissions, and other matters

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

This ordinance will amend Whatcom County's development regulations, State Environmental Policy Act (SEPA) provisions, permit review procedures, and Comprehensive Plan relating to fossil fuel facilities, renewable fuel facilities, transshipment fuel facilities and other similar land use activities. The proposal is intended to address the risks to public health, safety, and the environment associated with fossil fuel facilities. The proposal is also intended to address the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas transshipments from the Cherry Point Industrial District.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Proposed Ordinance for July 13 Introduction

PROPOSED BY: Council  
INTRODUCTION DATE: July 13, 2021

**ORDINANCE NO. \_\_\_\_\_**

**ADOPTING AMENDMENTS TO THE WHATCOM COUNTY  
COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE RELATING TO  
THE CHERRY POINT UGA, FOSSIL FUEL FACILITIES, RENEWABLE  
FUEL FACILITIES, PIERS, SEPA, GREENHOUSE GAS EMISSIONS,  
AND OTHER MATTERS**

**WHEREAS,** The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

**WHEREAS,** The County Council considered Planning Commission recommendations;

**WHEREAS,** The County Council considered the Joint Stakeholder Group recommendations, which were the result of a collaborative effort between industry, environmental, and labor representatives;

**WHEREAS,** The County Council held a public hearing; and

**WHEREAS,** The County Council has considered multiple alternatives and has reviewed and considered the State Environmental Policy Act (SEPA) review of the alternatives and the SEPA Determination of Nonsignificance (and Addendum) prepared by the County's SEPA Responsible Official; and

**WHEREAS,** The County Council hereby adopts the following findings of fact:

**FINDINGS OF FACT**

1. The Whatcom County Council approved Resolution 2019-037 on August 7, 2019, forwarding proposed Comprehensive Plan and code amendments to the Planning Commission for review. The subject amendments primarily relate to fossil fuel and renewable fuel facilities in the Cherry Point Area, although some of the amendments apply to various land uses on a countywide basis.

2. The subject amendments include the following:
  - a. Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
  - b. Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
  - c. Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).
  - d. Amending the Project Permit Procedures (WCC 22.05).
3. Notice was submitted to the Washington State Department of Commerce on August 15, 2019.
4. The Whatcom County Planning Commission held a town hall meeting on September 12, 2019.
5. The Whatcom County Planning Commission held work sessions on September 26, 2019, October 10, 2019, October 24, 2019, November 14, 2019, December 12, 2019, January 16, 2020, January 30, 2020, February 27, 2020, June 25, 2020, and July 9, 2020.
6. A Determination of Nonsignificance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 28, 2020. A SEPA Determination of Nonsignificance (DNS) Addendum was issued on July 1, 2021.
7. Notice of the Planning Commission hearing was sent to citizens, media, cities, and others on the County's e-mail list on July 30, 2020.
8. Notice of the Planning Commission hearing was posted on the County website on August 3, 2020.
9. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on August 3, 2020.
10. The Planning Commission held a public hearing on the subject amendments on August 13, 2020.
11. The County Council and the Planning Commission have studied and considered multiple alternatives and various drafts for the amendments which are contained in the record.
12. The County Council held a public hearing on the subject amendments.

## Comprehensive Plan Amendments

13. The Cherry Point UGA is approximately 7,030 acres. Whatcom County Comprehensive Plan Chapter 2 contains a specific section with text, goals, and policies relating to the Cherry Point UGA (other goals and policies in the Comprehensive Plan also apply).
14. The subject amendments modify text and Policies 2CC-11, 2CC-16, 2CC-17, and 2WW-4 in Whatcom County Comprehensive Plan Chapter 2. The subject amendments also add new Policy 2CC-18 to the Comprehensive Plan.
15. Whatcom County Comprehensive Plan Policy 2CC-11 already states that "It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers. . ." The subject amendments modify Policy 2CC-11. These amendments include:
  - a. Recognizing that the vested rights/enforceable agreement for an additional dock/pier no longer exist.
  - b. Recognizing the importance of preventing harm to habitat of the Cherry Point Herring stock and Southern Resident Killer Whales.
  - c. Recognizing that implementation of the Shoreline Program is an important way to preserve the natural character, result in long-term benefits, and protect the resources and ecology of the shoreline.
  - d. Deleting language that is unnecessary or no longer needed.
16. The Washington State Department of Natural Resources has prepared the Cherry Point Environmental Aquatic Reserve Management Plan which identifies management objectives and habitat concerns regarding the state waters adjacent to the Cherry Point UGA. And, by Commissioner's Order dated January 3, 2017, has limited additional in-water development including restricting lease areas to preclude the addition of new piers in the Cherry Point Aquatic Reserve.
17. The Federal Government has enacted the "Magnuson Amendment" which limits the transport of crude oils out of Puget Sound waters.
18. The United States Army Corps of Engineers (The Corps) has recognized the regulatory importance of reserved tribal treaty fishing rights in federal permitting decisions related to Puget Sound and in the areas adjacent to Cherry Point. Reserved treaty fishing rights have been addressed both in recent regulatory decisions by The Corps (Gateway Pacific Terminal) where federal permits have been denied where there is more than a de minimis

impact on tribal fishing rights and in federal court decisions regarding Corps permitting such as *Northwest Sea Farms v. US Army Corps of Engineers*, 931 F. Supp 1515 (W.D. Wash. 1996).

19. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-16. These amendments include:
  - a. Recognizing that the study and recommendations to address negative impacts from fossil fuel facilities have been completed (see *Reducing Impacts from Fossil fuel Projects Report to the Whatcom County Council*, Cascadia Law Group, Feb. 12, 2018 and Whatcom County Council Resolution 2019-037, August 7, 2019) and that alternatives have been considered by the County and that extensive public testimony and input has been received and considered.
  - b. Stating that the County will, through SEPA and permitting, seek to limit negative impacts from fossil fuel facilities within the Cherry Point UGA.
  - c. Refining the language relating to notice to the County Council of fossil fuel projects.
  - d. Deleting language that is unnecessary or no longer needed.
20. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-17. These amendments include:
  - a. Recognizing that limited fossil fuel facility expansions are subject to environmental review, greenhouse gas analysis, and Cherry Point policies in the Comprehensive Plan.
  - b. Deleting language that is unnecessary.
21. The subject amendments modify Whatcom County Comprehensive Plan Policy 2WW-4 by recognizing that existing marine port facilities and limited expansions are allowed consistent with the State of Washington Department of Natural Resources Cherry Point Aquatic Reserve Management Plan.
22. The subject amendments add new Whatcom County Comprehensive Plan Policy 2CC-18. This new policy recognizes that the following are allowed: The on-going operation, maintenance, and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational and site safety improvements, environmental improvements, and regulatory compliance projects.



23. 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**

24. The Growth Management Act (GMA) establishes planning goals in Revised Code of Washington (RCW) 36.70A.020 to guide adoption of comprehensive plan amendments.
25. 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."

26. GMA planning goal # 5 is to:

Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

27. The subject Comprehensive Plan amendments, when viewed in the context of the other Comprehensive Plan goals and policies, continue to encourage development in the Cherry Point industrial area while also addressing public safety and environmental protection. The amendments recognize that the existing industries provide significant employment and have shipped refined fossil fuel products for decades. The amendments also recognize that existing operations of fossil fuel facilities, along with limited expansions, are allowed as outright permitted uses with appropriate environmental review and analysis. In addition, beyond certain thresholds, the amendments provide for allowing expansions of existing fossil fuel refineries with conditional use permit review and appropriate environmental review and analysis.
28. 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."
29. GMA planning goal # 10 is to: "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."
30. The State Shoreline Management Act policies, which are incorporated as a GMA goal pursuant to RCW 36.70A.480, indicate that:

. . . It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. . . (RCW 90.58.020)

31. Fossil fuel refineries and transshipment facilities have potential for accidents, which can release pollutants into the environment and impact fish habitat, wildlife habitat, water quality, and air quality. The subject amendments seek to limit negative impacts on public health, safety, and the environment.

## **Countywide Planning Policies**

32. Countywide Planning Policy E-3 states:

Cherry Point shall be designated as an unincorporated industrial urban growth area in recognition of existing large scale industrial land uses. Additional large scale development shall be encouraged consistent with the ability to provide needed services and consistent with protecting critical areas along with other environmental protection considerations. The Cherry Point industrial area is an important and appropriate area for industry due to its access to deep water shipping, rail, all-weather roads, its location near the Canadian border, and its contribution to the County's goal of providing family wage jobs.

33. Countywide Planning Policy I-2 indicates "New business development and expansion of existing businesses are key factors in providing 'family wage' jobs and a strong tax base. Economic development that pays family wage rates should be encouraged. . ."

34. Countywide Planning Policy I-8 states:

Economic development should be encouraged that:

- a. Does not adversely impact the environment;
- b. Is consistent with community values stated in local comprehensive plans;
- c. Encourages development that provides jobs to county residents;
- d. Addresses unemployment problems in the county and seeks innovative techniques to attract different industries for a more diversified economic base;
- e. Promotes reinvestment in the local economy;
- f. Supports retention and expansion of existing businesses.

35. Countywide Planning Policy N-2 states that "The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. . ."

36. Countywide Planning Policy N-3 states that "Jurisdictions shall cooperate to protect and restore water resources and fish habitat within UGA's and across jurisdictional boundaries to maintain quality of life and economic health in Whatcom County."

37. The Countywide Planning Policies recognize the significance of the Cherry Point UGA for industry, transportation, and good jobs. The Countywide Planning Policies also recognize the importance of environmental protection.
38. The Comprehensive Plan, including the subject amendments, allows a variety of industrial uses in the Cherry Point UGA, while encouraging review processes that will facilitate a full evaluation of fossil fuel development proposals and mitigation of negative impacts.

### **Interlocal Agreements**

39. There are no interlocal agreements relating to the Cherry Point UGA.

### **Further Studies/Changed Conditions**

40. The GMA, originally adopted in 1990, included a requirement to designate Urban Growth Areas (UGAs).
41. The Cherry Point UGA was adopted in 1997 when the Whatcom County Comprehensive Plan was adopted.
42. The Washington State Department of Natural Resources (DNR) originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017.
43. The primary focus of the *Cherry Point Environmental Aquatic Reserve Management Plan* is to:
  - . . . protect, enhance and restore habitats used by Cherry Point herring stock, salmon, migratory and resident birds, Dungeness crab, groundfish rearing areas and marine mammals, as well as the protection of submerged aquatic vegetation and water quality. . . (p. 4).
44. The *Cherry Point Environmental Aquatic Reserve Management Plan* states:
  - . . . the aquatic environment of Cherry Point: provides essential habitat and irreplaceable biological and ecological functions; is a portion of Treaty-protected usual and accustomed (U&A) grounds and stations of local Native American Indians; and provides significant economic benefits, recreational opportunities and other social values. . . (pp. 4 and 5).
45. The *Cherry Point Environmental Aquatic Reserve Management Plan* recognizes that:
  - . . . A number of species and habitats addressed in this plan have

experienced declines over the past 40 years, such as the Cherry Point herring stock, which has shrunk from approximately 15,000 tons to between 800 and 2,100 tons over the last ten years. Other key species in decline include Puget Sound Chinook salmon, bull trout, and certain species of rockfish, surf scoter, and Southern Resident orca whales . . . (pp. 1 and 2).

46. The *Cherry Point Environmental Aquatic Reserve Management Plan* specifically excludes certain areas, including the three existing industrial piers, from the Reserve (pp. 10 and 11).
47. The *Cherry Point Environmental Aquatic Reserve Management Plan* constitutes a further study that indicates a need for the subject amendments and the Washington Department of Natural Resources has taken action to further restrict leasing and development of additional piers in the Aquatic Reserve through a Commissioner's Order dated January 3, 2017.
48. According to the Washington State Department of Ecology website:

. . . on December 22, 2020 a BNSF train derailed at mile post 111.7 near Custer, WA. Ten rail cars derailed with several overturning, spilling Bakken crude oil. Three of those cars leaked oil and caught fire. . . An estimated 28,962 gallons of oil were lost in the incident. Much of that amount burned up, evaporated or was recovered afterward, leaving 5,400 to 8,000 gallons unrecovered. . .
49. Other areas of the U.S. and Canada have experienced community impacts and environmental degradation associated with fossil fuel industry accidents since the adoption of the Cherry Point UGA in 1997. Protecting public safety is a core element of the police power and the County recognizes that it is a fundamental responsibility of local government to establish and enforce laws protecting the welfare, safety and health of the public as allowed under the Tenth Amendment of the US Constitution.
50. Since the 1997 establishment of the Cherry Point UGA, one of the changed conditions considered by the County is the increased knowledge of the impacts of climate change, including reduced snowpack, the potential impacts of sea level rise, the potential for increased and more intense storm activity and resultant flooding and potential impacts on public infrastructure and the impacts of increased temperatures on public health and safety and flooding. These climate impacts have been summarized in a variety of reports prepared by the University of Washington's Climate Impacts Group which are part of the record for this decision. The ordinance requires evaluation and consideration of the greenhouse gas impacts of new industrial development on climate change and addresses the need for mitigation of those impacts at the federal, state and/or local level.

## Public Interest

51. The Cherry Point area contains valuable fish and wildlife habitat (*Cherry Point Environmental Aquatic Reserve Management Plan*, DNR, amended 2017).
52. The Cherry Point UGA is a unique location, with important attributes, for industry (Whatcom County Comprehensive Plan, pp. 2-54 to 2-56). Existing industries provide high wage jobs and a substantial tax base (*Employment at Cherry Point*, Hodges, Rucker, and McCafferty, 2019).
53. The Cherry Point UGA text, goals and policies in the Whatcom County Comprehensive Plan, including the subject amendments, recognize the value of existing industrial uses and the importance of marine waters, fish and wildlife habitat, air quality and a healthy climate.
54. The subject comprehensive plan amendments should not adversely affect the overall rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan. The Whatcom County Comprehensive Plan allocated an additional 890 jobs for the Cherry Point UGA for the 2013-2036 planning period. The *Employment at Cherry Point* report from 2014 estimated that there were 2,100 – 2,200 jobs in the Cherry Point industrial area at that time (p. 3). The *Employment at Cherry Point* report from 2019 estimates 3,318 jobs and indicates that, between 2014-2019, “. . . roughly 1,100 jobs have been added . . .” (pp. 6 and 14). However, most of the 700 jobs at Alcoa Intalco Works, along with related jobs, were lost with the shutdown of the aluminum smelter. Growth projections will be updated in the next periodic update of the Comprehensive Plan (due by June 2025). These updated projections will take into account conditions at that time and expectations for the future.
55. The subject comprehensive plan amendments should not adversely affect ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities. The subject amendments do not expand the allowed uses that would be served by Fire District 7, which encompasses the Cherry Point UGA. Additionally, new residential uses are not allowed in the Cherry Point industrial area and, therefore, new students will not be generated by development in this area.
56. The closest designated Agricultural lands are over .80 of a mile to the southeast, the closest Mineral Resource designation is approximately .06 of a mile to the east, and the closest designated Forestry lands are over 4 miles to the southeast of the Cherry Point UGA. There is no evidence in

the record that the subject comprehensive plan amendments would adversely impact designated agricultural, forestry, or mineral resource lands.

57. The Cherry Point UGA goals and policies, including subject amendments, allow industrial uses in the Cherry Point UGA that provide family wage jobs and contribute to the tax base of the County and special purpose districts. The subject amendments allow existing fossil fuel facilities, along with certain improvements, as outright permitted uses subject to certain thresholds. Fossil fuel facility expansions are allowed by conditional use permit where newly established thresholds are exceeded while requiring appropriate environmental analysis and addressing impacts to public safety and the environment. Such planning is in the public interest.

### **Spot Zoning**

58. "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).
59. The subject proposal does not involve nor facilitate illegal spot zoning.

### **Development Regulation Amendments**

60. The subject amendments modify text of the Whatcom County SEPA rules (WCC 16.08), the Zoning Code (WCC 20), and Project Permit Procedures (WCC 22.05)
61. Pursuant to WCC 22.10.060(2), in order to approve development regulation amendments the County must find that the amendments are consistent with the Whatcom County Comprehensive Plan.

### ***SEPA Code Amendments***

62. Whatcom County Comprehensive Plan Policy 10A-6 states "Aim to meet or exceed national, state, and regional air quality standards. Work with the Northwest Clean Air Agency to ensure compliance with applicable air quality standards."
63. Whatcom County Comprehensive Plan Policy 10A-9 is to "Cooperate with state and federal agencies and neighboring jurisdictions to identify and protect threatened and endangered fish and wildlife species and their habitats."

64. Whatcom County Comprehensive Plan Goal 10D is to “Strengthen the sustainability of Whatcom County’s economy, natural environment, and built communities by responding and adapting to the impacts of climate change.”
65. Whatcom County Comprehensive Plan Goal 10L is to “Protect and enhance ecosystems that support native fish and wildlife populations and habitat.”
66. The Washington State Department of Ecology adopted a “Clean Air Rule,” which included greenhouse gas emission limits, in 2016 (Washington Administrative Code or WAC 173-442). The Clean Air Rule was developed under the authority granted in RCW 70.94 (Washington Clean Air Act) and RCW 70.235 (Limiting Greenhouse Gas Emissions). The Clean Air Rule was challenged and the Thurston County Superior Court issued a ruling in March 2018 that prevented Ecology from implementing the Clean Air Rule regulations. However, the Washington Supreme Court reversed the Superior Court in part on January 16, 2020, upholding the Clean Air rule as it relates to regulating stationary sources (Case No. 95885-8).
67. A [Directive of the Governor](#) (# 19-18), dated December 19, 2019, states:
- . . . I hereby direct the Department of Ecology to adopt rules by September 1, 2021, to strengthen and standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects with significant environmental impacts.
- . .
- The rules should be uniform and apply to all branches of government, including state agencies, political subdivisions, public and municipal corporations and counties. The rules should cover major industrial projects and major fossil fuel projects; and establish uniform methods, processes, procedures, protocols or criteria that ensure a comprehensive assessment and quantification of direct and indirect greenhouse gas emissions resulting from the project.
- Rules for cumulative environmental assessments and reporting should include . . . Methods, procedures, protocols, criteria or standards for mitigation of greenhouse gas emissions, as necessary to achieve a goal of no net increase in greenhouse gas emissions . . .
68. The Washington State Department of Ecology sent an e-mail “Notice of Rulemaking for Proposed New Chapter 173-445 WAC – Greenhouse Gas Assessment for Projects Rulemaking” on May 1, 2020. An associated document entitled “[Preproposal Statement of Inquiry](#)” on Ecology’s website stated:

The Department of Ecology (Ecology) is beginning rulemaking as per



the Directive of the Governor #19-18. The purpose of this rulemaking is to create a new rule under Chapter 173-445 WAC Greenhouse Gas Assessment for Projects (GAP Rule). This rule will address analysis and mitigation of greenhouse gas emissions for environmental assessments of industrial and fossil fuel projects.

It is anticipated that the GAP Rule will be adopted by the Department of Ecology and will prescribe the methodologies for analyzing the lifecycle greenhouse gas impacts of large facilities under the State Environmental Policy Act. It is also anticipated that the GAP Rule will take into account the provisions of SB 5126 and possibly, the impacts of HB 1091 pertaining to reducing carbon intensity of transportation fuels. The provisions of SB 5126 and HB 1091 are described in paragraph 68 below. The GAP Rule provisions will be incorporated into a new rule, WAC 173-445, contained in the Washington Administrative Code and will apply statewide to all jurisdictions, including Whatcom County. According to the Governor's directive, the new rule is to "strengthen and standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects...". The Governor has modified the original directive to extend the expected completion date for the rule to December 31, 2021.

69. On April 25, 2021, the Washington State Legislature adopted SB 5126, the Climate Commitment Act. This legislation, at Sections 8 and 9, establishes a cap and invest system to regulate greenhouse gas emissions from industrial sources producing over 25,000 metric tons per year of emissions and will apply to several of the existing industrial sources in the Cherry Point UGA as "covered entities". The legislation provides for rulemaking by the Department of Ecology to implement the provisions of the bill. The legislation is to take effect on January 1, 2023. The legislation requires that a cap and invest system be designed to reduce greenhouse gas emissions from covered entities in a manner that will meet the greenhouse gas emission limits established by the Legislature, which are: a 95% reduction below 1990 levels by 2050, with interim economy-wide emissions limits of 45% below 1990 levels by 2030 and 70% below 1990 levels by 2040 with the state achieving net zero emissions by 2050. The legislation, in Section 10, contains amendments to the State Environmental Policy Act, RCW 43.21C. The amendments preempt cities and counties from implementing a charge or tax based exclusively on the quantity of greenhouse gas emissions for a stationary source, preclude denial of a permit for new or expanded facilities with emissions covered by the legislation and also preempt the Department of Ecology's Clean Air Rule. The legislation, at Section 10 (9)(e), contains the following language regarding mitigation of greenhouse gas emissions from facilities covered by the legislation: "A lead agency under chapter 43.21C RCW or a permitting agency shall allow a new or expanded facility that is a covered entity or opt-in entity to satisfy a mitigation requirement for its covered emissions under this act and under any greenhouse gas mitigation

requirements for covered emissions under chapter 43.21C RCW by submitting to the department the number of compliance instruments equivalent to its covered emissions during a compliance period.” The legislation also provides that entities responsible for greenhouse gas emissions below the thresholds for “covered entities” may register as an “opt-in entity” or may register as a “general market participant” and reduce the entity’s greenhouse gas emissions through the cap and invest program.

70. In the 2021 session, the Legislature also adopted HB 1091, the Clean Fuel Standard. This legislation prescribes reductions in the carbon intensity of transportation fuels beginning January 1, 2023. The legislation addresses the downstream emissions of transportation fuels and would ultimately result in a 20 percent reduction in the carbon intensity of transportation fuels supplied for certain transportation uses by 2037 and could be extended beyond that date to provide further reductions. The GAP Rule may incorporate discussion of how this downstream emission reduction should be considered in analyzing and mitigating the greenhouse gas impacts of fuels produced by refineries.
71. The Washington State Legislature passed the Clean Energy Transformation Act (CETA) in the 2019 legislative session. CETA commits the State of Washington to an electricity supply free of greenhouse gas emissions by 2045. CETA will address indirect emissions for electricity supplied to facilities by utilities. The GAP Rule may address how these indirect emissions should be treated in environmental reviews for major facilities where lifecycle greenhouse gas analysis will be required and the County will be required to follow the provisions of the GAP Rule when it is finalized.
72. The subject amendments modify the County’s SEPA rules to require applicants for certain fossil fuel and renewable fuel projects to submit additional information on a number of topics including greenhouse gas and other emissions, tanker and barge traffic, stormwater, wastewater, and risk of spills and explosions. These provisions are intended to provide the SEPA Responsible Official with more information in order to make reasoned decisions on threshold determinations and possible mitigation of impacts. These provisions are consistent with the SEPA Rules established in Chapter 197-11 of the Washington Administrative Code.
73. The subject amendments include provisions on SEPA’s relationship to federal, state, and regional regulations (see WAC 197-11-158(4)). It is anticipated that these provisions will harmonize with the GAP Rule and the provisions of state legislation such as SB 5126 and HB 1091, if and when they become effective.
74. The subject amendments modify the County’s SEPA rules by adding provisions relating to air quality & climate and plants & animals. These

topics are specifically listed as “elements of the environment” under the State SEPA Rules (WAC 197-11-444).

75. The subject amendments include provisions that the decision maker may condition or deny projects (conditioning includes mitigating measures). This authority is already granted under RCW 43.21C.060, which states “. . . Any governmental action may be conditioned or denied pursuant to this chapter. . .” (the State Environmental Policy Act). These provisions may need to be further harmonized with the GAP Rule and/or the provisions of SB 5126 if and when the GAP Rule and the legislation become effective.
76. While State government is taking action to address air quality and greenhouse gas emissions, the County finds that the subject amendments will also provide assistance at the local government level in fulfilling responsibilities under SEPA. The provisions also allow reliance on SEPA analysis and mitigation by state, regional or federal entities under certain circumstances.

### ***Zoning Code Amendments***

77. The Cherry Point UGA is zoned Light Impact Industrial (LII) and Heavy Impact Industrial (HII). There are approximately 470 acres in the LII zone and 6,560 acres in the HII zone.
78. The subject amendments modify the LII zone, HII zone, Cherry Point Industrial District, Major Project Permits, and Definitions sections of the Whatcom County Zoning Code (Title 20).
79. Whatcom County Comprehensive Plan Goal 2H is to “Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources.”
80. Whatcom County Comprehensive Plan Goal 7A is to “Promote a healthy economy providing ample opportunity for family-wage jobs for diverse segments of the community, which is essential to the quality of life in the area.”
81. Whatcom County Comprehensive Plan Policy 7A-2 is to “Foster a diverse, private-sector job base, which will provide family-wage jobs at the state median income level or greater, and facilitate the retention and expansion of existing businesses.”
82. Whatcom County Comprehensive Plan Policy 7J-1 is to “Support creation of job opportunities for local residents, especially family wage jobs to decrease unemployment and underemployment.

83. The Zoning Code, as modified by the subject amendments, preserves private property rights and fosters economic development by continuing to allow a wide array of industrial land uses in the Cherry Point UGA. In the LII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, communications, and other similar uses. In the HII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, power plants (except coal-fired plants), and solid waste handling facilities.
84. Additionally, the HII zone amendments allow continued operation, maintenance, and certain improvements to existing refineries and transshipment facilities (WCC 20.68.068).
85. Whatcom County Comprehensive Plan Goal 2G is to "Encourage citizen participation in the decision making process." Policy 2G-1 is to "Examine and improve methods to notify affected property owners of proposed land use changes."
86. The subject Zoning Code amendments provide greater public review of certain land uses that could impact public safety, transportation, and the environment. Specifically, the expansion of existing fossil fuel refineries and existing fossil fuel transshipment facilities beyond specified thresholds requires a conditional use permit in the HII zone (WCC 20.68.153 and WCC 20.68.154). The conditional use permit process requires notice, a public hearing, evaluation of the proposal for compliance with the approval criteria, and a decision by the hearing examiner. Existing operations, certain specified accessory uses (WCC 20.68.068) and expansions below the specified thresholds remain outright permitted uses under the amendments. New renewable fuel refineries which reduce lifecycle greenhouse gas emissions are permitted uses under the amendments.
87. Whatcom County Comprehensive Plan Policy 2CC-16 was adopted in 2017 (Ordinance 2017-027). This Policy, which is being modified by the subject amendments, stated:

The County shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA . . . Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments. . .

88. The subject amendments prohibit entirely new fossil fuel refineries and new fossil fuel transshipment facilities (WCC 20.66.204, 20.68.204 and .205). Potential impacts from new refineries and associated transshipment facilities may include: Increased pollutant emissions to the air, increased chance of crude oil or refined product spills, increased chance of fire or explosion, increased rail traffic that can impact other modes of transportation (e.g. hold up motor vehicle, school bus, or emergency vehicle traffic at railroad crossings), increased chance of derailment, and increased vessel traffic.
89. The Whatcom County Comprehensive Plan states "Whatcom County lies within the influence of the convergent plate margin between the Pacific and North American Plate termed the Cascadia Subduction Zone. Regionally-extensive and damaging earthquakes, termed mega-thrusts, are possible when stress generated between the subducting Pacific Plate and over-riding North American Plate is released. . ." (Chapter 10, p. 10-12). Because new refineries and transshipment facilities would transport and process flammable and toxic materials there is heightened concern, based upon the geology of the region, that these facilities could increase risk to both public safety and the environment.
90. There are currently five oil refineries in Washington State. Two are in Whatcom County, two are in Skagit County, and one in Pierce County. Whatcom County has approximately 3% of the State's population, but 40% of the State's refineries. The County has accepted its fair share of such facilities in the state and region and wants to limit the local impacts on the community and environment of further concentration of such facilities.
91. The subject amendments prohibit new coal fired power plants in the HII zone (WCC 20.68.207).
92. According to the National Institute of Health's National Library of Medicine website in 2020:
- . . . Air pollution from coal-fired power plants cause serious risk to human health. Coal-fired power plants emit 84 of the 187 hazardous air pollutants identified by the U.S. Environmental Protection Agency. These pollutants may cause cancer, according to the National Toxicology Program.
- Hazardous air pollution released by coal-fired power plants can cause a wide range of health effects, including heart and lung diseases. Exposure to coal power plant pollution can damage the brain, eyes, skin, and breathing passages. It can affect the kidneys, lungs, and nervous and respiratory systems. Exposure can also affect learning, memory, and behavior.

. . . Coal-fired power plants are the biggest industrial sources of mercury and arsenic in the air. Mercury pollutes lakes, streams, and rivers, and builds up in fish. People who eat large amounts of fish from contaminated lakes and rivers are at the greatest risk of exposure to mercury.

. . . People who work at or live near coal-fired power plants have the greatest health risks from coal pollution. . .

93. The subject amendments continue to allow other types of power plants in the HII zone, but would prohibit coal-fired power plants because of the risks to the local community, public health, and environment.
94. Whatcom County Comprehensive Plan Policy 10D-10 is to "Create updates to Whatcom County land use policies and development regulations to support renewable energy development goals."
95. The subject amendments allow renewable fuel refineries as a permitted use in the HII zone (WCC 20.68.070 and .071).
96. The Whatcom County Comprehensive Plan states that ". . . Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. . ." (Chapter 2, p. 2-54). Comprehensive Plan Policy 2CC-11 states:

It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to . . . Recognize federal actions upholding treaty rights. . .

97. The United States Department of the Army, Corps of Engineers denied a permit for a new pier under Section 10 of the Rivers and Harbors Act on May 9, 2016 because ". . . the proposed project would violate the Lummi Indian Nation's tribal Treaty Rights to access and utilize usual and accustomed fishing areas. . ."
98. The subject Zoning Code amendments implement the Comprehensive Plan by prohibiting new piers, docks, and wharves in the HII zone (WCC 20.68.206 and WCC 20.74.055). The Zoning Code amendments will also provide consistency with the Cherry Point Aquatic Reserve Management Plan and the order of the Commissioner regarding further aquatic leasing for piers, docks and wharves.

### ***Project Permit Procedure Amendments***

99. Whatcom County Comprehensive Plan Goal 2D is to "Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner."

100. Whatcom County Comprehensive Plan Policy 7G-1 is to "Recognize the natural environment as a major asset and manage environmental resources accordingly. We need both economic prosperity and environmental sustainability."

101. Whatcom County Comprehensive Plan Policy 10A-2 is to:

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

102. RCW 88.40 is entitled "Transport of Petroleum Products – Financial Responsibility." This State law, at RCW 88.40.005, indicates:

The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters.

103. This State law requires a tank vessel that carries oil as cargo in bulk to demonstrate financial responsibility to ". . . meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses" (RCW 88.40.020).

104. WAC 480-62 is entitled "Railroad Companies – Operations." This State code, at WAC 480-62-300(2), requires any railroad company that transports crude oil in Washington to submit to the Washington Utilities and Transportation Commission a statement that contains:

- (a) All insurance carried by the railroad company that covers any losses resulting from a reasonable worst case spill.
- (b) Coverage amounts, limitations, and other conditions of the insurance.
- (c) Average and largest crude oil train, as measured in barrels, operated in Washington by the railroad company in the previous calendar year.
- (d) Information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a reasonable worst case spill

of oil including, but not necessarily limited to, insurance, reserve accounts, letters of credit, or other financial instruments or resources on which the company can rely to pay all such costs.

105. The State Legislature adopted Engrossed Substitute House Bill (ESHB) 1578 in 2019. This bill amended the "Vessel Oil Spill Prevention and Response" law (RCW 88.46), the "Oil and Hazardous Substance Spill Prevention and Response" law (RCW 90.56), and other provisions of state law.

106. ESHB 1578 states:

The legislature finds that a variety of existing policies designed to reduce the risk of oil spills have helped contribute to a relatively strong safety record for oil moved by water, pipeline, and train in recent years in Washington state. Nevertheless, gaps exist in our safety regimen, especially deriving from shifts in the modes of overwater transportation of oil and the increased transport of oils that may submerge or sink, contributing to an unacceptable threat to Washington waters, where a catastrophic spill would inflict potentially irreversible damage on the endangered southern resident killer whales. . . Therefore, it is the intent of the legislature to enact certain new safety requirements designed to reduce the current, acute risk from existing infrastructure and activities of an oil spill that could eradicate our whales, violate the treaty interests and fishing rights of potentially affected federally recognized Indian tribes, damage commercial fishing prospects, undercut many aspects of the economy that depend on the Salish Sea, and otherwise harm the health and well-being of Washington residents. . . (Section 1).

107. Tug escorts have been required for larger loaded oil tankers for years. ESHB 1578 amended state law to require certain smaller oil tankers to be under the escort of tugs, require the Department of Ecology to develop and maintain a model to assess current and potential future risks of oil spills from vessels in Washington waters, and modify reporting requirements for railroad cars and pipelines that transport crude oil within the state.
108. While the Washington State legislature has enacted laws relating to the transportation and handling of fossil fuels, there have been a number of accidents involving fossil fuel refineries and transportation of fossil fuels in North America over the years. These accidents, involving flammable and/or toxic materials, have impacted local communities and the environment. On July 5, 2013, an oil train derailment, explosion and fire in Lac Magentic, Quebec resulted in the deaths of 47 people. On December 22, 2020, a train derailment and fire occurred at Custer in Whatcom County. The Custer derailment and fire resulted in the loss of 29,000 gallons of crude oil and required an evacuation and extensive emergency



response. On June 10, 1999 an Olympic Pipe Line Company pipeline ruptured and spilled over 236,000 gallons of gasoline into Hanna and Whatcom Creeks resulting in the deaths of 3 young people.

109. Overall, the subject amendments seek to minimize or avoid additional risk to the local community and environment from fossil fuel facilities. The amendments are intended to heighten the level of review or, in certain cases, prohibit uses in order to protect public health, safety & welfare, fisheries industries, fish & wildlife habitat, and the environment.
110. However, in case of accidents, the subject amendments include proof of insurance requirements (WCC 22.05.125), as it is a matter of fairness that responsible parties mitigate the consequences of any accidents.

### ***County Charter and GMA Takings Provisions***

111. Whatcom County Charter Section 1.11 states, "The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened."
112. GMA Planning Goal 6, relating to property rights, states "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions" (RCW 36.70A.020(6)).
113. The Whatcom County Prosecuting Attorney's Office has rendered an opinion that the subject Comprehensive Plan and code amendments do not unduly burden property owners and do not take private property for public use.

### **CONCLUSIONS**

1. The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060(1).
2. The subject development regulation amendments are consistent with the approval criteria in WCC 22.10.060(2).

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

Section 1. Amendments to the Whatcom County Comprehensive Plan are hereby adopted as shown on Exhibit A.

Section 2. Amendments to Whatcom County Code 16.08 (State Environmental Policy Act) are hereby adopted as shown on Exhibit B.

Section 3. Amendments to Whatcom County Code Title 20 (Zoning) are hereby adopted as shown on Exhibit C.

Section 4. Amendments to Whatcom County Code 22.05 (Project Permit Procedures) are hereby adopted as shown on Exhibit D.

Section 5. 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 \_\_\_\_\_, 2021.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Chairperson

APPROVED as to form:

( ) Approved ( ) Denied

/s/ Karen Frakes

\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, Executive

Date: \_\_\_\_\_

# Exhibit A

## Comprehensive Plan (Chapter 2)

### Major Industrial Urban Growth Area / Port Industrial

#### *Cherry Point – Text*

##### **Change Second Paragraph of Cherry Point Text**

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971. The existing industries in the Cherry Point UGA, which provide significant employment, have produced and shipped refined fossil fuels and other products for decades.

##### **Amend Policy 2CC-11**

Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to:

- ~~Honor any existing vested rights or other legally enforceable agreements for an additional dock/ pier;~~  
Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point Herring stock and Southern Resident Killer Whales;
- ~~Update the~~ Optimally implement the Whatcom County Shoreline Master Program to ~~conform with this policy~~ fulfill the Shoreline Management Act's shorelines of statewide significance policy to preserve natural character, result in long-term over short-term benefit, and protect the resources and ecology of the shoreline;
- Encourage the continued agency use of best available science;
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing; and

- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

#### **Amend Policy 2CC-16**

~~2CC-16: The County will, through its adopted SEPA policies and applicable permitting processes, shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to seek to limit the negative impacts on public safety, transportation, the economy, and environment from new fossil fuel facilities, including new or expanded crude oil, coal, liquefied petroleum gases, and natural gas exports from facilities within the Cherry Point UGA above levels in existence as of March 1, 2017.~~

~~To provide clear guidance to current and future county councils on the County's legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code. The County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice publicly available.~~

~~• Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.~~

~~• Until the above mentioned amendments are implemented, †The Prosecuting Attorney and/or the County Administration should provide the County Council written notice of all known preapplication correspondence or permit application submittals and notices, federal, state, or local that involve activity with the potential to expand the export of fossil fuels from Cherry Point “Fossil Fuel Refinery, Renewable Fuel Refinery, Fossil Fuel Transshipment Facility, or Renewable Fuel Transshipment Facility,” as defined in the Whatcom County Code (Chapter 20.97).~~

#### **Amend Policy 2CC-17**

~~Policy 2CC-16 shall not limit Allow existing operations or maintenance of existing fossil-fuel related facilities operating as of March 1, 2017 [XXX effective date of ordinance] with limited expansions subject to environmental review, greenhouse gas emission analysis, and conformance with Policies 2CC-3 and -11.~~

Add a new policy as follows:

**Policy 2CC-18:** This chapter is intended to allow the on-going operation, maintenance, and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational and site safety improvements, environmental improvements, and regulatory compliance projects.

67

## 68 Essential Public Facilities

### 69 Amend Policy 2WW-4

70 Policy 2WW-4: State and regional highways in unincorporated Whatcom County that have been  
71 designated as essential state or regional transportation facilities are I-5, State Route 539 (the Guide  
72 Meridian), State Route 546/9 (Badger from the Guide to Sumas), and State Route 20 to eastern  
73 Washington. Other transportation facilities in unincorporated Whatcom County that have been  
74 designated as essential public facilities are Amtrak Cascades passenger rail service, the Burlington  
75 Northern Santa Fe railroad tracks, and the Cherry Point marine port facilities. Such facilities in the City of  
76 Bellingham include Fairhaven Station (intercity passenger rail terminal), Bellingham Cruise Terminal  
77 (Alaska Ferry), and the Port of Bellingham (marine port). Additionally, State Route 543 (the truck route at  
78 the Blaine border) is an essential public facility located within the city limits of Blaine.

79 Widening of existing state highways or railroad tracks (including construction of sidings) and siting new  
80 state highways or railroad tracks should be planned in the Washington Highway System Plan, Amtrak  
81 Cascades Plan and the Freight Rail Plan. The state will invite the Regional Transportation Planning  
82 Organization and the County to participate in planning studies, review design plans, and provide  
83 comments when siting new or expanded state highways or railroad tracks.

84 Highways and railroad tracks that qualify as essential public facilities should be sited in accordance with  
85 all of the following principles. These facilities should be located:

- 86 • In a manner that minimizes or mitigates noise impacts to surrounding residential areas.
- 87 • Outside of the Lake Whatcom Watershed, unless there are no viable alternatives.
- 88 • In a manner that allows continued fish passage beyond the road or railroad tracks or restores blocked  
89 passage.
- 90 • In a manner that avoids or mitigates wetland impacts.
- 91 • In a manner that minimizes impacts of additional impervious surfaces by treating stormwater runoff.
- 92 • In a manner that encourages a vibrant economy by facilitating the efficient movement of people and  
93 freight.
- 94 • In a manner that accommodates pedestrians, bicycles, and transit.

95 Major passenger intermodal terminals should be located in General Commercial, Airport Operations,  
96 Urban Residential-Medium Density or industrial zones.

97 Freight railroad switching yards and terminals should be located in industrial zones.

98 Marine port facilities should be located within the Heavy Impact Industrial zone of the Cherry Point  
99 Major/Port Industrial Urban Growth Area. Allow existing facilities and limited expansions consistent with  
100 the State of Washington Department of Natural Resource Cherry Point Aquatic Reserve Management  
101 Plan.

# Exhibit B

## 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.

37

38 **16.08.160 Substantive authority.**

39 A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of Whatcom  
40 County.

41 B. The county may attach conditions to a permit or approval for a proposal so long as:

42 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in  
43 environmental documents prepared pursuant to this chapter; and

44 2. Such conditions are in writing; and

45 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

46 4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are  
47 sufficient to mitigate the identified impacts; and

48 5. Such conditions are based on one or more policies or provisions in subsection D, E, or F of this section and cited in  
49 the license or other decision document.

50 C. The county may deny a permit or approval for a proposal on the basis of SEPA so long as:

51 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that  
52 are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

53 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient  
54 to mitigate the identified impact; and

55 3. The denial is based on one or more policies or provisions identified in subsection D or F of this section and identified  
56 in writing in the decision document.

57 D. The county designates and adopts by reference the following policies as the basis for the county's exercise of SEPA  
58 authority pursuant to this section:

59 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve  
60 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

61 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

62 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing  
63 surroundings;

64 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or  
65 other undesirable and unintended consequences;

66 d. Preserve important historic, cultural, and natural aspects of our national heritage;

67 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

68 f. Achieve a balance between population and resource use which will permit high standards of living and a wide  
69 sharing of life's amenities; and

70 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable  
71 resources.

72 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that  
73 each person has a responsibility to contribute to the preservation and enhancement of the environment.

74 3. The county adopts by reference the policies in the following county documents:

75 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)

76 Whatcom County Shoreline Management Program

77 Whatcom County Subdivision Ordinance

78 Whatcom County Solid Waste Management Plan

79 Whatcom County Critical Areas Ordinance

80 All official land use controls adopted by Whatcom County.

81 E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these  
82 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific  
83 adverse environmental impact has been adequately addressed by an existing rule or law of another agency with  
84 jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In  
85 making this deferral, the County shall base or condition its project approval on compliance with these other existing  
86 rules or laws. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to address  
87 a particular impact of a project or would be less restrictive than County Code.

88 F. Specific Environmental Policies

89 1. Air Quality and Climate:

90 a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality  
91 of life. Mitigation of air pollutant impacts will normally be the subject of air permits required by the Northwest  
92 Clean Air Agency (NWCAA) and/or State Department of Ecology (DOE) and no further mitigation by the County  
93 shall be required. However, where a project being reviewed by the County generates public nuisance impacts,  
94 odors or greenhouse gas emissions impacts not addressed through the regulations of NWCAA or DOE, the County  
95 may require mitigation under SEPA.

96 b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows  
97 and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads,  
98 dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global  
99 phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that  
100 projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be  
101 authorized by the County address greenhouse gas emissions impacts.

102 i. Greenhouse Gas Emissions: The following shall apply to projects that: (1) are expansions of Fossil Fuel  
103 Refineries and Fossil Fuel Transshipment Facilities, as defined in WCC 20.68.153 and WCC 20.68.154, or new,  
104 or expansion of Renewable Fuel Refineries and Renewable Fuel Transshipment Facilities; and (2) will have  
105 reasonably foreseeable, probable, direct greenhouse gas emissions resulting from new or modified equipment of  
106 greater than 10,000 MT/year (CO<sub>2</sub>e) as determined by the Northwest Clean Air Agency using methodology  
107 consistent with 40 CFR § 98.253, Calculating GHG Emissions (for Petroleum Refineries) and 40 CFR § 98.33,  
108 Calculating GHG Emissions (for Stationary Fuel Combustion Sources), as applicable.

109 (a) Emissions Assessed: The SEPA Responsible Official shall require assessment of the lifecycle  
110 greenhouse gas emissions of the project, with a focus on the reasonably foreseeable, probable, direct and  
111 indirect, gross greenhouse gas emissions caused by the project, consistent with WAC 197-11-060(4)(d).  
112 The assessment shall estimate the incremental gross direct emissions change from a baseline established in  
113 current Prevention of Significant Deterioration and/or Minor New Source Review Permit Technical  
114 Support Documents.

115 (b) Impact Assessment: Greenhouse gas emissions impacts shall be assessed using current scientifically  
116 valid modeling techniques, accounting for project emissions and gross increases of existing facility  
117 emissions resulting from the proposed expansion project. The range of greenhouse gas emissions impacts  
118 assessed may be greater than the range of greenhouse gas emissions impacts for which mitigation is  
119 required.

120 (c) Mitigation: The County decision-maker shall require the applicant to identify options for mitigation of  
121 greenhouse gas emissions that are caused by the project pursuant to WAC 197-11-660 and WCC  
122 16.08.160.B, and in accordance with the following considerations:



(1) Mitigation measures must be imposed on the permittee as provided in WAC 197-11-660(1)(d). The County decision maker must require mitigation to address the project's direct greenhouse gas emissions and may require 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.

(2) The SEPA Responsible Official shall not require duplicative mitigation of greenhouse gas emissions (MT CO<sub>2</sub>e) 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.

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.

218	197-11-740	Environment.
219	197-11-742	Environmental checklist.
220	197-11-744	Environmental document.
221	197-11-746	Environmental review.
222	197-11-750	Expanded scoping.
223	197-11-752	Impacts.
224	197-11-754	Incorporation by reference.
225	197-11-756	Lands covered by water.
226	197-11-758	Lead agency.
227	197-11-760	License.
228	197-11-762	Local agency.
229	197-11-764	Major action.
230	197-11-766	Mitigated DNS.
231	197-11-768	Mitigation.
232	197-11-770	Natural environment.
233	197-11-772	NEPA.
234	197-11-774	Nonproject.
235	197-11-775	Open record hearing.
236	197-11-776	Phased review.
237	197-11-778	Preparation.
238	197-11-780	Private project.
239	197-11-782	Probable.
240	197-11-784	Proposal.
241	197-11-786	Reasonable alternative.
242	197-11-788	Responsible official.
243	197-11-790	SEPA.
244	197-11-792	Scope.
245	197-11-793	Scoping.
246	197-11-794	Significant.
247	197-11-796	State agency.
248	197-11-797	Threshold determination.
249	197-11-799	Underlying governmental action.

250 In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this article,  
251 the following terms shall have the following meanings, unless the context indicates otherwise:

- 252 A. “Direct Emissions” means greenhouse gas emissions associated with Fossil Fuel Refineries, Fossil Fuel  
253 Transshipment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based upon  
254 the refining and processing of Fossil Fuels located within the Cherry Point Heavy Industrial area.”
- 255 B. “Early notice” means the county’s response to an applicant stating whether it considers issuance of a  
256 determination of significance (DS) likely for the applicant’s proposal (mitigated determination of  
257 nonsignificance (MDNS) procedures).
- 258 C. “ERC” means environmental review committee established in WCC 16.08.045.

259 D. "Greenhouse Gas Emissions" means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse  
260 gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,  
261 perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the federal clean air act  
262 (United States Code Title 42, Chapter 85), state clean air act (Chapter 70A.15 RCW) or state limiting greenhouse  
263 gas emissions law (Chapter 70A.45 RCW) or any directly superseding provisions of state or federal law.

264 E. Gross emissions mean the actual incremental emissions increases or decreases resulting from the project. Gross  
265 emissions do not include reductions or additions from offsite mitigation or lifecycle impacts.

266 F. Indirect emissions mean emissions resulting from offsite generation of power purchased for consumption at the  
267 facility and emissions from other contiguous or adjacent utilities directly supplying the facility (examples include  
268 cogeneration of steam, offsite hydrogen production).

269 G. "Lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including  
270 direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel  
271 and feedstock production and distribution, from feedstock generation or extraction through the distribution and  
272 delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are  
273 adjusted to account for their relative global warming potential.

274 HC. "Ordinance" means the procedure used by the county to adopt regulatory requirements.

275 ID. "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA  
276 process or his/her designee.

277 JE. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 98-048 Exh. A; Ord.  
278 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.

365 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and  
366 materials handling equipment; machine tools and dies; and special and general industrial equipment.

367 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

368 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,  
369 railroad equipment, bicycles and motorcycles.

370 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities except as  
371 conditionally permitted under WCC 20.68.153 and .154 or prohibited under WCC 20.68.200.

372 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants  
373 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind  
374 (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.

375 .061 Heavy construction contractors.

376 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,  
377 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar  
378 noncommercial uses, excluding state education facilities and correction facilities.

379 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet  
380 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building  
381 shall contain no indoor plumbing but may be served with electrical power for lighting.

382 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within  
383 the Heavy Impact Industrial District in the Bellingham UGA.

384 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

385 .066 Marijuana production or processing facility.

386 .068 Existing Fossil Fuel Refineries, existing Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, Renewable  
387 Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that  
388 when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must  
389 disclose any capacity changes defined under WCC 20.68.153 and WCC 20.68.154 to the county permitting authorities.  
390 Provided that a conditional use permit is not required by WCC 20.68.153 or WCC 20.68.154, permitted uses include repairs,  
391 improvements, maintenance, modifications, remodeling or other changes including but not limited to the following.:

392 (1) Accessory and appurtenant buildings, structures, and processing equipment.

393 (2) Office space.

394 (3) Parking lots.

395 (4) Radio communications facilities.

396 (5) Security buildings, fire stations, and operation centers.

397 (6) Storage buildings.

398 (7) Routine maintenance and repair.

399 (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with  
400 federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes of co-processing  
401 biomass with petroleum.

402 (9) Road projects and bridges.

403 (10) Temporary trailers.

404 (11) Heating and cooling systems.

- 405 (12) Cable installation.
- 406 (13) Information technology improvements.
- 407 (14) Continuous emissions monitoring systems or analyzer shelters.
- 408 (15) Wastewater and stormwater treatment facilities.
- 409 (16) Replacement and upgrading of existing equipment.
- 410 (17) Safety upgrades.
- 411 (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.
- 412 (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.
- 413 (20) Renewable fuel production and shipment.
- 414 (21) Transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved;
- 415 (22) Necessary Fossil Fuels transfers during turn-arounds or maintenance periods.
- 416 (23) Storage tanks, provided that the County decision maker shall include in any approval of an application for storage tanks  
417 at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel  
418 Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and  
419 approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of  
420 fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or  
421 will not be used for transshipment.
- 422 (24) Other similar structures or activities.
- 423 .070 New Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, except that new piers, docks, or wharves  
424 in the Cherry Point Industrial District are prohibited.
- 425 .071 Expansion of existing legal Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, provided that the  
426 expansion is for Renewable Fuels only.
- 427 .081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.
- 428 .082 Marine port facilities, except as prohibited under WCC 20.68.200.
- 429 .085 Type I solid waste handling facilities.
- 430 .086 Type II solid waste handling facilities.
- 431 **20.68.100 Accessory uses.**
- 432 .101 Employee recreation facilities and play areas.
- 433 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the  
434 district.
- 435 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 436 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50  
437 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 438 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.
- 439 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved  
440 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.



.107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the purpose of serving the child care needs of employees whose place of employment lies within this zone district.

.108 Electric vehicle rapid charging stations and battery exchange facilities.

.109 Inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks.

#### 20.68.130 Administrative approval uses.

.131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1 (Exh. A), 2006).

#### 20.68.150 Conditional uses.

The following uses require a conditional use permit in the HII Zoning District.

.152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

(1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

(2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

.153 Expansion of existing Fossil Fuel Refineries. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following applicable thresholds:

- A. Cumulatively increases the facility's total Maximum Atmospheric Crude Distillation Capacity for Fossil Fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- B. Cumulatively increases the 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 of physical equipment limitations conducted by a licensed professional engineer in accordance with 20.97.230.1; or
- C. Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by County, State or Federal authorities (where applicable) as of [XXX effective date of ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

.154 Expansion of existing Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that 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.

481

482 .15~~5~~<sup>4</sup> Treatment and storage facilities for hazardous wastes subject to the following:

483 (1) The ~~eight~~ criteria for a conditional use listed under WCC ~~22.05.02620.84.200~~.

484 (2) The most current state siting criteria under Chapter 173-303 WAC.

485 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,  
486 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those  
487 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.

488 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County  
489 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from  
490 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10  
491 percent of the total local hazardous waste stream.

492 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been  
493 constructed consistent with state requirements.

494 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,  
495 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to  
496 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit  
497 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,  
498 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be  
499 documented by county staff.

500 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of  
501 all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county  
502 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and  
503 inspection reporting procedures.

504 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an  
505 inspection by a qualified and independent inspection agency satisfactory to the county.

506 (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health  
507 and safety, the permit may be revoked by the approving body following a public hearing.

508 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

509 .157 Trailheads with parking areas for more than 30 vehicles.

510 .158 Athletic fields.

511 .180 Major passenger intermodal terminals.

512 .187 Type III solid waste handling facilities; provided, that:

513 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site  
514 will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at  
515 least three feet in elevation higher than the floodway elevation;

516 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:

517 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

518 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;

519 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

520 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

- 521 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 522 (f) This 1,500-foot buffer does not apply to:
- 523 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from  
524 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 525 (ii) Inert landfills;
- 526 (3) Inert landfills shall be located at least 500 feet from the following:
- 527 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 528 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 529 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 530 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 531 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 532 (f) This 500-foot buffer does not apply to:
- 533 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from  
534 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 535 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use  
536 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any  
537 county or state road right-of-way;
- 538 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,  
539 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use  
540 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 541 (6) The facility or site has complied with the provisions of WCC ~~22.05.026~~~~20.84.200~~ and all other ordinances and laws  
542 regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as  
543 well as state and federal regulations concerning solid waste facilities and sites;
- 544 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the  
545 closure plan includes:
- 546 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular  
547 activity, with seeding to be accomplished annually but no later than September 30th; and
- 548 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is  
549 covered through the financial assurance for post-closure activities;
- 550 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements  
551 of WCC 20.80.300 (Landscaping);
- 552 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's  
553 delineated wellhead protection area;
- 554 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving  
555 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be  
556 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from  
557 the boundary of the airport property;
- 558 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to  
559 protect the value and enjoyment of existing adjacent uses.

560 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when  
561 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be  
562 processed as a major development project pursuant to Chapter 20.88 WCC.

#### 563 **20.68.200 Prohibited uses.**

564 All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not  
565 limited to the following, which are listed here for purposes of clarity:

566 .201 Reserved.

567 .202 Adult businesses.

568 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary  
569 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and  
570 products derived thereof; and primary metal industries.

571 .204 New Fossil Fuel Refineries.

572 .205. New Fossil Fuel Transshipment Facilities.

573 .206. New piers, docks, or wharves in Cherry Point Industrial District.

574 .207 Coal-fired power plants.

575 (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-  
576 075, 1991).

#### 577 **20.68.250 Minimum lot size.**

578 The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and  
579 development standards of the district. (Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996).

#### 580 **20.68.255 Minimum lot frontage.**

581 For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility  
582 development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the  
583 frontage be less than 30 feet. (Ord. 99-045 § 1, 1999).

#### 584 **20.68.350 Building setbacks.**

585 Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.68.550. (Ord. 99-078, 1999).

#### 586 **20.68.400 Height limitations.**

587 No maximum height is established; however, when a building exceeds 50 feet, the setback requirements of WCC 20.80.200  
588 shall be increased by one foot for each foot of building height in excess of 50 feet, as applicable to all setbacks.

#### 589 **20.68.450 Lot coverage.**

590 The maximum building or structural coverage shall not exceed 60 percent of the lot size.

#### 591 **20.68.500 Open space.**

592 *Repealed by Ord. 97-057. (Ord. 96-046, 1996).*

#### 593 **20.68.550 Buffer area.**

594 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial  
595 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual

596 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site  
597 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

598 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory  
599 structures shall be established consistent with the following options:

600 (1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum  
601 setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security  
602 roads, parking, or open space.

603 (2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the  
604 district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the  
605 setback(s) may be used for security roads, parking, or open space.

606 (3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to  
607 the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be  
608 situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.

609 (4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban  
610 Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be  
611 increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.

612 (5) In no case shall the setback from the northern and western boundaries of the Cherry Point heavy industrial area not  
613 contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and  
614 security or protective uses.

615 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and  
616 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

617 .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  
618 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),  
619 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,  
620 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

## 621 **20.68.600 Sign regulations.**

622 Sign regulations shall be administered pursuant to WCC 20.80.400.

## 623 **20.68.650 Development criteria.**

624 (Ord. 96-056 Att. A § A1, 1996).

## 625 **20.68.651 Landscaping.**

626 Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).

## 627 **20.68.652 Off-street parking and loading.**

628 Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must  
629 be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on  
630 public rights-of-way.

## 631 **20.68.653 Drainage.**

632 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No  
633 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A §  
634 A2, 1996; Ord. 94-022, 1994).

635 **20.68.654 Driveways.**

636 Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of  
637 Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).

638 **20.68.655 Access.**

639 Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).

640 **20.68.656 Maintenance.**

641 The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be  
642 responsible for assuring the care and maintenance of any natural growth, where appropriate.

643 **20.68.657 Enclosure.**

644 All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature,  
645 including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).

646 **20.68.700 Performance standards.**

647 **20.68.701 *Pollution control and nuisance abatement.***

648 Each industry is required to continuously employ the best pollution control and nuisance abatement technology when  
649 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or  
650 regulations provide for the level of technology to be employed, the appropriate standards shall apply.

651 **20.68.702 *Heat, light and glare.***

652 All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used  
653 as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

654 **20.68.703 *Ground vibration.***

655 No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is  
656 discernible without instruments, at or beyond the property line for the use concerned.

657 **20.68.704 *Odors.***

658 No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in  
659 such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe  
660 upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).

661 **20.68.705 *Noise.***

662 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-  
663 075, 1991).

664 **20.68.706 *Toxic gases and fumes.***

665 Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control  
666 Authority standards. (Ord. 91-075, 1991).

667 **20.68.707 *Liquid pollutants.***

668 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).

669     **20.68.708     *Appearance.***

670     New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so  
671     as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such  
672     uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999).

673     **20.68.709     *Marijuana odor.***

674     For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a  
675     concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon  
676     the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to  
677     capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or  
678     surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh.  
679     A, 2015).

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705 **CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT**

706 **20.74.010 Purpose.**

707 The purpose of the Cherry Point Industrial District is to implement the policies of the Cherry Point Major Industrial Urban  
708 Growth Area section of the Whatcom County Comprehensive Plan by establishing a range of land uses and types of  
709 development appropriate for the Cherry Point UGA and to encourage large scale master planning of industrial sites to  
710 preserve sites of sufficient size to accommodate major port and industrial development. (Ord. 98-083 Exh. A § 57, 1998).

711 **20.74.020 Applicability.**

712 This chapter is applicable to the entire Cherry Point Major Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

713 **20.74.030 Permitted uses.**

714 (1) Primary permitted uses:

715 (a) Area south of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Heavy  
716 Impact Industrial District, Chapter 20.68 WCC, as well as large scale high technology businesses.

717 (b) Area north of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Light  
718 Impact Industrial District, Chapter 20.66 WCC.

719 (2) Secondary permitted uses shall include smaller scale industrial uses, nonretail commercial uses, and industry-related  
720 professional services, provided the secondary use supports or is supported by primary permitted uses in the Cherry Point  
721 Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

722 **20.74.040 Accessory uses.**

723 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
724 083 Exh. A § 57, 1998).

725 **20.74.050 Conditional uses.**

726 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
727 083 Exh. A § 57, 1998).

728 **20.74.055 Prohibited uses.**

729 Prohibited uses shall be the same as those prohibited in the Light Impact Industrial District (Chapter 20.66) and the Heavy  
730 Impact Industrial District (Chapter 20.68 WCC), as applicable, and the following:

731 (1) New piers, docks, or wharves.

732 (2) Conversion of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility to a Fossil Fuel Refinery or Fossil  
733 Fuel Transshipment Facility.

734 **20.74.060 Master site plan requirements.**

735 (1) Development in the Cherry Point Industrial District requires the review and approval of a master site plan, including  
736 SEPA review. Acceptable master site plans include site plans and supporting information submitted and approved for  
737 applications for a building permit, a short subdivision, a preliminary plat, a binding site plan, a major project permit or a  
738 planned unit development.

739 (2) The minimum area for a master site plan (planning block) shall be 160 acres, or the entire property under common  
740 ownership if the common ownership is less than 160 acres.



- 741 (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  
742 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site  
743 shall be waived.
- 744 (4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.
- 745 (5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit,  
746 short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject  
747 to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site  
748 plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private  
749 facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation  
750 required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

#### 751 **20.74.070 Minimum lot size and parcelization.**

752 The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be  
753 permitted as follows:

- 754 (1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent  
755 with the master site plan requirements in this chapter.
- 756 (2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC  
757 consistent with the master site plan requirements of this chapter.
- 758 (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master  
759 site plan requirements of this chapter.
- 760 (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  
761 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.
- 762 (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083  
763 Exh. A § 57, 1998).

#### 764 **20.74.080 Design standards.**

765 Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site  
766 design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District,  
767 Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District,  
768 Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

#### 769 **20.74.090 Traffic demand management.**

770 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major  
771 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time  
772 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  
773 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

774 (1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by  
775 December 1, 2011.

776 (2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the  
777 requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

#### 778 **20.74.100 Drainage.**

779 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No  
780 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

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783 CHAPTER 20.88 MAJOR PROJECT PERMITS

784 20.88.100 Major project permits.

785 .110 All major developments shall, prior to any construction, obtain a major project permit.

786 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter  
787 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

788  
789 In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the  
790 technical review committee that any project be considered a major development, if in the opinion of the administration it is of  
791 a nature that council review would be appropriate.

792 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval  
793 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing  
794 examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application  
795 based on the following criteria:

796 (1) Will comply with the development standards and performance standards of the zone in which the proposed major  
797 development will be located; provided where a proposed major development has obtained a variance from the development  
798 and performance standards, standards as varied shall be applied to that project for the purposes of this act.

799 (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for  
800 the issuance of a conditional use permit for the zone in which the project is located.

801 ~~(3) Will be consistent with applicable laws and regulations.~~

802

(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.15 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.45 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.

961 **20.97.340.4 Renewable Fuel.**

962 “Renewable Fuel” means liquid or gaseous fuels produced from renewable biomass, woody biomass or landfill wastes and  
963 limited in terms of blending with fossil fuels. Renewable fuels shall also include fuels produced from renewable electricity  
964 including hydrogen and synthetic fuels. Common renewable fuels include ethanol, renewable diesel and biodiesel:

965 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is  
966 nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of  
967 American society of testing and materials specification D 5798.

968 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable  
969 oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal  
970 environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 and meets the requirements of American  
971 society of testing and materials specification D 975.

972 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or  
973 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other  
974 feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State  
975 Department of Ecology or US EPA.

976 **20.97.340.5 Renewable Fuel Refinery.**

977 A “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small  
978 Fossil or Renewable Storage and Distribution Facilities.

979 **20.97.340.6 Renewable Fuel Transshipment Facility.**

980 “Renewable Fuel Transshipment Facility” is an entire complex, consisting of its individual units, equipment, or components  
981 which in aggregate engages primarily in the process of off-loading Renewable Fuels and/or Renewable Biomass from one  
982 mode of shipment (i.e., rail, truck, pipeline, etc.) then storing and/or loading such fuels without processing through a  
983 Renewable Fuel Refinery or Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated  
984 zoning district boundaries, such as the Cherry Point Industrial District. This definition shall exclude Small Fossil or  
985 Renewable Fuel Storage and Distribution Facilities.

986 **20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities.**

987 “Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

988 (1) Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or

989 (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation,  
990 and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel  
991 transshipment facilities.

992 **20.97.434.1 Technical committee.**

993 “Technical committee” or “technical review committee” means the designated representatives of the Whatcom County  
994 Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and  
995 the Whatcom County Health Department Director.

996 *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.

(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; and

(d) An attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant and certified by a Notary Public.

(2) 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) The applicant shall clearly identify information the applicant considers to be 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 Business Information clearly identified, with a watermark indicating the document contains such information; and

2. A copy with Confidential Business Information redacted, and a watermark added indicating that the document does not contain such information and is suitable for public disclosure.

(ii) 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 Confidential Business Information and, if so, shall be marked as such when submitted.

(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.

(3) 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. Confidential Business Information shall be clearly identified as required by WCC 22.05.126(2)(a)(i) above.

(4) 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 a reasonable period of time of at least 1530 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).



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-405

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<b>File ID:</b>	AB2021-405	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/06/2021	<b>Entered by:</b>	JLassite@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	07/13/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Ordinance requesting that the Whatcom County Auditor include the question of establishing a Birch Bay Library Capital Facility Area to finance a new library facility in Birch Bay on the ballot at the November general election

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance would forward the Birch Bay Library Capital Facility Area proposal to the Whatcom County Auditor for inclusion on the ballot at the next general election.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Proposed Ordinance, WCLS Resolution, WCLS Explanatory Statement, WCLS Auditor Forms

3  
4  
5                                   **ORDINANCE NO. \_\_\_\_\_**

6  
7                   **REQUESTING THAT THE WHATCOM COUNTY AUDITOR INCLUDE THE**  
8                   **QUESTION OF ESTABLISHING A BIRCH BAY LIBRARY CAPITAL FACILITY**  
9                   **AREA TO FINANCE A NEW LIBRARY FACILITY IN BIRCH BAY ON THE**  
10                   **BALLOT AT THE NOVEMBER GENERAL ELECTION**

11  
12                   **WHEREAS,** on June 15, 2021, the Whatcom County Library System Board of  
13 Trustees adopted Resolution No. 6/15/21-08 initiating the process for establishing  
14 the Birch Bay Library Capital Facility Area to finance a new library facility in Birch  
15 Bay; and

16  
17                   **WHEREAS,** the Bookmobile currently serving the Birch Bay community  
18 cannot accommodate a collection size to support the rapidly growing population;  
19 and

20  
21                   **WHEREAS,** the Birch Bay community lacks public services such as public  
22 meeting rooms, public internet computers, free informational and educational  
23 programs and events for all ages; and

24  
25                   **WHEREAS,** Chapter 27.15 RCW permits, upon the request of the Library  
26 District and the approval of the voters, the creation of a library capital facility area  
27 to construct, acquire, maintain, and remodel library capital facilities; and

28  
29                   **WHEREAS,** the Whatcom County Rural Library District has fulfilled all the  
30 requirements for the proposed establishment of the Birch Bay Library Capital  
31 Facility Area and the proposal is ready to send to a vote of the people.

32  
33                   **NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council  
34 hereby forwards the Birch Bay Library Capital Facility Area proposal to the  
35 Whatcom County Auditor for inclusion on the ballot at the next general election.

36  
37                   **BE IT FURTHER ORDAINED** that the boundaries of the Birch Bay Library  
38 Capital Facility Area shall be as described by Exhibit A to this ordinance.

**BE IT FURTHER ORDAINED** that the proposition shall be in substantially the following form:

The Whatcom County Council adopted Ordinance No. \_\_\_\_ concerning a proposition to establish the Birch Bay Library Capital Facility Area to finance a new library facility in Birch Bay. If approved, this proposition would establish the Birch Bay Library Capital Facility Area with boundaries as described in County Council Ordinance No. \_\_\_\_, authorize it to acquire, construct, furnish and equip a new library in Birch Bay, incur indebtedness to finance such improvements through the issuance of up to \$4,500,000 in general obligation bonds maturing within 20 years, and levy annual excess property taxes to repay such bonds. Shall this proposition be approved?

**YES** \_\_\_\_\_

**NO** \_\_\_\_\_

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Civil Deputy Prosecutor

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Satpal Sidhu  
County Executive

(    ) Approved    (    ) Denied

Date Signed: \_\_\_\_\_



**EXHIBIT 'A'**

**WHATCOM COUNTY RURAL LIBRARY DISTRICT  
BIRCH BAY LIBRARY  
CAPITAL FACILITY AREA BOUNDARY DESCRIPTION**

ALL THOSE PORTIONS OF UPLAND AND TIDELANDS PROPERTIES INCLUDED WITHIN THE AREA DESCRIBED BELOW, AND LYING WITHIN PORTIONS OF THE FOLLOWING SECTIONS:

TOWNSHIP 39 NORTH RANGE 1 WEST, W.M.  
~~SECTION 1, SECTION 2, SECTION 11 AND SECTION 12.~~

TOWNSHIP 39 NORTH RANGE 1 EAST, W.M.  
~~SECTION 5, SECTION 6, SECTION 7 AND SECTION 8.~~

TOWNSHIP 40 NORTH RANGE 1 WEST, W.M.  
~~SECTION 10, SECTION 15, SECTION 16, SECTION 21, SECTION 22, SECTION 23, SECTION 24, SECTION 25, SECTION 26, SECTION 27 AND SECTION 36.~~

TOWNSHIP 40 NORTH RANGE 1 EAST, W.M.  
~~SECTION 19, SECTION 20, SECTION 21, SECTION 22, SECTION 27, SECTION 29, SECTION 30, SECTION 31 AND SECTION 32.~~

**CAPITAL FACILITY AREA BOUNDARY:**

BEGINNING AT THE SOUTH 1/16<sup>TH</sup> CORNER ON THE EAST LINE OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.; THENCE WESTERLY ALONG THE SOUTH 1/16<sup>TH</sup> LINE OF SAID SECTION 10 AND THE SOUTHERLY CITY LIMITS BOUNDARY OF THE CITY OF BLAINE TO THE SHORELINE OF SEMIAHMOO BAY; THENCE ALONG SAID SHORELINE, AS FOLLOWS:

IN A GENERALLY SOUTHERLY DIRECTION ALONG THE SHORELINE OF SEMIAHMOO BAY AND WITHIN SAID SECTIONS 10, 15, 16, AND 21 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.;

THENCE IN A GENERALLY SOUTHEASTERLY DIRECTION ALONG THE SHORELINE OF SEMIAHMOO BAY AND BIRCH BAY AND WITHIN SAID SECTIONS 21, 22 AND 27 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.;

THENCE IN A GENERALLY EASTERLY AND NORTHEASTERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND WITHIN SAID SECTIONS 26 AND 23 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.;

THENCE IN A GENERALLY SOUTHEASTERLY AND SOUTHERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND WITHIN SAID SECTIONS 24 AND 25 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M., AND SECTION 30 OF TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M.;

THENCE IN A GENERALLY SOUTHERLY AND SOUTHWESTERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND WITHIN SAID SECTION 31, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., AND SECTION 36, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M. AND SECTIONS 1 AND 2, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M.;

THENCE CONTINUING IN A GENERALLY WESTERLY AND SOUTHERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND THE STRAIT OF GEORGIA AND WITHIN SECTION 2, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M.;

THENCE CONTINUING IN A GENERALLY SOUTHERLY AND SOUTHEASTERLY DIRECTION ALONG THE SHORELINE OF THE STRAIT OF GEORGIA TO THE INTERSECTION WITH THE SOUTH LINE OF SECTION 11, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M.;

THENCE DEPARTING SAID SHORELINE AND EASTERLY ALONG SAID SOUTH LINE OF SECTIONS 11 AND 12, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M. TO THE SOUTHEAST CORNER OF SAID SECTION 12;

THENCE CONTINUING EASTERLY ALONG THE SOUTH LINE OF SECTIONS 7 AND 8, TOWNSHIP 39 NORTH, RANGE 1 EAST, W.M., ALSO BEING THE CENTERLINE OF ALDERGROVE ROAD (CO. RD. NO. 641) TO THE SOUTHEAST CORNER OF SAID SECTION 8, BEING A POINT OF INTERSECTION OF THE CENTERLINES OF SAID ALDERGROVE ROAD WITH KICKERVILLE ROAD (CO. RD. 228);

THENCE NORTH ALONG SAID CENTERLINE OF KICKERVILLE ROAD, AND THE EAST LINE OF SAID SECTIONS 8 AND SECTION 5 OF SAID TOWNSHIP 39 NORTH, RANGE 1 EAST, W.M. TO THE NORTHEAST CORNER OF SAID SECTION 5, BEING A POINT OF INTERSECTION OF THE CENTERLINES OF SAID KICKERVILLE ROAD AND BAY ROAD (CO. ROAD NO. 42);

THENCE NORTHERLY ALONG THE EAST LINE OF SECTIONS 32 AND 29, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., AND ALONG THE CENTERLINE OF SAID KICKERVILLE ROAD TO THE NORTHEAST CORNER OF SAID SECTION 29, BEING THE POINT OF INTERSECTION OF THE CENTERLINES OF SAID KICKERVILLE ROAD AND BIRCH BAY-LYNDEN ROAD (CO. RD. NO. 559); THENCE EAST ALONG THE SOUTH LINE OF SECTIONS 21 AND 22, TOWNSHIP 40 NORTH, RANGE 1 EAST, AND ALONG THE CENTERLINE OF SAID BIRCH BAY-LYNDEN ROAD TO THE POINT OF INTERSECTION WITH PORTAL WAY; THENCE CONTINUING IN AN EASTERLY AND SOUTHEASTERLY DIRECTION ALONG SAID CENTERLINE OF SAID BIRCH BAY-LYNDEN ROAD AND WITHIN SECTIONS 22 AND 27 OF TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., TO THE WEST MARGIN OF INTERSTATE 5; THENCE NORTHWESTERLY ALONG SAID WEST MARGIN OF INTERSTATE 5 AND WITHIN SAID SECTIONS 27, 22 AND 21 TO THE POINT OF INTERSECTION WITH THE NORTH LINE OF SAID SECTION 21; THENCE WESTERLY ALONG THE NORTH LINE OF SECTIONS 21, 20, AND 19, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., AND SECTIONS 24 AND 23, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M., TO THE NORTHWEST CORNER OF SAID SECTION 23; THENCE NORTHERLY ALONG THE EAST LINE OF SECTIONS 15 AND 10, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M., TO THE POINT OF BEGINNING.

TOGETHER WITH SECOND CLASS TIDELANDS ABUTTING.

ALSO TOGETHER WITH ANY PROPERTIES LOCATED BETWEEN THE LINE OF ORDINARY HIGH WATER AND THE GOVERNMENT MEANDER LINE.

EXCEPTING THEREFROM ANY PORTION OF LAND LOCATED WITHIN THE CITY OF BLAINE.

SITUATE IN WHATCOM COUNTY, WASHINGTON

NOTE: THE TERM "SHORELINE" USED IN THIS CAPITAL FACILITY AREA BOUNDARY DESCRIPTION IS INTENDED TO REPRESENT THE LEGAL BOUNDARY BETWEEN UPLAND

AND TIDELAND PROPERTIES, WHICH MAY BE EITHER THE GOVERNMENT MEANDER LINE OR THE LINE OF ORDINARY HIGH WATER DEPENDING ON HISTORICAL AND LEGAL CIRCUMSTANCES. IN ALL CASES, AND SPECIFICALLY FOR THE PURPOSES OF THIS CAPITAL FACILITY AREA BOUNDARY DESCRIPTION IT SHOULD BE PRESUMED THAT THERE IS NO GAP BETWEEN UPLAND AND TIDELANDS PROPERTIES.



WHATCOM COUNTY RURAL LIBRARY DISTRICT  
BIRCH BAY LIBRARY  
CAPITAL FACILITY BOUNDARY EXHIBIT



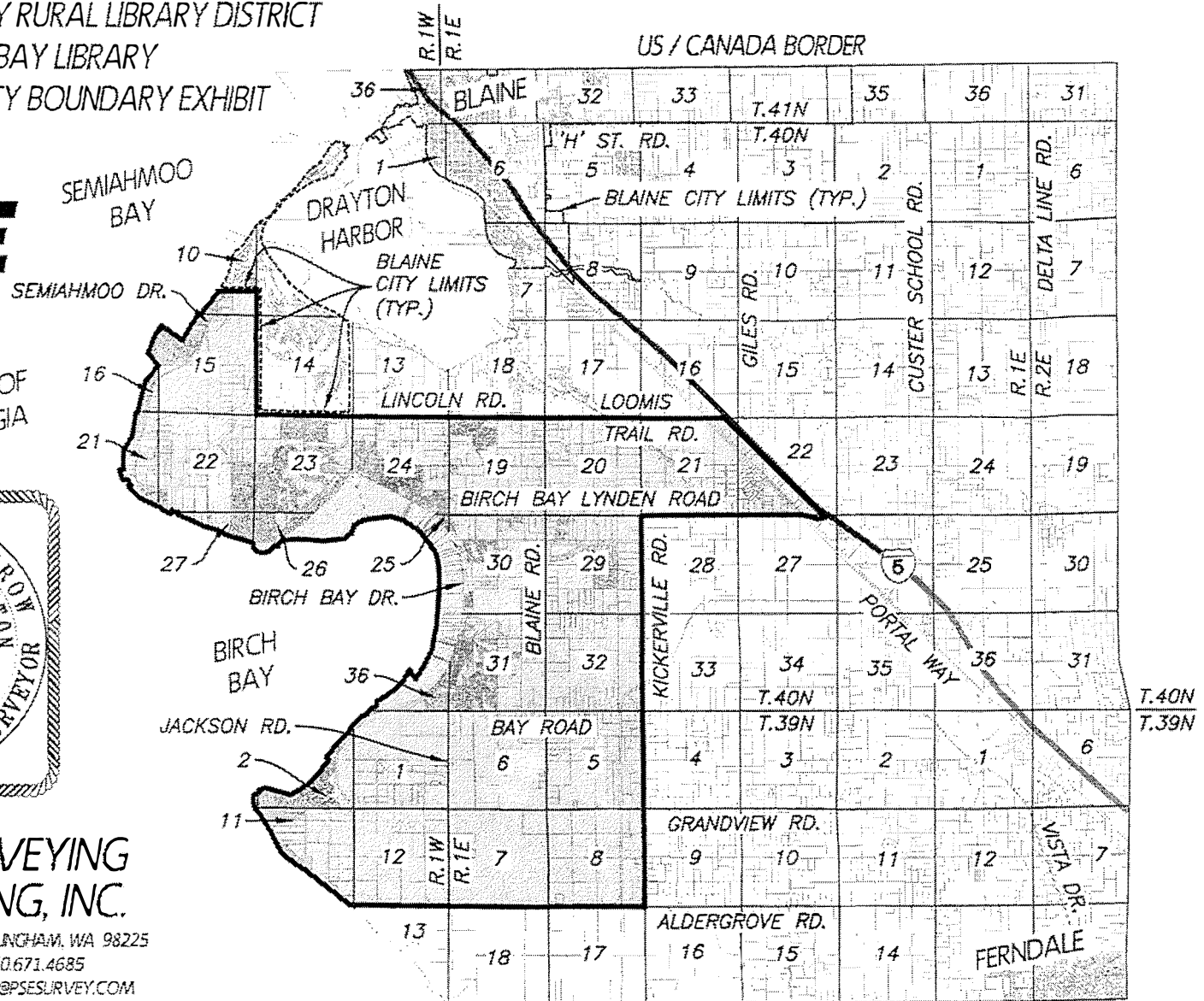
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STRAIT OF GEORGIA

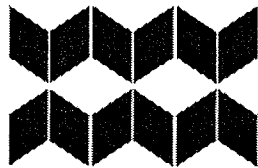


**PACIFIC SURVEYING  
& ENGINEERING, INC.**

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DWG: 2021084\_svE\_Exhibit.dwg DATE: 6.8.2021 JOB#: 2021084 SCALE: 1"=9000' SHEET: 1 OF 1



whatcom county  
**library system**

## CERTIFICATE RE RESOLUTION NO. 06/15/21-08

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I, the undersigned Executive Director of the Whatcom County Rural Library District, DO HEREBY CERTIFY that attached is a true and complete copy of Resolution No. 6/15/21-08 of the Board of Trustees of the Whatcom County Rural Library District requesting the establishment of the Birch Bay Library Capital Facility Area and submission of a ballot proposition to finance a new library facility in Birch Bay, which resolution was duly adopted at an open, public and regular meeting of the Board of Trustees held on June 15, 2021, and signed by a majority of the members of the Board of Trustees.

---

Christine Perkins  
Executive Director  
Whatcom County Rural Library District



A RESOLUTION OF THE BOARD OF TRUSTEES OF THE  
WHATCOM COUNTY RURAL LIBRARY DISTRICT  
REQUESTING THE ESTABLISHMENT OF THE BIRCH BAY  
LIBRARY CAPITAL FACILITY AREA TO FINANCE A NEW LIBRARY  
FACILITY IN BIRCH BAY AND THEREBY EXPAND LIBRARY  
SERVICE

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**WHEREAS**, library service to the residents of the Birch Bay community is currently provided through weekly Bookmobile visits operated by the Whatcom County Rural Library District (the "Library District"); and

**WHEREAS**, the Blaine Library is located at some distance from the Birch Bay community and is separated from Birch Bay by railroad tracks, which, when occupied, can prevent passage from Birch Bay to Blaine for 20 minutes or more; and

**WHEREAS**, the Birch Bay community has experienced rapid growth in the number of residents and the population is expected to continue to increase; and

**WHEREAS**, the Bookmobile cannot accommodate a collection size to support a community of 8,400 residents or more; and

**WHEREAS**, the Birch Bay community lacks public services such as public meeting rooms, public internet computers, free informational and educational programs and events for all ages; and

**WHEREAS**, chapter 27.15 RCW permits, upon the request of the Library District and the approval of the voters, the creation of a library capital facility area to construct, acquire, maintain and remodel library capital facilities; and

**WHEREAS**, the cost of developing a new library, to be located in the Birch Bay community, can most fairly be paid by those residents of the area to be served thereby through the establishment of a library capital facility area and its issuance of bonds to finance the acquisition, construction, furnishing and equipping of such new library; and

**WHEREAS**, the Library District will be responsible for designing, administering the construction, furnishing and equipping of, and operating and maintaining the new library to be financed by the proposed Birch Bay library capital facility area, and expects that the governing body of the Birch Bay library capital facility area will enter into an appropriate agreement with the Library District agreeing to such arrangements;

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF TRUSTEES OF THE WHATCOM COUNTY RURAL LIBRARY DISTRICT:**

1. Approval of Creation of the Birch Bay Library Capital Facility Area. The Library District finds that a new library facility located in Birch Bay is essential to the public welfare and to the residents of the Birch Bay community. The Library District hereby approves the creation of a library capital facility area to be known as the "Birch Bay Library Capital Facility Area," the boundaries of which shall be as described in Exhibit A to this resolution, which is incorporated herein by this reference.



RESOLUTION NO. 06/15/21-08

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE  
WHATCOM COUNTY RURAL LIBRARY DISTRICT  
REQUESTING THE ESTABLISHMENT OF THE BIRCH BAY  
LIBRARY CAPITAL FACILITY AREA TO FINANCE A NEW LIBRARY  
FACILITY IN BIRCH BAY AND THEREBY EXPAND LIBRARY  
SERVICE

2. Request to the Whatcom County Council. The Library District requests that the Whatcom County Council, pursuant to chapter 27.15 RCW, provide for establishing the Birch Bay Library Capital Facility Area and submit to the voters of the said area a ballot proposition at a special election to be held in conjunction with the regular election on November 2, 2021, in substantially the following form, with such additions, deletions, and modifications as may be required by the Whatcom County Prosecuting Attorney:

Proposition 1: The Whatcom County Council adopted Resolution No. \_\_\_\_, concerning a proposition to establish the Birch Bay Library Capital Facility Area to finance a new library facility in Birch Bay. If approved, this proposition would establish the Birch Bay Library Capital Facility Area with boundaries as described in County Council Resolution No. \_\_\_\_, authorize it to acquire, construct, furnish and equip a new library in Birch Bay, incur indebtedness to finance such improvements through the issuance of up to \$4,500,000 in general obligation bonds maturing within 20 years, and levy annual excess property taxes to repay such bonds. Shall this proposition be approved?

3. Election Costs. The Library District shall pay all of the costs of submitting the ballot propositions to the voters of the proposed library capital facility area.
4. Authorization to Submit Resolution to the Whatcom County Council. The Executive Director of the Library District is hereby authorized and directed to certify a copy of this resolution and submit it to the Whatcom County Council.

Adopted by the Whatcom County Rural Library District Board of Trustees this 15th day of June, 2021.

A handwritten signature in cursive script, appearing to read "Marvin Waschke".

Marvin Waschke, Board Chair

A handwritten signature in cursive script, appearing to read "Lori Jump".

Lori Jump, Board Vice Chair

A handwritten signature in cursive script, appearing to read "Claudia Disend".

Claudia Disend, Board Secretary

A handwritten signature in cursive script, appearing to read "Erika Lautenbach".

Erika Lautenbach, Trustee

A handwritten signature in cursive script, appearing to read "Rodney Lofdahl".

Rodney Lofdahl, Trustee



## **Pacific Surveying & Engineering, Inc**

land surveying • civil engineering • consulting • environmental  
909 Squallicum Way #111, Bellingham, WA 98225  
Phone 360.671.7387 Facsimile 360.671.4685 Email [info@psurvey.com](mailto:info@psurvey.com)

### **EXHIBIT 'A'**

#### **WHATCOM COUNTY RURAL LIBRARY DISTRICT BIRCH BAY LIBRARY CAPITAL FACILITY AREA BOUNDARY DESCRIPTION**

ALL THOSE PORTIONS OF UPLAND AND TIDELANDS PROPERTIES INCLUDED WITHIN THE AREA DESCRIBED BELOW, AND LYING WITHIN PORTIONS OF THE FOLLOWING SECTIONS:

TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M.  
SECTION 1, SECTION 2, SECTION 11 AND SECTION 12.

TOWNSHIP 39 NORTH, RANGE 1 EAST, W.M.  
SECTION 5, SECTION 6, SECTION 7 AND SECTION 8.

TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.  
SECTION 10, SECTION 15, SECTION 16, SECTION 21, SECTION 22, SECTION 23, SECTION 24,  
SECTION 25, SECTION 26, SECTION 27 AND SECTION 36.

TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M.  
SECTION 19, SECTION 20, SECTION 21, SECTION 22, SECTION 27, SECTION 29, SECTION 30,  
SECTION 31 AND SECTION 32.

#### **CAPITAL FACILITY AREA BOUNDARY:**

BEGINNING AT THE SOUTH 1/16<sup>TH</sup> CORNER ON THE EAST LINE OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.; THENCE WESTERLY ALONG THE SOUTH 1/16<sup>TH</sup> LINE OF SAID SECTION 10 AND THE SOUTHERLY CITY LIMITS BOUNDARY OF THE CITY OF BLAINE TO THE SHORELINE OF SEMIAHMOO BAY; THENCE ALONG SAID SHORELINE, AS FOLLOWS:

IN A GENERALLY SOUTHERLY DIRECTION ALONG THE SHORELINE OF SEMIAHMOO BAY AND WITHIN SAID SECTIONS 10, 15, 16, AND 21 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.;

THENCE IN A GENERALLY SOUTHEASTERLY DIRECTION ALONG THE SHORELINE OF SEMIAHMOO BAY AND BIRCH BAY AND WITHIN SAID SECTIONS 21, 22 AND 27 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.;

THENCE IN A GENERALLY EASTERLY AND NORTHEASTERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND WITHIN SAID SECTIONS 26 AND 23 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.;

THENCE IN A GENERALLY SOUTHEASTERLY AND SOUTHERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND WITHIN SAID SECTIONS 24 AND 25 OF TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M., AND SECTION 30 OF TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M.;



THENCE IN A GENERALLY SOUTHERLY AND SOUTHWESTERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND WITHIN SAID SECTION 31, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., AND SECTION 36, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M. AND SECTIONS 1 AND 2, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M.;

THENCE CONTINUING IN A GENERALLY WESTERLY AND SOUTHERLY DIRECTION ALONG THE SHORELINE OF BIRCH BAY AND THE STRAIT OF GEORGIA AND WITHIN SECTION 2, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M.;

THENCE CONTINUING IN A GENERALLY SOUTHERLY AND SOUTHEASTERLY DIRECTION ALONG THE SHORELINE OF THE STRAIT OF GEORGIA TO THE INTERSECTION WITH THE SOUTH LINE OF SECTION 11, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M.;

THENCE DEPARTING SAID SHORELINE AND EASTERLY ALONG SAID SOUTH LINE OF SECTIONS 11 AND 12, TOWNSHIP 39 NORTH, RANGE 1 WEST, W.M. TO THE SOUTHEAST CORNER OF SAID SECTION 12;

THENCE CONTINUING EASTERLY ALONG THE SOUTH LINE OF SECTIONS 7 AND 8, TOWNSHIP 39 NORTH, RANGE 1 EAST, W.M., ALSO BEING THE CENTERLINE OF ALDERGROVE ROAD (CO. RD. NO. 641) TO THE SOUTHEAST CORNER OF SAID SECTION 8, BEING A POINT OF INTERSECTION OF THE CENTERLINES OF SAID ALDERGROVE ROAD WITH KICKERVILLE ROAD (CO. RD. 228);

THENCE NORTH ALONG SAID CENTERLINE OF KICKERVILLE ROAD, AND THE EAST LINE OF SAID SECTIONS 8 AND SECTION 5 OF SAID TOWNSHIP 39 NORTH, RANGE 1 EAST, W.M. TO THE NORTHEAST CORNER OF SAID SECTION 5, BEING A POINT OF INTERSECTION OF THE CENTERLINES OF SAID KICKERVILLE ROAD AND BAY ROAD (CO. ROAD NO. 42);

THENCE NORTHERLY ALONG THE EAST LINE OF SECTIONS 32 AND 29, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., AND ALONG THE CENTERLINE OF SAID KICKERVILLE ROAD TO THE NORTHEAST CORNER OF SAID SECTION 29, BEING THE POINT OF INTERSECTION OF THE CENTERLINES OF SAID KICKERVILLE ROAD AND BIRCH BAY-LYNDEN ROAD (CO. RD. NO. 559); THENCE EAST ALONG THE SOUTH LINE OF SECTIONS 21 AND 22, TOWNSHIP 40 NORTH, RANGE 1 EAST, AND ALONG THE CENTERLINE OF SAID BIRCH BAY-LYNDEN ROAD TO THE POINT OF INTERSECTION WITH PORTAL WAY; THENCE CONTINUING IN AN EASTERLY AND SOUTHEASTERLY DIRECTION ALONG SAID CENTERLINE OF SAID BIRCH BAY-LYNDEN ROAD AND WITHIN SECTIONS 22 AND 27 OF TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., TO THE WEST MARGIN OF INTERSTATE 5; THENCE NORTHWESTERLY ALONG SAID WEST MARGIN OF INTERSTATE 5 AND WITHIN SAID SECTIONS 27, 22 AND 21 TO THE POINT OF INTERSECTION WITH THE NORTH LINE OF SAID SECTION 21; THENCE WESTERLY ALONG THE NORTH LINE OF SECTIONS 21, 20, AND 19, TOWNSHIP 40 NORTH, RANGE 1 EAST, W.M., AND SECTIONS 24 AND 23, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M., TO THE NORTHWEST CORNER OF SAID SECTION 23; THENCE NORTHERLY ALONG THE EAST LINE OF SECTIONS 15 AND 10, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M., TO THE POINT OF BEGINNING.

TOGETHER WITH SECOND CLASS TIDELANDS ABUTTING.

ALSO TOGETHER WITH ANY PROPERTIES LOCATED BETWEEN THE LINE OF ORDINARY HIGH WATER AND THE GOVERNMENT MEANDER LINE.

EXCEPTING THEREFROM ANY PORTION OF LAND LOCATED WITHIN THE CITY OF BLAINE.

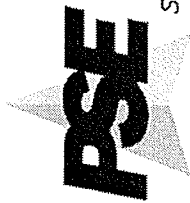
SITUATE IN WHATCOM COUNTY, WASHINGTON

NOTE: THE TERM "SHORELINE" USED IN THIS CAPITAL FACILITY AREA BOUNDARY DESCRIPTION IS INTENDED TO REPRESENT THE LEGAL BOUNDARY BETWEEN UPLAND

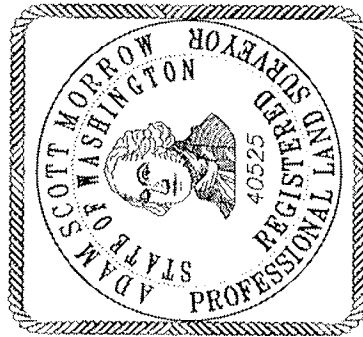
AND TIDELAND PROPERTIES, WHICH MAY BE EITHER THE GOVERNMENT MEANDER LINE OR THE LINE OF ORDINARY HIGH WATER DEPENDING ON HISTORICAL AND LEGAL CIRCUMSTANCES. IN ALL CASES, AND SPECIFICALLY FOR THE PURPOSES OF THIS CAPITAL FACILITY AREA BOUNDARY DESCRIPTION IT SHOULD BE PRESUMED THAT THERE IS NO GAP BETWEEN UPLAND AND TIDELANDS PROPERTIES.



WHATCOM COUNTY RURAL LIBRARY DISTRICT  
BIRCH BAY LIBRARY  
CAPITAL FACILITY BOUNDARY EXHIBIT

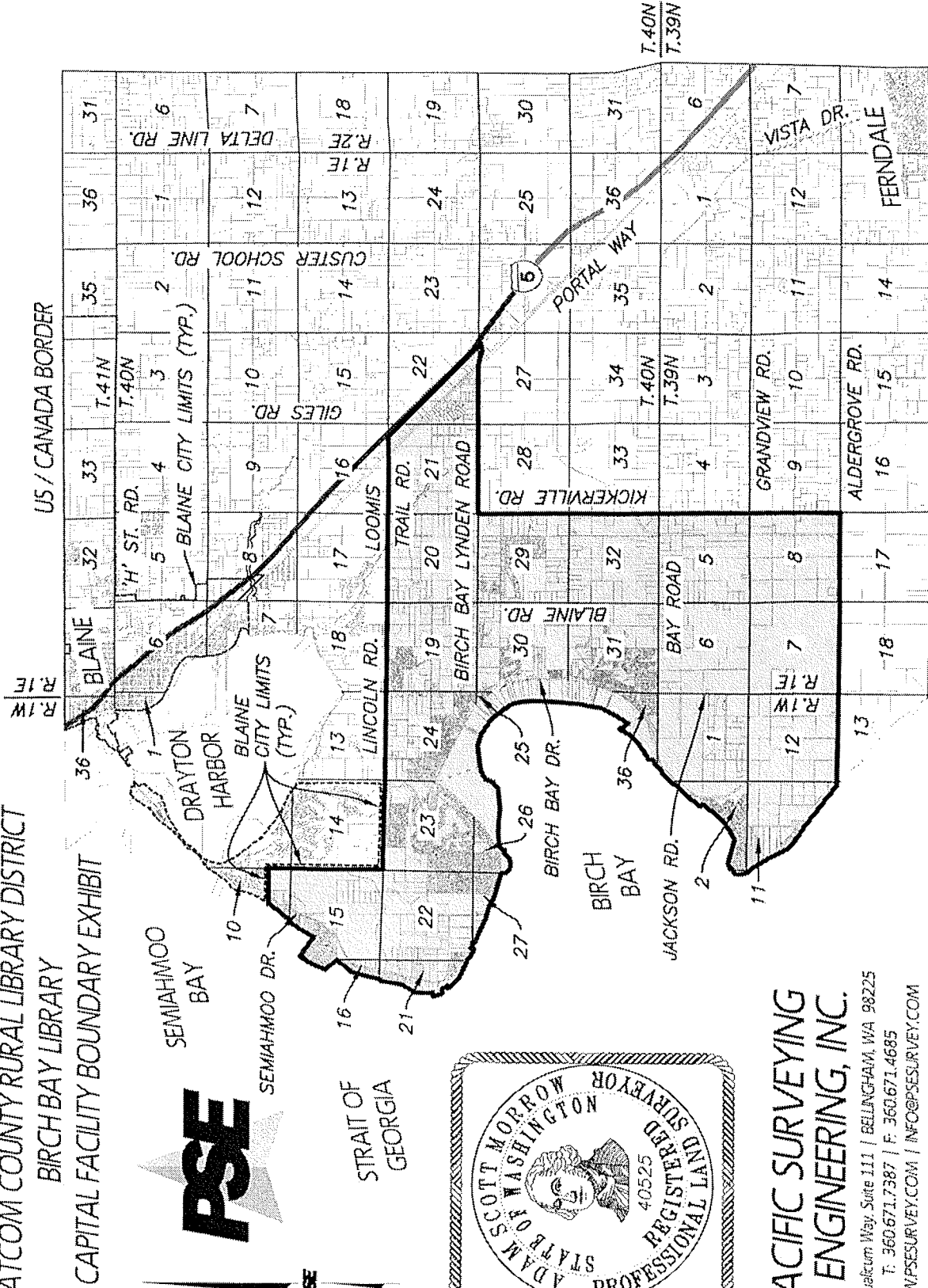


STRAIT OF  
GEORGIA



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BIRCH BAY LIBRARY CAPITAL FACILITY AREA

PROPOSITION 1

EXPLANATORY STATEMENT

November 2, 2021 Ballot

A vote for Proposition 1 will establish the Birch Bay Library Capital Facility Area and authorize it to acquire, construct, furnish and equip a new library in Birch Bay, incur indebtedness to finance such improvements through the issuance of up to \$4,500,000 in general obligation bonds maturing within 20 years, and levy annual excess property taxes to repay such bonds, all as permitted under State law by a vote of the people. The proposed library capital facility area boundaries are described in \_\_\_\_\_, and its governing body will be three members of the County Council selected by the Council.



# Whatcom County Auditor's Office

## Ballot Measure Coversheet

### District Information

District Name: Whatcom County Rural Library District

District Address: 5205 Northwest Drive, Bellingham, WA 98226

### Contact Person 1

Christine Perkins, Executive Director

Name & Title

360-305-3601 christine.perkins@wcls.org

Phone & email

### Contact Person 2

Jackie Saul, Director of Finance & Admin.

Name & Title

360-305-3603 jackie.saul@wcls.org

Phone & email

### Attorney Information

Dan Gottlieb, attorney

Name & Title

206-470-7627 dgottlieb@hcmp.com

Phone & email

Has your attorney prepared this ballot measure?

☒ Yes ☐ No

### Are the following required documents included?

(circle one)

**Resolution**  
with original signatures or a certified copy

☒ Yes

☐ No

**Explanatory Statement**  
prepared by your attorney, not to exceed 100 words

☒ Yes

☐ No

**"For" and "Against" Committee Appointment Forms**

☒ Yes

☐ No

**Completed Ballot Measure Coversheet**

☒ Yes

☐ No

### Complete if anything is missing...

I understand that the deadline to submit the missing information is \_\_\_\_\_.

The Auditor's Office will not begin processing this ballot measure until all required documents have been submitted.

Date Stamp

C. Perkins

Presenter's Signature

\_\_\_\_\_  
Deputy Auditor's Signature



# Whatcom County Auditor's Office

## Committee Appointment Form

### District & Ballot Measure Information

District Name: Whatcom County Rural Library District

Proposition Name: Birch Bay Library Capital Facility Area Proposition 1

<b>Appointment of:</b> <input checked="" type="checkbox"/> Committee FOR <input type="checkbox"/> Committee AGAINST	<b>No Committee Formed:</b> <input type="checkbox"/> Committee FOR <input type="checkbox"/> Committee AGAINST
<b>NOTE:</b> The Chair of the committee will serve as the contact person for Auditor's staff. The Chair will also be the recipient of the opposing committee's statement so the rebuttal can be prepared.  The phone numbers and e-mail addresses listed below will not be published. However, the information provided on this form is subject to public disclosure laws under RCW 42.56 and 42.17. A copy of this form will be released to anyone requesting it.	<b>Actions taken to solicit committee members (required, select at least 3):</b> <input type="checkbox"/> Posting the request on the jurisdiction's website, if they have one <input type="checkbox"/> Requesting volunteers to serve at any commissioner meeting when the proposal is being discussed <input type="checkbox"/> Making direct phone calls to potential individuals <input type="checkbox"/> Putting up flyers on bulletin boards in libraries, grocery stores, or other community boards <input type="checkbox"/> Submitting a news release or letter to the editor to the newspapers (whether for printed version or online version) requesting volunteers (A "paid ad" in the Legal Notices is not required) <input type="checkbox"/> Posting on a reader board or sandwich board <input type="checkbox"/> Recruiting at any district events (i.e. monthly pancake feed) <input type="checkbox"/> Putting notice in emails or newsletters sent to individuals in the district <input type="checkbox"/> Inserts in bills <input type="checkbox"/> Other direct mail/email notifications <input type="checkbox"/> Other: _____

### Committee:

	Name	Phone	email
1. Chair	Doralee Booth		
2. Member	Keith Alesse		
3. Member	Ruth Higgins		

I hereby certify the above name individuals have been appointed and have consented to serve as indicated, or at least 3 actions have been taken to solicit committee members.

C Perlino  
Authorized Signature (individual with authority to sign for the district)

6/15/2021

Date



# Whatcom County Auditor's Office

## Committee Appointment Form

### District & Ballot Measure Information

District Name: Whatcom County Rural Library District

Proposition Name: Birch Bay Library Capital Facility Area Proposition 1

#### Appointment of:

☐ Committee FOR

☐ Committee AGAINST

#### NOTE:

The Chair of the committee will serve as the contact person for Auditor's staff. The Chair will also be the recipient of the opposing committee's statement so the rebuttal can be prepared.

The phone numbers and e-mail addresses listed below will not be published. However, the information provided on this form is subject to public disclosure laws under RCW 42.56 and 42.17. A copy of this form will be released to anyone requesting it.

#### No Committee Formed:

☐ Committee FOR

☒ Committee AGAINST

Actions taken to solicit committee members (required, select at least 3):

- ☒ Posting the request on the jurisdiction's website, if they have one
- ☐ Requesting volunteers to serve at any commissioner meeting when the proposal is being discussed
- ☐ Making direct phone calls to potential individuals
- ☒ Putting up flyers on bulletin boards in libraries, grocery stores, or other community boards
- ☒ Submitting a news release or letter to the editor to the newspapers (whether for printed version or online version) requesting volunteers (A "paid ad" in the Legal Notices is not required)
- ☐ Posting on a reader board or sandwich board
- ☐ Recruiting at any district events (i.e. monthly pancake feed)
- ☒ Putting notice in emails or newsletters sent to individuals in the district
- ☐ Inserts in bills
- ☐ Other direct mail/email notifications
- ☐ Other: \_\_\_\_\_

#### Committee:

	Name	Phone	email
1. Chair	<hr/>	<hr/>	<hr/>
2. Member	<hr/>	<hr/>	<hr/>
3. Member	<hr/>	<hr/>	<hr/>

I hereby certify the above name individuals have been appointed and have consented to serve as indicated, or at least 3 actions have been taken to solicit committee members.

C Perkins  
Authorized Signature (individual with authority to sign for the district)

6/15/2021

Date