CLERK OF THE COUNCILDana Brown-Davis, C.M.C.

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



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

COMBINED AGENDA PACKET FOR JULY 27, 2021

INCLUDES INFORMATION FOR THE FOLLOWING MEETINGS:

9 A.M. – NATURAL RESOURCES COMMITTEE (ENDS NO LATER THAN 9:20 A.M.)

9:30 A.M. – FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE (ENDS NO LATER THAN 10:55 A.M.)

11 A.M. – COMMITTEE OF THE WHOLE – EXECUTIVE SESSION (ENDS NO LATER THAN NOON)

1 P.M. – PUBLIC WORKS AND HEALTH COMMITTEE (ENDS NO LATER THAN 1:25 P.M.)

1:30 P.M. - CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE (ENDS NO LATER THAN 2:30 P.M.)

2:40 P.M. – PLANNING AND DEVELOPMENT COMMITTEE (ENDS NO LATER THAN 3:40 P.M.)

3:45 - COMMITTEE OF THE WHOLE (MAY BEGIN EARLY / ENDS NO LATER THAN 4:45 P.M.)

6 P.M. - COUNCIL

PARTICIPATE IN VIRTUAL COUNCIL MEETINGS

THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY

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

FOR INSTRUCTIONS ON HOW TO WATCH OR PARTICIPATE IN COMMITTEE AND COUNCIL MEETINGS, PLEASE VISIT

WHATCOMCOUNTY.US/3415/PARTICIPATE-IN-VIRTUAL-COUNCIL-MEETINGS
OR CONTACT THE COUNCIL OFFICE AT 360.778.5010

COMMITTEE AGENDAS

COUNCIL NATURAL RESOURCES COMMITEE 9:00 A.M. TUESDAY, JULY 27, 2021 (ENDS NO LATER THAN 9:20 A.M.) Virtual Meeting

Call To Order

Roll Call

Announcements

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

Committee Discussion

1. AB2021-404 Disucssion with Public Works Department on declining water quality in Drayton Harbor Page 1

Items Added by Revision

Other Business

Adiournment

COUNCIL FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE 9:30 A.M. TUESDAY, JULY 27, 2021 (ENDS NO LATER THAN 10:55 A.M.) Virtual Meeting

Call To Order

Roll Call

Announcements

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

Special Presenation

1. AB2021-312 Report from Emergency Medical Services (EMS)

Page 2

Committee Discussion

1. <u>AB2021-416</u> Discussion of proposed interlocal agreement and resolution for the transfer of Whatcom County Flood Control Zone District real property to the Lummi Nation

Pages 3 - 26

Committee Discussion and Recommendation to Council

1.	<u>AB2021-396</u>	Request approval for the County Executive to enter into a contract between Whatcom County Flood Control Zone District and the Washington Department of Ecology in the amount of \$153,520 (Council acting as the Flood Control Zone District Board of Supervisors) Pages 27 – 37
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 Pages 38 – 58
3.	AB2021-409	Request approval for the County Executive to enter into an interlocal agreement on behalf of the Flood Control Zone District between Whatcom County and the City of Lynden in the amount of \$20,000 for the construction of the Lynden Levee Channel Realignment Project (Council acting as the Flood Control Zone District Board of Supervisors) Pages 59 – 72
4.	AB2021-431	Resolution to set hearing and notice of hearing to declare Whatcom County real property as surplus

Council "Consent Agenda" Items

AB2021-432

1.	AB2021-407	Request authorization for the County Executive to enter into a contract between		
		Whatcom County and GeoEngineers, Inc. to provide on-call geotechnical engineering		
		services for 2021-2022 in the amount not to exceed \$200,000		

Resolution to set hearing and notice of hearing to authorize the sale of Whatcom

Pages 78 - 151

Pages 73 - 74

Pages 75 - 77

County surplus property

2. AB2021-429 Request authorization for the County Executive to enter into a contract between Whatcom County and Lifeline Connections to support the Whatcom Recovery House, in the amount of \$51,447

Pages 152 - 172

Items Added by Revision

Other Business

Adiournment

5.

COUNCIL COMMITTEE OF THE WHOLE - EXECUTIVE SESSION 11:00 A.M. TUESDAY, JULY 27, 2021 (ENDS NO LATER THAN NOON) Virtual Meeting

Call To Order

Roll Call

Announcements

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

Committee Discussion

1. AB2021-339 Discussion to establish a process for filling district court judicial vacancy

Pages 173 - 403

2. <u>AB2021-411</u> Discussion regarding potential property acquisition for the Flood Control Zone District

[Discussion of this item may take place in executive session (closed to the public)

pursuant to RCW 42.30.110(1)(b)]

Page 404

Items Added by Revision

Other Business

Adjournment

COUNCIL PUBLIC WORKS & HEALTH COMMITTEE 1:00 P.M. TUESDAY, JULY 27, 2021 (ENDS NO LATER THAN 1:25 P.M.) Virtual Meeting

Call To Order

Roll Call

Announcements

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

Committee Discussion

1. <u>AB2021-421</u> Discussion with Public Works Department regarding request for temporary closure of a portion of Gulf Road

Pages 405 - 445

Items Added by Revision

Other Business

Adjournment

COUNCIL CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITEE 1:30 P.M. TUESDAY, JULY 27, 2021 (ENDS NO LATER THAN 2:30 P.M.) Virtual Meeting

Call To Order

Roll Call

Announcements

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

Special Presentation

1. AB2021-304 Report from the Incarceration Prevention and Reduction Task Force

Pages 446 - 476

2. AB2021-406 Report from Juvenile Court

Page 477

Items Added by Revision

Other Business

Adiournment

COUNCIL PLANNING AND DEVELOPMENT COMMITTEE 2:40 P.M. TUESDAY, JULY 27, 2021 (ENDS NO LATER THAN 3:40 P.M.) Virtual Meeting

Call To Order

Roll Call

Announcements

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

Committee Discussion

1. AB2021-418 Discussion of proposed ordinance amending the Whatcom County Comprehensive

Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest

Pages 478 - 515

2. AB2021-425 Discussion of an ordinance adopting amendments to Whatcom County Code Title 20,

Zoning to allow and regulate Battery Energy Storage Systems

<u>Pages 516 - 548</u>

Items Added by Revision

Other Business

Adiournment

COUNCIL COMMITTEE OF THE WHOLE 3:45 P.M. TUESDAY, JULY 27, 2021 (ENDS NO LATER THAN 4:45 P.M.; MAY BEGIN EARLY) Virtual Meeting

Call To Order

Roll Call

Announcements

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

Special Presentation

1. AB2021-402 Report on activities in progress pursuant to Homeless Strategies Workgroup recommendations

Page 549

Committee Discussion and Recommendation to Council

1.	<u>AB2021-438</u>	Resolution approving the Whatcom County Water District No. 7 Water System Plan Pages 550 – 558
2.	AB2021-185	Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County Pages 559 – 572

Committee Discussion

1.	AB2021-339	Discussion to establish a process for filling district court judicial vacancy
		Pages 173 - 403

2. AB2021-439 Brief discussion of Comprehensive Plan amendments scheduled for concurrent review and adoption on July 27, 2021
Pages 573 – 584

Items Added by Revision

Other Business

Adiournment

COUNCIL AGENDA

REGULAR COUNCIL MEETING 6:00 P.M. TUESDAY, JULY 27, 2021 Virtual Meeting

CALL TO ORDER

ROLL CALL

FLAG SALUTE

ANNOUNCEMENTS

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

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

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

COUNTY EXECUTIVE'S REPORT

SPECIAL PRESENTATION

1. AB2021-440 Presentation on police reform in Washington State Pages 585 – 590

MINUTES CONSENT

1.	MIN2021-055	Committee of the Whole Executive Session for July 13, 2021	Pages 591 - 594
2.	MIN2021-056	Committee of the Whole for July 13, 2021	<u>Pages 595 - 602</u>
3.	MIN2021-057	Regular County Council for July 13, 2021	<u>Pages 603 - 615</u>
4.	MIN2021-059	Water Work Session for July 20, 2021	Pages 616 - 619

PUBLIC HEARINGS

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

1. AB2021-403 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

Recommended motion: Forward for concurrent review with other Comprehensive Plan amendment proposals scheduled later this evening Pages 620 – 686

APPROVAL OF COMPREHENSIVE PLAN AMMENDMENTS

These items have been reviewed by Council and are ready to be considered concurrently so the cumulative effect of the proposals can be evaluated. Each ordinance will be voted on separately, followed by a vote to approve the ordinances as a group.

- 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 620 686

 AB2021-380 Ordinance adopting amendments to the Whatcom County Comprehensive Plan
- relating to density credits, PDRs, and TDRs

 Pages 687 803
- 3. <u>AB2021-381</u> Ordinance adopting Whatcom County Comprehensive Plan amendments concerning the Lummi Island Ferry, modifying Policy 6A-1 relating to ferry level of service and deleting Policy 6C-9 relating to a ferry feasibility study

 Pages 804 825
- 4. 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
 This ordinance was adopted on July 13, 2021, but requires review with the

other Comprehensive Plan amendments scheduled this evening so the cumulative effect of the various proposals can be evaluated

Pages 826 - 865

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 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. AB2021-407 Request authorization for the County Executive to enter into a contract between Whatcom County and GeoEngineers, Inc. to provide on-call geotechnical engineering services for 2021-2022 in the amount not to exceed \$200,000
 - Pages 78 151
- 2. AB2021-429 Request authorization for the County Executive to enter into a contract between Whatcom County and Lifeline Connections to support the Whatcom Recovery House, in the amount of \$51,447

Pages 152 - 172

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1.	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 Pages 38 - 58
2.	AB2021-431	Resolution to set hearing and notice of hearing to declare Whatcom County real property as surplus Pages 73 – 74
3.	AB2021-432	Resolution to set hearing and notice of hearing to authorize the sale of Whatcom County surplus property Pages 75 – 77
4.	AB2021-396	Request approval for the County Executive to enter into a contract between Whatcom County Flood Control Zone District and the Washington Department of Ecology in the amount of \$153,520 (Council acting as the Flood Control Zone District Board of Supervisors) Pages 27 – 37
5.	AB2021-409	Request approval for the County Executive to enter into an interlocal agreement on behalf of the Flood Control Zone District between Whatcom County and the City of Lynden in the amount of \$20,000 for the construction of the Lynden Levee Channel Realignment Project (Council acting as the Flood Control Zone District Board of Supervisors) Pages 59 – 72

(From Council Committee of the Whole)

6. AB2021-438 Resolution approving the Whatcom County Water District No. 7 Water System Plan

Pages 550 - 558

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.	AB2021-412	Ordinance amending the 2021 Whatcom County Budget, request no. 12, in the amount of \$1,506,763 Pages 866 – 877
2.	AB2021-420	Ordinance amending the Whatcom County Comprehensive Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest Pages 878 - 903
3.	AB2021-422	Ordinance for reestablishing a speed limit for a portion of Bay Road Pages 904 – 907
4.	AB2021-424	Ordinance adopting amendments to the Whatcom County Code Title 20, Zoning to allow and regulate Battery Energy Storage Systems Pages 908 – 940
5.	AB2021-433	Resolution declaring Whatcom County real property as surplus Pages 941 – 944

6.	<u>AB2021-434</u>	Resolution authorizing the sale of Whatcom County surplus property Pages 945 – 947
7.	AB2021-413	Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for FY2021 Byrne Justice Assistance Grant (JAG) Program Award, in the amount of \$14,001 Pages 948 – 959
8.	AB2021-417	Resolution transferring a Whatcom County Flood Control Zone District property to the Lummi Nation (Council acting as the Flood Control Zone District Board of Supervisors) Pages 960 – 977
9.	AB2021-185	Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County Pages 559 – 572

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

ADJOURN



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-404

File ID:	AB2021-404	Version: 1	Status:	Agenda Ready
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File Created: 07/06/2021 Entered by: AKell@co.whatcom.wa.us

Department: Public Works File Type: Discussion

Department

Assigned to: Council Natural Resources Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Attachments:

Discussion with Public Works Department on declining water quality in Drayton Harbor

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Public works staff will provide an update on declining water quality in Drayton Harbor this past year and the anticipated downgrade to shellfish growing areas

HISTOR	HISTORY OF LEGISLATIVE FILE					
Date:	Acting Body:	Action:	Sent To:			



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-312

File ID:	AB2021-312	Version:	1	Status:	Agenda Ready

File Created: 05/21/2021 Entered by: AReynold@co.whatcom.wa.us

Department: County Executive's

Office

File Type: Report

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Report from Emergency Medical Services (EMS)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Annual report to Council from Emergency Medical Services (EMS)

HISTORY OF LEGISLATIVE FILE Date: Acting Body: Action: Sent To:

Attachments:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-416

File ID: AB2021-416 Version: 1 Status: Agenda Ready

File Created: 07/14/2021 Entered by: AHester@co.whatcom.wa.us

Department: Public Works File Type: Discussion

Department

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Discussion of proposed interlocal agreement and resolution for the transfer of Whatcom County Flood Control Zone District real property to the Lummi Nation

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This interlocal and resolution is for the transfer of Whatcom County Flood Control Zone District real property to the Lummi Nation in exchange for wetland mitigation credits in the amount of \$17,000 pursuant to WCC 1.10.340 (A) and WCC 1.10.370

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Staff Memo, Proposed Resolution, Interlocal Agreement, Bargain and Sale Deed, Conservation

Easement, Aerial Map

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS DIRECTOR



CIVIC CENTER
322 N. Commercial Street, Suite 210
Bellingham, WA 98225-4042
Telephone: (360) 778-6200
FAX: (360) 778-6201
www.whatcomcounty.us

MEMORANDUM

To:

The Honorable Satpal Singh Sidhu, County Executive,

Honorable Members of the County Council

Through:

Jon Hutchings, Director

From:

Andrew Hester, Real Estate Coordinator

Date:

July 14, 2021

Re:

Interlocal Agreement and Resolution Transferring Whatcom County Flood

Control Zone District Property to the Lummi Nation

Enclosed is an interlocal agreement and resolution requesting the approval of a transfer of Whatcom County Flood Control Zone District property to the Lummi Nation.

Requested Action

Public Works respectfully requests that the Whatcom County Council hold a public hearing and take action on the proposed property transfer.

Background and Purpose

The Whatcom County Flood Control Zone District purchased a property located on Ferndale Road in 2008. A portion of the property was used for mitigation purposes for a Public Works road project. The property has been subject to trespassing and dumping. The Lummi Nation would like to acquire the property and has offered wetland mitigation credits in the amount of \$17,000 in exchange for the property. Whatcom County Public Works recommends the transfer of this property subject to a conservation easement protecting the mitigation area and deed restrictions preventing the future development of the property.

Funding Amount and Source

No County funds are being expended on this agreement.

Please contact me at extension 6216 if you have any questions or concerns regarding this resolution.

Encl.

	SPONSORED BY:	
	PROPOSED BY: _	Public Works
	INTRODUCTION I	DATE:
RESOLUTION NO		

TRANSFERRING A WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT PROPERTY TO THE LUMMI NATION

WHEREAS, Whatcom County Flood Control Zone District (FCZD) owns property on Ferndale Road designated as Whatcom County tax parcel number 380208 042156 0000; and

WHEREAS, FCZD acquired property to prevent development in a frequently flooded area; and

WHEREAS, a portion of the property was used for stream buffer mitigation for a Whatcom County Public Works project; and

WHEREAS, the property has been subject to trespassing and dumping; and

WHEREAS, the Lummi Nation requested the property be transferred for fishing access; and

WHEREAS, FCZD is agreeable to the transfer of the property to the Lummi Nation if the mitigation area is protected and property is not developed in the future; and

WHEREAS, FCZD and Lummi Nation have negotiated that consideration for the property will be in the amount of \$17,000 to be applied towards a future wetland mitigation credit transaction; and

WHEREAS, this matter has been reviewed by the Property Management Committee with a recommendation to present to the County Council for approval; and

WHEREAS, after due consideration by the Whatcom County Council acting as the FCZD Board of Supervisors, it appears to the Council that it will be in the best interest of the FCZD to convey to the Lummi Nation a bargain and sale deed subject to deed restrictions and a conservation easement.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council acting as the FCZD Board of Supervisors, that the Executive is authorized to execute a bargain and sale deed transferring Whatcom County tax parcel number 380208 042156 0000 as described in Exhibit A to the Lummi Nation subject to a conservation easement and deed restrictions as set forth in Exhibit B and subject to the transfer of \$17,000 to the FCZD to be applied towards a future wetland mitigation credit transaction.

APPROVED this day of	, 2021
ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
Dana Brown-Davis, County Clerk	Barry Buchanan, Council Chair
APPROVED AS TO FORM:	
Christopher Quinn	
Civil Deputy Prosecutor	
(approved electronically 7/7/2021)	

EXHIBIT A

Legal Description of property to be quitclaimed

The North 100 feet of the South 300 feet of that portion of the Northwest Quarter of the Northwest Quarter of Section 8, Township 38 North, Range 2 East of W.M., lying westerly of the present channel of the Nooksack River, and south of the slough, except right-of-way commonly referred to as Ferndale Road, lying along the Westerly line of said premises, and less River Wash.

Situate in Whatcom County, Washington.

EXHIBIT B

Deed Restrictions

- A. Compatible uses. The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: outdoor recreational activities, restoration; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; unpaved access roads; and buffer zones.
- B. No permanent structures or improvements shall be erected on the property. Temporary structures associated with outdoor recreational activities shall be allowed subject to the approval of Grantor. Any improvements on the property shall be in accordance with proper floodplain management policies and practices.
- C. Any grading activities required to construct approved improvements or access roads on the property shall restore the grades to pre-project conditions so as to not affect the conveyance of floodwaters. Proposed grading activities must be approved by the Grantor prior to ground disturbance.
- D. The Grantee is responsible for obtaining all applicable permits for any proposed improvements or grading on the property.

INTERLOCAL AGREEMENT BY AND BETWEEN WHATCOM COUNTY FLOOD CONTROL DISTRICT AND LUMMI NATION FOR FERNDALE ROAD PROPERTY TRANSFER

Whatco the Stat	THIS AGREEMENT is made this om County Flood Control Zone Districte of Washington, hereinafter referred to ized Native American tribe, hereafter referred to the control of the contr	t, a taxin to as "Co	g district wind unity," and	ithin a Lumn	n municipal	corporat	ion of
now W	WHEREAS, the people of the Lumm hatcom County, Washington, since time State of Washington was established in	ne imme	morial; the (
of the I	WHEREAS, the Lummi Indian Busin Lummi Indian Reservation by the author of the Lummi Reservation, Washington	ority of t		•	_	_	
	WHEREAS, County currently 80421560000; and	owns	property	on	Ferndale	Road	APN
and pro	WHEREAS, the Lummi Natural Resources the Natural Resources into perpetrance with the policy and procedures of	uity for t	he benefit o	f the			nage
River; a	WHEREAS, the Parties recognize thand	ne need	for Nation	fisher	s to access	the Noo	oksack
	WHEREAS, the Parties seek a long-to-dition of the land; and	erm coo _l	perative rela	tionsl	nip aimed at	t improvi	ing
	WHEREAS, the Parties seek to elimicel; and	nate the	County's ov	ersig	ht and respo	onsibility	of
	WHEREAS, the Parties have negotion of a conservation easement ov				-	el subject	t to
	WHEREAS, the County requires wet nance projects; and	land mit	gation cred	its for	various co	nstructio	n and
	WHEREAS, the Nation has a wetland	d mitigat	ion bank; ar	nd			
and	WHEREAS, the Nation has an appro-	val proce	ess to distrib	ute w	etland mitig	gation cre	edits;
	WHEREAS, County and Nation find	that this	Agreement	is in	the public in	nterest.	
Ferndale	Road Property Interlocal Agreement				Pa	ge 1 of 6	_

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS MUTUALLY AGREED AND UNDERSTOOD THAT THE

PARTIES, in accordance with federal, state, and local laws, will utilize their best efforts to accomplish the transfer of the Ferndale Road Property (APN: 3802080421560000) from the County to the Nation in exchange for a \$17,000 account balance to be applied toward a future wetland mitigation credit purchase by the County.

SECTION I. PURPOSE OF AGREEMENT

The purpose of the Agreement is to provide the legal framework wherein the two Parties to this Agreement support improvements to public safety, Nation fisher's access, water quality, wetlands habitat and riparian habitat, by transferring the ownership of the Ferndale Road Property from the County to the Nation.

SECTION II. NATION RESPONSIBILITIES

Nation is responsible for the following items:

- 1. Provide County with an account balance of \$17,000 to be put toward a future wetland mitigation credit transaction;
- 2. Review and process County request(s) for wetland mitigation credits per the standard credit transaction approval process.

SECTION III. COUNTY RESPONSIBILITIES

County is responsible for the following items:

- 1. Issuing a Bargain and Sale Deed subject to deed restrictions and a conservation easement to the Nation for the Ferndale Road Property (APN: 3802080421560000) upon execution of this agreement for the amount of \$17,000 in account balance to be applied toward a future wetland mitigation credit transaction.
- 2. Adhere to the standard wetland mitigation credit application process for the use of the available account balance.

SECTION IV. RELATIONSHIP OF THE PARTIES

The Parties agree that each is an independent entity operating pursuant to the terms and conditions of this agreement. No agent, employee, or representative of either Party shall be deemed to be an agent, employee, or representative of the other Party for any purpose unless requested otherwise in writing per the scope of this agreement. Each Party shall be solely and entirely responsible for the acts of its agents, employees and representatives during the term of this agreement.

SECTION V. MODIFICATION

No changes or additions to this Agreement shall be valid or binding on any Party unless such changes or additions shall be in writing executed by both Parties.

Ferndale Road Property Interlocal Agreement

SECTION VI. NON-WAIVER OF BREACH

The failure of the County, or the Nation to insist upon strict performance of any of the covenants and conditions of this Agreement, or to exercise any options herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

SECTION VII. ARBITRATION AND MUTUAL WAIVER OF SOVEREIGN IMMUNITY

This Interlocal Agreement shall be governed by the laws of the State of Washington. The Nation, the governing body of a federally recognized Native American tribe, hereby unequivocally and irrevocably agrees to a limited waiver of its sovereign immunity with respect to enforcement of the obligations arising under this Agreement by County. This limited waiver of sovereign immunity includes a waiver of immunity as to the jurisdiction and immunity from execution of any judgment to compel or enforce any order issued by a court of the United States of America regarding this Agreement, provided that the judgment does not exceed the obligations of the Nation under this Agreement; and provided further that enforcement of such judgment may not be made against trust property or trust resources, or grants and loans restricted to governmental or economic development purposes. In the event of a lawsuit involving this Agreement, venue shall be proper only in the U.S. Federal District Court for the Western District of Washington. The Nation, by execution of this Agreement, acknowledges the jurisdiction of the courts of the United States of America in this matter.

SECTION VIII. ARBITRATION OF LEGAL DISPUTES

- 1. The Parties to this agreement mutually covenant to work cooperatively to timely resolve any dispute that may arise between the Parties concerning this agreement. However, if the Parties cannot mutually settle a dispute, the dispute or claim shall be submitted to binding arbitration. The Parties agree that the arbitration shall be governed by the rules and procedures of the American Arbitration Association. The arbitration shall be brought for resolution at a neutral site in Whatcom County. Judgment on an award of arbitration may be brought only in the U.S. Federal District Court for the Western District of Washington. No award of arbitration shall exceed the obligations of either Party arising from this Agreement, but may include reasonable costs and fees.
- 2. Nation hereby agrees to a limited waiver of its sovereign immunity only for the purposes of arbitration, the enforcement of an award of or judgment on an award of arbitration, and the enforcement consistent with this arbitration clause of Nation's Responsibilities. Such waiver shall be effective only in the federal courts for the Western District of Washington. Enforcement of any award or judgment shall not be made against trust property or trust resources, or funds restricted to governmental or economic development purposes.
- 3. County represents that its sovereign immunity has been abrogated as between the County and Nation with respect to the subject of this Agreement. Nor does the public duty doctrine apply to the benefit of Whatcom County against Lummi Nation with respect to the subject of this Agreement. Nothing in this Agreement shall be construed as affecting the County's sovereign immunity with respect to others who are not party to this agreement, or as to Lummi Nation apart from the subject of this Agreement.
- 4. The laws of the United States and of the State of Washington shall govern this Agreement.

SECTION IX. NOTICE

Notices pursuant to this Agreement shall be delivered via USPO certified mail, or by private carrier via a method with similar assurances of delivery as USPO certified mail, to the following persons at the corresponding addresses below:

Nation:

Merle Jefferson, Executive Director Lummi Natural Resources Department 2665 Kwina Road Bellingham, WA 98226

County:

Jon Hutchings, Director Public Works Department 322 N Commercial Suite 110 Bellingham, WA 98225

SECTION X. RECORDS

Each Party shall maintain books, records, documents and other evidence which accurately evidences all direct and indirect costs incurred by either Party in the performance of this Agreement. These records shall be subject to inspection, review, or audit by the other Party as required by applicable law. All records will be maintained for a minimum of six years after expiration.

IN WITNESS WHEREOF, the Partitle hereafter indicated.	ies have executed this Agreement on the day and year
DATED thisday of	, 2021.
Executed by LUMMI NATION:	
Merle Jefferson, Lummi Natural Reon behalf of the Lummi Nation	Date:sources Department Executive Director
Approved as to Form:	
	Date:
Office of the Reservation Attorney,	
STATE OF WASHINGTON) :ss	
COUNTY OF WHATCOM)	
	, 2021, before me personally appeared, to me known to be the, that
executed the within and foregoing in and voluntary act and deed of the Lu mentioned, and on oath stated that h Lummi Indian Nation.	nstrument, and acknowledged said instrument to be the free ammi Indian Nation, for the uses and purposes herein e/she was authorized to execute said instrument on behalf of I have hereunto set my hand and affixed my official seal the
	Notary Public in and for the State of Washington
	Residing at
	My commission expires
Ferndale Road Property Interlocal Agreeme	ent Page 5 of 6

Executed by WHATCOM COUNTY Date: Satpal Singh Sidhu, Whatcom County Executive on behalf of the Whatcom County Flood Control Zone District Approved as to form: Prosecuting Attorney's Office Christopher Quinn Date: Civil Deputy Prosecutor (approved electronically 7/7/2021) STATE OF WASHINGTON) COUNTY OF WHATCOM) On this _____ day of _____, 2021, before me personally appeared Satpal Singh Sidhu, to me known to be the Executive of Whatcom County, a municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Whatcom County, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of Whatcom County. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington
Residing at
My commission expires

After recording return document to:

Lummi Nation 2665 Kwina Road Bellingham, WA 98226

Document Title: Bargain and Sale Deed

Reference Number of Related Documents: NA

Grantor: Whatcom County Flood Control Zone District

Grantee: Lummi Nation

Legal Description: A Ptn of the NW ¼ SW ¼, S8, T38N. R2E, W.M.

Assessor's Tax Parcel Number: 380208 042156 0000

BARGAIN AND SALE DEED

The Grantor, WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT, A QUASI-MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, for and in consideration of TEN AND NO/100 Dollars and other valuable consideration, in hand paid, bargains, sells, and conveys to **LUMMI NATION**, the following described real estate, situated in Whatcom County, in the State of Washington:

The North 100 feet of the South 300 feet of that portion of the Northwest Quarter of the Northwest Quarter of Section 8, Township 38 North, Range 2 East of W.M., lying westerly of the present channel of the Nooksack River, and south of the slough, except right-of-way commonly referred to as Ferndale Road, lying along the Westerly line of said premises, and less River Wash.

Situate in Whatcom County, Washington.

Subject to deed restrictions described in Exhibit A.

Page 1 of 5 Pages

BARGAIN AND SALE DEED
Evacuted this day of 2021 for Granton WHATCOM
Executed this day of, 2021 for Grantor, WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT (FCZD), by:
COUNTY PEOOD CONTROL ZONE DISTRICT (PCZD), by.
Satpal Singh Sidhu, County Executive
Acting on behalf of the FCZD Board of Supervisors
Approved as to form:
Prosecuting Attorney's Office
Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 7/7/2021)
Accepted this day of, 2021 for Grantee, LUMMI
NATION, by:
Lawrence Solomon, Chairman
Lummi Indian Business Council
Approved as to form:
Office of the Reservation Attorney
Office of the Reservation Attorney
Page 2 of 5 Pages
PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

BARGAIN AND SALE DEED
STATE OF WASHINGTON) : ss
COUNTY OF WHATCOM)
On this day of, 2021, before me personally appeared <u>Satpal Singh Sidhu</u> , to me known to be acting on behalf of the Board of Supervisors of the FCZD, a Quasi-Municipal Corporation in the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of FCZD, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the FCZD Board of Supervisors.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.
Notary Public in and for the State of Washington Residing at My commission expires
Page 3 of 5 Pages
PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

BARGAIN AND SALE DEED
STATE OF WASHINGTON)
COUNTY OF WHATCOM)
On this, 2021, before me personally appeared, to me known to be the <u>Lawrence Solomon</u> of the <u>Lummi Nation</u> , that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the Lummi Nation, for the uses and purposes herein mentioned, and on oath stated that Lawrence Solomon was authorized to execute said instrument on behalf of the Lummi Nation.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.
Notary Public in and for the State of Washington Residing at My commission expires
Page 4 of 5 Pages
PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

BARGAIN AND SALE DEED

Exhibit A

Deed Restrictions

- A. Compatible uses. The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: outdoor recreational activities, restoration; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; unpaved access roads; and buffer zones.
- B. No permanent structures or improvements shall be erected on the property. Temporary structures associated with outdoor recreational activities shall be allowed subject to the approval of Grantor. Any improvements on the property shall be in accordance with proper floodplain management policies and practices.
- C. Any grading activities required to construct approved improvements or access roads on the property shall restore the grades to pre-project conditions so as to not affect the conveyance of floodwaters. Proposed grading activities must be approved by the Grantor prior to ground disturbance.
- D. The Grantee is responsible for obtaining all applicable permits for any proposed improvements or grading on the property.

Page 5 of 5 Pages

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

After recording return to: Whatcom County Planning and Development Services 5280 Northwest Drive Bellingham, WA 98226

GRANTOR:

GRANTEE: WHATCOM COUNTY

GRANTEE (Trustee): N/A

LEGAL DESCRIPTIÓN: TAX PARCEL I.D. #: REFERENCE #'s:

CONSERVATION EASEMENT

This grant of a conservation easement is made by and between________, referred to hereafter as "Grantors," and Whatcom County, referred to hereafter as "Grantee." The Grantors own real property in Whatcom County, the legal description of which is attached hereto as Exhibit A (hereinafter the "Property"). The intent of Grantors and Grantee, through this conservation easement, is to preserve, protect, maintain and limit use of a portion of Grantors' undeveloped Property containing an identified critical area(s) and/or its associated buffer area(s), defined pursuant to WCC 16.16 – Whatcom County Critical Areas Ordinance, for the purpose of protecting the ecological functions and values provided by said critical area(s).

Grantors hereby convey to Grantee, its successors, heirs, and assigns, an easement for conservation purposes in reference to wetlands and/or Habitat Conservation Areas and/or associated buffers as defined pursuant to WCC 16.16. The conservation easement is depicted as "Conservation Easement" on Exhibit B attached hereto (hereinafter the "Conservation Easement").

It is the intent of this easement that the grant of protection not exceed the purpose, boundaries, or duration of critical area protection required by law under the Whatcom County Critical Areas Ordinance. Should the size, shape, or character of the identified critical area be altered by natural processes and/or operation of law in favor of the grantor, this easement shall be subject to amendment to conform to those changes, as determined by the administrator or a court of competent jurisdiction.

This conservation easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below.

1. **Rights**, **Obligations** and **Reservations**. All rights, obligations and reservations shall operate as covenants running with the land.

- 2. **Permitted Uses and Rights Reserved by Grantors**. Grantor reserves the following rights:
 - a. To use the property as allowed by applicable Whatcom County Ordinances after disclosing the proposed use to Whatcom County.
 - b. To include the acreage of the conservation easement within any development permit application or any project proposal that may be located on the Property for the purposes of calculating residential density or designating required open space.
 - c. To maintain fish and wildlife habitat.
 - d. Only upon written consent of Grantee, or by an approved farm plan or an approved addendum by the Technical Administrator:
 - (1) to enhance or restore degraded fish or wildlife habitat, wetlands, or wildland forest characteristics, on an ecologically managed basis; or
 - (2) to allow construction of unpaved foot trails; or
 - (3) to allow for ongoing agriculture activities outside of approved mitigation areas; or
 - (4) install utilities as approved by the Technical Administrator.
- 3. **Restrictions on Use**. Except as provided above, and as may be necessary to carry out those rights reserved, and after review by Technical Administrator, the Grantors shall not conduct the following activities within the Conservation Easement area:
 - a. Remove trees or native vegetation.
 - b. Permit grazing of domestic animals.
 - c. Excavate, dredge, fill, dike or otherwise alter the landscape or topography.
 - d. Store derelict vehicles, hazardous substances, or waste of any kind.
 - e. Explore for or extract minerals, hydrocarbons, soils, gravel or other materials.
 - f. Construct, erect or place any buildings, structures, or improvements, either of a temporary or permanent nature.
 - g. Grant or allow road or utility construction and easements.

h. Alter the surface or subsurface hydrology entering or exiting the conservation easement area.

Otherwise use the conservation easement area in a manner that is inconsistent with the reservation of rights and the purposes of this Conservation Easement.

4. Rights and Responsibilities of Grantee.

- a. Any forbearance by Grantee to exercise any rights under this agreement, in the event of a breach, shall not be deemed to be a waiver of Grantee's rights under this Conservation Easement.
- b. To access, with permission from Grantor, or with an administrative search warrant, to grantee, agents, successor and assigns for the limited purpose of monitoring this easement.

5. General Conditions.

- a. This conservation easement does not grant or permit public access to any portion of the conservation easement.
- b. Grantee may assign its interest in this conservation easement upon written consent of grantor.
- c. This conservation easement shall run with the property and shall be binding on successors, assigns, heirs of Grantor and Grantee.
- d. In the event that any of the provisions contained in this conservation easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in affect.

Dated this day of	
Grantor	Grantor
Grantor/Print Name	Grantor/Print Name
STATE OF WASHINGTON)	
)ss. COUNTY OF WHATCOM)	
,	actory ovidence that
this instrument, on oath stated	before me, and said person acknowledge that he signed that he was authorized to execute the instrument and not voluntary act of such party for the uses and purposes
Dated:	
	NOTARY PUBLIC, in and for the State of Washington,
	residing at:
	Printed Name:
	My Commission expires:
STATE OF WASHINGTON)	
COUNTY OF WHATCOM)	
this instrument, on oath stated	actory evidence that
Dated:	
	NOTARY PUBLIC, in and for the State of Washington,
	residing at:
	Printed Name:
	My Commission expires:
Reviewed and approved by:	
Whatcom County Natural Resource	es Division Date

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director



James P. Karcher, P. E.

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

EXHIBIT "A"

A CONSERVATION EASEMENT LYING OVER, UNDER AND ACROSS A PORTION OF THE FOLLOWING DESCRIBED PARCEL:

(PER STATUTORY WARRANTY DEED AF. NO. 2080903242)

THE NORTH 100 FEET OF THE SOUTH 300 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 2 EAST W.M., LYING WESTERLY OF THE PRESENT CHANNEL OF THE NOOKSACK RIVER, AND SOUTH OF THE SLOUGH, EXCEPT RIGHT-OF-WAY COMMONLY REFERRED TO AS FERNDALE ROAD, LYING ALONG THE WESTERLY LINE OF SAID PREMISES, AND LESS RIVER WASH.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

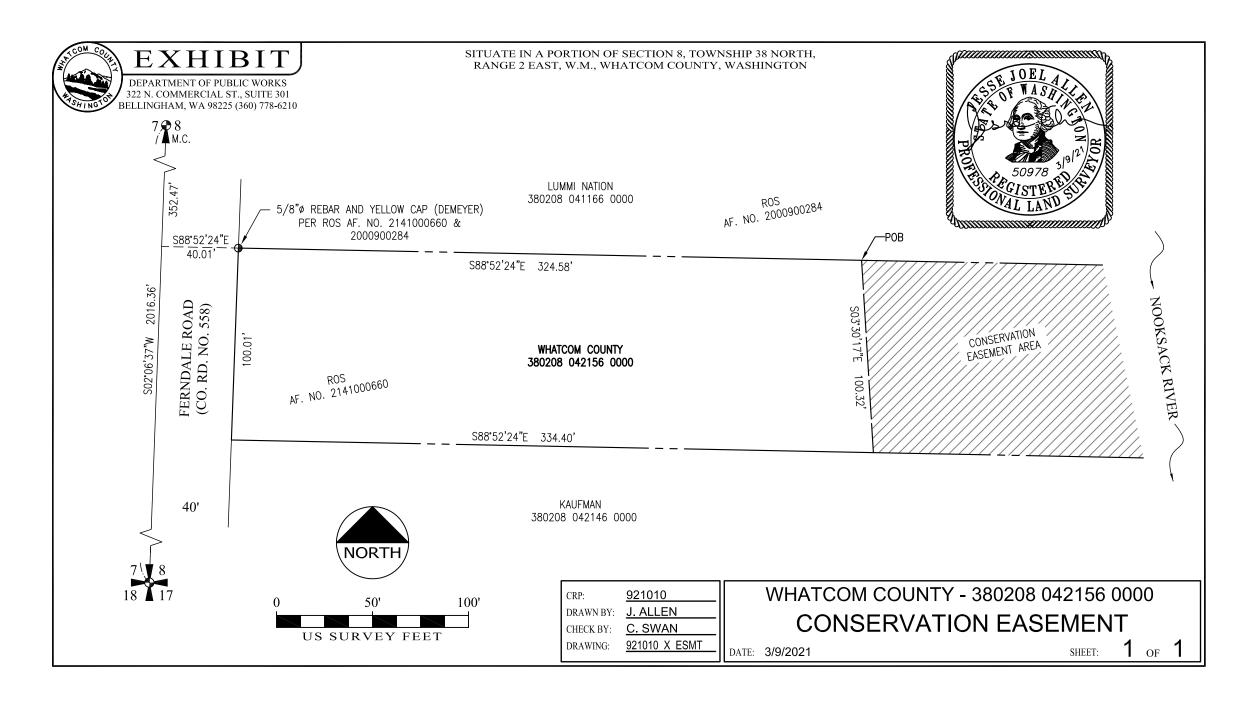
CONSERVATION EASEMENT DESCRIPTION

THAT PORTION OF THE ABOVE DESCRIBED PARCEL LYING EAST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A REBAR AND CAP MARKING THE NORTHWEST CORNER OF SAID PARCEL AS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2141000660, SAID POINT ALSO BEING ON THE EASTERLY RIGHT OF WAY MARGIN OF FERNDALE ROAD (CO. RD. NO. 558); THENCE ALONG THE NORTH LINE OF SAID PARCEL SOUTH 88°52'24" EAST 324.58 FEET TO THE **POINT OF BEGINNING**; THENCE DEPARTING SAID NORTH LINE SOUTH 03°30'17" EAST 100.32 FEET MORE OR LESS TO THE SOUTH LINE OF SAID PARCEL AND THE **TERMINUS** OF SAID LINE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.









Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-396

File ID: AB2021-396 Version: 1 Status: Agenda Ready

File Created: 07/01/2021 Entered by: AKell@co.whatcom.wa.us

Department: Council Office File Type: Contract (FCZDBS)

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Request approval for the County Executive to enter into a contract between Whatcom County Flood Control Zone District and the Washington Department of Ecology in the amount of \$153,520 (Council acting as the Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This agreement for \$153,520 between Washington Department of Ecology and Whatcom County Flood Control Zone District provides a 6-person Washington Conservation Corps crew to perform habitat restoration, stormwater, and water quality work. The Nooksack Salmon Enhancement Association is a co-sponsor under a separate agreement.

HISTORY OF LEGISLATIVE FILE					
Date:	Acting Body:	Action:	Sent To:		

Attachments: Staff memo, Agreement

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings Director



NATURAL RESOURCES

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

www.whatcomcounty.us

MEMORANDUM

TO: Satpal Singh Sidhu, County Executive and The Honorable Members of the

Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager

John N. Thompson, Senior Salmon Recovery Planner

DATE: June 30, 2021

RE: Washington Department of Ecology Agreement for the 2021-2022

Washington Conservation Corps Crew

Enclosed are an agreement between Washington Department of Ecology (Ecology) and the Whatcom County Flood Control Zone District for your review and signature. Please note that Ecology has provided a fillable pdf which provides for an electronic signature.

Requested Action

Public Works respectfully requests that the County Executive, and the County Council, acting as the Flood Control Zone District (FCZD) Board of Supervisors, enter into an agreement with Ecology for a sum not to exceed \$153,520 to sponsor a Washington Conservation Corps crew for the October 2021 to September 2022 term.

Background and Purpose

Public Works proposes to sponsor a 6-member Washington Conservation Corps (WCC) Crew for the 2021-2022 terms. The crew will assist Public Works with installation and maintenance of salmon habitat and a storm water project conduct water quality monitoring and are available for emergency response. The crew is co-sponsored with the Nooksack Salmon Enhancement Association (NSEA) under a separate agreement with Ecology. NSEA provides office and equipment space and use of specialized tools.

Funding Amount and Source

The \$153,520 for this new agreement is included in the Public Works, Natural Resource Division (169119) 2021 budget and will be included in the 2022 proposed budget.

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

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:				
Division/Program: (i.e. Dept. Division and Program)				
Contract or Grant Administrator:				
Contractor's / Agency Name:				
		ewal to an Existing Contract? Yes No /CC 3.08.100 (a)) Original Contract #:		
Does contract require Council Approval? Yes Already approved? Council Approved Date:		If No, include WCC: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)		
Is this a grant agreement? Yes No If yes, grantor age	ency contract i	number(s): CFDA#:		
Is this contract grant funded? Yes No If yes, Whatcom C	County grant o	contract number(s):		
Is this contract the result of a RFP or Bid process?		Contract		
Yes No If yes, RFP and Bid numb	ber(s):	Cost Center:		
Is this agreement excluded from E-Verify? No	Yes	If no, include Attachment D Contractor Declaration form.		
If YES, indicate exclusion(s) below: Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS). Contract work is for less than \$100,000. Work related subcontract less than \$25,000. Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.				
Term of Contract:		Expiration Date:		
Contract Routing: 1. Prepared by:		Date:		
2. Attorney signoff:		Date:		
3. AS Finance reviewed:		Date:		
4. Department Head signoff:		Date:		
5. Contractor signed:		Date:		
6. Submitted to Exec.:7. Council approved (if necessar	-1/)·	Date: Date:		
8. Executive signed:	J/·	Date:		
9. Original to Council:		Date:		

WCC-2129 Page 1 of 8

Above cost Not to be Exceeded



AGREEMENT BETWEEN

The State of Washington, Department of ECOLOGY

Whatcom County Flood Control Zo	ne District
THIS AGREEMENT is made and entered into by and between the Departure as "ECOLOGY", and Whatcom County Flood Conhereinafter referred to as the "SPONSOR."	3,
IT IS THE PURPOSE OF THIS AGREEMENT to provide Washington C complete environmental or disaster services projects, pursuant to Chap	onservation Corps (WCC) members to ter 43.220 of the Revised Code of Washington
THEREFORE, IT IS MUTUALLY AGREED THAT:	
STATEMENT OF WORK Both parties agree to do all things necessary for or incidental to the perfeattached hereto and incorporated herein.	formance of the work set forth in Appendix "A"
PERIOD OF PERFORMANCE Subject to its other provisions, the period of performance of this Agreem and be completed on 9/30/2022, unless terminated sooner as pro Individual Placement corpsmember specified in this agreement will be a on the calendar in Appendix "B" attached hereto and incorporated herei	vided herein. The WCC Crew and/or WCC
COMPENSATION The parties have determined that the cost of accomplishing the work he Payment for satisfactory performance of the work shall not exceed this a higher amount. Compensation for service(s) shall be based on the follow	amount unless the parties mutually agree to a
Provided by ECOLOGY	Reimbursed to ECOLOGY by SPONSOR
WCC Crew (splitting full-term crew with NSEA)	\$153,520
Total SPONSOR COST	\$153,520

The costs reimbursed to ECOLOGY by SPONSOR are a cost-share rate. Estimated value of a WCC crew is \$258,027 annually per WCC Crew consisting of five WCC/AmeriCorps Members and one WCC Supervisor and/or \$34,333 annually per WCC Individual Placement. Indirect costs are included in SPONSOR share at a standard rate of 5% of direct costs.

BILLING PROCEDURE

ECOLOGY shall submit invoices monthly to the SPONSOR's designated contact person listed under "Agreement Management" section. Payment to ECOLOGY for approved and completed work will be made by warrant or account transfer by SPONSOR within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

WCC-2129 Page 2 of 8

AGREEMENT ALTERATIONS AND AMENDMENTS

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

ASSIGNMENT

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

ASSURANCES

Parties to this Agreement agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

CONFORMANCE

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.

DISPUTES

If 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 determination of the Dispute Board shall be final and binding on the parties hereto.

As an alternative to this process, if SPONSOR is a state agency, 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.

FUNDING AVAILABILITY

The obligation of the SPONSOR to provide reimbursements is contingent upon appropriation of funds by the SPONSOR's governing body for the specific purpose of funding the project, which is the subject of this Agreement. Upon the failure of such appropriation, the SPONSOR may terminate this Agreement.

ECOLOGY's ability to provide cost-share 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 completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the agreement, in whole or part, for convenience or to renegotiate the agreement subject to new funding limitations and 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 restrictions.

GOVERNING LAW AND VENUE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

INDEMNIFICATION

To the fullest extent permitted by law, each party shall defend, indemnify, and hold harmless the other party, including officials, agents, and employees from and against all claims of third parties, and all associated losses arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Parties waive their immunities under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the other party and their agencies, officials, agents or employees.

WCC-2129 Page 3 of 8

INDEPENDENT CAPACITY

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

ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- 1. Applicable federal and state of Washington statutes, regulations, and rules
- 2. Mutually agreed written amendments to this Agreement
- 3. This Agreement
- 4. Statement of Work and Budget
- 5. Any other provisions of this Agreement, including materials incorporated by reference

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of this Agreement and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties subject to state public disclosure laws.

RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

RIGHTS IN DATA

Unless otherwise provided, data, which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be jointly owned by ECOLOGY and SPONSOR. Data shall include, but not be limited to, 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.

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, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

TERMINATION FOR CAUSE

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

WCC-2129 Page 4 of 8

TERMINATION FOR CONVENIENCE

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

WAIVER
A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. 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.

AGREEMENT MANAGEMENT

The program manager 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 Agreement.

The Contract/Program Manager for ECOLOGY is: The Contract/Program Manager for SPONSOR is:

Travis Weller John Thompson

322 N. Commercial Street Suite 110 PO Box 47600

Olympia, WA 98504 Bellingham WA 98225

(360) 742-8760 (360) 778-6230

inthomps@co.whatcom.wa.us travis.weller@ecy.wa.gov

IN WITNESS WHEREOF, the State of Washington Department of ECOLOGY	parties have executed tl	SPONSOR	•		
Signature	 Date	Signature	 Date		
Joenne McGerr, SEA Prog	ram Manager	Satpal Singh Sidhu, W	hatcom County Executive		
Printed Name, Title	_	Printed Name, Title			

WCC-2129 Page 5 of 8

STATEMENT OF WORK Appendix A

Work summary:

Under direction of SPONSOR, crew(s) will perform restoration activities. Specific tasks could include invasive control, native species installation, plant nursery care, scientific monitoring, and fence installation or repair. See Appendix C for additional details.

Special Terms and Conditions:

- 1. WCC resources (members, supervisors, tools and trucks) will not be utilized to clean public restrooms, clear active or abandoned homeless encampments and/or to clean up hazardous materials including hypodermic needles. If a significant amount of hazardous or unidentifiable material is discovered on a project site, activity will cease until SPONSOR mitigates potential hazards or finds an alternate project site.
- 2. WCC vehicle is not to be used for heavy hauling; the primary use is for transportation of crew, tools, and safety equipment. In the event that WCC vehicles are requested to tow SPONSOR-provided equipment (including rentals), it will only be on a limited basis and SPONSOR is solely responsible for accidental damages, unless damages are caused by WCC negligence.
- 3. WCC is not responsible for normal wear and tear when project requires the use of SPONSOR-provided tools, equipment, or safety gear.
- 4. The assignment of members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of non-overtime work, wages, or other employment benefits. Agencies that participate in the program may not terminate, lay-off, or reduce working hours of any employee for the purpose of using a member with available funds. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use members to carry out essential agency work or contractual functions without displacing current employees.
- 5. All state holidays and shutdown weeks are non-working days for members. Shutdown weeks are to be used by WCC staff/supervisors for planning purposes. The WCC standard 40-hour schedule is Monday through Thursday from 7:00am to 5:30pm. An alternate schedule may be arranged with prior approval from the WCC.
- 6. WCC's cost-share rate is calculated using the full costs of supporting WCC crews and IPs, including time spent training, required community service events, shutdowns, etc. Indirect costs are included in SPONSOR share at a standard rate of 5% of direct costs.
- 7. If inclement weather makes a project site inaccessible, then the sponsor should reassign the WCC crew or IP to alternative projects in an accessible location.

In inclement weather, WCC crews follow the weather-related guidance (e.g. shut-down, delayed start, early end, etc.) from the regional Ecology office closest to the crew lock-up or IP service location. If the member's assigned location is more than one hour from an Ecology regional office, then WCC follows weather-related guidance of federal, state and local governments. Only WCC can instruct a crew or IP to shut-down due to weather. Sponsors are not charged for WCC-initiated, weather related shut-downs or delays.

If a shut-down is requested by a sponsor for any reason, then the sponsor is responsible for crew costs.

ECOLOGY shall:

- 1. Provide WCC members for the number of weeks specified in this agreement. Full-term crews and Individual Placements are available to SPONSOR for a maximum of 41 weeks (approx. 164 days) during the Federal AmeriCorps program service year (October-September).
- 2. Enroll members to begin service no sooner than October 4, 2021 and no later than October 18, 2021 to attain a full AmeriCorps scholarship. Member vacancies may be filled with a 1200 hour, three-quarter term AmeriCorps Education Award beginning January 19, 2022. Any further member enrollment for the remainder of the program year is at the discretion of ECOLOGY and based on availability.
- 3. In the event of a disaster response deployment, ECOLOGY will make every effort to fulfill SPONSOR needs, including sending additional members, whenever possible. Unless disaster response activities are requested by the sponsor, sponsors are not charged for WCC's emergency and disaster responses.

WCC-2129 Page 6 of 8

- 4. Provide training and development specified in Appendix B: eight days of formal WCC training, a two to four day Orientation Training, one day dedicated to MLK Community Service, and one day for a debrief meeting near the conclusion of the term. Beyond dates included in Appendix B, Ecology will schedule up to six additional days of Supervisor training during the term. WCC members and supervisors are logging hours on the dates identified for WCC-sanctioned events, but are unavailable to SPONSOR. ECOLOGY will provide a four-day Assistant Supervisor training to the designated Assistant Supervisor.
- 5. Each full-term crew or IP may spend up to two weeks (eight days) with an alternative sponsor during the crew year. These dates will be determined in coordination with their full-term Sponsor.
- 6. For crews, ECOLOGY agrees to provide a crew of 5 members, a crew supervisor, vehicle, and basic hand tools. Rates are not based on actual attendance, however, invoices will be reduced for member or supervisor vacancies lasting 20 days or more.

SPONSOR shall:

- 1. Guide completion of appropriate projects for number of weeks specified in this agreement by providing logistical, technical and safety-related support necessary for project completion. Provide site orientation for WCC members, site-specific training, and materials beyond basic hand tools to complete tasks. Obtain and ensure adherence to applicable permits as set by local, state, tribal or federal laws and regulations.
- 2. Help promote the AmeriCorps and WCC brands, logo, slogans and phrases. WCC will provide camera-ready logos.
- 3. For a SPONSOR hosting Individual Placement positions, SPONSOR agrees to provide computer access, email, transportation to and from WCC events (or private mileage reimbursement), and day-to-day direction of activities.
- 4. For a SPONSOR hosting full-term WCC Crew(s), SPONSOR shall provide a secure site to store tools and park crew vehicles as well as desk and internet access for the crew supervisor. In the event of theft, vandalism, or loss, the SPONSOR shall provide reimbursement (75 percent sponsor share) of expenditures and deductibles.

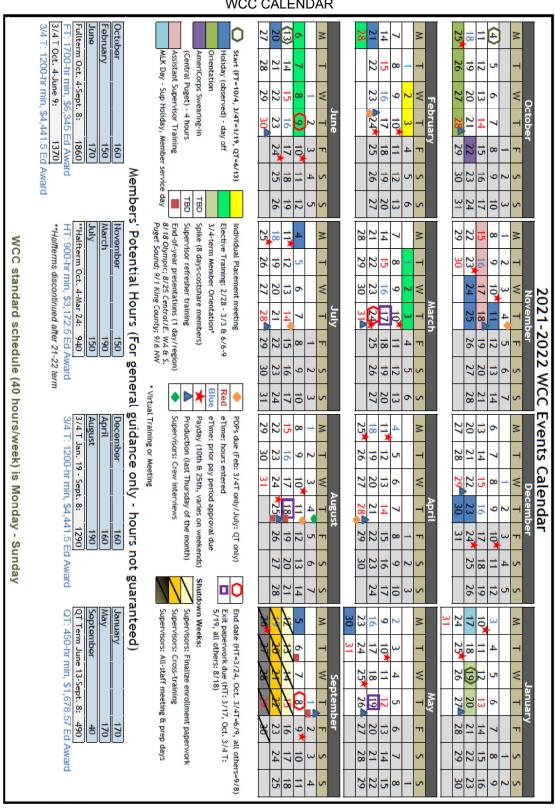
AmeriCorps Prohibited Activities:

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program, staff and members may not engage in the following activities (see 45 CFR § 2520.65):

- A. Attempting to influence legislation;
- B. Organizing or engaging in protests, petitions, boycotts, or strikes;
- C. Assisting, promoting, or deterring union organizing;
- D. Impairing existing contracts for services or collective bargaining agreements;
- E. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- F. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- G. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- H. Providing a direct benefit to-
 - I. A business organized for profit;
 - II. A labor union;
 - III. A partisan political organization;
 - IV. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - V. An organization engaged in the religious activities described in paragraph 3.g. above, unless AmeriCorps assistance is not used to support those religious activities;
- I. Conducting a voter registration drive or using AmeriCorps funds to conduct a voter registration drive;
- J. Providing abortion services or referrals for receipt of such services; and
- K. Census Activities. AmeriCorps members and volunteers associated with AmeriCorps grants may not engage in census activities during service hours. Being a census taker during service hours is categorically prohibited. Census-related activities (e.g. promotion of the Census, education about the importance of the Census) do not align with State and National objectives.
- L. Election and Polling Activities. AmeriCorps members may not provide services for election or polling locations or in support of such activities.
- M. Such other activities as AmeriCorps may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-AmeriCorps funds. Individuals should not wear the AmeriCorps logo while doing so.

Appendix B WCC CALENDAR



Appendix C Whatcom County Flood Control Zone District PROPOSED PROJECT TYPES AND GEOGRAPHIC FOCUS AREAS

Water Quality & Habitat Monitoring

- Birch Bay Watershed
- Drayton Harbor Watershed
- Portage Bay Shellfish District
- Chuckanut Bay
- Canyon Creek, North Fork Nooksack River

New Restoration Projects

- Birch Bay tributaries
- Drayton Harbor tributaries
- Mainstem tributaries
- E. Hemmi riparian and wetlands

Maintain Existing Salmon Recovery and Stormwater Projects

- Birch Bay
- Canyon Creek, North Fork Nooksack River
- Drayton Harbor
- Friday Creek
- High Creek
- Lake Whatcom
- Mainstem tributaries
- North Fork tributaries
- South Fork & tributaries

Support Weed Program – Map and Manage Riparian Invasive Species

- North, Middle and South Forks
- Lake Whatcom
- Other areas to be determined in consultation with Noxious Weed Coordinator

Support to Parks - Lake Whatcom

• Noxious weed management



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-405

File ID: AB2021-405 Version: 1 Status: Introduced

File Created: 07/06/2021 Entered by: JLassite@co.whatcom.wa.us

Department: Council Office File Type: Ordinance

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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 Captial Facility Area proposal to the Whatcom County Auditor for inclusion on the ballot at the next general election.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
07/13/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Ordinance, WCLS Resolution, WCLS Explanatory Statement, WCLS Auditor Forms,

RCW 27.15 Language

1	PROPOSED BY: WHATCOM COUNTY RURAL LIBRARY DISTRICT
2	INTRODUCTION DATE: JULY 13, 2021
3	
4	ODDINANCE NO
5	ORDINANCE NO
6	DECUECTING THAT THE WHATCOM COUNTY AUDITOD INCLUDE THE
7	REQUESTING THAT THE WHATCOM COUNTY AUDITOR INCLUDE THE
8	QUESTION OF ESTABLISHING A BIRCH BAY LIBRARY CAPITAL FACILITY AREA TO FINANCE A NEW LIBRARY FACILITY IN BIRCH BAY ON THE
9	BALLOT AT THE NOVEMBER GENERAL ELECTION
10 11	BALLOT AT THE NOVEMBER GENERAL ELECTION
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	NOW THEREFORE REIT ORDAINED II III WILL GOLD GOLD
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 th	e proposition shall be in substantially
the following form:	
The Whateens County Council adopte	d Oudinance No.
The Whatcom County Council adopte	y Library Capital Facility Area to finance
a new library facility in Birch Bay. If	
establish the Birch Bay Library Capita	
described in County Council Ordinand	•
•	brary in Birch Bay, incur indebtedness
	gh the issuance of up to \$4,500,000 in
	ithin 20 years, and levy annual excess
property taxes to repay such bonds.	
. , , , , , , , , , , , , , , , , , , ,	
YES	
NO	
ADOPTED this day of	, 2021.
	WHATCOM COUNTY COUNCIL
ATTECT.	WHATCOM COUNTY WASHINGTON
ATTEST:	WHATCOM COUNTY, WASHINGTON
Dana Brown-Davis, Clerk of the Council	Barry Buchanan, Council Chair
,	,
	WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:	WHATCOM COUNTY, WASHINGTON
/s/ Karan Fraksa Annroyad via F. mail /1	
/s/ Karen Frakes Approved via E-mail /JL	
Civil Deputy Prosecutor	Satpal Sidhu
	County Executive
	() Approved () Donied
	() 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 1/16TH CORNER ON THE EAST LINE OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.; THENCE WESTERLY ALONG THE SOUTH 1/16TH 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 FOWNSHIP 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.

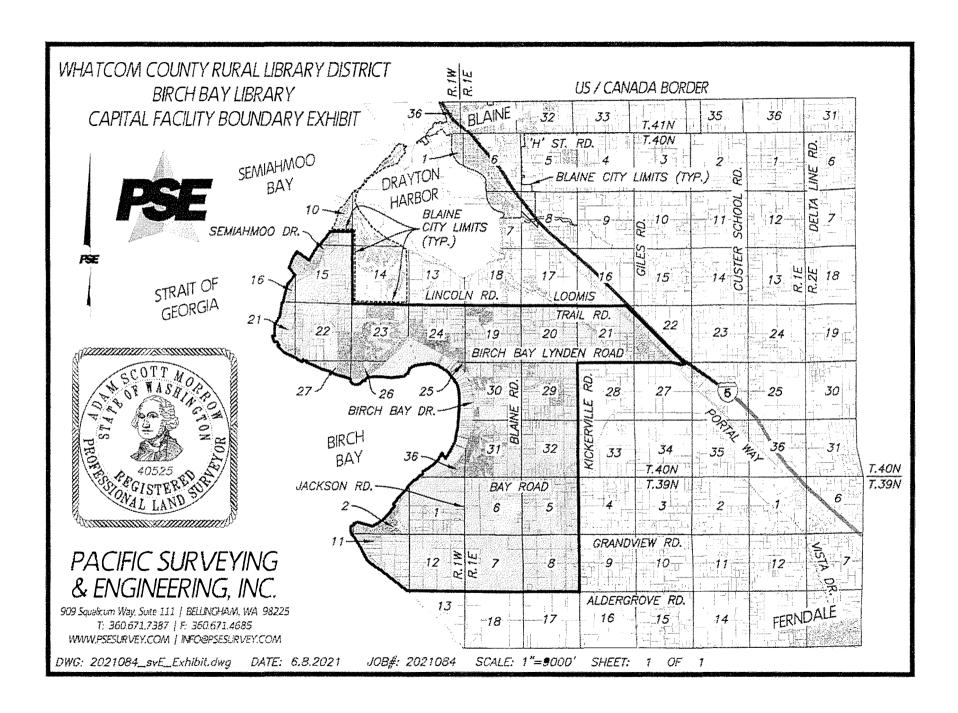
EXCEPTING THEREFROM ANY PORTION OF LAND LOCATED WITHIN THE CITY OF BLAINE.

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 OR 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.







CERTIFICATE RE RESOLUTION NO. 06/15/21-08

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

whatcom county library system

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

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. <u>Approval of Creation of the Birch Bay Library Capital Facility Area</u>. 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.

whatcom county library system

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. <u>Election Costs</u>. 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. <u>Authorization to Submit Resolution to the Whatcom County Council</u>. 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.

Marvin Waschke, Board Chair

Rodney Lofdahl, Trustee

Claudia Disend, Board Secretary

Érika Lautenbach, Trustee

Lori Jump, Board Vice Chair



Pacific Surveying & Engineering, Inc

land surveying • civil engineering • consulting • environmental 909 Squalicum Way #111, Bellingham, WA 98225

Phone 360.671.7387 Facsimile 360.671.4685 Email info@psesurve.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 $1/16^{TH}$ CORNER ON THE EAST LINE OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.; THENCE WESTERLY ALONG THE SOUTH $1/16^{TH}$ 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.

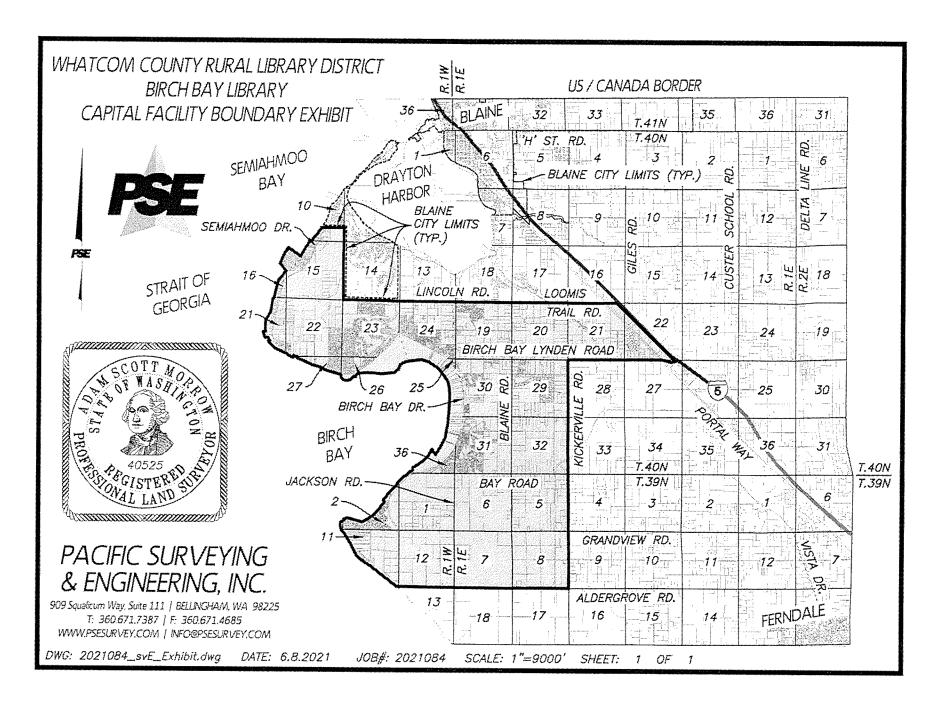
EXCEPTING THEREFROM ANY PORTION OF LAND LOCATED WITHIN THE CITY OF BLAINE.

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 OR 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.





Page 6 of 6 51

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 Informatio			*		
District Name:	Whatcom County Rural Library District				
District Address:	5205 Northwest Drive, Belli	ingham, WA 98	226		
Contact Person 1		Contact Person 2			
Christine Per	kins, Executive Director	Jackie Saul, Dire	ector of I	Finance & Admin.	
Name & Title		Name & Title	<u></u>		
360-305-3601	christine.perkins@wcls.org	360-305-3603 j	ackie.sa	aul@wcls.org	
Phone & email		Phone & email	************************************		
Attorney Information Dan Gottlieb,					
Name & Title		Has your attorne	y prepared (this ballot measure?	
	7 dgottlieb@hcmp.com	⊙ Y	• •	No	
Phone & email	- agottilos@nomp.com				
Are the following	required documents included?		(circle one	a) ^d ana a sana a s	
Resolution with original signature	s or a certified copy	(Y	es	No	
Explanatory Statem prepared by your attor	ent rney, not to exceed 100 words	(Y	es)	No	
"For" and "Against"	Committee Appointment Forms	Y	es	No	
Completed Ballot M	easure Coversheet	Y	es)	No	
Complete if anythi	ng is missing				
I understand that the information is	e deadline to submit the missing	94(0)	an a	ara kana a manananga mengua apara ya waka 1996946 SEDI SEDIA SESIA (Alaka, ali hari	
measure until all req	will not begin processing this ballot uired documents have been submitted.				
C.Perl	M				
Presenter's Signature				Deputy Auditor's Signature	



Whatcom County Auditor's Office

Committee Appointment Form

District & Ball	ot Measure Information	plati descriptionelles proprietà				
District Name:	District Name: Whatcom County Rural Library District					
Proposition Na	Proposition Name: Birch Bay Library Capital Facility Area Proposition 1					
Appointment o		No Committee Formed: ☐ 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.		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	Doralee Booth					
2. Member	Keith Alesse		<u> </u>			
3. Member	Ruth Higgins					
I hereby certify the	ne above name individuals have been appointed and icit committee members.	d have consented to serve as ind	icated, or at least 3 actions have			
Authorized Signar	MMMO ture (individual with authority to sign for the distric		5/2021			



Whatcom County Auditor's Office

Committee Appointment Form

District & Ballot Measure Information					
District Name: Whatcom County Rural Libi	Whatcom County Rural Library District				
Proposition Name: Birch Bay Library Capital Fa	acility Area Proposition 1				
Appointment of: ☐ Committee FOR ☐ Committee AGAINST	No Committee Formed: ☐ Committee FOR				
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.	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				
Name	Phone email				
1. Chair					
2. Member					
3. Member					
I hereby certify the above name individuals have been appointed and been taken to solicit committee members.	d have consented to serve as indicated, or at least 3 actions have				
Authorized Signature (individual with authority to sign for the district	6/15/2021 Date				

RCW 27.15.020

Request to establish library capital facility area—Ballot proposition.

- (1) Upon receipt of a completed written request to both establish a library capital facility area and submit a ballot proposition under RCW **27.15.050** to finance library capital facilities, that is signed by a majority of the members of the board of trustees of a library district or board of trustees of a city or town library, the county legislative authority or county legislative authorities for the county or counties in which a proposed library capital facility area is to be established must submit a ballot proposition to voters to establish the proposed library capital facility area and authorize the library capital facility area to finance library capital facilities by issuing general indebtedness and imposing excess levies to retire the indebtedness. The ballot proposition must be submitted to voters at a general or special election. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed library capital facility area is already holding a special election under RCW **29A.04.330**. The ballot proposition must be approved by a supermajority vote.
- (2) A completed request submitted under this section must include: (a) A description of the boundaries of the library capital facility area; and (b) a copy of the resolution of the legislative authority of each city or town, and board of trustees of each library district, with territory included within the proposed library capital facility area indicating both: (i) Its approval of the creation of the proposed library capital facility area; and (ii) agreement on how election costs will be paid for submitting the ballot proposition to voters.
- (3) For the purposes of this section, a supermajority vote means the affirmative vote of a three-fifths majority of those voting on the proposition, and the total number of persons voting on the proposition must be at least 40 [forty] percent of the voters in the proposed library capital facility area who voted in the last preceding statewide general election.

[2020 c 207 § 2; 2015 c 53 § 4; 1996 c 258 § 1; 1995 c 368 § 3.]

RCW 27.15.030

Governing body.

The governing body of the library capital facility area shall be three members of the county legislative authority from each county in which the library capital facility area is located. In counties that have more than three members of their legislative body, the three members who shall serve on the governing body of the library capital facility area shall be chosen by the full membership of the county legislative authority. Where the library capital facility area is located in more than one county, a county may be represented by less than three members by mutual agreement of the legislative authorities of the participating counties.

[1995 c 368 § 4.]

RCW 27.15.040

Authority to construct, acquire, maintain, and remodel facilities—Interlocal agreements—Legal title.

A library capital facilities [facility] area may construct, acquire, maintain, and remodel library capital facilities and the governing body of the library capital facility area may, by interlocal agreement or otherwise, contract with a county, city, town, or library district to design, administer the construction of, operate, or maintain a library capital facility financed pursuant to this chapter. Legal title to library capital facilities acquired or constructed pursuant to this chapter may be transferred, acquired, or held by the library capital facility area or by a county, city, town, or library district in which the facility is located.

[<u>1995 c 368 § 5</u>.]

RCW 27.15.050

Financing—Bonds authorized.

- (1) A library capital facility area may contract indebtedness or borrow money to finance library capital facilities and may issue general obligation bonds for such purpose not exceeding an amount, together with any existing indebtedness of the library capital facility area, equal to one and one-quarter percent of the value of the taxable property in the district and impose excess property tax levies to retire the general indebtedness as provided in RCW 39.36.050 if a ballot proposition authorizing both the indebtedness and excess levies is approved by at least three-fifths of the voters of the library capital facility area voting on the proposition, and the total number of voters voting on the proposition constitutes not less than forty percent of the total number of voters in the library capital facility area voting at the last preceding general election. The term "value of the taxable property" has the meaning set forth in RCW 39.36.015. Such a proposition shall be submitted to voters at a general or special election and may be submitted to voters at the same election as the election when the ballot proposition authorizing the establishing of the library capital facility area is submitted. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed library capital facility area is already holding a special election under RCW 29A.04.330.
- (2) A library capital facility area may accept gifts or grants of money or property of any kind for the same purposes for which it is authorized to borrow money in subsection (1) of this section.

[<u>2015 c 53 § 5</u>; <u>1996 c 258 § 2</u>; <u>1995 c 368 § 6</u>.]

RCW 27.15.060

Dissolution of library capital facility area.

- (1) A library capital facility area may be dissolved by a majority vote of the governing body when all obligations under any general obligation bonds issued by the library capital facility area have been discharged and any other contractual obligations of the library capital facility area have either been discharged or assumed by another governmental entity.
- (2) A library capital facility area shall be dissolved by the governing body if the first two ballot propositions under RCW <u>27.15.050</u> that are submitted to voters are not approved.

[1995 c 368 § 7.]



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-409

File ID: AB2021-409 Version: 1 Status: Agenda Ready

File Created: 07/13/2021 Entered by: LCumming@co.whatcom.wa.us

Department: Public Works File Type: Contract (FCZDBS)

Department

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Request approval for the County Executive to enter into an interlocal agreement on behalf of the Flood Control Zone District between Whatcom County and the City of Lynden in the amount of \$20,000 for the construction of the Lynden Levee Channel Realignment Project (Council acting as the Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attached

HISTORY OF LEGISLATIVE FILE					
Date:	Acting Body:	Action:	Sent To:		

Attachments: Staff Memo, Interlocal Agreement

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS
DIRECTOR



RIVER AND FLOOD 322 N. Commercial Street, Suite 120 Bellingham, WA 98225-4042 Phone: (360) 778-6230 Fax: (360) 778-6231

www.whatcomcounty.us

MEMORANDUM

TO:

The Honorable Members of the Whatcom County Flood Control Zone

District Board of Supervisors

THROUGH:

Jon Hutchings, Public Works Director

FROM:

Paula J. Harris, P.E., River and Flood Manager

Gary Stoyka, Natural Resources Manager

RE:

Lynden Levee Channel Realignment Project - Interlocal Agreement

DATE:

June 24, 2021

Enclosed please find two (2) originals of an Interlocal Agreement between the Flood Control Zone District (FCZD) and the City of Lynden for your review and signature.

Requested Action

Public Works respectfully requests that the County Executive and the County Council, acting as the FCZD Board of Supervisors, enter into an Interlocal Agreement with the City of Lynden for the construction of the Lynden Levee Channel Realignment Project.

Background and Purpose

The purpose of the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and City of Lynden related to:

- Implementing, operating, maintaining, repairing, and providing funding for the FCZD Lynden Levee Channel Realignment Project (FCZD Channel Realignment Project), No. 718005. The Channel Realignment Project includes realignment of a tributary channel and a ditch.
- Operating, maintaining, and repairing the levee, culvert, and flood gate associated with the USACE Lynden Levee Rehabilitation Project (USACE Levee Rehabilitation Project), No. NSK-03-018.
- Securing a cost share of \$20,000 from City of Lynden for the FCZD Channel Realignment Project that will be constructed in summer 2021 and funded by the FCZD.

The Channel Realignment project, led by the FCZD, will be funded through a Floodplains by Design grant and is being constructed in conjunction with the Levee Rehabilitation Project, led by the USACE. The USACE project was initially identified during the System-wide Improvement Framework (SWIF) process to resolve levee deficiencies.

Funding Amount and Source

The construction costs and funding for both the proposed FCZD Channel Realignment and USACE Rehabilitation projects are included in the following table. The Interlocal Agreement being considered for approval includes a local sponsor contribution from the City of Lynden in the amount of \$20,000.

PROJECT COSTS		
USACE Levee/culvert rehabilitation		\$1,053,000
FCZD Channel realignment		\$525,000
	TOTAL	\$1,578,000
		2
PROJECT FUNDING	G	
USACE (80% of rehab)		\$842,400
FbD grant (80% of channel)		\$420,000
FCZD	×	\$270,600
LE Subzone		\$25,000
City of Lynden		\$20,000
	TOTAL	\$1,578,000

The FCZD expenditures are consistent with the adopted 2021 budgets. The USACE agreement is being executed under a separate cover.

Please contact Paula Harris at pharris@co.whatcom.wa.us or extension 6285 if you have any questions or concerns.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Public Works		
Division/Program: (i.e. Dept. Division and Program)	River & Flood (9075)/Flood Hazard Reduction (907550)		
Contract or Grant Administrator:	Paula Harris		
Contractor's / Agency Name:	City of Lynden		
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval? Yes O No O Already approved? Council Approved Date:	If No, include WCC: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)		
Is this a grant agreement? Yes No O If yes, grantor agency contract	et number(s): CFDA#:		
Is this contract grant funded? Yes O No O If yes, Whatcom County grant contract number(s):			
Is this contract the result of a RFP or Bid process? Yes O No O If yes, RFP and Bid number(s):	Contract Cost Center:718005		
Is this agreement excluded from E-Verify? No ① Yes (If no, include Attachment D Contractor Declaration form.		
amount and any prior amendments): \$ \(\frac{20,000}{20,000} \) This Amendment Amount: \$ \(\frac{20,000}{20,000} \) Total Amended Amount: \$ \(\frac{20,000}{20,000} \) Summary of Scope: Public Works respectfully requests that the County Execut	☐ Contract for Commercial off the shelf items (COTS). ☐ Work related subcontract less than \$25,000. ☐ Public Works - Local Agency/Federally Funded FHWA. roval required for; all property leases, contracts or bid awards exceeding diprofessional service contract amendments that have an increase greater 0 or 10% of contract amount, whichever is greater, except when: ing an option contained in a contract previously approved by the council. It is for design, construction, r-o-w acquisition, prof. services, or other costs approved by council in a capital budget appropriation ordinance. In a capital budget ordinance. In the included in Exhibit "B" of the Budget Ordinance. It is for manufacturer's technical support and hardware maintenance of the increase greater of proprietary software currently used by Whatcom County. In the shelf items (COTS).		
Supervisors, enter into an Interlocal Agreement (ILA) with the City of Lynden for the construction of the Lynden Levee Channel Realignment Project. The ILA includes a local sponsor contribution from the City of Lynden of \$20,000. Term of Contract: Expiration Date:			
Contract Routing: 1. Prepared by: Deb Johnson	Date: 06/24/21		
2. Attorney signoff: Christopher Quinn	Date: 7/7/2021		
3. AS Finance reviewed: bbennett	Date: 7/08/2021		
4. IT reviewed (if IT related):	Date:		
5. Contractor signed:	Date:		
6. Submitted to Exec.:	Date:		
7. Council approved (if necessary):8. Executive signed:	Date:		
9. Original to Council:	Date:		
V			

Last edited 04/11/19

INTERLOCAL AGREEMENT

Between

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

And

THE CITY OF LYNDEN

For

Lynden Levee Channel Realignment Project (No. 718005) and USACE Lynden Levee Rehabilitation Project (No. NSK-03-18)

This Interlocal Agreement (ILA) is made and entered into by and between the City of Lynden (hereinafter referred to as "City"), and the Whatcom County Flood Control Zone District (hereinafter referred to as the "FCZD"), this _______, day of _________, 2021 (individually referred to as "Parties" and together referred to as "Party").

WHEREAS, a parcel of property located within the corporate limits of the City, is owned by the City of Lynden and is approximately 18 acres in size (Parcel Number 4003203371080000), described more fully and accurately in Exhibit A attached hereto ("Property"); and

WHEREAS, a modified natural stream channel (hereinafter referred to as the "Channel") runs through the Property and is a tributary to the Nooksack River; and

WHEREAS, the Channel provides storm water drainage for the City and provides drainage to adjacent farm ground including drainage of floodwaters; and

WHEREAS, the primary use of the Property is the operation and maintenance of the City's Wastewater Treatment Plant (hereinafter referred to as "WWTP"); and

WHEREAS, the levee lying along the southern property line of the Property ("Lynden Levee") provides flood protection to the City and is active in the United States Army Corps of Engineers (USACE) PL84-99 Program for repairs if damaged by a flood event; and

WHEREAS, the FCZD is proposing the Lynden Levee Channel Realignment Project (No. 718005) to: (1) realign and regrade the Channel, (2) combine it with an existing small drainage ditch, (3) enhance an existing berm adjacent to the settling pond (pond), (4) regrade a segment of the Lynden Levee to pre-damage conditions, and (5) regrade and place riprap protection on the levee back slope to protect the pond and new culvert; and

WHEREAS, the Lynden Levee Channel Realignment Project (No. 718005) (hereinafter referred to as the "Project") is described more fully and accurately in Exhibit B attached hereto; and

WHEREAS, the Project is being implemented in conjunction with the USACE Lynden Levee Rehabilitation Project (No. NSK-03-18) which includes repairing a segment of the Lynden Levee, replacing/combining two existing culverts with one new culvert with a flood gate; and

NOW, THEREFORE, it is agreed by the parties hereto as follows:

PURPOSE OF THE AGREEMENT

The purpose of this ILA is to define the obligations and responsibilities of the Parties involved in:

- Implementing, operating, maintaining, repairing, inspecting, restoring, and providing funding for the FCZD Lynden Levee Channel Realignment Project (FCZD Channel Realignment Project), No. 718005. The Channel Realignment Project includes realignment of a tributary channel and a ditch.
- Operating, maintaining, and repairing the Lynden Levee, culvert, and flood gate associated with the USACE Lynden Levee Rehabilitation Project (USACE Levee Rehabilitation Project), No. NSK-03-018.

DEFINITIONS

Operations and Maintenance:

- Maintenance of natural channel and buffer functions including wood habitat features.
- Removal of accumulated sediment, wood, manmade debris, and/or trash in the culvert and/or channel if it is disrupting drainage or the functioning of the culvert or flood gate.
- Operation and maintenance of the flood gate.
- Maintenance of Lynden Levee vegetation including mowing crest and back slope and preventing invasive plant species from establishing and spreading.

All Operations and Maintenance shall be in accordance with the Operations and Maintenance (O&M) Plan and in compliance with all Local, State, and Federal permits and regulatory requirements.

Repair:

- Reestablishment of original Lynden Levee crest elevations if compromised by scour from flood overtopping.
- Filling of scour holes and reestablishment of riparian vegetation on the realigned tributary channel/ditch banks as necessary to maintain natural channel function and protect adjacent property and infrastructure.
- Filling of scour holes and reestablishment of riprap on the levee as necessary to protect the culvert and/or levee.
- Filling of scour holes and reestablishment of the scour apron upstream and/or downstream of the culvert as necessary to protect the culvert and levee.
- Filling of scour holes and reestablishment of streambed sediment upstream of the scour apron as necessary to protect the culvert and levee and provide intended habitat function.

All repairs shall be in compliance with all Local, State, and Federal permits and regulatory requirements.

Inspections:

- Site inspections of the FCZD Channel Realignment Project and USACE Levee Rehabilitation Project, including the Lynden Levee, culvert, flood gate, realigned channel, and realigned ditch following all significant flood events to identify maintenance and/or repair needs.
- Periodic inspections of the culvert, including photos and videos, as required by the USACE.

Mitigation and Restoration Measures:

• Stream and buffer restoration, maintenance, and monitoring provisions as outlined in the document titled, "Lynden Levee Channel Realignment Project Wetland and Stream Mitigation and Restoration Plan," dated November 23, 2020.

OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES

- A. Whatcom County Flood Control Zone District ("FCZD") shall:
 - 1. Construct the FCZD Channel Realignment Project in conjunction with the USACE Levee Rehabilitation Project and associated culvert replacement work;
 - 2. Implement the mitigation and restoration measures associated with the FCZD Channel Realignment Project which includes site preparation, site planting, and regular maintenance and monitoring of the mitigation through 2027;
 - 3. Lead the effort to develop an Operations and Maintenance (O&M) Plan for the flood gate in collaboration with WDFW, NOAA, the Nooksack Tribe, and the City;
 - 4. Ensure proper operations and maintenance of the flood gate in collaboration with the City and in accordance with the O&M Plan.
 - 5. Inspect the FCZD Channel Realignment Project and the USACE Levee Rehabilitation Project including the Lynden Levee, realigned channel, realigned ditch, culvert, and flood gate with the City following all significant flood events, to identify maintenance and/or repair needs;
 - 6. Perform all maintenance activities for both projects that require heavy equipment.
 - 7. Have the option, if the City abandons its obligations, to undertake maintenance and inspection responsibilities for the FCZD Channel Realignment Project and USACE Levee Rehabilitation Project, as defined below, and charge the City for the cost of these services.
 - 8. Perform repairs to the FCZD Channel Realignment Project and USACE Levee Rehabilitation Project including the realigned channel, realigned ditch, Lynden Levee, culvert, and/or flood gate as necessary to maintain proper functioning and prevent damage to adjacent property and/or infrastructure.

- 9. Continue to manage and implement levee vegetation maintenance (mowing crest and back slope and preventing invasive plant species from establishing and spreading) and inspection responsibilities as required by the USACE along the Lynden Levee.
- 10. Reimburse the City for its costs of performing any of the foregoing FCZD responsibilities if the FCZD abandons its obligations for those services.
- 11. Defend, indemnify, hold free and harmless the City free from damages or claims arising from FCZD's acts or omissions in the Project, except for damages in actions brought by third parties due to negligence of the City or its contractors. In case of such exception, the FCZD shall immediately, upon receipt of notice, notify the City of the existence of any such suit, or of its intent to avail itself of the defense that the City or its contractors were negligent.

B. City of Lynden ("City") shall:

- 1. Make a one-time cash payment to the FCZD in the amount of \$20,000 as a local contribution toward the construction costs associated with the Project.
- 2. Prohibit public access to the Project area during construction and limit public access until such time the FCZD determines the Project vegetation is sufficiently established.
- 3. Grant a Perpetual Flood Works Easement to the FCZD for the purpose of construction, inspection, monitoring, and, if necessary, for operating, maintaining, and/or repairing the Project. The easement shall cover the Project and mitigation area described more fully and accurately in Exhibit A attached hereto. The easement shall attach to the land and run with the land upon sale or other transfer.
- 4. Maintain natural channel and buffer functions including wood habitat features as intended by the Project design and to operate under Nationwide Permit (NWP) 27.
- 5. Perform minor maintenance that can be completed by hand labor such as removing accumulated wood debris, sediment, and/or trash that impedes functionality of the culvert, gate, and/or realigned channel and ditch. Minor maintenance shall also include beaver management and removal of beaver dams, as needed, to ensure proper functioning of the project and adjacent infrastructure. All minor maintenance shall be in compliance with all Local, State and Federal permits and regulatory requirements.
- 6. Inspect the FCZD Channel Realignment Project and the USACE Levee Rehabilitation Project with the FCZD following all significant flood events to identify maintenance and/or repair needs. If significant maintenance and/or repair is required, the FCZD will partner with the City to address the needs.
- 7. Perform periodic inspections of the culvert, including photos and videos as required by the USACE currently defined as every 5 years. Phone photos and videos are acceptable.
- 8. Work with the FCZD to develop an Operations and Maintenance (O&M) Plan for the flood gate in collaboration with WDFW, NOAA, and Nooksack Tribe.

- 9. Ensure proper operations and maintenance of the flood gate in collaboration with the FCZD and in accordance with the O&M Plan.
- 10 Reimburse the FCZD for its costs of ongoing maintenance and inspection of the Project, culvert, and flood gate if the City abandons its obligations for those services.
- 11. Defend, indemnify, hold free and harmless the FCZD free from damages or claims arising from the design, construction, and maintenance of the Project, except for damages in actions brought by third parties due to negligence of the FCZD or its contractors. In case of such exception, the City shall immediately, upon receipt of notice, notify the FCZD of the existence of any such suit, or of its intent to avail itself of the defense that the FCZD or its contractors were negligent.

PAYMENT

The City shall provide \$20,000 cash payment to the Flood Control Zone District within sixty days of receiving notice of Project completion from the FCZD.

AGREEMENT ALTERATIONS AND AMENDMENTS

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

ASSIGNMENT

The obligations to be performed by the Parties under this ILA are not assignable or delegable by either Party in whole or in part, without the prior written consent of the other Party.

WAIVER

A failure by either Party to exercise its rights under this ILA shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this ILA unless stated to be such in a writing signed by an authorized representative of the Party.

SEVERABILITY

If any provision of this ILA or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this ILA which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this ILA, and to this end the provisions of this ILA are declared to be severable.

INTEGRATION OF AGREEMENT

This ILA contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this ILA shall be deemed to exist or to bind either Party.

TERM OF AGREEMENT

This ILA shall begin on upon date of execution, and shall remain in effect until terminated or amended as provided herein.

RECORDATION

Upon execution of this ILA, the FCZD shall file a copy of it with the office of the County Auditor pursuant to the requirements of RCW 39.34.

CONTRACT MANAGEMENT

The Contract Administrator for each of the Parties shall be responsible for and shall be the contact person for all communications regarding the performance of this ILA.

The Contract Administrator for the City is:

Steve Banham, P.E. City of Lynden - Public Works Director 300 4th Street Lynden, WA 98264

Phone: (360) 255-5512

Email: banhams@lyndenwa.org

The Contract Administrator for the FCZD is:

Paula J. Harris, P.E. Whatcom County Public Works 322 N. Commercial, Suite 120 Bellingham, WA 98225-4042

Phone: 360.778-6285

Email: pharris@co.whatcom.wa.us

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF LYNDEN
By: Scott Korthuis, City of Lynden Mayor
Date: June 7, 2021
Approved as to form:
Thet 6/22/2021
Office of the City Attorney Date
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT By:
By:Satpal Singh Sidhu
By:
By: Satpal Singh Sidhu Whatcom County Executive

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director



James P. Karcher, P. E.

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

EXHIBIT "A"

A PERMANENT EASEMENT LYING OVER, UNDER AND ACROSS A PORTION OF THE FOLLOWING DESCRIBED PARCEL:

(PER WHATCOM LAND TITLE COMPANY, SUBDIVISION GUARANTEE NO. W-175196)

A TRACT OF LAND IN THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY CORPORATION LINE OF THE TOWN OF LYNDEN, 80 FEET SOUTHERLY (AT RIGHT ANGLE TO FRONT STREET), AND 22 FEET EASTERLY (PARALLEL TO FRONT STREET) FROM THE SOUTHEAST CORNER OF LOT 4, BLOCK 2, SUPPLEMENTAL AND CORRECTED PLAT OF LYNDEN, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 48, RECORDS OF WHATCOM COUNTY, WASHINGTON; THENCE 32° EAST ALONG THE EASTERLY LINE OF A TRACT OF LAND OWNED BY P. AWYNS AS DESCRIBED IN AUDITOR'S FILE NO. 837243 (MAP 20.1), A DISTANCE OF 609 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20 TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE EAST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, 1260 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF THE TRACT OF LAND CONVEYED TO NEAL MEEBOER AND MARIE MEEBOER, HUSBAND AND WIFE, BY DEED RECORDED UNDER AUDITOR'S FILE NO. 296254: THENCE SOUTH PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 20, TO THE NORTH BANK OF THE NOOKSACK RIVER; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE NORTH BANK OF THE NOOKSACK RIVER TO THE SOUTHEAST CORNER OF THE ZWYNS TRACT AS DESCRIBED IN AUDITOR'S FILE NO. 837243 (MAP 20.1); THENCE IN A NORTHERLY DIRECTION ALONG THE EASTERLY LINE OF SAID ZWYNS TRACT TO THE POINT OF BEGINNING:

ALONG WITH ANY PORTION OF THAT CERTAIN TRACT OF LAND WITHIN THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., DESCRIBED ON STATUTORY WARRANTY DEED RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 940322218 WHICH MAY LIE WESTERLY OF THE FOLLOWING DESCRIBED LINE:

EXHIBIT "A" CONTINUED

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 20; THENCE NORTH 02°00'25" EAST, A DISTANCE OF 1323.49 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 20; THENCE NORTH 86°41'30" WEST, A DISTANCE OF 2000.06 FEET TO A POINT MARKED WITH A 5/8 INCH REBAR WITH A 1 INCH PLASTIC CAP STAMPED "NWS & GPS, 21423 & 32430", SAID POINT BEING THE TRUE POINT OF BEGINNING OF THIS LINE DESCRIPTION; THENCE SOUTH 02°12'22" WEST, A DISTANCE OF 584.94 FEET TO A 5/8 INCH REBAR WITH A 1 INCH PLASTIC CAP STAMPED "NWS & GPS, 21423 & 32430); THENCE CONTINUING SOUTH 02°12'22" WEST TO THE NORTH BANK OF THE NOOKSACK RIVER AND THE TERMINUS OF THIS LINE DESCRIPTION.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PERMANENT EASEMENT DESCRIPTION

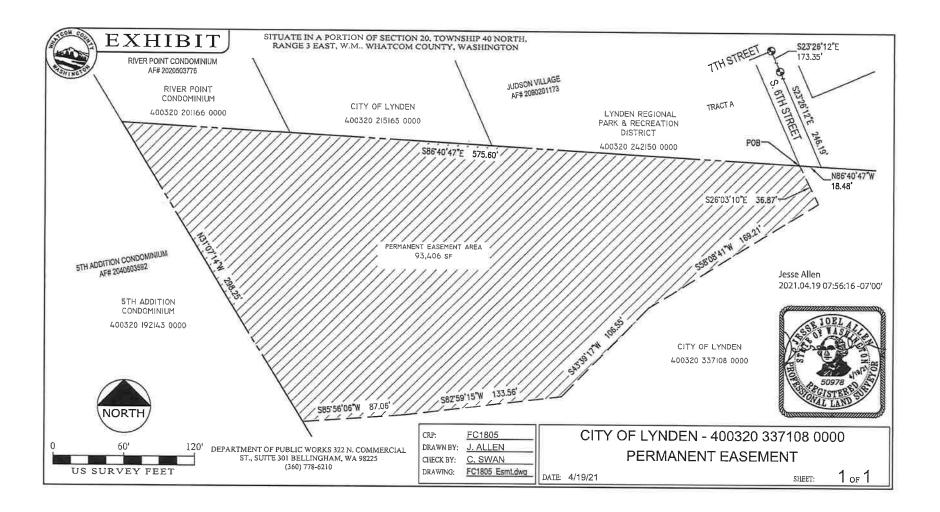
COMMENCING AT A BRASS DISK MARKING THE INTERSECTION OF THE CENTERLINE OF $7^{\rm TH}$ STREET WITH THE CENTERLINE OF SOUTH $6^{\rm TH}$ STREET; THENCE ALONG SAID SOUTH $6^{\rm TH}$ STREET CENTERLINE SOUTH $23^{\rm o}26'12"$ EAST 173.35 FEET TO A BRASS DISK MONUMENT MARKING THE CENTERLINE OF SAID SOUTH $6^{\rm TH}$ STREET; THENCE CONTINUING ALONG SAID SOUTH $6^{\rm TH}$ STREET CENTERLINE SOUTH $23^{\rm o}26'12"$ EAST 246.19 FEET TO THE NORTH LINE OF THE ABOVE DESCRIBED PARCEL; THENCE ALONG SAID NORTH LINE NORTH $86^{\rm o}40'47"$ WEST 18.48 FEET TO THE **POINT OF BEGINNING**; THENCE DEPARTING SAID NORTH LINE SOUTH $26^{\rm o}03'10"$ EAST 36.87 FEET; THENCE SOUTH $58^{\rm o}08'41"$ WEST 169.21 FEET; THENCE SOUTH $43^{\rm o}39'17"$ WEST 106.55 FEET; THENCE SOUTH $82^{\rm o}59'15"$ WEST 133.56 FEET; THENCE SOUTH $85^{\rm o}56'06"$ WEST 87.06 FEET TO THE WEST LINE OF THE ABOVE DESCRIBED PARCEL; THENCE ALONG SAID WEST LINE NORTH $31^{\rm o}07'14"$ WEST 298.25 FEET TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE ALONG THE NORTH LINE OF SAID PARCEL SOUTH $86^{\rm o}40'47"$ EAST 575.60 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 93,406 SQUARE FEET, MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON

Jesse Allen 2021.04.19 07:55:53 -07'00'







Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-431

File ID: AB2021-431 Version: 1 Status: Agenda Ready

File Created: 07/19/2021 Entered by: THelms@co.whatcom.wa.us

Department: County Executive's File Type: Resolution

Office

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Resolution to set hearing and notice of hearing to declare Whatcom County real property as surplus

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution to set hearing and notice of hearing to declare Whatcom County real property as surplus

HISTORY OF LEGISLATIVE FILE Date: Acting Body: Action: Sent To:

Attachments: Resolution

PROPOSED BY: <u>Executive</u> INTRODUCTION DATE: <u>July 27, 2021</u>

RESOLUTION	NO
	NOTICE OF HEARING TO DECLARE WHATCOM PROPERTY AS SURPLUS
procedures for the procedures for the ma	norizes counties to establish comprehensive anagement of county property, including the sale of the in the best interest of a county to sell same; and
WHEREAS , in Whatcom county of established those procedures; and	code (WCC), Chapter 1.10, Whatcom County has
considered Whatcom County's best inter	Property Management Committee, having met and rest, recommends that the County Council declare is 1661 Baker Creek Place, tax parcel number rty; and
	Executive believes that it is in the best interests of perty to Lake Whatcom Treatment Center, a local
oublic hearing on the matter of whether , 2021 or as soon thereaft Chambers at 311 Grand Avenue, Whatco	to declare such real property surplus be held oner as possible, in the Whatcom County Council om County, Bellingham, WA or via Zoom (online nitting testimony for or against propriety of
	ot the Clerk of the Whatcom County Council shall er prescribed by law under RCW 36.34.030.
APPROVED this day of _	, 2021.
ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
Dana Brown-Davis, Council Clerk	Barry Buchanan, Council Chair
APPROVED as to form:	
Civil Deputy Prosecutor	



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-432

File ID: AB2021-432 Version: 1 Status: Agenda Ready

File Created: 07/19/2021 Entered by: THelms@co.whatcom.wa.us

Department: County Executive's File Type: Resolution

Office

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Resolution to set hearing and notice of hearing to authorize the sale of Whatcom County surplus property

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution to set hearing and notice of hearing to authorize the sale of Whatcom County surplus property

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Resolution

PROPOSED BY: Executive

INTRODUCTION DATE: July 27, 2021

RESOLUTION TO SET HEARING AND NOTICE OF HEARING TO AUTHORIZE THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY

WHEREAS, RCW 36.34.005 authorizes counties to establish comprehensive procedures for the procedures for the management of county property, including the sale of surplus real estate where it is found to be in the best interest of a county to sell same; and

WHEREAS, in Whatcom County Code (WCC), Chapter 1.10, Whatcom County has established those procedures; and

WHEREAS, the Whatcom County previously declared the property known 1661 Baker Creek Place, tax parcel number 3803171904530000 as surplus pursuant to Whatcom County Code, Chapter 1.10; and

WHEREAS, the Whatcom County Executive has determined that it is in the best interest of the public to sell such surplus real property at 1661 Baker Creek Place to Lake Whatcom Treatment Center, a non-profit agency, pursuant to the authority of WCC 1.10.340; and

WHEREAS, the abbreviated legal description of the surplus property known as 1661 Baker Creek Place is: Parcel P-13 Iron Gate Park specific binding site Plan No 3 as Rec book 1 binding site plans PG 63-EXC PTN to City of Bellingham for Street Desc AF 1980600800; and

	SOLVED by the Whatcom County Council
that a public hearing on the matter of the sa	1 1 0
	ble, in the Whatcom County Council
Chambers at 311 Grand Avenue, Whatcom	
(online meeting access), for the purpose of	admitting testimony for and against the
propriety of selling such property; and	
BE IT FURTHER RESOLVED to	hat the Clerk of the County Council is directed
to give notice of such hearing in the manne	r prescribed by law.
APPROVED this day of	, 2021.
	WHATCOM COUNTY COUNCIL
ATTEST:	
ATTEST:	WHATCOM COUNTY, WASHINGTON
Dana Brown-Davis, Council Clerk	Barry Buchanan, Council Chair
,	,
APPROVED as to form:	
Civil Deputy Prosecutor	



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-407

File ID: AB2021-407 Version: 1 Status: Agenda Ready

File Created: 07/12/2021 Entered by: SMock@co.whatcom.wa.us

Department: Public Works File Type: Contract

Department

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and GeoEngineers, Inc. to provide on-call geotechnical engineering services for 2021-2022 in the amount not to exceed \$200,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This is a task order-based contract that will likely be utilized by multiple Public Works Divisions (Design/Construction, Bridge and Hydraulics, Stormwater, River and Flood, etc.). As such, multiple funding sources will be utilized during work under the contract

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Staff Memo, Agreement

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director



James P. Karcher, P. E.

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

MEMORANDUM

To: The Honorable Satpal Singh Sidhu, Whatcom County Executive, and

The Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director

From: James P. Karcher, P.E., County Engineer

Date: July 9, 2021

Subject: Local Agency Standard Consultant Agreement

For 2021-2022 Professional Geotechnical Engineering Services

Enclosed for your review and signature are two (2) originals of a Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement between Whatcom County and GeoEngineers, Inc.

Requested Action

Public Works respectfully requests that the County Council authorize the County Executive to enter into a Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement with GeoEngineers, Inc. to provide on-call professional geotechnical engineering services for 2021-2022 in the amount Not-to-Exceed \$200,000.

Background and Purpose

Whatcom County Public Works, at times, requires additional professional geotechnical engineering services due to the following: work outside our expertise, independent opinions, and unanticipated projects related to emergency repairs or natural events. This contract will provide for these professional geotechnical engineering services.

Three (3) geotechnical engineering firms responded to a Request for Qualifications (RFQ #21-37). After interviews by a selection panel, GeoEngineers, Inc. was deemed the most qualified consultant for the work.

Funding Amount and Source

The not-to-exceed amount for this contract is \$200,000. This is a task order-based contract that will likely be utilized by multiple Public Works Divisions (Design/Construction, Bridge and Hydraulics, Stormwater, River and Flood, etc.). As such, multiple funding sources will be utilized during work under this contract.

Please contact Cody Swan at extension 6265, if you have any questions or concerns regarding the terms of this agreement.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Public Works	
Division/Program: (i.e. Dept. Division and Program)	905900 / Construction	
Contract or Grant Administrator:	James P. Karcher, PE, County Engineer	
Contractor's / Agency Name:	GeoEngineers, Inc.	
Is this a New Contract? If not, is this an Amendment or	Renewal to an Existing Contract? Yes No O reginal Contract #:	
Does contract require Council Approval? Yes • No • Already approved? Council Approved Date:	If No, include WCC: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes No o If yes, grantor agency control	ract number(s): CFDA#:	
Is this contract grant funded? Yes O No O If yes, Whatcom County gr	rant contract number(s):	
Is this contract the result of a RFP or Bid process? Yes No No If yes, RFP and Bid number(s): 2		
Is this agreement excluded from E-Verify? No Ye	If no, include Attachment D Contractor Declaration form.	
Contract work is for less than \$100,000. Contract work is for less than 120 days. Interlocal Agreement (between Governments). Contract Amount:(sum of original contract amount and any prior amendments): \$ 200,000.00 This Amendment Amount: \$ N/A Total Amended Amount: \$ 200,000.00 Total Amended Amount: \$ 200,000.00	d professional. Goods and services provided due to an emergency Contract for Commercial off the shelf items (COTS). Work related subcontract less than \$25,000. Public Works - Local Agency/Federally Funded FHWA. pproval required for; all property leases, contracts or bid awards exceeding and professional service contract amendments that have an increase greater 000 or 10% of contract amount, whichever is greater, except when: cising an option contained in a contract previously approved by the council. tract is for design, construction, r-o-w acquisition, prof. services, or other tal costs approved by council in a capital budget appropriation ordinance. Or award is for supplies. In property is included in Exhibit "B" of the Budget Ordinance. Tract is for manufacturer's technical support and hardware maintenance of tronic systems and/or technical support and software maintenance from the sloper of proprietary software currently used by Whatcom County.	
Summary of Scope: Whatcom County Public Works, at times, requires additional professional geotechnical engineering services due to the following: work outside our expertise, independent opinions, and unanticipated projects related to emergency repairs or natural events. This contract will provide for these professional geotechnical engineering services.		
Term of Contract: Not to Exceed	Expiration Date: December 31, 2022 Date: 2021-07-02	
Contract Routing: 1. Prepared by: C. Swan 2. Attorney signoff: Christopher Quinn	Date: 7/6/2021	
Attorney signori: Christopher Quinn AS Finance reviewed: M Caldwell	Date: 7/6/21	
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:	

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement	Num	ber:
1 151 connent	1 1 01111	O CI

Firm/Organization Legal Name (do not use dba's):		
GeoEngineers, Inc.		
Address	Federal Aid Number	
554 W. Bakerview Rd., Bellingham, WA 98226	N/A	
UBI Number	Federal TIN	
600 375 010	91-6237984	
Execution Date	Completion Date	
	12-31-2022	
1099 Form Required	Federal Participation	
Yes No	☐ Yes ■ No	
Project Title		
On-Call Professional Geotechnical Engine	eering for 2021-2022	
Description of Work		
This contract will consist of geotechnical engineering services pursuant to a number of Whatcom County Public Works projects and involves generating specific geotechnical engineering deliverables at an agreed amount, until the contract maximum value is reached. See Exhibit A for Scope of Work.		
☐ Yes ☐ No DBE Participation ☐ Yes ☐ No MBE Participation	Maximum Amount Payable: \$200,000.00	
Yes No WBE Participation		
Yes No SBE Participation		

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement Agreement Number

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the Whatcom County

hereinafter called the "AGENCY," and the "Firm / Organization Name" referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY desires to accomplish the work referenced in "Description of Work" on page one (1) of this AGREEMENT and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days' notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is, a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY's "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C Preparation and Delivery of Electronic Engineering and other Data."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring, as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name: Cody Swan

Agency: Whatcom County Public Works Address: 322 N. Commercial St. Suite 301

State: WA Zip: 98225 City: Bellingham

Email: cswan@co.whatcom.wa.us

Phone: 360-815-3803

Facsimile:

If to CONSULTANT:

Name: Sean Cool, P.E. Agency: GeoEngineers, Inc. Address: 554 W. Bakerview Rd.

Zip: 98226 State: WA City: Bellingham

Email: scool@geoengineers.com

Phone: 360-647-1510

Facsimile:

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement Agreement Number

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits "D" and "E" attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT's direct labor rates and indirect cost rate computations and agreed upon fee. The accepted negotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgment, to 180 days following the CONSULTANT's fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits "D" and "E" shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT's FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits "D" and "E" will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12 month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT's books and records to determine the CONSULTANT's actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will applicable for the twelve (12) month period.

The fee as identified in Exhibits "D" and "E" shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rate under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY's option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgment.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fee (profit) percentage. The CONSULTANT shall bill each employee's actual classification, and actual salary plus indirect cost rate plus fee.

- A. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of sub-consultants. Air or train travel will be reimbursed only to lowest price available, unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT's Accounting Manual M 13-82, Chapter 10 Travel Rules and Procedures, and all revisions thereto. Air, train, and rental card costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-salary Costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- B. Maximum Amount Payable: The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- C. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. Detailed statements shall support the monthly billings for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- D. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents, which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings

E. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgment between the parties

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

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VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964
 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973
 (29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 et. seq.)

- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 et. seq.)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason, that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee.

The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY.

Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT

to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tie, or any other persons for whom the STATE and /or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, subconsultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The Parties have mutually negotiated this waiver.

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

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Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any subconsultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Cody Swan

Agency: Whatcom County Public Works Address: 322 N. Commercial St. Ste. 301

City: Bellingham

State: WA Zip: 98225

Email: cswan@co.whatcom.wa.us

Phone: 360-815-3803

Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third part, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V "Payment Provisions" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment," hereafter referred to as "CLAIM," under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI "Disputes" clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "G-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENT's over one hundred thousand dollars (\$100,000.00) and Exhibit "G-4" is required only in AGREEMENT's over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III "General Requirements" prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

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XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state, or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, subconsultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained, and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information, which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

Agreement Number _____ Page 12 of 14 The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT, or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain, and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim, or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim, or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENTS, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribblings, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number_

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops, or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

A	Loss	6/30/2021
Signature	Sean Cool, PE, Associate Geotechnical Engineer	Date
Signature		Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

WHATCOM COUNTY:	
Recommended for Approval: 7/13/2 Department Director Date Approved as to form:	
Approved as to form: Approved VIA Email - CQ Senior Civil Deputy Prosecuting Attorney	Sm / la/al
Approved:	
Accepted for Whatcom County:	
By: Satpal Singh Sidhu, Whatcom County Executive	
STATE OF WASHINGTON)	
) ss COUNTY OF WHATCOM)	
On this day of, 20, before me pers of Whatcom County, who executed the above instrument a	sonally appeared Satpal Singh Sidhu, to me known to be the Executive 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

Exhibit A Scope of Work

Project No.

(See attached exhibits A & A1)

EXHIBIT A

SCOPE OF WORK

Consultants are requested to submit a proposal that addresses performing the following general scope of work:

Geotechnical Engineering Analysis:

- 1. The consultant shall work on an "as Requested" basis only, as determined by the Agency.
- 2. Prior to mutual acceptance of a formal task assignment, as described in Exhibit A-1, "Formal Task Assignment Document" attached, the Consultant will prepare a written itemized cost estimate for the requested services.
- 3. Perform borings, test pits, or other methods to investigate subsurface soil conditions.
- 4. Determine ground water levels, soil classifications and other geotechnical properties related to subsurface investigations. Services will include installation and monitoring of piezometers.
- 5. Provide technical and professional engineering services to produce stamped technical reports, including recommendations, related to the geotechnical properties of existing site conditions and solutions to proposed project design issues. Proposed designs issues would include, but not be limited to, pavement designs, bearing capacity, foundation designs, slope stability, levee design, retaining walls, dewatering, settlements, excavations and other design features typical of public works projects.

Administration:

- Contractor shall utilize a reporting system that will track the contract budget by providing both project amount expended to date and overall contract amount expended to date with detail by task assignment.
- 2. Every quarter (3 months), Contractor will provide the Agency with an update on the contract dollar amount expended to date. The update shall summarize each invoice number, date, and amount. This information should be emailed to the Agency. Contractor shall reference the Whatcom County Contract No. (WCC#) on all correspondence related to this contract. The Agency may relax this requirement if Contractor's reporting system shows this to be a redundant method.
- 3. Services provided must be listed on invoices using the exact description/classification, as they appear on the Contractor's Fee Schedule for the various personnel involved.
- 4. Invoices shall be segregated by project CRP Number or task number if there is no CRP Number related to the task.

Insurance:

The contractor shall carry, for the duration of this Contract, general liability and property damage insurance. The insurance shall be primary, non-contributory, and shall waive all rights of subrogation. The insurance shall identify the Agency (Whatcom County) as an additional insured. (See WSDOT requirements - page 10 of 14 - Local Agency A & E Professional Services Negotiated Hourly Rate Consultant Agreement)

Exhibit A-1

Formal Task Assignment Document

lask Number	
The general provisions and clauses ofeffect for this Agreement Task Assignment	
Location of Project:	
Project Title: On-Call Professional Geotechnical Engineering for	2021-2022
Maximum Amount Payable per Task Assignment:	
Completion Date:	
Description of Work: (See attached letter from Agency)	
Agency Project Manager Signature:	Date:
Oral Authorization Date: See	Letter Date:
Consultant Signature:	Date:
Agency Approving Authority:	Datos

Exhibit B DBE Participation Plan

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number____

Exhibit C Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

- Surveying, Roadway Design & Plans Preparation Section
 - A. Survey Data N/A

B. Roadway Design Files N/A

C. Computer Aided Drafting Files Civil 3D Drawing

Specify the Agency's Right to Review Product with the Consultant	
Subject to full review by Whatcom County	
Specify the Electronic Deliverables to Be Provided to the Agency	
Deliverable reports and supporting data shall be in PDF format, Word, or Excel	as appropriate
Specify What Agency Furnished Services and Information Is to Be Provide	ed
	Specify the Agency's Right to Review Product with the Consultant Subject to full review by Whatcom County Specify the Electronic Deliverables to Be Provided to the Agency Deliverable reports and supporting data shall be in PDF format, Word, or Excel Specify What Agency Furnished Services and Information Is to Be Provide See attached Exhibit A for scope details.

II.	Any Other Electronic Files to Be Provided	
	Photos may be jpeg or pdf	
III.	Methods to Electronically Exchange Data	
	Exchange of data may be email or consultant supplies data exchange website.	
al A	Agency A&E Professional Services	

A. Agency Software Suite

Microsoft Office Suite, Civil3D 2019, and ArcGIS Reader

B. Electronic Messaging System N/A

C. File Transfers Format See above file formats

Exhibit D Prime Consultant Cost Computations

See Attached: ANTE Table Acceptance ICR-Risk Assessment Review

GeoEngineers, Inc.

Actuals Not to Exceed Table (ANTE) Whatcom County, Washington

June 18, 2021

Job Classification	1	Average et Labor Rate	C	Overhead on Direct 197.12%	F	Fixed Fee On Direct 27.91%	Fully Burdened Hourly Rate
Principal	\$	67.77	\$	133.59	\$	18.91	\$ 220.27
Associate	\$	62.42	\$	123.04	\$	17.42	\$ 202.88
Senior Engineer/Scientist 2	\$	57.35	\$	113.05	\$	16.01	\$ 186.40
Senior Engineer/Scientist 1	\$	47.50	\$	93.63	\$	13.26	\$ 154.39
Project Engineer/Scientist 2	\$	46.69	\$	92.04	\$	13.03	\$ 151.76
Project Engineer/Scientist 1	\$	45.17	\$	89.04	\$	12.61	\$ 146.82
Staff 3 Engineer	\$	39.50	\$	77.86	\$	11.02	\$ 128.39
Staff 3 Scientist	\$	37.50	\$	73.92	\$	10.47	\$ 121.89
Staff 2 Engineer	\$	36.25	\$	71.46	\$	10.12	\$ 117.82
Staff 2 Scientist	\$	32.50	\$	64.06	\$	9.07	\$ 105.63
Staff 1 Engineer	\$	34.00	\$	67.02	\$	9.49	\$ 110.51
Staff 1 Scientist	\$	30.25	\$	59.63	\$	8.44	\$ 98.32
CAD Design Coordinator	\$	42.00	\$	82.79	\$	11.72	\$ 136.51
CAD Designer	\$	38.00	\$	74.91	\$	10.61	\$ 123.51
CAD Technician	\$	28.75	\$	56.67	\$	8.02	\$ 93.45
Senior Techician	\$	24.25	\$	47.80	\$	6.77	\$ 78.82
Technician	\$	23.39	\$	46.11	\$	6.53	\$ 76.02
Administrator 2	\$	31.75	\$	62.59	\$	8.86	\$ 103.20
Administrator 1	\$	23.50	\$	46.32	\$	6.56	\$ 76.38

^{*}Invoiced labor rates will not exceed the maximum direct rates.



Development Division Contract Services Office PO Box 47408 Olympia, WA 98504-7408 7345 Linderson Way SW Tumwater, WA 98501-6504

TTY: 1-800-833-6388 www.wsdot.wa.gov

May 21, 2021

GeoEngineers, Inc. 17425 NE Union Hill Rd, Suite 250 Redmond, WA 98052

Subject:

Acceptance FYE 2020 ICR - CPA Report

Dear Jane Lu:

We have accepted your firms FYE 2020 Indirect Cost Rate (ICR) of 197.12% of direct labor (rate includes 0.22% Facilities Capital Cost of Money) based on the "Independent CPA Report," prepared by BDO USA, LLP. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with the firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at (360) 705-7019 or via email <u>consultantrates@wsdot.wa.gov</u>.

Regards;

ERIK K. JONSON

Contract Services Manager

EKJ:ah

GEOENGINEERS, INC. STATEMENT OF DIRECT LABOR, FRINGE BENEFITS, AND GENERAL OVERHEAD FOR THE YEAR ENDED DECEMBER 31, 2020

Кеу	_	 Total Reported Costs	Adjustments To Reported	Reference For Adjustments	Allowable Costs	% of Direct Labor
RECT LABOR		\$ 17,870,449	\$ -		\$ 17,870,449	100%
INGE BENEFITS						
1	Payroll Taxes	\$2,439,628	\$ (181,719)	Α	\$ 2,257,909	12.63%
2	Group Insurance	\$3,888,292	\$ -		\$ 3,888,292	21.76%
3	Worker's Compensation	\$137,102	\$		\$ 137,102	0.77%
4	Vacation, Holiday and Sick Pay	\$4,196,548	\$ -		\$ 4,196,548	23.48%
5	Profit Sharing and 401(k) Contributions	\$1,285,975	\$		\$ 1,285,975	7.20%
6	Bonuses and Severance	\$ 4,841,803	\$ (808,377)	В	\$ 4,033,425	22.57%
	Total Fringe Benefits	\$16,789,348	\$ (990,096)		\$ 15,799,251	88.41%
NERAL OVERHE	AD					
7	Non-Billable Labor	\$7,937,607	\$ (346,602)	C	\$ 7,591,005	42.48%
8	Bid & Proposal Labor	\$1,362,897	\$ -		\$ 1,362,897	7.63%
9	Direct Selling Labor	\$1,420,704	\$ (338,999)	D	\$ 1,081,705	6.05%
10	Office Rent & Maintenance	\$2,978,503	\$ (46,635)	Ε	\$ 2,931,868	16.41%
11	Telecommunications	\$251,447	\$ (1,162)	F	\$ 250,285	1.40%
12	Bus. Taxes & Other than Federal	\$952,870	\$	P	\$ 952,870	5.33%
13	Subscriptions, Stationery & Supplies	\$233,513	\$ (28,496)	G	\$ 205,017	1.15%
14	Travel	\$462,242	\$ (112,137)	н	\$ 350,105	1.96%
14.5	Company Vehicles	\$241,136	\$ (241,136)	1 -	\$	0.00%
15	Professional Dues, Meetings & Proposals	\$494,726	\$ (41,310)	J	\$ 453,416	2.54%
16	Depreciation	\$852,614	\$ (49,566)	I	\$ 803,048	4.49%
17	Equipment Rental & Maintenance	\$67,719	\$ -	F	\$ 67,719	0.38%
18	Bad Debt	\$72,000	\$ (72,000)	K	\$	0.00%
19	Professional Consultants	\$744,647	\$ (27,655)	L	\$ 716,993	4.01%
20	Entertainment/Advertising and Proposals	\$98,386	\$ (76,851)	M	\$ 21,535	0.12%
21	Field and Laboratory Supplies	\$174,643	\$ (2,710)	N	\$ 171,934	0.96%
22	Insurance	\$967,955	\$ (3,429)	О	\$ 964,526	5.40%
23	Computer Maintenance and Software	\$1,283,797	\$ (11,039)	E	\$ 1,272,758	7.12%
24	Recruiting & Relocation	\$133,710	\$ (11,394)	P, E	\$ 122,315	0.68%
25	Contributions	\$22,310	\$ (22,310)	Q	\$ -	0.00%
26	Fines/Penalties/Unallowable	\$25,941	\$ (25,941)	F	\$ -	0.00%
27	Employee Health & Welfare	\$242,825	\$ (176,400)	R	\$ 66,425	0.37%
	Total General Overhead	 \$21,022,190	\$ (1,635,771)		\$ 19,386,420	108.48%
	Total Indirect Costs and Overhead	 \$37,811,538	\$ (2,625,867)	=	\$ 35,185,671	196.89%
28	Facilities Capital Cost of Money ("FCCM")	 \$0	\$ 39,911		\$ 39,911	0.22%

GeoEngineers, Inc. Indirect Cost Rate Schedule For the Year Ended December 31, 2020

	Deformance to Adjustine to
Α	References to Adjustments Fringe benefits adjustment for unallowable Direct Selling labor and unallowable bonuses per 48 CFR 31.201-
	6(e)(2).
В	Unallowable bonuses per 48 CFR 31.205-6(f); 48 CFR 31.205-13 and 48 CFR 31.205-41.
С	(I) CONTROL (I) CONTROL (I)
	Indirect labor adjustment required to meet PSMJ 2020 - 25th percentile of Direct Labor (an average of
	Environmental, Engineering - Prime, Engineering - Subcontractor firms), as a % of total labor (55.67%).
D	Unallowable marketing activities per 48 CFR 31.205-1,14,38 and 41.
E	Assigned parking costs unallowable per 48 CFR31.201-2 & 31.201-3; unallowable office for the benefit of
	employee per 48 CFR 31.201-3.
F	Fines & Penalties unallowable per CFR 31.205-15(a).
G	Promotional materials unallowable per 48 CFR 31.205-1(f)(5). Allowable fringe benefits (Home office
	allowances) due to the remote work need as a result of Covid 19 impact per 48 CFR 31.201-3. CFR 31.201-4.
	and CFR 31.205-13(a).
н	
	Vehicle costs unallowable per 48 CFR 31.201-2(d); Travel in excess of Federal per-diem unallowable per 48
	CFR 31.205-46; Unallowable marketing activities per 48 CFR 31.205-1, 14 and 38; entertainment unallowable
	[per 48 CFR 31.205-14; direct project costs unallowable per 48 CFR 31.202(a).
	Vehicle costs unallowable per 48 CFR 31.201-2(d).
J	
	Dues to social clubs, memberships in civic and community organizations unallowable per 48 CFR 31.205-
	1(f)(7), 31.205-14; lobbying unallowable per 48 CFR 31.205-22; marketing costs unallowable per 48 CFR
	[31.205-1, 14, and 38; direct project costs unallowable per 48 CFR 31.202(a).
K	Bad debts unallowable per 48 CFR 31.205-3.
L	Direct project costs unallowable per 48 CFR 31.202(a); unallowable marketing activities per 48 CFR 31.205-1,
	14 & 38; patent costs unallowable per 48 CFR 31.205-30.
M	Unallowable marketing activities per 48 CFR 31.205-1, 14 & 38; entertainment unallowable per 48 CFR 31.205-
N	14; advertising unallowable per 48 CFR 31.205-38(b)(1).
IV	Direct project costs well-well-well-well-well-well-well-well
0	Direct project costs unallowable per 48 CFR 31.202(a); vehicle costs unallowable per 48 CFR 31.201-2(d).
U	Unallowable key person life insurance per 48 CFR 31.205-19(e)(2)(v). Direct project costs unallowable per 48 CFR 31.202(a).
P	Unallowable taxes per 48 CFR 31.205-41.
Q	Contributions unallowable per 48 CFR 31.205-8.
R	Social activities unallowable per 48 CFR 31.205-14; employee gifts & recreation unallowable per 48 CFR
	31.205-13(b).
S	Costs of money adjustment allowable per 48 CFR 31.205-10(a).
	1

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- 1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, (*Title of Modal Operating Administration*), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Modal Operating Administration specific program requirements.]*
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. [Include Modal Operating Administration specific program requirements.]
- 4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Agreement Numbe	er
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Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of
 disability in the operation of public entities, public and private transportation systems, places of public
 accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by
 Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

	Numh	reement	Ag
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Exhibit G Certification Document

Exhibit G-1(a)	Certification of Consultant
Exhibit G-1(b)	Certification of
Exhibit G-2	Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions
Exhibit G-3	Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
Exhibit G-4	Certificate of Current Cost or Pricing Data

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of GeoEngineers, Inc.

whose address is

554 West Bakerview Road, Bellingham, WA 98226

and that neither the above firm nor I have

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the Whatcom County

and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

GeoEngineers, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Sean Cool, PE, Associate Geotechnical Engineer

6/30/2021

Date

Exhibit G-1(b)	Certification of
I hereby certify that	I am the:
Other	
of the	, and
of its representative	has not been required, directly or indirectly as an express or implied condition in connection rying out this AGREEMENT to:
a) Employ or re	tain, or agree to employ to retain, any firm or person; o
b) Pay, or agree consideration	te to pay, to any firm, person, or organization, any fee, contribution, donation, of any kind; except as hereby expressly stated (if any):
I acknowledge that the	nis certificate is to be furnished to the
Federal laws, both cr	ighway Administration, U.S. Department of Transportation, in connection with this lying participation of Federal-aid highway funds, and is subject to applicable State and iminal and civil.
Signature	Date

Exhibit G-2 Certification Regarding Debarment Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; an
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

GeoEngineers, Inc.	
Consultant (Firm Name)	
Signature (Authorized Official of Consultant)	6/30/2021
origination (Mathorized Official of Consultant)	Date

Sean Cool, PE, Associate Geotechnical Engineer

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the require certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

GeoEngineers, Inc.	
Consultant (Firm Name)	
Andos	6/30/2021
Signature (Authorized Official of Consultant)	Date
Sean Cool, PE, Associate Geotechnical Engineer	

Exhibit G-4 Certification of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and be the Federal Acquisition Regulation (FAR) and required actually or by specific identification in writing, to the representative in support of On-Call Professional Geotechnical Engineering for as of June 30, 2021	under FAR subsection 15.403-4) submitted, either Contracting Officer or to the Contracting Officer.
This certification includes the cost or pricing data supporting rate AGREEMENT's between the offer or and the Government of the cost of th	mg any advance AGREEMENT's and forward pricing ment that are part of the proposal
Firm: GeoEngineers, Inc.	r are proposal.
Signature Sean Cool, PE	Associate Geotechnical Engineer
Date of Execution	****

^{*}Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

^{***}Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant has alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include all decisions and descriptions of work, photographs, records of labor, materials, and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number

Step 5 Forward Documents to Local Programs

For federally funded projects, all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) total a \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will met with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action in needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Agreement	Number	_
-----------	--------	---

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Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- · Agency's summation of hours by classification for each firm that should be included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associate with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- · Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit

Terra Insurance Company (A Risk Retention Group) Two Fifer Avenue, Suite 100 Corte Madera, CA 94925



DATE

06/23/21

CERTIFICATE OF INSURANCE

CERTIFICATE HOLDER

Whatcom County Public Works Attn: Cody Swan 322 N. Commercial St., Suite 301 Bellingham, WA 98225

This certifies that the "claims made" insurance policy (described below by policy number) written on forms in use by the Company has been issued. This certificate is not a policy or a binder of insurance and is issued as a matter of information only, and confers no rights upon the certificate holder. This certificate does not alter, amend or extend the coverage afforded by this policy.

The policy of insurance listed below has been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy. Aggregate limits shown may have been reduced by paid claims.

TYPE OF INSURANCE	Professional Liability						
POLICY NUMBER 221019	EFFECTIVE DATE 01/01/21	EXPIRATION DATE 12/31/21					
LIMITS OF LIABILITY	\$1,000,000 EACH CLAIM \$1,000,000 ANNUAL AGGREGATE						

PROJECT DESCRIPTION

On-Call Professional Geotechnical Engineering for 2021-2022

CANCELLATION: If the described policy is cancelled by the Company before its expiration date, the Company will mail written notice to the certificate holder thirty (30) days in advance, or ten (10) days in advance for non-payment of premium. If the described policy is cancelled by the insured before its expiration date, the Company will mail written notice to the certificate holder within thirty (30) days of the notice to the Company from the insured.

NAME AND ADDRESS OF INSURED

GeoEngineers, Inc. 554 West Bakerview Road Bellingham, WA 98226 **ISSUING COMPANY:**

TERRA INSURANCE COMPANY

(A Risk Retention Group)

President

GEOENINC2

ACORD...

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/23/2021

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

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

Union Street, Suite 1000 ttle, WA 98101 CONTACT NAME: Please See Below: PHONE (A/C, No, Ext): 206 441-6300 FAX (A/C, No): 610-362-8 E-MAIL ADDRESS: Seattle.PLCertRequest@usi.com		362-8530
	INSURER(S) AFFORDING COVERAGE	NAIC#
INSURED	INSURER A: Valley Forge Insurance Company	20508
GeoEngineers, Inc.	INSURER B: Transportation Insurance Company	20494
17425 NE Union Hill Road, Suite 250	INSURER C : American Casualty Company of Reading PA	20427
Redmond, WA 98052	INSURER D : National Fire Insurance Co. of Hartford	20478
	INSURER E :	
00//504070	INSURER F:	
COVERAGES CERTIFICATE NUMBER:	DEVICION NUMBER	

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

TO TYPE OF INSURANCE ADD SUBBLIFY AND POLICY NUMBER POLICY EFF, POLICY EXP. (MM/DD/YYYY) LIMITS

A COMMERCIAL GENERAL LIABILITY X X 6023113030

LIK	THE OF INSURANCE	INSR	WVD	POLICY NUMBER	(MM/DD/YYYY)	(MM/DD/YYYY)	LIMITS	
Α	X COMMERCIAL GENERAL LIABILITY	X	X	6023113030		06/30/2021		\$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$500,000
	X Stop Gap: WA.OH.ND						MED EXP (Any one person)	\$15,000
1	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$1,000,000
	▼ PRO-						GENERAL AGGREGATE	\$2,000,000
1	POLICY X JECT LOC						PRODUCTS - COMP/OP AGG	\$2,000,000
D	OTHER: AUTOMOBILE LIABILITY		-				Stop Gap/EL	\$1,000,000
١		X	X	BUA6023117823	06/30/2020	06/30/2021	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
1	OWNED SCHEDULED						BODILY INJURY (Per person)	\$
1	X AUTOS ONLY AUTOS ONLY X AUTOS ONLY X AUTOS ONLY						BODILY INJURY (Per accident)	\$
	A AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$
	UMBRELLA LIAB							\$
1	EXCESS LIAB						EACH OCCURRENCE	\$
	DED RETENTION \$	-					AGGREGATE	\$
В	WORKERS COMPENSATION		v	14/00004007000				\$
-	AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EYECUTIVE Y/N		Х	WC6081095683	06/30/2020	06/30/2021	X PER STATUTE OTH-	
c	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N/A		CA: Incl.MEL/USL&H			E.L. EACH ACCIDENT	\$1,000,000
١	If yes, describe under		Х	WC6081095666	06/30/2020	06/30/2021	E.L. DISEASE - EA EMPLOYEE	\$1,000,000
	DÉSCRIPTION OF OPERATIONS below			AOS: Incl.MEL/USL&H				\$1,000,000
								,

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
**Please Note: The limits shown above may not represent the full limits of coverage carried by the Named
Insured, but are shown as evidence that coverage is carried with the limits at least as high as is required
by contract."

RE: Project: On-Call Professional Geotechnical Engineering for 2021-2022, Whatcom County. (See Attached Descriptions)

CERTIFICATE HOLDER	CANCELLATION
	OANGELEATION
Whatcom County Public Works 322 N. Commercial St., Suite 301 Bellingham, WA 98225	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE
	Gun a. Ryan

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DESCRIPTIONS (Continued from Page 1)

The General Liability Includes Additional Insured coverage for Ongoing and Completed Operations, when required by written contract. The Automobile Liability policy includes an automatic Additional Insured endorsement that provides Additional Insured status to the Whatcom County Public Works, the State of Washington, their officers, employees and agents, only when there is a written contract that requires such status, and only with regard to work performed by or on behalf of the named insured. The General Liability and Automobile Liability policies contains a special endorsement with Primary and Noncontributory wording, when required by written contract. The General Liability, Automobile Liability and Workers Compensation policies includes a Waiver of Subrogation endorsement in favor of the Certificate Holder as referenced above. The General Liability, Automobile Liability and Workers Compensation policies include an endorsement providing that 30 days notice of cancellation will be given to the Certificate Holder by the Insurance Carrier. The Umbrella Liability policy follows form of underlying liability.





Architects, Engineers and Surveyors General Liability Extension Endorsement

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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CNA74858XX (1-15)

Page 1 of 18

VALLEY FORGE INSURANCE COMPANY Insured Name: GEOENGINEERS, INC.

Policy No: 6023113030 Endorsement No: 2

Effective Date: 06/30/2020



CNA PARAMOUNT

Architects, Engineers and Surveyors General Liability **Extension Endorsement**

1. ADDITIONAL INSUREDS

- a. WHO IS AN INSURED is amended to include as an Insured any person or organization described in paragraphs A. through I. below whom a Named Insured is required to add as an additional insured on this Coverage Part under a written contract or written agreement, provided such contract or agreement:
 - (1) is currently in effect or becomes effective during the term of this Coverage Part; and
 - (2) was executed prior to:
 - (a) the bodily injury or property damage; or
 - (b) the offense that caused the personal and advertising injury,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
 - (1) a higher limit of insurance than required by such contract or agreement; or
 - (2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through I. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a Named Insured, but only with respect to such person or organization's liability for bodily injury, property damage or personal and advertising injury arising out of:

- 1. such person or organization's financial control of a Named Insured; or
- premises such person or organization owns, maintains or controls while a Named Insured leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a Named Insured and covered under this insurance but only with respect to such co-owner's liability for bodily injury, property damage or personal and advertising injury as co-owner of such premises.

C. Engineers, Architects or Surveyors Engaged By You

An architect, engineer or surveyor engaged by the Named Insured, but only with respect to liability for bodily injury, property damage or personal and advertising injury caused in whole or in part by the Named Insured's acts or omissions, or the acts or omissions of those acting on the Named Insured's behalf:

- a. in connection with the Named Insured's premises; or
- in the performance of the Named Insured's ongoing operations.

But the coverage hereby granted to such additional insureds does not apply to bodily injury, property damage or personal and advertising injury arising out of the rendering of or failure to render any professional services by, on behalf of, or for the Named Insured, including but not limited to:

CNA74858XX (1-15)

Page 2 of 18 VALLEY FORGE INSURANCE COMPANY Insured Name: GEOENGINEERS, INC.

Policy No: 6023113030 Endorsement No: 2

Effective Date: 06/30/2020

06/30/2020

Effective Date:



Architects, Engineers and Surveyors General Liability Extension Endorsement

- the preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- 2. supervisory, inspection, architectural or engineering activities.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury** or **property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions - Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

- 1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - **a.** the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or

CNA74858XX (1-15) Policy No: 6023113030
Page 3 of 18 Endorsement No: 2

VALLEY FORGE INSURANCE COMPANY Insured Name: GEOENGINEERS, INC.







CNA PARAMOUNT

Architects, Engineers and Surveyors General Liability Extension Endorsement

2. the permitted or authorized operations performed by a Named Insured or on a Named Insured's behalf.

The coverage granted by this paragraph does not apply to:

- a. Bodily injury, property damage or personal and advertising injury arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. Bodily injury or property damage included within the products-completed operations hazard.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

I. Trade Show Event Lessor

- 1. With respect to a Named Insured's participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the Named Insured is required to include as an additional insured, but only with respect to such person or organization's liability for bodily injury, property damage or personal and advertising injury caused by:
 - a. the Named Insured's acts or omissions; or
 - b. the acts or omissions of those acting on the Named Insured's behalf,

in the performance of the $\bf Named\ Insured's\$ ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. ADDITIONAL INSURED - EXTENDED COVERAGE

When an additional insured is added by this or any other endorsement attached to this **Coverage Part**, **WHO IS AN INSURED** is amended to make the following natural persons **Insureds**.

If the additional insured is:

- a. An individual, then his or her spouse is an Insured;
- b. A partnership or joint venture, then its partners, members and their spouses are Insureds;
- A limited liability company, then its members and managers are Insureds; or
- d. An organization other than a partnership, joint venture or limited liability company, then its executive officers, directors and shareholders are Insureds;

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but only with respect to locations and operations covered by the additional insured endorsement's provisions, and only with respect to their respective roles within their organizations.

Please see the ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES provision of this endorsement for additional coverage and restrictions applicable to **spouses** of natural person **Insureds**.

4. BOATS

Under COVERAGES, Coverage A - Bodily Injury And Property Damage Liability, the paragraph entitled Exclusions is amended to add the following additional exception to the exclusion entitled Aircraft, Auto or Watercraft:

This exclusion does not apply to:

Any watercraft owned by the Named Insured that is less than 30 feet long while being used in the course of the Named Insured's inspection or surveying work.

5. BODILY INJURY - EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under CONDITIONS, the condition entitled Duties in The Event of Occurrence, Offense, Claim or Suit is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The Named Insured must give the Insurer or the Insurer's authorized representative notice of an occurrence, offense or claim only when the occurrence, offense or claim is known to a natural person Named Insured, to a partner, executive officer, manager or member of a Named Insured, or to an employee designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The Named Insured's rights under this Coverage Part will not be prejudiced if the Named Insured fails to give the Insurer notice of an occurrence, offense or claim and that failure is solely due to the Named Insured's reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the Named Insured shall give written notice of such occurrence, offense or claim to the Insurer as soon as the Named Insured is aware that this insurance may apply to such occurrence, offense or claim.

7. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

- Pursuant to the limitations described in Paragraph 4. below, any organization in which a Named Insured has management control:
 - a. on the effective date of this Coverage Part; or
 - b. by reason of a Named Insured creating or acquiring the organization during the policy period,

qualifies as a Named Insured, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have

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provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this BROAD NAMED INSURED provision does not apply to:

- (a) any partnership, limited liability company or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this Coverage Part.

For the purpose of this provision, management control means:

- **A.** owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
- **B.** having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
- **4.** With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph **3.** above, this insurance does not apply to:
 - a. bodily injury or property damage that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. personal or advertising injury caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
- 5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

8. CONTRACTUAL LIABILITY - RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** you with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- **d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement:
- f. That part of any other contract or agreement pertaining to the Named Insured's business (including an indemnification of a municipality in connection with work performed for a municipality) under which the Named Insured assumes the tort liability of another party to pay for bodily injury or property damage to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

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- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the Insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, executors, heirs, legal representatives, administrators, trustees, beneficiaries and spouses of any natural person Insured or living trust shall also be insured under this policy; provided, however, coverage is afforded to such estates, executors, heirs, legal representatives, administrators, trustees, beneficiaries and spouses only for claims arising solely out of their capacity or status as such and, in the case of a spouse, where such claim seeks damages from marital community property, jointly held property or property transferred from such natural person Insured to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or spouse outside the scope of such person's capacity or status as such, provided, however, that the spouse of a natural person Named Insured, and the spouses of members or partners of joint venture or partnership Named Insureds are Insureds with respect to such spouses' acts, errors or omissions in the conduct of the Named Insured's business.

10. EXPECTED OR INTENDED INJURY - EXCEPTION FOR REASONABLE FORCE

Under COVERAGES, Coverage A - Bodily Injury And Property Damage Liability, the paragraph entitled Exclusions is amended to delete the exclusion entitled Expected or Intended Injury and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or property damage expected or intended from the standpoint of the Insured. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER LOCATION

- A. A separate Location General Aggregate Limit, equal to the amount of the General Aggregate Limit, is the most the Insurer will pay for the sum of:
 - 1. All damages under Coverage A, except damages because of bodily injury or property damage included in the products-completed operations hazard; and
 - 2. All medical expenses under Coverage C,

that arise from occurrences or accidents which can be attributed solely to ongoing operations at that location. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Location General Aggregate Limit of any other location.

B. All:

1. Damages under Coverage B, regardless of the number of locations involved;

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- 2. Damages under Coverage A, caused by occurrences which cannot be attributed solely to ongoing operations at a single location, except damages because of bodily injury or property damage included in the products-completed operations hazard; and
- 3. Medical expenses under Coverage C caused by accidents which cannot be attributed solely to ongoing operations at a single location,

will reduce the General Aggregate Limit shown in the Declarations.

- C. For the purpose of this GENERAL AGGREGATE LIMITS OF INSURANCE PER LOCATION Provision. "location" means:
 - 1. a premises the Named Insured owns or rents; or
 - 2. a premises not owned or rented by any Named Insured at which the Named Insured is performing operations pursuant to a contract or written agreement. If operations at such a location have been discontinued and then restarted, or if the authorized parties deviate from plans, blueprints, designs, specifications or timetables, the location will still be deemed to be the same location.

For the purpose of determining the applicable aggregate limit of insurance, premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad shall be considered a single location.

- D. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Location General Aggregate Limit or the General Aggregate Limit, depending on whether the occurrence can be attributed solely to ongoing operations at a particular location.
- E. When coverage for liability arising out of the products-completed operations hazard is provided, any payments for damages because of bodily injury or property damage included in the products-completed operations hazard, regardless of the number of locations involved, will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations.
- F. The provisions of LIMITS OF INSURANCE not otherwise modified by this GENERAL AGGREGATE LIMITS OF INSURANCE - PER LOCATION Provision shall continue to apply as stipulated.

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the Named Insured, or chartered by or for the Named Insured, will be treated in the same manner as though the action were in personam against the Named Insured.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

- A. Under COVERAGES, Coverage A Bodily Injury And Property Damage Liability, the Insuring Agreement is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:
 - This insurance applies to **bodily injury** provided that the professional health care services are incidental to the Named Insured's primary business purpose, and only if:
 - (1) such bodily injury is caused by an occurrence that takes place in the coverage territory.
 - (2) the bodily injury first occurs during the policy period. All bodily injury arising from an occurrence will be deemed to have occurred at the time of the first act, error, or omission that is part of the occurrence;

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- Under COVERAGES, Coverage A Bodily Injury And Property Damage Liability, the paragraph entitled Exclusions is amended to:
 - i. add the following to the Employers Liability exclusion:

This exclusion applies only if the bodily injury arising from a health care incident is covered by other liability insurance available to the Insured (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled Contractual Liability and replace it with the following:

This insurance does not apply to:

Contractual Liability

the Insured's actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. to add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not be limited to claims based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any health care incident for which coverage is excluded by endorsement.

- C. **DEFINITIONS** is amended to:
 - add the following definitions:

Health care incident means an act, error or omission by the Named Insured's employees or volunteer workers in the rendering of:

- professional health care services on behalf of the Named Insured or
- Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

a. Physician;

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- b. Nurse;
- c. Nurse practitioner:
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist:
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of occurrence and replace it with the following:

Occurrence means a health care incident. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single occurrence;

- iii. amend the definition of Insured to:
 - a. add the following:

the Named Insured's employees are Insureds with respect to:

- (1) bodily injury to a co-employee while in the course of the co-employee's employment by the Named Insured or while performing duties related to the conduct of the Named Insured's business; and
- (2) bodily injury to a volunteer worker while performing duties related to the conduct of the Named Insured's business:

when such bodily injury arises out of a health care incident.

the Named Insured's volunteer workers are Insureds with respect to:

- (1) bodily injury to a co-volunteer worker while performing duties related to the conduct of the Named Insured's business; and
- (2) bodily injury to an employee while in the course of the employee's employment by the Named Insured or while performing duties related to the conduct of the Named Insured's business;

when such bodily injury arises out of a health care incident.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of WHO IS AN INSURED.
- D. The Other Insurance condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance

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b. Excess Insurance

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the Named Insured to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

A. Past Joint Ventures, Partnerships, Limited Liability Companies

The following is added to WHO IS AN INSURED:

If the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to personal and advertising injury occurred prior to such termination date, and the
 personal and advertising injury arising out of such offense, first occurred after such termination date;
- b. the bodily injury or property damage first occurred after such termination date; and
- **c.** there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph **c.** above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Architects**, **Engineers And Surveyors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

B. Participation In Current Professional Joint Ventures

The following is added to WHO IS AN INSURED:

The **Named Insured** is also an **Insured** for participation in a current joint venture that is not named on the Declarations, but only if such joint venture meets all of the following criteria:

- Each and every one of the Named Insured's co-venturers are architectural, engineering or surveying firms only; and
- b. There is no other valid and collectible insurance purchased specifically to insure the joint venture.

However, the **Named Insured** is an **Insured** only for the conduct of such **Named Insured's** business within such a joint venture. The **Named Insured** is not insured for liability arising out of the acts or omissions of other coventurers, nor of their partners, members or employees.

C. WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

Except as provided under this **Architects**, **Engineers And Surveyors General Liability Extension Endorsement** or by the attachment of another endorsement (if any), no person or organization is an **Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations.

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- 15. LEGAL LIABILITY DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL
 - A. Under COVERAGES, Coverage A Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended to delete exclusion j. Damage to Property in its entirety and replace it with the following:

This insurance does not apply to:

j. Damage to Property

Property damage to:

- (1) Property the Named Insured owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the Named Insured;
- (4) Personal property in the care, custody or control of the Insured;
- (5) That particular part of real property on which the Named Insured or any contractors or subcontractors working directly or indirectly on the Named Insured's behalf are performing operations, if the property damage arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are your work.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to property damage included in the products-completed operations hazard.

Paragraphs (3) and (4) of this exclusion do not apply to property damage to:

- i. tools, or equipment the Named Insured borrows from others, nor
- ii. other personal property of others in the Named Insured's care, custody or control while being used in the Named Insured's operations away from any Named Insured's premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- **b.** property that is **mobile equipment** leased by an **Insured**;

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- c. property that is an auto, aircraft or watercraft;
- d. property in transit; or
- e. any portion of property damage for which the Insured has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See LIMITS OF INSURANCE as amended below.

B. Under COVERAGES, Coverage A - Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a Named Insured or temporarily occupied by a Named Insured with permission of the owner, nor to damage to the contents of premises rented to a Named Insured for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE.

C. The following paragraph is added to LIMITS OF INSURANCE:

Subject to 5. above, \$25,000 is the most the Insurer will pay under Coverage A for damages arising out of any one occurrence because of the sum of all property damage to borrowed tools or equipment, and to other personal property of others in the Named Insured's care, custody or control, while being used in the Named Insured's operations away from any Named Insured's premises. The Insurer's obligation to pay such property damage does not apply until the amount of such property damage exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the Named Insured will promptly reimburse the Insurer for any such amount.

- D. Paragraph 6., Damage To Premises Rented To You Limit, of LIMITS OF INSURANCE is deleted and replaced by the following:
 - 6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under Coverage A for damages because of property damage to any one premises while rented to the Named Insured or temporarily occupied by the Named Insured with the permission of the owner, including contents of such premises rented to the Named Insured for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:
 - a. \$500,000; or
 - b. The Damage To Premises Rented To You Limit shown in the Declarations.
- E. Paragraph 4.b.(1)(a)(ii) of the Other Insurance Condition is deleted and replaced by the following:
 - (ii) That is property insurance for premises rented to the Named Insured, for premises temporarily occupied by the Named Insured with the permission of the owner; or for personal property of others in the Named Insured's care, custody or control;

16. LIQUOR LIABILITY

Under COVERAGES, Coverage A - Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended to delete the exclusion entitled Liquor Liability.

This LIQUOR LIABILITY Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this Coverage Part.

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17. MEDICAL PAYMENTS

- A. LIMITS OF INSURANCE is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:
 - 7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under Coverage C for all medical expenses because of bodily injury sustained by any one person. The Medical Expense Limit is the greater of:
 - (1) \$15,000 unless a different amount is shown here: \$N,NNN,NNN,NNN; or
 - (2) the amount shown in the Declarations for Medical Expense Limit.
- B. Under COVERAGES, the Insuring Agreement of Coverage C Medical Payments is amended to replace Paragraph 1.a.(3)(b) with the following:
 - (b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

18. NON-OWNED AIRCRAFT

Under COVERAGES, Coverage A - Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended as follows:

The exclusion entitled Aircraft, Auto or Watercraft is amended to add the following:

This exclusion does not apply to an aircraft not owned by any Named Insured, provided that:

- 1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- 2. the aircraft is rented with a trained, paid crew to the Named Insured; and
- the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under COVERAGES, Coverage A - Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended to delete subparagraph (2) of the exclusion entitled Aircraft, Auto or Watercraft, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any Named Insured, provided the watercraft is:
 - (a) less than 75 feet long; and
 - (b) not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY -DISCRIMINATION OR HUMILIATION

- A. Under DEFINITIONS, the definition of personal and advertising injury is amended to add the following tort: Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- B. Under COVERAGES, Coverage B Personal and Advertising Injury Liability, the paragraph entitled Exclusions is amended to:
 - 1. delete the Exclusion entitled Knowing Violation Of Rights Of Another and replace it with the following:

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This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the Named Insured; or
- (b) any executive officer, director, stockholder, partner, member or manager (if the Named Insured is a limited liability company) of the Named Insured.
- add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

Provision 1. ADDITIONAL INSURED of this endorsement; or

attachment of an additional insured endorsement to this Coverage Part.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

- A. Under COVERAGES, Coverage B –Personal and Advertising Injury Liability, the paragraph entitled Exclusions is amended to delete the exclusion entitled Contractual Liability.
- B. Solely for the purpose of the coverage provided by this PERSONAL AND ADVERTISING INJURY LIMITED CONTRACTUAL LIABILITY provision, the following changes are made to the section entitled SUPPLEMENTARY PAYMENTS COVERAGES A AND B:
 - 1. Paragraph 2.d. is replaced by the following:
 - d. The allegations in the suit and the information the Insurer knows about the offense alleged in such suit are such that no conflict appears to exist between the interests of the Insured and the interests of the indemnitee;
 - 2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorney's fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred



CNA74858XX (1-15) Page 15 of 18

VALLEY FORGE INSURANCE COMPANY

Insured Name: GEOENGINEERS, INC.

Endorsement No: 2 Effective Date: 06/30/2020

6023113030

Policy No:

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Architects, Engineers and Surveyors General Liability **Extension Endorsement**

by the indemnitee at the Insurer's request will be paid as defense costs. Such payments will not be deemed to be damages for personal and advertising injury and will not reduce the limits of insurance.

C. This PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY Provision does not apply if Coverage B -Personal and Advertising Injury Liability is excluded by another endorsement attached to this Coverage Part.

This PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this Coverage Part.

22. PROPERTY DAMAGE - ELEVATORS

- A. Under COVERAGES, Coverage A Bodily Injury and Property Damage Liability, the paragraph entitled Exclusions is amended such that the Damage to Your Product Exclusion and subparagraphs (3), (4) and (6) of the Damage to Property Exclusion do not apply to property damage that results from the use of elevators.
- B. Solely for the purpose of the coverage provided by this PROPERTY DAMAGE ELEVATORS Provision, the Other Insurance conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

WHO IS INSURED is amended to include as Insureds natural persons who are retired partners, members, directors or employees, but only for bodily injury, property damage or personal and advertising injury that results from services performed for the Named Insured under the Named Insured's direct supervision. All limitations that apply to employees and volunteer workers also apply to anyone qualifying as an Insured under this Provision.

24. SUPPLEMENTARY PAYMENTS

The section entitled SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1.000. limit.

25. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the Named Insured unintentionally fails to disclose all existing hazards at the inception date of the Named Insured's Coverage Part, the Insurer will not deny coverage under this Coverage Part because of such failure.

26. WAIVER OF SUBROGATION - BLANKET

Under CONDITIONS, the condition entitled Transfer Of Rights Of Recovery Against Others To Us is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

- 1. the Named Insured's ongoing operations; or
- 2. your work included in the products-completed operations hazard.

However, this waiver applies only when the Named Insured has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

CNA74858XX (1-15)

Page 16 of 18 VALLEY FORGE INSURANCE COMPANY

Insured Name: GEOENGINEERS, INC.

Policy No: 6023113030 **Endorsement No:** 2

Effective Date: 06/30/2020





Architects, Engineers and Surveyors General Liability **Extension Endorsement**

- is in effect or becomes effective during the term of this Coverage Part; and
- was executed prior to the bodily injury, property damage or personal and advertising injury giving rise to the claim.

27. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a consolidated (wrap-up) insurance program by applicable state statute or regulation.

If the endorsement EXCLUSION - CONSTRUCTION WRAP-UP is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

A. The following wording is added to the above-referenced endorsement:

With respect to a consolidated (wrap-up) insurance program project in which the Named Insured is or was involved, this exclusion does not apply to those sums the Named Insured become legally obligated to pay as damages because of:

- 1. Bodily injury, property damage, or personal or advertising injury that occurs during the Named Insured's ongoing operations at the project, or during such operations of anyone acting on the Named Insured's behalf; nor
- 2. Bodily injury or property damage included within the products-completed operations hazard that arises out of those portions of the project that are not residential structures.
- B. Condition 4. Other Insurance is amended to add the following subparagraph 4.b.(1)(c):

This insurance is excess over:

- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the Named Insured as a result of the Named Insured being a participant in a consolidated (wrap-up) insurance program, but only as respects the Named Insured's involvement in that consolidated (wrap-up) insurance program.
- C. **DEFINITIONS** is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

- single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
- the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, residential structure does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. Residential structure also does not include hospitals or prisons.

CNA74858XX (1-15)

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VALLEY FORGE INSURANCE COMPANY

Insured Name: GEOENGINEERS, INC.

Policy No:

6023113030

Endorsement No:

2

Effective Date:

06/30/2020

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Architects, Engineers and Surveyors General Liability Extension Endorsement

This WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this Coverage Part.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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VALLEY FORGE INSURANCE COMPANY Insured Name: GEOENGINEERS, INC.

Policy No: 60

6023113030

Endorsement No:

2

Effective Date:

06/30/2020





Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. WHO IS AN INSURED is amended to include as an Insured any person or organization whom you are required by written contract to add as an additional insured on this coverage part, but only with respect to liability for bodily injury, property damage or personal and advertising injury caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
 - A. in the performance of your ongoing operations subject to such written contract; or
 - **B.** in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury** or **property damage** included in the **products-completed operations hazard**, and only if:
 - 1. the written contract requires you to provide the additional insured such coverage; and
 - 2. this coverage part provides such coverage.
- II. But if the written contract requires:
 - A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
 - B. additional insured coverage with "arising out of" language; or
 - C. additional insured coverage to the greatest extent permissible by law;

then paragraph I. above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an Insured any person or organization whom you are required by written contract to add as an additional insured on this coverage part, but only with respect to liability for bodily injury, property damage or personal and advertising injury arising out of your work that is subject to such written contract.

- III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
 - A. coverage broader than required by the written contract; or
 - B. a higher limit of insurance than required by the written contract.
- IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury**, **property damage**, or **personal and advertising injury** arising out of:
 - **A.** the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 - 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications: and
 - 2. supervisory, inspection, architectural or engineering activities; or
 - **B.** any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V. Under COMMERCIAL GENERAL LIABILITY CONDITIONS, the Condition entitled Other Insurance is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this coverage part:

CNA75079XX (10-16) Page 1 of 2

VALLEY FORGE INSURANCE COMPANY Insured Name: GEOENGINEERS, INC.

Policy No: 6023113030
Endorsement No: 11
Effective Date: 06/30/2020

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Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

- 1. primary and non-contributing with other insurance available to the additional insured; or
- 2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence**, **Offense**, **Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

- 1. give the Insurer written notice of any claim, or any occurrence or offense which may result in a claim;
- 2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
- 3. make available any other insurance, and tender the defense and indemnity of any claim to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this coverage part. However, if the written contract requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
 - 1. the bodily injury or property damage; or
 - 2. the offense that caused the personal and advertising injury;

for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75079XX (10-16)

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VALLEY FORGE INSURANCE COMPANY

Insured Name: GEOENGINEERS, INC.

Policy No: 6023113030 Endorsement No: 11 Effective Date: 06/30/2020

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Commercial General Liability Coverage Part

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the **Named Insured** shown in the Declarations, and any other person or organization qualifying as a **Named Insured** under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word Insured means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in bold have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies. We will have the right and duty to defend the Insured against any suit seeking those damages. However, we will have no duty to defend the Insured against any suit seeking damages for bodily injury or property damage to which this insurance does not apply. We may, at our discretion, investigate any occurrence and settle any claim or suit that may result. But:
 - (1) The amount we will pay for damages is limited as described in Section III Limits Of Insurance; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages $\bf A$ and $\bf B$.

- b. This insurance applies to bodily injury and property damage only if:
 - (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**;
 - (2) The bodily injury or property damage occurs during the policy period; and
 - (3) Prior to the policy period, no Insured listed under Paragraph 1. of Section II Who Is An Insured and no employee authorized by you to give or receive notice of an occurrence or claim, knew that the bodily injury or property damage had occurred, in whole or in part. If such a listed Insured or authorized employee knew, prior to the policy period, that the bodily injury or property damage occurred, then any continuation, change or resumption of such bodily injury or property damage during or after the policy period will be deemed to have been known prior to the policy period.
- c. Bodily injury or property damage which occurs during the policy period and was not, prior to the policy period, known to have occurred by any Insured listed under Paragraph 1. of Section II Who Is An Insured or any employee authorized by you to give or receive notice of an occurrence or claim, includes any continuation, change or resumption of that bodily injury or property damage after the end of the policy period.
- d. Bodily injury or property damage will be deemed to have been known to have occurred at the earliest time when any Insured listed under Paragraph 1. of Section II Who Is An Insured or any employee authorized by you to give or receive notice of an occurrence or claim:
 - (1) Reports all, or any part, of the **bodily injury** or **property damage** to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the bodily injury or property damage; or
 - (3) Becomes aware by any other means that **bodily injury** or **property damage** has occurred or has begun to occur.



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Page 1 of 20



Commercial General Liability Coverage Part

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the First Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the First Named Insured.
- **c.** The **First Named Insured** must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this **Coverage Part** to the **First Named Insured**, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom claim is made or suit is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the **Insured** has rights to recover all or part of any payment we have made under this **Coverage Part**, those rights are transferred to us. The **Insured** must do nothing after loss to impair them. At our request, the **Insured** will bring **suit** or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this **Coverage Part**, we will mail or deliver to the **First Named Insured** shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

- Advertisement means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - **b.** Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

Auto means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: GEOENGINEERS, INC. Endorsement Effective Date: 06/30/2020

SCHEDULE

Name Of Person(s) Or Organization(s):

ANY PERSON OR ORGANIZATION THAT THE NAMED INSURED IS OBLIGATED TO PROVIDE INSURANCE WHERE REQUIRED BY A WRITTEN CONTRACT OR AGREEMENT IS AN INSURED, BUT ONLY WITH RESPECT TO LEGAL RESPONSIBILITY FOR ACTS OR OMISSIONS OF A PERSON/ORGANIZATION FOR WHOM LIABILITY COVERAGE IS AFFORDED UNDER THIS POLICY

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

Form No: CA 20 48 10 13 **Endorsement Effective Date:** Endorsement No: 11; Page: 1 of 1

Endorsement Expiration Date:

Policy No: BUA 6023117823 Policy Effective Date: 06/30/2020

Policy Page: 70 of 251

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL 60606







ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY

It is understood and agreed that this endorsement amends the BUSINESS AUTO COVERAGE FORM as follows:

SCHEDULE

Name of Additional Insured Person Or Organization

ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT TO NAME AS AN ADDITIONAL INSURED.

- 1. In conformance with paragraph A.1.c. of Who Is An Insured of Section II LIABILITY COVERAGE, the person or organization scheduled above is an insured under this policy.
- 2. The insurance afforded to the additional insured under this policy will apply on a primary and non-contributory basis if you have committed it to be so in a written contract or written agreement executed prior to the date of the "accident" for which the additional insured seeks coverage under this policy.

All other terms and conditions of the policy remain unchanged

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

Form No: CNA71527XX (10-2012) Endorsement Effective Date: Endorsement No: 27; Page: 1 of 1

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL

60606

Policy No: BUA 6023117823 Policy Effective Date: 06/30/2020 Policy Page: 116 of 251





WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: GEOENGINEERS, INC.

Endorsement Effective Date: 06/30/2020

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

ANY PERSON OR ORGANIZATION FOR WHOM OR WHICH YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER FROM US. YOU MUST AGREE TO THAT REQUIREMENT PRIOR TO LOSS.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The Transfer Of Rights Of Recovery Against Others To Us condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

Form No: CA 04 44 10 13 Endorsement Effective Date: Endorsement No: 8; Page: 1 of 1

Endorsement Expiration Date:

Policy No: BUA 6023117823 Policy Effective Date: 06/30/2020

Policy Page: 66 of 251

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL





NOTICE OF CANCELLATION TO CERTIFICATEHOLDERS

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificateholders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificateholder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.

All other terms and conditions of the policy remain unchanged

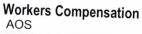
This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

Form No: CNA68021XX (02-2013) **Endorsement Effective Date:** Endorsement No: 26; Page: 1 of 1

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 6023117823 Policy Effective Date: 06/30/2020

Policy Page: 115 of 251







POLICY HOLDER NOTICE - NOTICE OF CANCELLATION CERTIFICATEHOLDERS

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificateholders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificateholder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.

Form No: CNA87315XX (10-2016)

Underwriting Company: American Casualty Company of Reading PA

Policy No: WC6081095666 Policy Effective Date: 06/30/2020







POLICY HOLDER NOTICE - NOTICE OF CANCELLATION CERTIFICATEHOLDERS

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificateholders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificateholder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.

Form No: CNA87315XX (10-2016)

Underwriting Company: American Casualty Company of Reading PA

Policy No:WC6081095683 Policy Effective Date: 06/30/2020



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-429

File ID: AB2021-429 Version: 1 Status: Agenda Ready

File Created: 07/16/2021 Entered by: JThomson@co.whatcom.wa.us

Department: Health Department File Type: Contract

Assigned to: Council Finance and Administrative Services Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Lifeline Connections to support the Whatcom Recovery House, in the amount of \$51,447

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE							
Date:	Acting Body:	Action:	Sent To:				

Attachments: Staff Memo, Proposed Contract

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Lifeline Connections – Recovery House Contract

DATE: July 13, 2021

Attached is a contract between Whatcom County and Lifeline Connections for your review and signature.

Background and Purpose

Recovery House is a residential level of care provided for people with substance use disorders (SUDs), usually after a stay in inpatient treatment. RH programs assist the individual with the adjustment back to community living and into long-term recovery from long term alcohol or other substance use disorders. The need for a recovery house has consistently ranked high in Whatcom County community surveys and forums. The Whatcom County Recovery House is uniquely dedicated to people with co-occurring mental health and substance use disorders who are in, or diverting from, the criminal justice system. This contract supports a portion of the Recovery House Director's salary and program start-up costs.

Funding Amount and Source

Funding for this contract, in an amount not to exceed \$51,447, is provided by the Behavioral Health Program Fund and Criminal Justice Treatment Account (CJTA) which is administered through the Washington State Health Care Authority. These funds are included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

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

		I COUNT	Y CONTRAC	CT	Whatcor	m County Co	ntract No.	
Originating Department			•					
Originating Department: Division/Program: (i.e. Dept. Division			85 Health					
Contract or Grant Administrator:		8550 Human Services / 855060 Substance Abuse Program						
Contractor's / Agency Name:		Jackie Mitchell Lifeline Connections						
			ul.					
	ent or Renewal to an Existing Contract?		ontract #:	Yes [□ No □			
Yes ⊠ No ☐ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:								
Does contract require Council Approval? Yes ⊠ No □ If No, include WCC:								
Already approved? Council Appro	ved Date:		(Exclusions see: \	Whatcom Cou	unty Codes 3.06.010,	3.08.090 and 3.	.08.100)	
Is this a grant agreement?								
Yes □ No ⊠	ncy contract r	number(s):		CFDA#:	:			
Is this contract grant funded?	, ,							
Yes ⊠ No □	If yes, Whatcom Co	Whatcom County grant contract number(s): 201909026						
Is this contract the result of a RFP	or Bid process?				Contract Cost			
Yes □ No ⊠ If yes,	RFP and Bid numbe	r(s): S	ole Source		Center:	675600 / 1	24100	
Is this agreement excluded from E	-Verify? No		П					
If YES, indicate exclusion(s) below:	<u> </u>							
☐ Professional services agreen	nent for certified/lice	ensed profes	ssional.					
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\$ 0		 approved by council in a capital budget appropriation ordinance. Bid or award is for supplies. 						
Total Amended Amount:				included in Exhibit "B" of the Budget Ordinance r manufacturer's technical support and hardware maintenance of electronic				
\$ 0	systems and/or technical support and software maintenance from the developer of							
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Summary of Scope: This contract p mental health and substance use di	•	•		•		opie with co	-occurring	
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Term of Contract: 11 Mor	nths		Expiration Date:		06/30/2022			
Contract Routing: 1. Prepared	by: JT			•	Date	: 03/2	2/2021	
	dget Approval: KF				Date		6/2021	
3. Attorney s					Date		9/2021	
4. AS Finance		pennett			Date		6/21	
	ed (if IT related):				Date			
6. Contracto					Date			
7. Submitted		4 D00	04 400		Date			
	oproved (if necessary):	AB202	21-429		Date			
9. Executive					Date			
10. Original	io couricii.				Date			

Whatcom County Contract No.

CONTRACT FOR SERVICES Between Whatcom County and Lifeline Connections

Lifeline Connections, hereinafter called Contractor and Whatcom County, hereinafter referred to as County , agree and contract as set forth in this Agreement, including: General Conditions, pp. 3 to 13, Exhibit A (Scope of Work), pp. 14 to 16, Exhibit B (Compensation), p. 17, Exhibit C (Certificate of Insurance). Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.
The term of this Agreement shall commence on the 1st day of August, 2021 and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2022.
The general purpose or objective of this Agreement is to provide funding for the Whatcom Recovery House as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.
The maximum consideration for the initial term of this agreement is estimated at \$51,447. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.
Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.
Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.
IN WITNESS WHEREOF, the parties have executed this Agreement this day of, 2021.
CONTRACTOR:
Lifeline Connections PO Box 1678 Vancouver, WA 98661
Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.
Jared Sanford, MPA – Chief Executive Officer

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:

WHATCOM COUNTY: Recommended for Approval:

Lifeline Connections

Jared Sanford, MPA – Chief Executive Officer
PO Box 1678

Vancouver, WA 98661
360-397-8246 ext. 30484
jsanford@lifelineconnections.org

GENERAL CONDITIONS

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

0.1 Scope of Services:

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

Series 10-19: Provisions Related to Term and Termination

10.1 Term

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

10.2 Extension:

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

11.1 Termination for Default:

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

11.2 Termination for Reduction in Funding:

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

11.3 Termination for Public Convenience:

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

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

23.1 Labor Standards:

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

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

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

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph

30.2 <u>Assignment and Subcontracting:</u>

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

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the Country at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of

the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

31.2 Patent/Copyright Infringement:

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

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

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

32.1 Confidentiality:

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

33.1 Right to Review:

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

34.1 Insurance: Commercial General Liability and Business Automobile Liability

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less that A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Commercial General Liability

Property Damage General Liability & bodily injury Annual Aggregate \$500,000.00, per occurrence \$1,000,000.00, per occurrence \$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Business Automobile Liability

\$1,000,000.00 Minimum, per occurrence \$2,000,000.00 Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non- contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.

- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- I. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 <u>Defense & Indemnity Agreement:</u>

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or

omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

35.1 <u>Non-Discrimination in Employment:</u>

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

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

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

35.2 Non-Discrimination in Client Services:

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

36.1 Waiver of Noncompetition:

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

36.2 Conflict of Interest:

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

37.1 Administration of Contract:

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

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

Jackie Mitchell, Program Specialist

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Health Department Jackie Mitchell, Program Specialist 509 Girard Street Bellingham, WA 98225 360-778-6048 JMitchel@co.whatcom.wa.us

Llifeline Connections
Jared Sanford, MPA – Chief Executive Officer
PO Box 1678
Vancouver, WA 98661
360-397-8246 ext. 30484
jsanford@lifelineconnections.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered

mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

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

38.2 <u>Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:</u>

If applicable, the Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

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

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

38.3 E-Verify:

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

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

40.1 Modifications:

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

40.2 Contractor Commitments, Warranties and Representations:

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

41.1 Severability:

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

41.2 Waiver:

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

42.1 <u>Disputes:</u>

General:

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

b. Notice of Potential Claims:

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

c. Detailed Claim:

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

d. Arbitration:

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but

shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

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

43.1 Venue and Choice of Law:

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

44.1 Survival:

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

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A" (SCOPE OF WORK)

I. Background

Recovery House (RH) is a level of care provided for people with substance use disorders (SUDs), usually after a stay in inpatient treatment, in order to help the individual with the adjustment to community living and long-term recovery. This service is a level 3.1 within the American Society of Addiction Medicine (ASAM) continuum of care. Despite being a highly effective treatment modality, recovery houses are in short supply throughout the state. RHs are effective precisely because the amount of time an individual can stay in the program can be lengthened depending on the individual's need. The National Institute of Drug Abuse (NIDA) says that, after long term substance use, the brain may require as long as two years to recover lost capacity.

The need for recovery houses has consistently ranked high in Whatcom County community surveys and forums. The Incarceration Prevention and Reduction Task Force's Legal and Justice Committee worked to promote the development of a recovery house on behalf of the local Drug Court Program. The Drug Court Program relies on a continuum of care to ensure vacated charges and prevention of rearrests for people with felony drug charges. The Whatcom County Recovery House is enhanced with the ability provide services to people with co-occurring mental health and substance use disorders, In addition, the enhanced RH will serve people who are in or diverting from criminal justice system, especially those individuals participating in the local Drug Court.

This contract supports part of the salary of the Director position for the Recovery House and program start-up costs. The Director will be in charge of hiring staff, designing polices and procedures for RH services, ensuring licensure and quality services, and other administrative duties.

II. Definitions

American Society of Addiction Medicine (ASAM) Criteria – Medical and psychosocial criteria used by SUD professionals to determine individual placement in treatment. ASAM is a standard used in the SUD treatment profession after a diagnosis of SUD is made.

<u>Criminal Justice Treatment Account (CJTA)</u> – A fund designated by state law to treat certain non-violent drug offenders who have an SUD that if not treated is likely to result in addiction or is already addiction. Eligibility for CJTA is further described in the contract.

<u>Substance Use Disorder Professional (SUDP) & Substance Use Disorder Professional Trainee (SUDPT)</u> – These are Washington State credentials for professionals and trainees who specialize in the treatment of substance use disorders.

<u>Diagnostic and Statistical Manual 5 (DSM5)</u> – The standard manual used for the classification of and diagnosis of mental disorders.

<u>Recovery</u> – A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential. (SAMHSA)

Recovery House (RH) – as indicated by ASAM, a 3.1 level of care on a continuum, usually following inpatient treatment. This level of care is a clinically managed, low intensity residential service delivered in a 24/7 staff-supported environment. Trained personnel provide at least 5 hours of clinical services to each resident per week.

Release of Information (ROI) – This is written form for client consent to share information with other people or entities who are involved with the client's care. ROIs are required by federal regulations such as 42 Part 2 CFR and by Health Insurance and Portability Act (HIPAA) and are designed to protect client confidentiality. (See the following links for more

information: https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=42:1.0.1.1.2 and https://www.hhs.gov/hipaa/index.html)

<u>Substance Use Disorder (SUD)</u> – A diagnostic classification in the DSM-5 which combines substance abuse and addiction into a single disorder (or set of disorders) which is measured along a continuum from mild to severe depending on symptoms.

<u>Washington Administrative Code (WAC)</u> – Regulations are a source of primary law in Washington State. Regulations of executive branch agencies are issued by authority of statutes. The WAC codifies the regulations and arranges them by subject or by agency.

<u>Substance Abuse and Mental Health Administration (SAMHSA)</u> – A federal organization that provides funding, key policy decisions, oversight, data and information related to substance abuse and mental health issues and services.

III. Statement of Work

The purpose of this contract is to provide funding for the RH Director salary in order to ensure readiness for opening and in order to maintain high quality services for residents at the RH. The Contractor shall provide .60 FTE Director position to manage the RH services and staff.

The Director shall have the minimum qualifications:

- Master's level professional, (independent licensure preferred)
- SUDP preferred
- Experience working with people with serious mental illnesses and SUDs.
- Administrative and managerial experience and be prepared to work with neighborhood and community members and organizations to promote community relations.
- Specific qualifications can be waived with approval from the County Administrator.

RH Director responsibilities shall include:

- a. Hiring qualified staff (mental health professionals, substance use disorder professionals, peers and ensure all RH services are provided within the scope of practice for each staff position.
- b. Ensuring sufficient staffing levels to run the RH program on a 24/7 basis.
- Orienting and providing staff training commensurate with assigned duties.
- d. Ensuring the RH complies with all Washington State regulations governing recovery houses and residential treatment facilities, including the enhanced mental health features.
- e. Ensuring all ASAM criteria are met for a 3.1 level of care.
- f. Developing policies and procedures which are appropriate to licensure of the services and the facility in order to ensure continuous operations.
- g. Collaborating with the County to ensure adequate funding to maintain RH services in the community.
- h. Providing a community relations plan to ensure positive relations with neighbors and stewardship of property and surrounding areas.
- i. Attending County-wide community provider meetings to hear community needs and report RH updates.
- j. Securing supplies as needed for ongoing operations of the Program.
- Ensuring program eligibility criteria, admission and discharge criteria to include prioritizing Drug Court and Mental Health court participants.

 Meet quarterly with the Contract Administrator to provide updates, plan for future needs, and answer questions about progress. This meeting will take place after the quarterly report has been submitted and can be conducted by an internet interface.

IV. Reporting Requirements

The Contractor will provide a written report to be turned in by the 5th of September, December, March, and June. The report shall provide progress and outcomes on the following:

- a. Licensure for services and facility
- b. Staffing issues, including new hires, workforce issues
- c. System improvement efforts
- d. Neighborhood/community concern or issues
- e. Community meetings attended
- f. Challenges/opportunities and expected next steps.

Exhibit B (COMPENSATION)

Funding for this contract may not exceed \$51,447 and is provided by the Washington State Health Care Authority, Criminal Justice Treatment Account (CJTA) and Local Behavioral Health Sales Tax. The budget for this work is as follows:

*Item	Documentation Required w/ Invoice	Budget
Personnel Salary (.60 FTE) CJTA		\$41,276
Program Supplies and Equipment (including technology, televisions, appliances, furniture) (Local Sales Tax)	GL Detail; receipts or paid invoices	\$5,494
	Subtotal	\$46,770
**Indirect @ 10%		\$4,677
	TOTAL	\$51,447

^{*}Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County.

**In no instance shall administration exceed the identified rate.

I. Invoicing

- 1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.
- 2. The Contractor shall submit invoices to (include contract/PO #) to HL-BusinessOffice@co.whatcom.wa.us.
- 3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
- 4. Invoices must include the following statement, with an authorized signature and date:

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

5. <u>Duplication of Billed Costs or Payments for Services</u>: 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.

<u>EXHIBIT "C"</u> (CERTIFICATE OF INSURANCE)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-339

File ID: AB2021-339 Version: 1 Status: Agenda Ready

File Created: 06/08/2021 Entered by: DBrown@co.whatcom.wa.us

Department: Council Office File Type: Discussion

Assigned to: Council Committee of the Whole Final Action:

Agenda Date: 07/27/2021 Enactment #:

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.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	

07/13/2021 Council Committee of the Whole

DISCUSSED AND MOTION(S) APPROVED

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, Memo - Draft Interview Questions

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

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.

County Council accepting applications for District Court Judge

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. 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.

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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



JUN 28 2021

WHATCOM COUNTY COUNCIL

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

APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name:	ANGELA ROSE ANDERSON
Street/Mailing Address:	
City/State:	Zip Cod€
Day Telephone:	Evening Telephone:
Fax Number:	E-mail Address: <u> </u>
1. Be a registered vo	RCW 3.34.060, to be eligible to serve as a district court judge, a person oter of the district court district and electoral district, if any; and sted to practice law in the state of Washington.
Are you a lawyer admitte	er of Whatcom County? (X) Yes () No ed to practice law in the state of Washington? (X) Yes () No
B. Resume: A resume u following:	p to two (single-sided) pages in length may be attached to address the
Professional/ComnEducation.	
 Qualifications relat 	ted to the position of Whatcom County District Court Judge.
C. References: • Please provide three	ee letters of reference.
ricuse provide dire	se recters 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 herby 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:	(<i>X</i>		Date	JUNE 27, 2021
Julianie 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

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)
 - o Original member representing the Public Defender's Office
 - o Legal and Justice Subcommittee
 - Vera Project Participant
 - o 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
 - o 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
 - o December 2014 and July 2018
- Guest speaker
 - o Professor K. Anderson's class at WWU on Domestic Violation (three times)
 - o Professor Majumdar's class at Fairhaven College (four times)
 - Options High School mock trial class with Ms. Reidel (three times)
 - o Lynden High School
 - o 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,

Dona Bracke

Whatcom County Assistant Chief Prosecutor

District Court Supervisor

Sincerely,

Dave McEachran,

Former Whatcom County Prosecutor

Sincerely,

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,

Judge Charles R. Snyder

Whatcom County Superior Court, retired

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.

Land.

Sincerely,

lack Hovenier

D. QUESTIONS Angela Anderson

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 <u>only</u> 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.

D. QUESTIONS Angela Anderson

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 efiling 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 **J** (360) 332-7000

3 (360) 384-6400

(360) 332-6677

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



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,

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,

Phillip Pruner

WHATCOM COUNTY PROSECUTING ATTORNEY

CHIEF CRIMINAL DEPUTY

Eric Richey

Erik Sigman

ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

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

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

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,

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 Arts. 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* 30 Tanya S. Keating

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Malcolm A. Naftulin Fax: (888) 350-9917
*Also Licensed in WA

Washington Office & Attorneys:

3020 Carbon Place, Suite 202 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

VIA EMAIL

Whatcom County Council 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,

Thomas P. Lyden

KEATING & LYDEN, LLC

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

Styrus Goddley

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-confidant and very effective.

Thank you for this opportunity to share my experiences in working with Ms. Anderson.

Wendy Jones, Chief

Whatcom County Sheriff's Office, Corrections Bureau

Monica Rouse

From: Kate Newell <

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

Monica Rouse

From: Jonathan Richardson <

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

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

am Chalozeka

Jacqueline Lassiter

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

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



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

From:

C Dunavan

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

Monica Rouse

From: Fred Heydrich

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.

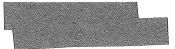
Finally, I personally know and have worked with all the other applicants for the job and can confidently state that none of them possess the combination of experience, knowledge and demeanor that Angela would bring to the job of District Court Judge. If appointed, I am sure she would provide the citizens 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,

Wesley B. Vanderheyden

Owner/Investigator

Van D Investigations

Stephen W. Jackson

Attorney at Law



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,

Stephen W. Jackson

Attorney

Bellingham, Washington

To; Kathy Kershner
Whatcom County Council District 4
KKershne@co.whatcom.wa.us

CC: rbrowne@co.whatcom.wa.us, tbyrd@co.whatcom.wa.us, Belenbaa@co.whatcom.wa.us, bbuchanan@co.whatcom.wa.us, cfrazey@co.whatcom.wa.us, council@co.whatcom.wa.us,

Re: Angela Anderson, candidate for Whatcom County District Court Judge

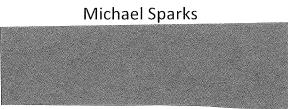
Councilperson Kershner,

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



Jacqueline Lassiter

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 <

Sent: Thursday, July 1, 2021 9:15 AM

To: Todd Donovan <TDonovan@co.whatcom.wa.us>; Council <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:		
City/State:	Zip 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	o practice law in the state of Washington.	
•	Whatcom County? (※) Yes () No 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 herby 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.

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
Flo Simon Chief, Bellingham Police Department
Mark Personius Director, Whatcom County Planning
Diana Bradrick Whatcom County Auditor
John Wolpers Manager, Whatcom County Environmental Health
Anna Webb Paralegal, Whatcom County Prosecutor's Office

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.

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. 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 References²

The following co-workers and community members have all agreed to act as additional references:

Satpal Sidhu Executive Sheriff (Bill Elfo Sarah Rothenbuhler Owner/CEO, Birch Equipment Superior Court Judge **Evan Jones** Superior Court Judge Dave Freeman Director of Administrative Services Tyler Schroeder Treasurer (______ Steve Oliver Director, Whatcom County Health Department Erika Lautenbach Chief Deputy Assessor John Romaker Former Elected Prosecutor, Whatcom County Dave McEachran Assistant Chief Deputy / District Court Supervisor Dona Bracke Senior Planner, Whatcom County Amy Keenan

- 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.

¹ 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.

² 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.³ District Court uses a risk assessment tool, and the results are provided to the judicial officer before the first appearance of a defendant.⁴ 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.⁵ 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, 6 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." 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 onboard with continuing this philosophy and reserving jail as a tool for public safety.

³ Bruce VanGlubt, District Court Probation Administrator.

⁴ Discontinued for in-custody hearings during the pandemic (but still used for pre-trial monitoring after in-custody hearings).

⁵ Upon any conviction, a "dynamic" tool involving interviews is used for post-conviction probation.

⁶ Other additions include the pretrial unit, a behavioral health unit, a DV unit and text reminders for court.

⁷ Wendy Jones is Chief of Corrections.

WHATCOM COUNTY PROSECUTING ATTORNEY

CHIEF CRIMINAL DEPUTY

Eric Richey

CHIEF CIVIL DEPUTY

Karen Frakes

Erik Sigmar

ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

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

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

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

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,

Eric Richev

Whatcom County Prosecutor

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.

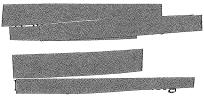
I find Royce to be highly ethical, competent and intelligent. He has a quick wit about him and enjoys interacting with people.

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

Sincerely.

Flo Simon

Nate Reiss, PhD



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.

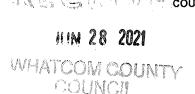
Sincerely,

Mate Peiss Pho

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

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





NCILMEMBERS
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:		
City/State:	Zip 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:		
•	oter of the district court district and electoral district, if any; and tted to practice law in the state of Washington.	

Are you a registered voter of Whatcom County? (\checkmark) Yes () No Are you a lawyer admitted to practice law in the state of Washington? (\checkmark) 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 herby 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:

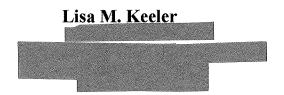
Applications must be submitted to the Clerk of the Whatcom County

Council by 4:00 p.m. on June 28, 2021

gelee Date: 6/23/2021

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



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.

Lisa M. Keeler

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:

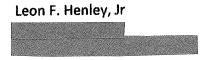
- Washington State Bar Association, admitted to practice in 2007
- Supreme Court of the United States, admitted to practice in 2013
- American Bar Association, member since 2006
- Whatcom County Bar Association, member since 2010; Young Lawyers Committee 2012-17
- Skagit County Bar Association, member 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 30th 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.



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,

Reon Healey, B.

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, hardworking 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

May Key loberton

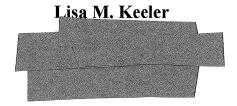
2021 Vice President Elect, Washington Realtors Government Affairs

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 themself 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.
- 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

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

Jacqueline Lassiter

From:

Brenda Burnett

Sent:

Wednesday, July 7, 2021 4:20 PM

To:

Council

Subject:

Lisa Keeler for Whatcom County District Court vacancy

I am writing to offer my support for Lisa Keeler to be appointed to fill the vacancy on the Whatcom County District Court that opened when Judge David Grant retired.

I have known Lisa Keeler since 2009, and heartily endorse her as an outstanding candidate for your consideration. She is fair, honest and a person of the highest integrity. She has an extensive background as an attorney and a sincere desire to be of service to the community. I have no doubt she would fill this position with the honor and competence required.

On a personal note, Lisa is a delight to know and I am proud to be counted among her many friends.

Thank you for your consideration.

Sincerely,

Brenda Burnett

Judge Robert E. Olson

JUL 0 4 2021

ALL COUNCIL MEMBERS
To the Honorable Barry Buchanan, Chair, and the Whatcom County Council Cou

I am writing this letter on behalf of Ms. Lisa Keeler, 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. Keeler since 2010 when I joined the Washington State Attorney General's Office here in Bellingham. Beginning in 2012, Ms. Keeler became my immediate colleague with both of us assigned to represent Child Protective Services in Whatcom County cases. For much of that time, the two of us were the only attorneys assigned to a caseload designed for three attorneys. I had ample opportunity to observe Ms. Keeler in the courtroom and greatly appreciated her knowledge of the law, her skill at advocacy, and her commitment to the cause of protecting abused and neglected children. In my view, Ms. Keeler is an attorney and professional upon whom I could completely rely — a trait that is, sadly, all too rare in the modern workplace. When Ms. Keeler sought to broaden her horizons by entering into private practice in 2015, while I was happy for her new prospects, it was a great loss to the Attorney General Office and to me personally because we had developed such an excellent working relationship.

Since my appointment to the Superior Court, I have had a number of opportunities to observe Ms. Keeler in court. It is clear she continues to display her knowledge and skill representing her clients and their many diverse cases. Ms. Keeler is nimble-minded and she presents with a bright yet even-keeled demeanor that recommends her well for service as a judge.

In addition to the many community activities to which Ms. Keeler donates her time and financial support, one thing of particular note is her devotion to her faith and her congregation, where she frequently lends her considerable musical talents. She has an amazing stage presence, which is a difficult-to-learn skill that cannot be overstated for a judge on the bench.

All of Ms. Keeler's amazing abilities recommend her for Whatcom County District Court. She brings with her a diversity of thought and experience that will greatly enrich the Whatcom County bench as a whole. Please do not hesitate to contact me should you require any further information or insight regarding Ms. Keeler.

Respectfully,

Robert E. Olson

REO/-

Jacqueline Lassiter

From:

Grant

Sent:

Wednesday, July 14, 2021 2:12 PM

To:

Council

Subject:

Support Lisa Keeler for Whatcom County District Court

Sent from Mail for Windows 10

Dear Whatcom County Council Members,

Please consider Lisa Keeler as a strong candidate for Whatcom County District Court. I have known Lisa for more than 10 years. I have always been impressed that in work or volunteer efforts she always shows earnestness, intelligence, hard work, and ideas to make things work better. In the judicial area I know that Lisa has spoken repeatedly of increasing the efficiency of the court and making it more available.

Lisa has a long list of service to the field of law, and a wide experience before the courts. She has served as pro tem commissioner for Whatcom County Superior Court. Lisa has been a MAR/SSCAR arbitrator, and an Assistant Attorney General representing various State agencies.

Lisa Keeler would provide the best of judicial tradition for Whatcom County.

Sincerely, Grant Deger MD Bellingham City Council 2001-2004



STUART W. SCARFF, ESQ. JOSEPH N. PEW, V, ESQ.

stuart@scarfflaw.com

July 13, 2021

RECEIVED

PHONE: 206.236.1500

FAX: 206.905.5912

JUL 16 2021

WHATCOM COUNTY

Via U.S. First Class Mail

Whatcom County Council 311 Grand Avenue, Suite 105 Bellingham, WA 98225

Re: Lisa Keeler for District Court Judge

Dear Councilmembers:

I recently learned the Honorable Judge David Grant has retired from his many years of service as a judge on the Whatcom County District Court. I heartily endorse my colleague Lisa Keeler as his replacement for the remainder of his term.

I met Lisa when I was hired as a pianist at Assumption Catholic Church, a job I took to earn some extra money during college at Western Washington University. Lisa has been an active participant in the church choir for many years and it was a pleasure to work with her in that capacity. But as I began to consider applying for law school, she also was kind enough to meet with me for coffee and answer my questions. She helped me get an internship at the Attorney General's Office in Bellingham, where she worked at the time, to get a glimpse into the day-to-day life of a lawyer.

I have since graduated law school and started my career, and Lisa played a wonderful part in helping me get here. She has the skills and temperament to serve as a judge, as is evidenced by her work as arbitrator and *pro tem* commissioner. She is smart, dedicated, and fair. She has led a life of leadership and service, and will continue to do so as a District Court judge.

Respectfully,

JADRIAN MICHAÉĽ COPPIETERS

Attorney at Law

Superior Court of the State of Washington

Hon. Evan Jones, Dept. 2

Email: cmartin@whatcomcounty.us (360) 778-5632 Fax: (360) 778-5561 Judge's Chambers and Courtroom on

2nd floor



Whatcom County Courthouse 311 Grand Avenue, Suite 301 Bellingham, Washington 98225

Send judge's copies to: PO Box 1144 Bellingham, WA 98227-1144

July 14, 2021

Whatcom County Council 311 Grand Avenue, Suite 105 Bellingham, WA 98225 ATTN: District Court Judicial Appointment

RE: Application of Lisa Keeler

Councilmembers,

I understand that the Council is now engaged in the important process of filing the expected vacancy in Whatcom County District Court. 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.

Lisa Keeler would make an excellent addition to the Whatcom County bench and I enthusiastically support her application. I have known Lisa for over a decade in both a professional and personal capacity. During that time, I have had many opportunities to observe her professional abilities and courtroom decorum, and also discuss with her larger matters of law, access to justice, and courtroom administration. In all these areas, Lisa has consistently shown herself as an impressive, capable, and thoughtful person. As a judge, I have no doubt that Lisa would continue this trajectory and provide the District Court with smart direction and positive leadership.

As you might know, Lisa ran a campaign for Superior Court Judge in 2020. I was her opponent in that race, and had a front row seat to her political demeanor and the messaging of her campaign. Much of my positive impression of Lisa comes from these observations. First, her campaign was efficient and organized. It was clear that Lisa has an advanced ability to administer and motivate people. Second, Lisa was truly "non-partisan." Instead, Lisa spoke -as a judge should- to all people in an unbiased and

open-minded manner. She intentionally remained cognizant of her ethical responsibilities to present herself as a neutral decision-maker. This was evident by her well-articulated remarks on the campaign trail, but also by her diverse body of supporters. Lisa was supported by individuals from all ends of the political spectrum, brought together by their mutual respect for her as a person, and also a recognition that a smart, open-minded judge would be good for Whatcom County.

This does not mean that Lisa does not have opinions about issues a judge might face. She surely does. But rather, what Lisa understands is that the best decisions are reached when individuals are able to present their "case" without a perception that those issues have already been decided. She listens first, and then provides her learned perspective to the decision.

The Council would do well to strongly consider the application of Lisa Keeler. She would be a great addition to the bench and would be a candidate that all people of the County could support.

Please feel free to follow up with any questions you might have.

Sincerely,

Judge Evan Jones

Whatcom County Superior Court, Dept. 2

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:	Jeffrey A. Lustick
Street/Mailing Addre	
City/State:	
Day Telephone:	
Fax Number:	
must: 1. Be a registered vo	RCW 3.34.060, to be eligible to serve as a district court judge, a person oter of the district court district and electoral district, if any; and sted to practice law in the state of Washington.
· -	er of Whatcom County? (X) Yes ()No ed 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 herby 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. Lusticl

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.

${\bf Cable\ Television\ Legal\ Commentator}-{\it Seattle,\ WA}$

NBC and CBS Regional: 2008 – present

Manhattan, NY

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 targeting0020on 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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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.

- PUBLIC SERVICE, MEMBERSHIPS, & AWARDS -

- 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 that 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 handing 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 emersed 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 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 pervious lawyers to get him to do so, who claimed his case was unwinnable. Although the client could not speak much

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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 me. 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.

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 inperson 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 <u>Blake</u> 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 countywide. 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,

Sheriff Bill Elfo

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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 WCDC 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.

Stracerely

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 Henderlete

Mick Moynihan

JUH 65 7061

ALL COUNCIL MEMBERS
WHATCOM COUNTY COUNCIL

Retired Judge

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.

DISTRIBUTED TO

June 5, 2021

JUN 07 2021

Ms. Kathy Kershner Whatcom County Council 311 Grand Ave. Bellingham, WA 98225

ALL COUNCIL MEMBERS WHATCOM COUNTY COUNCIL

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.

Mese

Sincerely

Steven J. Mura



HIN 28 2021

WHATCON COUNTY

Superior Court of the State of Washington

Hon. Evan Jones, Dept. 2
Email: cmartin@whatcomcounty.us

(360) 778-5632
Fax: (360) 778-5561

Judge's Chambers and Courtroom on

2nd 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,

Judge Evan Jones

Whatcom County Superior Court, Dept. 2



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

Whatcom County Council Members June 6, 2021 Page 2

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

Carle S. Higginson

cc: Jeffrey A. Lustick, Esq.

ChCJH PERSONAL\Letters\jeffrey lustick support 06-06-2021.wpd

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,



June 4, 2021

Judical 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,

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

Matthew & Crayl

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

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

→dam 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,

James Heintz

Broker and Co-Founder



DAVID R. OSGOOD





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.

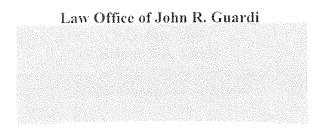
My practice is in Seattle, Washington, and I have an extensive background on Civil Rights issues going back twenty-five years, working with the ACLU, National Black Chamber of Commerce, Lambda Legal Defense and Education Fund, and Human Rights Campaign, among others. Over time, I have had occasions to 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 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



June 7, 2021

Whatcom County Council 311 Grand Avenue Bellingham, WA 98225

> Letter of Recommendation for Jeff Lustick Re: 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.

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

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 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 them 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,

James T. Hulbert

WHATCOM COUNTY PROSECUTING ATTORNEY

CHIEF CRIMINAL DEPUTY

Eric Richev

Karen Frakes

CHIEF CIVIL DEPUTY

Erik Sigmar

Whatcom County Courthouse 311 Grand Avenue Suite 201 Bellingham, WA 98225-4079

(360) 778-5710 /Main Office FAX (360) 778-5711

ASST. CHIEF CRIMINAL DEPUTY

Donn Bracke

CIVIL DEPUTIES

CRIMINAL DEPUTIES

Royce Buckingham Christopher Quinn George Roche Brandon Waldron

David Graham Kellen Kooistra Benjamin Pratt Gordon Jenkins Kacie Emerick Christina Garcia Jesse Corkern Evan Sterk Nicole Meyer

CIVIL SUPPORT ENFORCEMENT DEPUTIES Janelle Wilson/Lead Dionne Clasen

Julia Monroe Maggie Peach Andrew Bogle Kayleigh Mattoon

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,

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,

Pete Smilev

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 Jeffs 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,

Gene Knutson Bellingham City Council 2nd 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

Paul Richmond Law

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 trails, 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

KWagner



FERNDALE MUNICIPAL COURT

P.O. Box 291 Ferndale, WA 98248-0291

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

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

Best Regards,

Admis Dum

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 17th 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.

Lurge 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:

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

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 Couny 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 Amercians 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 tempere for Whatcom Couny 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,

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 by email at

Sincerely.

TERRANCE G. LEWIS

Lynden Municipal Court Judge

Jacqueline Lassiter

From: Bob Delgatto < ==

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

Jacqueline Lassiter

From: Perry Eskridge

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. P	erry Esl	kridge	V/400948817237274974



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 protem 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 222Grand Avenue, Suite A Bellingham, WA 98225 (360) 685-4221

Re: Recommendation for Whatcom CoutnyDistrict 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,

Agron 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.

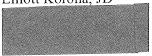
I am proud to endorse Judge Lustick in any bid he makes for a permanent judicial position. If you have any questions please don't hesitate to contact me.

Sincerely,

Jason Ans. Smith

Owner - North County Public Defense, PLLC

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

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

RECEINA

June 14, 2021

TO: Whatcom County Council

RE: District Court Judge

WHATCOM COUNTY

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.

Sin/ce/rely,

Nancy C. Ivarinen

Whatcom County Council 311 Grand Avenue Bellingham, WA 98225



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 Youssef,

Attorney and Citizen in Whatcom County

Founder of MyTrafficMan.NET



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 a judicial qualification with the caliber of experience and legal and judicial qualifications that only Jeff has. Please feel free to contact me at a judicial qualification with the caliber of experience and legal and judicial qualifications that only Jeff has.

Very Truly

Angela Luke

Bellingham, WA. 98225

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 a first if you would like any further information.

Best Regards,

Corwin McCaig

Lynden, WA

July 6, 2021



Whatcom County Council Members 311 Grand Avenue, Suite # 105 Bellingham, WA 98226

RE: Appointment of the next Whatcom County District Court Judge

Dear Honorable Councilmembers:

I am the President of Haskell Corporation, a construction company based in Bellingham. Haskell Corporation has been in business in Bellingham since 1890, and I am the 5th generation Haskell family member to lead this company. We have always been based in Whatcom County and always plan to. Haskell Corporation employees anywhere from 100 employees to upwards of 600 people at times, most of which are based in Northwest Washington. As a member of the Bellingham and Whatcom County community, born and raised in Bellingham, I have a true appreciation for the importance of our court system and the need to have excellent individuals in service to the community as a judge.

Mr. Jeff Lustick is applying for appointment by this Council as the next Whatcom County District Court, and I strongly recommend that you appoint him. I have known Jeff for several years and I sincerely believe, from what I have learned about him, he is a qualified and experienced candidate for this position. Jeff is an ethical, honorable, and conscientious lawyer, and he is a strong leader. He is fair and open minded and has the character needed to be a judge.

Jeff is an honor graduate from Gonzaga Law School. He began his legal career in public service as a Judge Advocate in the Air Force and successfully prosecuted and defended hundreds of federal and military cases. After the military, he continued his public service at the Bellingham City Prosecutor's office, prosecuting hundreds more DUIs, assault, and domestic violence cases, just like the District Court handles every day. Later, Jeff founded a new criminal defense firm, and he did not hesitate to take on all the big cases. In the process, he has built a sterling reputation as one of the greatest criminal defense lawyers in the state. Starting in 2005, Jeff began serving as a part-time judge and most recently, he fills in frequently for the same judge who just retired.

I know that if he is appointed, right off the bat, Jeff will be an excellent District Court Judge for all of Whatcom County. It is imperative that this candidate have the legal expertise, experience, leadership skills, and the trust of the voters needed to be resoundingly re-elected at the next election. I therefore sincerely urge you to appoint Jeff Lustick for this vital judicial position.

Sincerely,

Evan Haskell President July 8, 2021

Whatcom County Council 311 Grand Avenue, Suite 105 Bellingham, WA 98225

Dear Whatcom County Council Members,

My name is Ariane Takano. I am writing to recommend Judge *Pro Tempore* Jeffrey Lustick as the next Whatcom County District Court Judge. I have experience as a deputy prosecuting attorney in the District Courts of both Yakima County and Whatcom County, and currently work as a Labor Advocate for the Washington Federation of State Employees. Mr. Lustick's qualifications and years of service as a judge *pro tem* will allow him to immediately take on the significant responsibilities of the position without the downtime or training that such transitions often require.

During my time as a prosecutor in Whatcom County, I have had the opportunity to appear before Mr. Lustick on numerous occasions, including arraignments, pretrial omnibus hearings, bail hearings, probation hearings, and motion calendars—essentially the bread and butter of District Court. Mr. Lustick has also presided over matters I appeared for that required more prep work from the bench, such as a Driving Under the Influence (DUI) bench trial, a contested dangerous dog hearing, and Mental Health Court. I have also had the unique experience of appearing before Mr. Lustick as a newer attorney eager to learn and adapt and excel. Despite Mr. Lustick's obvious expertise, I was struck by the fact that he has never "talked down" to me from the bench, nor touted his years of experience during negotiations in his capacity as a defense attorney. While fairness and impartiality are traditionally important judicial traits that Mr. Lustick certainly holds, humility in the legal profession is a less prevalent—but I believe equally important—attribute that Mr. Lustick possesses. This same humility is further demonstrated by the calm patience, empathy, and ever-present respect that Mr. Lustick displays when interacting with all members of the community and courtroom.

District Court is face-paced, high-volume, and often involves novel situations that demand the ability to expertly problem-solve on the spot. I have observed Mr. Lustick address unusual legal issues during the pandemic with thoughtfulness and decisiveness. In addition, District Court absolutely must operate on a regimented schedule in order to fit in all the cases of the day. Time squandered on the bench due to lack of judicial experience (figuring out court forms, timelines, and procedures) has the very real result of court calendars running overtime and dominoeffect delays for the remainder of the day. The unfortunate outcome is not only rushed hearings and attorneys/court staff showing up late for other obligations, but of more concern, defendants and litigants having to take additional hours off of work or pay additional parking fees in order to attend their late court hearings. District Court simply does not have the capacity to accommodate ineptitude from the bench. Mr. Lustick has handled hefty court dockets involving complex pleas and unexpected disruptions with precision, efficiency, and care. He has regularly balanced "making good time" with thoroughly addressing every matter before the court. This skill is integral to the smooth operations of District Court and cannot be picked up on the fly.

I believe Mr. Lustick's interest in judgeship comes from a place of genuine investment and commitment to the community, rather than the privilege to take advantage of an opportunity. Given the serious demands of a court system that involves a backlog of cases due to COVID, repeat DV and DUI offenders, and the legitimate need for treatment/rehabilitation, Mr. Lustick will competently fulfill the District Court Judge role with the requisite experience and temperament to serve the Whatcom community with integrity. I strongly recommend that he be appointed.

Respectfully,

Ariane Takano WSBA #53643

7/8/2021

0 0 0

Matthew A. Skau Yranela & Associates, PLLC

Whatcom County Council Members 311 Grand Avenue, Suite # 105 Bellingham, WA 98225

Dear Council Members,

I am writing to you today to encourage you to consider Jeff Lustick to replace Judge Grant in Whatcom County District Court.

My name is Matthew Skau. I practice as a criminal defense lawyer based out of King County, but our firm takes cases all over the State of Washington. I also serve as a King County District Court Judge pro-tem. Prior to practicing at my current firm, I worked in Whatcom County with the Law Office of Ziad Youssef for two years. In that time I appeared in front of Judge Grant regularly as well as Mr. Lustick.

I was always impressed with Mr. Lustick's professionalism and careful, balanced approach to justice. This approach no doubt derives from his many years of experience in all roles of our justice system, having served as a military prosecutor, defense counsel, and pro-tem judge. I was confident enough that he would weigh any matter carefully and fairly that I chose to take a difficult DUI case to a bench trial in front of him. My case hinged on technical legal arguments that I felt an experienced legal professional would be better able to weigh than a jury. Although he ultimately ruled against my client, finding him guilty, I had no cause to complain that he did not give the matter the diligence and consideration it deserved.

There may be some among you who operate under the belief that District Court Judge is something akin to an "entry-level position" when it comes to the judiciary and that any lawyer could do it as well as any other. In my personal experience nothing could be further from the truth. I have witnessed firsthand the extreme miscarriages of justice that can happen when a newly-appointed judge hits the bench with no criminal law experience. Being able to look at the law as written does not grant the institutional knowledge necessary to ensure your rulings are fair, equitable, and in line with other rulings by other judges in that court. Justice requires fairness and consistency, and without direct, hands-on experience in the District Court system, without that institutional knowledge, fairness and consistency go out the window.

Yranela & Associates, PLLC

. . .

Although I do not know the resumes of all the candidates before you, I have a hard time imagining that any of them surpass Mr. Lustick's wide and deep experience in this job, and I truly believe that our justice system is best served by the person most experienced in all aspects of its administration. You must, of course, balance many interests in making your decision, but if your primary interest is in the smooth, fair, and consistent operation of justice in Whatcom county, I would encourage you to select Mr. Lustick for this role.

Sincerely,

Matthew A. Skau Attorney, WSBA# 41927 Yranela & Associates, PLLC Whatcom County Council 311 Grand Ave., Ste. 105 Bellingham, WA 98225

EMAIL ONLY

July 11, 2021

Dear Councilpersons,

I write to endorse Jeffrey Lustick to fill Judge Grant's position at the Whatcom County District Court. I have known Jeff for approximately 12 years as he has come to San Juan County where I practice. Jeff is smart, level-headed, caring, and experienced.

Jeff will no doubt inform you of his background and experience. Instead, I am going to focus on an important consideration that has not been given enough attention lately: the experience necessary to do this job.

I am a liberal who believes that women and minorities should be given every opportunity that white men receive, and that our justice system benefits from a diverse judiciary. All other considerations being equal, I would choose a woman or minority as a judge until we have more diverse representation. However, I have seen several instances across the state in which lawyers have been chosen as judges before they are ready.

While a lawyer can restrict her practice to her competencies, a judge must pull from deep experience to be effective. This experience must cover much more than the broad range of substantive law that a judge is required to apply. It must cover procedural rules and customs, managing courtrooms, and creating an impression of expertise, wisdom, and confidence.

Frankly, the single greatest factor in the satisfaction that my clients receive from the legal system is the extent to which they believe that they received a fair hearing from a wise and knowledgeable judge who listened to their case and considered it carefully and impartially. Creating this impression is far more difficult than it sounds. Learning to play this important role begins with the judge's extensive experience as a lawyer participating in judicial proceedings and observing those jurists who come before. It cannot be taught, and it does not come quickly.

When I ran for San Juan County District Court judge against a young woman with only three years of experience as a lawyer, Judge Grant wrote:

A District Court judge draws on legal and personal experience to be the most effective at administering justice. In my opinion, in this year's election for San Juan County District Court judge, only Steve Brandli has the experience and perspective for this job.

Jeff Lustick has the legal experience to assume Judge Grant's position. He has an extensive and diverse background as a lawyer and has invaluable bench experience. Whatcom County should settle for no less.

Sincerely,

Sta. Brandl.

Stephen A. Brandli

Timothy J. Arnold

RECEIVED

JUL 12 2021

July 12, 2021

Whatcom County Council Members 311 Grand Avenue Bellingham, WA 98225

MHATCOM COUNTY COUNCIL

Council members,

I am writing to regarding Mr. Jeffrey Lustick's current application to fill the District Court vacancy left by Judge David Grant. As a member of the local legal community—particularly that of the public defense community—I hope this letter contextualizes your consideration of his application.

I have observed Mr. Lustick in both his capacity as a private defense attorney, and while serving as a Judge Pro Tempore. When appearing as private counsel, Mr. Lustick is prepared, punctual, cordial, professional, and well-versed in handling the multitude of random occurrences that arise through court appearances. As a pro tempore, Mr. Lustick expands on those qualities, bringing integrity to the bench.

As a defense attorney, my interest is in a neutral judiciary that correctly, and fairly, applies both the law, and the application of it. I can say without question that each time I've appeared before Mr. Lustick as a pro tempore, I knew both the State and I would receive a fair hearing, and genuine consideration of legal argument. Mr. Lustick addressed my clients with dignity, respect, and empathy. It is the empathy that distinguishes Mr. Lustick. Having practiced as both a prosecutor and as defense counsel serves Mr. Lustick well to understand all aspects of the cases brought before him, the interests of the practitioners before him, and the situation clients are in.

It is my feeling when appearing in front of Mr. Lustick that he intends on bringing integrity, and the perception of it, to the bench. To date, I have not had a single client say anything negative about Mr. Lustick, even when our particular legal argument resulted in an unfavorable ruling.

It is my firm belief that should Mr. Lustick be chosen to serve our community as the next District Court Judge, Whatcom County would be well-served, and could be confident knowing that the Judge approaches those before him fairly and respectfully. I am available to the counsel for any questions that may arise. I appreciate you taking the time to consider this letter.

Sincerely,

Timothy J. Arnold , USBA 50669



Tuesday, July 13, 2021

Whatcom County Council Members 311 Grand Avenue, Suite # 105 Bellingham, WA 98225

I am proud to recommend Mr. Jeff Lustick for immediate appointment as Whatcom County District Judge. He has the experience and temperament necessary to properly hear both civil and criminal cases in District Court and has been doing so for many years as a Judge pro tempore.

As a fellow attorney in the Pacific Northwest legal community, I have worked with and against Jeff many times over the years when he was a prosecutor and a defense counsel. I have seen first-hand the respect with which he treats others, even opposing parties. Jeff's depth of legal knowledge and experience is just what our local District Court needs.

As a lawyer whose practice includes District Court in many Washington counties, I also see the desperate need for an experienced judiciary in other counties and small jurisdictions. Small Claims and District Court is where many people who cannot afford expensive legal help end up for resolution to their important legal issues. A District Court Judge with compassion, experience, and large breadth of knowledge, like Jeff is when serving as a Pro Tempore Judge, is absolutely required. As many litigants in the District Court are self-represented, our citizens depend on the District Court Judge to know the law and apply it to their cases fairly. Our local court system will be lucky to have an experienced attorney with direct judicial experience such a Jeff Lustick presiding over cases in District Court.

Jeff's legal background is replete with important and valuable experiences as an advocate in the city, county, state, military, and federal court systems. Most importantly, Jeff has 3 years of real-world service as a Judge Pro Tempore in Whatcom County District Court, Bellingham Municipal Court, and Ferndale Municipal Court. As a substitute Judge, he has successfully handled every type of case that District Court judges face such as small claims trials, criminal jury trials, civil and criminal motion hearings, various traffic matters and domestic violence anti-harassment hearings. This experience and his unique qualifications sets Jeff apart from other candidates, and represents a big bonus for the court system as training delay and getting up to speed will not be necessary.

Jeff also has filled in during Whatcom DC Mental Health Court which is a sensitive treatment court that requires continuity and familiarity to be able to handle well. And Jeff

already has close working relationships with Judge Matthew Elich, Bruce Van Glubt (the Whatcom District Court administrator), all the clerks and court staff of the District Court. Given that the District Court already has a significant backlog of cases due to COVID and since the departure of Judge Grant, more and more criminal and civil cases are being set for trial, we need Jeff appointed as soon as possible. For his part, he is willing to leave a successful private practice right away to serve Whatcom County with distinction. I have discussed the possible time in service with Jeff, and I think if given this opportunity, he will probably go on to serve as a District Court Judge for the next 20 years.

Please select Jeff Lustick for the appointment as Whatcom County District Court Judge. I can be reached via e-mail at positivelaw@gmail.com if you have any questions about Jeff.

Respectfully Submitted,

Saawn Alexander Attorney at Law July 10, 2021

Whatcom County Council Members 311 Grand Avenue Bellingham, Washington 98225

Re: Recommendation of Jeffrey Lustick for Whatcom County District Court Judge

Members of the Council,

I first met Jeff Lustick while I was assigned as the Headquarters Staff Judge Advocate for the Washington Air National Guard, a position that I held for the last 11 years of my military career. As such, I was the legal advisor to WA ANG Commander and the rest of the command staff. I also supervised all of the JAG officers serving in the WA ANG. Jeff joined the WA ANG upon separating from active duty and, therefore, overseeing his duty performance fell within my area of responsibility. In every respect his performance was exceptional and I was convinced that he would rise to take the position as HQ SJA as his career progressed. I was disappointed when he left the Guard but understood that the pressure of his growing law practice, the extent of his community involvement and his devotion to family made that his best choice. I was very happy to see that he returned to service as a member of the Civil Air Patrol were he has continued to excel and impress.

In my civilian capacity I have been a judge in one capacity or another for approximately 38 years. Beginning in 1984 I have continuously served as a part-time municipal court judge for one or more towns and/or cities in Whitman County, Judge Pro Tem in the Whitman County Superior Court and Court Commissioner in the Whitman County District Court. I was appointed as the full-time Whitman County District Court Judge in January, 2001. I retired from that position effective January, 2019 at which time I was again appointed as the part-time Municipal Court Judge for the City of Colfax, a position that I currently hold. I am also again a part-time Court Commissioner for the Whitman County Superior and District Courts as well as a Court Commissioner for the Asotin County Superior Court. Prior to my appointment as a full-time judge I also maintained an active criminal and civil litigation private practice. I have litigated or presided over tens of thousands of cases.

I relate my background only to demonstrate that I have the experience to know what makes a good judge and I am absolutely convinced that Jeff Lustick will make an outstanding judge. I will not repeat Jeff's vast experience and his superlative qualifications, I am sure that others from your community who work with Jeff on a daily basis can do that far better than I, but I wish to comment on another critical aspect of being a district court judge. That aspect of the job is the people who come before a limited jurisdiction judge each and every day.

Without question a judge must be well versed in the law and I have little doubt that all of the candidates you are considering meet this criteria. Similarly, I have no doubt that each of the candidates can weigh facts, apply the law and announce a decision in compliance therewith. Equally important, however, is the ability to conduct every case in a manner that creates confidence in the Court's decision, demonstrates respect for the person before the judge and engenders respect for the judicial system and

the rule of law. This is particularly true for the district courts as they, along with the municipal courts, are the place where the majority of people who come to court first encounter the legal system.

The position of District Court Judge is not a ministerial one. It is not a job that every competent and capable lawyer can do well. It is a position that requires extensive legal knowledge and the ability to discern the character of the person before you and "what makes them tick" in very short order. Depending on the type of case before you, the judge must fashion their comments, announce their decision and explain the result in a manner that demonstrates an understanding of what the person is experiencing, that acknowledges the significance of the matter to that individual and clearly explains the basis of, and reason for, the Court's decision. Only then will a litigant leave court believing that he has been fully heard, that his case has been carefully considered and that they have been treated fairly. They will more readily accept the result if they are satisfied that they have had their "day in court".

Likewise, when sentencing an offender the court should consider alternatives to the standard disposition of fines, jail and probation if an alternative may result in getting to the root cause of the criminal behavior and create an opportunity for the person to change for the better. I know that Jeff is committed to this sentencing approach as it is through the creative use of sentencing alternatives that a person can be helped to become a contributing member of society. District court is where this can happen most effectively as it is the place where people frequently land when first getting involved in criminal behavior. Efforts at changing that behavior rather than simply punishing it can pay great dividends but it is not the easiest option. It takes time, skill, perception and a willingness to "think outside the box" in order to fashion an appropriate alternative sentence for a particular individual. Jeff is clearly committed to investing this extra effort. A judge committed to the alternative sentencing approach, and who is effective in changing behaviors as a result, can benefit the offender tremendously, as well as the community as a whole.

The breadth and scope of Jeff's background and experience are extraordinary. His legal abilities are unquestionable, he genuinely wants to help people and his commitment to excelling as a judge has been amply demonstrated during his service as a Judge Pro Tem. Quite simply, Jeff has all of the professional and personal qualities needed to be an excellent district court judge. As a judge he will continue to be a tremendous asset for Whatcom County and all who come before him. I cannot imagine that there is a better qualified candidate for the position before you for consideration. I strongly recommend that you select Jeffrey Lustick as Whatcom County's next District Court Judge.

Sincerely,

//S//

Douglas B. Robinson
Colfax Municipal Court Judge
Whitman County District Court Judge (Ret)
Colonel, Washington Air National Guard (Ret)

Witt Law Firm, P.S.

Morgan M. Witt

Attorney at Law

415 Pine Street/P.O. Box 726 Mount Vernon, WA 98273 Ph 360.336.1614/Fx 360.707.4081 morgan@legalwitt.com

www.legalwitt.com



Whatcom County Council Members
311 Grand Avenue, Suite # 105
Bellingham, WA 98225
Sent via email only: council@co.whatcom.wa.us

Re: Whatcom County District Court Judge Appointment

Hello Whatcom County Council Members -

July 14, 2021

I write this letter in support of the proposition that experience matters when it comes to filling a judicial position at any level. Jeff Lustick is the candidate that is the best qualified to be appointed as the next Whatcom County District Court Judge due to his extensive experience serving as a judicial officer in Whatcom County District Court.

Learning on the job is a precarious prong to base a decision upon since the judge at the district court level has a broader and more significant impact on the rights of Whatcom County residents than any other judicial position. There are more cases at the district court level statewide than at the superior court level statewide. From gross misdemeanor DUI's or Domestic Violence cases to infractions and small claims matters, district court judges need a broad and diversified legal background to address the numerous and varied cases that must be decided upon.

Consequently, experience is the primary consideration when appointing a judge to the bench.

Jeff Lustick has been a lawyer in Washington State since 1997. He has worked all aspects on the law. He was a city prosecutor for the City of Bellingham, a military prosecutor and military defense counsel, a federal prosecutor, a federal public defender and a private defense attorney for the past 17 years in Whatcom County.

More recently and more importantly, Jeff Lustick has served consistently over the last three years as a judge pro tempore in Whatcom County District Court, Bellingham Municipal Court and Ferndale Municipal Court. Additionally, Jeff Lustick has an established, professional working relationship with existing Whatcom District Court Judge Elich and Whatcom District Court Administrator, Bruce Van Glubt.

As an attorney who represents clients in Whatcom County District Court for the past 28 years, I can affirm to you that experience does matter when deciding on who the next Whatcom County District Court Judge will be. Jeff Lustick would be my recommendation for that position.

Morgan M. Witt Attorney at Law 218 W. Champion Street Bellingham, WA 98225

410 Myrtle Street Mount Vernon, WA 98273



(425) 493-1115 (360) 734-3847 (Bellingham) (360) 336-8722 (Mount Vernon) (425) 645-5713 (Fax) E-mail: david@davidjollylaw.com www.washdui.com

DUI | CRIMINAL DEFENSE | TRAFFIC TICKETS

July 14, 2021

Whatcom County Council 311 Grand Avenue Suite 105 Bellingham, WA 98225

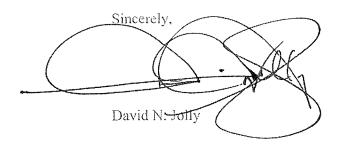
Dear Whatcom County Council:

I am writing to support Mr. Jeff Lustick and his application for Whatcom County District Court Judge. I highly recommend Mr. Lustick for this position.

I am a local attorney in Bellingham and have known Jeff for more than a decade. During this period of time I have witnessed first-hand Jeff's competence, knowledge and thorough understanding of the law. Jeff is an attorney who his colleagues look up to and seek counsel in. Ouite simply, he is one of the Whatcom County finest attorneys.

In recent years I have appeared in front of Jeff when he appeared as Judge Pro Tem in both Whatcom County District Court and Bellingham Municipal Court. I can assure the County Council that appearing as a Judge Pro Tem and appearing composed, prepared and competent is not an easy task. However, Jeff has excelled in this position and has always had the attention and respect from all attorneys. His experience in this capacity has proven he is more than capable of excelling as the Whatcom County District Court Judge.

I would be happy to provide further insight if necessary but I wish to inform the Council that I have the greatest respect for Jeff and whole heartedly support him for the position of Whatcom County District Court Judge. There is no-one more qualified or competent.



322

DAVID A. NELSON, P.S.

Telephone:

July 7, 2021

Whatcom County Council 311 Grand Ave. Bellingham, WA 98225

Re: Jeff Lustick, applicant for District Court Judge

Dear Sir/Madam,

I support Jeff Lustick for Whatcom County District Court Judge. I have known Jeff for many years both personally and professionally. I have appeared in front of him when he has acted as a protem judge in the Whatcom District Court. I firmly believe that Jeff is eminently qualified for this position.

Jeff has prepared for this job for many years. He has served as prosecutor, defense attorney, and judge in all of the courts in Whatcom County. Jeff consistently acts as a reasonable and knowledgeable jurist in the courts he presides in. Attorneys and litigants know they have been heard in his court. I know that Jeff cares about this community and every person who appears in his court. I have seen Jeff act with wisdom and with empathy as a judge. I have also seen a strong work ethic in his professional practice. He would be a great asset to the District Court.

I know all of the applicants applying for the position of Whatcom County District Court. I believe that Jeff stands out due to his experience, knowledge and maturity. There will be no learning curve for Judge Lustick.

I hope that you will consider the most qualified, experienced and competent individual for this important position. I am available for any questions regarding this letter.

Sincerely yours,

David A. Nelson Attorney at Law July 13, 2021

Whatcom County Council 311 Grand Avenue, Suite 105 Bellingham, WA 98226

RE: Letter Supporting Jeff Lustick for Appointment as Judge

To Whom it May Concern:

My name is Charlie Harger, and I am a news reporter with a major news talk radio station in Seattle, WA. I am writing in my personal capacity to tell you about my longtime friend and co-worker, Attorney Jeff Lustick of Bellingham, who is an applicant for appointment as a judge on the Whatcom County District Court. I strongly recommend Jeff for this position.

I hold a Master of Science degree in strategic communications from Arkansas State University and have worked in the news media and communications fields for over 25 years. For the past 20 years, I have worked in top-rated and major market radio news environments. I have been with my current employer in Seattle for over 17 years where my duties include reporting on crime and public safety stories, anchoring news broadcasts, writing news copy, reporting on sporting events, editing and fact checking, and producing broadcast news content. I am a 4-time recipient of the Edward R. Murrow Award for ethical and precise news reporting, and I have also received a nomination for a regional Emmy Award. I was recognized by the Associated Press Television Association as "Reporter of the Year" and am a 2-time recipient of "Best Investigative Reporting." I also serve as an adjunct faculty member at Green River Community College in Auburn, WA where I instruct students on radio broadcasting and podcasting, social media, and emerging technologies in the media industry.

I have known Jeff for the last 18 years. We first met when I was working as a talk show host at KGMI NewsTalk Radio 790-AM in Bellingham. From the moment met, I could tell Jeff is a talented communicator with a sharp analytical mind. He was an on-air legal analyst and commentator and had a weekly legal segment as part of my show. In this unpaid, volunteer role, Jeff produced and presented a different legal topic each week which we would discuss live on the air for 10-12 minutes during my talk show. He also sometimes filled in as a host on the show when I was away. Often, his segment presentations would generate call-ins from our listeners, and Jeff would remain on the air after his to answer the listener's questions.

During my time at KGMI, Jeff also analyzed and commented on numerous news stories for the afternoon and morning news programs. He usually commented on legal cases that were in the statewide or nationwide news cycle, but sometimes he would discuss local legal issues too. Jeff was always very clear and concise and very informative when speaking over the airwaves to the public on any legal topic.

I recall one of Jeff's most memorable radio segments at KGMI when he executed a Last Will and Testament and a Power of Attorney for my co-host, Amanda Hostetler, live on the air, and I acted as one of the witnesses for Amanda's signatures. The will execution segment, which was done with Amanda's consent, turned out to be one of the most humorous, entertaining, and informative segments that Jeff ever did. He used his vividly descriptive communications skills to take the listener through each step of the will signing process and explained all of the many reasons why people should have their wills, powers of attorneys, and advanced healthcare directives prepared. I know that this segment was a tremendous service to the community, and it broke down the common misconceptions about wills and powers of attorney that the public sometimes has. It was also probably the first ever will execution in the world done on a live radio program!

When I left KGMI and joined my current employer, to my delight, Jeff was already on the roster of talented news analysists working for the station. This allowed me to keep working with Jeff whenever I wanted to and to

keep presenting his legal analysis and explanations, but now to an even larger audience. For example, while on the radio with me, Jeff has spoken on such incredibly important and compelling legal topics as analysis of the U.S. Supreme Court's decision legal to legalize LGBTQ-IA marriage; analysis of a General Court-Martial at Joint Base Lewis-McChord of an Army soldier accused of war crimes and murders in Afghanistan; commentary and analysis on the two presidential impeachment processes; the statewide initiative for the legalization of marijuana, and recently he even explained the Washington State Supreme Court's landmark decision to strike down most of the state's felony drug offenses. He has always responded every time I request his help.

Over my years working with Jeff, he has been a reliable ad trustworthy sounding board for me, and I sometimes call him just to get his take on crime stories that I am working on. I have repeatedly relied on Jeff because his legal analysis and the way he is explains it is always crystal clear, concise, and easy to follow. His way of explaining and analyzing legal topics is also always impartial, fair, and non-biased. I really cannot think of a story he has contributed to in which he displayed any political agenda.

As a broadcaster and producer, I find Jeff's style of legal commentary and analysis to be extremely valuable to the public. Furthermore, Jeff received zero compensation for his work and considers his legal commentary to be a pro bono donation so the public will better understand the law and have increased respect for the justice system. From the feedback that I get from his work on our station, I can tell you the public is appreciative, and it gains a valuable insight from Jeff's work.

Jeff also strikes me as an excellent role model for other attorneys to follow. He has given his time in the local Bellingham community to perform pro bono legal service. He has served in many different legal roles including as a military legal officer, a prosecuting attorney, a criminal defense lawyer, and most recently as a fill-in judge. His work in the local, regional, and on national media with CNN, TruTV (formerly CourtTv), and on local TV and radio stations has introduced hundreds of thousands of people to the fair, level-headed, trustworthy, and wise attorney that Jeff is. He is never overbearing, he is consistently congenial, and always presents himself in an approachable manner. I believe all of these are excellent and sometimes rare qualities for a legal professional to have. In my years of experience as a legal news reporter, I know they are also traits to needed to be an excellent judge.

In conclusion, while Jeff's appointment would mean that I would be losing him as on-air talent at my radio station, my loss would be Whatcom County's gain. Jeff will bring a multitude of legal and practical life experiences, vast knowledge, sage judgment, and a sense of humanity into being a judge. I know that Jeff will welcome litigants and make them feel comfortable. He will earn and hold the respect of prosecutors, defense counsels, defendants, and plaintiffs. He will explain his legal reasoning in terms that everyone can understand and appreciate, and his work as a decisionmaker will help people in disputes find peace. He will comfort victims of crime and will represent every person in your county with dignity and honor. You will be remiss if you do not select Jeff for this judicial position.

Respectfully,

e/s/ Charlie Harger

Charlie Harger Phone

KORODY LAW, P.A.

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July 15, 2021

Whatcom County Council Members 311 Grand Avenue, Suite # 105 Bellingham, WA 98225

Re: Letter of Recommendation for Jeffrey A. Lustick, Esq.

Dear Council Members:

Jeffrey A. Lustick, Esq. has my strongest possible recommendation to fill the district court judge vacancy in your county.

As background, I spent 10 years on active duty in the United States Navy Judge Advocate General's (JAG) Corps and currently serve in the JAG Corps reserve at the rank of Commander. From 2011 to 2013, I was the Navy's senior trial counsel (prosecutor) for Navy Region Northwest. My office was on-board Naval Base Kitsap. I was responsible for the prosecution of Sailors at court-martial throughout the region, supervising and training a team of trial counsel and paralegals. I also personally prosecuted complex cases and cases with potential political or medial interest. I left active duty in 2015 and opened my own law practice in Jacksonville, Florida.

I met Jeff in 2011 shortly after reporting to Naval Base Kitsap. He was opposing counsel on a court-martial. I learned that he was former active duty Air Force JAG and also served in the Air National Guard. Over the next two years, I would try several jury trials against Jeff. I also was aware that he represented numerous Sailors in administrative separation proceedings. Jeff is the <u>most professional</u> opposing counsel I litigated against during my two tours as a Navy trial counsel. His filings were timely, meritorious, and well-written. He was always well-prepared for court. He was a stellar advocate in the courtroom. He enjoyed an outstanding reputation among the military judiciary and my office as a consummate professional. I can attest that he earned the respect and confidence of the military legal community in the Northwest when I was stationed there.

Because I truly respected Jeff as a lawyer and owner of a law practice, I sought Jeff out as a mentor after I transferred from Naval Base Kitsap. He has been extremely helpful to me at every stage of my transition from active duty to the civilian practice of law and the opening of my law firm.

Jeff and I speak regularly and I was not surprised to hear several years ago that he began serving as a judge pro tempore. He has the absolute right temperament to serve as a judge and it was the logical progression for a lawyer of his caliber. I am now not surprised that he is seeking to fill the judicial vacancy in your county.

Without any hesitation, Jeff should be a selected to fill the judicial vacancy. I have no doubt that he will administer justice for your community fairly, transparently, and in accordance with the law for decades to come.

Sincerely,

Patrick K. Korody

Attorney

FL Bar # 0107361

15 July 2021

Whatcom County Council Members 311 Grand Ave # 105 Bellingham, WA 98225

Dear County Council Members:

My name is Victoria Wonser, I am a resident of Olympia, Washington, and I am writing today to strongly recommend Jeff Lustick for the position of judge in Whatcom County.

I have known Jeff for seven years. We have both served at the state-level of the Civil Air Patrol's Washington Wing at its headquarters on Joint Base Lewis McChord in Tacoma, WA. At the time, Jeff was assigned as the state-level legal officer and advisor to the state CAP commander, and I was a state-level assistant public affairs officer. I presently serve as the commander of the McChord Field Composite Squadron, and have kept in close contact with Jeff and his wife over the past several years.

I'm sure by now you've heard all about Jeff's bright legal scholarship, his diverse experiences as an attorney, and his excellent service as a temporary judge, but there's one thing that you I bet you haven't heard about him. What I am referring to is how he saved the life of a man who was struck down in an intersection in Bellingham on the on October 28, 2017.

That morning, Jeff was driving alone in his car west bound on Bakerview Road, and he was headed to the Bellingham Airport. When Jeff got to the intersection of Bakerview Road and Northwest Avenue, he saw a car come speeding through the intersection from southbound Northwest Avenue. The vehicle was turning left onto eastbound Bakerview, but the driver of this car was driving so fast that they did not see an elderly male pedestrian who was walking across Bakerview Road in the crosswalk. The car struck the man at high speed, throwing him onto the hood of the car and smashing his face and head into the car's windshield. As the vehicle abruptly stopped, the man was thrown onto the bare pavement and began to bleed profusely. The offending driver stopped at the scene but remained inside of their car.

Jeff was two cars behind the crosswalk on Bakerview and he saw the entire event unfold. Upon seeing the elderly man get hit by the car and be thrown onto the pavement, he sprung into action and drove his car into the opposite lane of travel, parked it to shield the man from oncoming cars, and then got out and immediately started giving first aid to the man. In total disregard for his personal safety, Jeff used emergency first aid skills that he had learned as a Civil Air Patrol ground search and rescue team member to revive man and keep him conscious and awake until the EMS and fire department arrived. By the time they did arrive, Jeff was covered in the man's blood, but Jeff never stopped applying direct pressure to the man's face and head to stop the major bleeding.

Later, the man would be airlifted to the Regional Trauma Center in Seattle where he would undergo surgery and would fully recover. But Because of Jeff's fast thinking and quick action, he stopped the man from passing away right there in that street after being hit by the car that morning. For Jeff's heroic and selfless action, the National Commander of the Civil Air Patrol, Major General Mark Smith, awarded Jeff the Civil Air Patrol Bronze Medal of Valor, which is CAP's second highest medal for distinguished and conspicuous heroic lifesaving action where danger to self is probable and known.

This single act of selfless courage and humanitarian service shows you exactly who Jeff really is. Jeff has served his community, state, and nation in many ways for many years, always touching the lives of the people around him. He is ready and willing to now serve as the next district judge in Bellingham, and I strongly recommend his selection.

Very Truly

Victoria Wonser

Phone:



222 Grand Avenue · Suite A · Bellingham · Washington · 98225 · 360.305.0785 · iteichert@teichertlaw.com

July 15, 2021

VIA EMAIL Council@co.whatcom.wa.us

Members Whatcom County Council 311 Grand Avenue, Ste 105 Bellingham, WA 98225

Re: <u>Letter of Support for Appointment of Jeffrey Lustick as Judge, Whatcom</u>
County District Court

Greetings Whatcom County Council Members:

I write to express my strong support for the Whatcom County Council's appointment of Jeffrey A. Lustick as the next Whatcom County District Court Judge.

I have 27 years' experience in the practice of law. In 1994, I earned a Juris Doctor from Brigham Young University. Upon graduating from law school, I served two years as a judicial law clerk to Chief Justice F. Michael Kruse and Associate Justice Lyle L. Richmond of the High Court of American Samoa. I went on to receive a Master of Laws Degree (LLM), *With Highest Honors*, in early American legal history and environmental law from George Washington University Law School. In 2001, I opened my law firm, Teichert Law Office, PC, in Gateway Centre in Bellingham, WA. In 2006, I ran for election as Judge on the Washington State Court of Appeals, Division I. From 2008 to 2010, I served as a member of the Planning Commission of the City of Blaine, WA for two years. I opened my current law office based in Farmington, UT in 2016. My license in Washington was reactivated last year, and I still actively work in Washington. My career has involved numerous appeals, which I have briefed and argued before the United States Supreme Court, the Washington Court of Appeals, and the State Superior Courts across Washington State. I have recently been appointed as an Assistant Attorney General for Utah in the Constitutional Law Section of the office but have not begun my employment there yet.

I have known Mr. Lustick for 18 years and counting. We met right after he opened his solo practice criminal law firm in 2003 in the same building as my law office. As a new law firm owner, Mr. Lustick worked very hard to establish himself as a one of the best criminal defense attorneys in the state—which he undoubtedly is. Initially he volunteered to take on conflict cases from the Bellingham Municipal Court and the Whatcom Superior Court and received a lot of jury trial experience. During this time, I recall him going to trial almost every month. I also recall that his work on these jury trial cases produced an excellent track record, which garnered him an even better professional reputation in a short amount of time in practice.

I also recall in 2005, being very impressed when Mr. Lustick was retained by the President of an outlaw motorcycle organization, he took on one of the biggest cases of his career – the kind of case that would be the biggest case in any legal career in the criminal law field. His

client had been raided by the FBI, the ATF, and local law enforcement as part of a three-state search warrant execution. The case was covered in the news media nationally by CNN, Fox News, and the Associated Press. The defendant was charged by a federal grand jury in Seattle in a 37-count sealed criminal indictment alleging a host of extremely serious offenses, including federal racketeering (RICO) charges, conspiracy to commit murder, witness tampering, and trafficking in stolen motorcycle parts. At the time, Mr. Lustick was a young lawyer, which raised a lot of eyebrows as he was representing such a notorious client in U.S. District Court. Mr. Lustick never showed any fear and never stopped fighting for his client. As a defense counsel, Mr. Lustick often championed unpopular cases (as was his duty) with dignity and honor. In this case of the outlaw motorcycle gang president, Mr. Lustick's work really made a difference, resulting in his client pleading to one RICO count and receiving credit for time served with probation. In my opinion, an attorney with the work ethic, courage, tenacity, and legal acumen that was displayed by Mr. Lustick in this case, has what it takes to be a great judge.

If appointed, Mr. Lustick will bring to the District Court Judge position an incredibly diverse legal background that you rarely see during a typical legal career. He began his career in 1997 as a U.S. Air Force Judge Advocate where he both prosecuted and defended hundreds of military and civilian cases in the federal legal system. He left active duty in 2001 and was hired by the City of Bellingham as the lead municipal prosecutor. In 2005, Mr. Lustick worked for a major national television network as an on-air legal consultant, explaining the inner workings of the criminal justice system to literally millions of people every time he was on TV. He has served as a private practice defense counsel and a contract public defender where he has defended thousands of individuals over two decades. He has successfully handled thousands of misdemeanor, gross misdemeanor, and felony criminal cases and civil cases at every level of trial court available, which are municipal court, state district court, state superior court, military trial courts, tribal nation courts, and federal district court. All of this unique and intensive personal experience legal means that Mr. Lustick has what it takes to be an incredible judge for the Whatcom District Court. Frankly, you are lucky he is willing to apply for this position.

Mr. Lustick initially started serving as a Judge Pro tempore back in 2005, and now frequently serves as a fill-in judge in Whatcom District Court on a weekly basis, presiding over a wide variety of cases, from DUI and domestic violence related cases to antiharassment orders and traffic cases, to civil garnishments and lawsuits. He has also served as a Judge Pro tempore in the municipal courts of Bellingham and Ferndale. Among these three courts, Mr. Lustick provides service as a substitute judge approximately 3 to 4 hours every week over the last several years. No other applicant applying for this judge appointment has as much frequent, recent, and legitimate service on the trial court bench as Mr. Lustick does, and none is as well rounded like he is with years of service in all three roles as a judge, prosecutor, and defense counsel.

In conclusion, I am very pleased to join the ranks of the many civic leaders, elected officials, judges, attorneys, and community members who are endorsing Jeffrey Lustick for the open District Court position. This vast and overwhelming community support for his appointment is on purpose because Mr. Lustick has the exact legal background and strong personal character to fit right into the open seat and start serving the people Whatcom County immediately.

jteichert@teichertlaw.com · www.facebook.com/jeffreyteichert

Please feel free to contact me at <u>jteichert@teichertlaw.com</u> if you would like any further information about Mr. Lustick.

Sincere Regards,

Jeffrey B. Teichert Attorney at Law



FERNDALE MUNICIPAL COURT

P.O. Box 291 Ferndale, WA 98248-0291

RECEIVED

JUL 16 2021

WHATCOM COUNTY
COUNCIL

July 9, 2021

Whatcom County Council 311 Grand Avenue, Suite 105 Bellingham, WA 98225

Dear Whatcom County Council Members,

I am the Court Manager of Ferndale Municipal Court. After acting as clerk of court today with Pro Tem Jeff Lustick, I am compelled to write and encourage you to choose Mr. Lustick to replace Judge Grant in Whatcom County District Court.

Mr. Lustick has served as a pro tem judge for Ferndale for the past few years. I am always impressed with his experience and knowledge of the law and court procedure, while showing patience and respect for each person who faces him. He carefully considers each case before him, listening and asking questions. He works respectfully with the clerks, asking questions and remaining open to input from staff. When Judge Kaiman has to be away, Mr. Lustick is our first choice for pro tem.

Most of our courts are suffering a backup of cases due to COVID, and the best possible option for dealing with this situation is an experienced and capable judge. District Court will be well served to place Jeff Lustick in Judge Grant's position.

I would be happy to discuss this further, should you desire. Thank you for your consideration.

Sincerely,

Faith Miller

Court Services Manager

July 16, 2021

Whatcom County Council 311 Grand Avenue Suite 105 Bellingham WA 98225

Dear County Council:

My name is Brenda Scamehorn, and my family and I reside in Everson, WA. I am aware that the County Council will soon make important choice when appointing someone to fill the District Court vacancy left by Dave Grant who has chosen to retire, so I wanted to take this opportunity to write you and highly recommend Attorney Jeff Lustick who has applied for this position.

A few years ago, when my family lived in Bellingham, Jeff supported my family through an extremely difficult time when we really needed him. My husband and I found out that a member of our family was being sexually exploited inside of our home by an adult who was renting a room from us. When we found out about this, we did not know where to go for help. At the time, Jeff was our neighbor, but we were not that familiar him. We knew that Jeff was a criminal defense attorney in private practice and that he worked with defendants, but we were also aware that he was a former city prosecutor. So, despite our unfamiliarity with Jeff, we decided to go to him for help.

After we told Jeff what happened, he sprang into action and immediately contacted law enforcement on our behalf. He guided us through the process to fill out a witness statement and file a report with the police. Jeff also helped us get a victim witness interview scheduled with investigators, and he went to the interview with our family member. He was at our house late into the evening when law enforcement came over to conduct an evidence search. Because of Jeff's fast actions, the perpetrator was arrested the next day and it made my family member feel listened to, supported, defended.

But Jeff did not stop there either. Jeff continued to defend and support my family member all throughout this prosecution process. He met with the county prosecutor who was handling the case and made sure that felony charges and a sexual assault protection order were filed against the perpetrator. Jeff kept everyone in our family

constantly aware of the status of the case. Jeff also went to every Superior Court hearing that followed. I believe that due to his involvement, the case against the perpetrator was much stronger, and in the end, the strong backing that Jeff gave to my family member figured into the perpetrator's decision to plea guilt, thereby avoiding potentially painful jury trial process.

This entire situation was extremely stressful and difficult for my family member and my entire family to get through, but with the incredible and compassionate support of Jeff Lustick, it was much easier to get through. Jeff took the lead in making sure that my family member was well protected. She felt validated and supported at every step of the case. I would also like to point out that everything Jeff did for us was done for free and given out of the kindness of his heart. He never requested any fees nor asked for any payment for his work.

I am thrilled that Jeff Lustick has chosen to become an applicant for the open District Court Judge position. My family has continued to be in touch with Jeff and we know that he is a man of integrity with great moral character and wisdom. If appointed as the Whatcom County judge, I have no doubt that his compassion for protecting victims of sexual assault and other crimes will be significant and will serve to make Whatcom County a safer place.

I also think it is high time that our elected leaders choose to put someone in as judge who looks out for crime victims and has the knowledge and strength to defend victims in a way that makes them feel validated, listened to, and completely supported. Jeff Lustick is a person who does this, and I therefore strongly recommend that you appoint him as the next district judge.

Very Sincerely Yours,

Brenda Scamehorn

July 10, 2021

Whatcom County Council Members
311 Grand Avenue
Bellingham, Washington 98225

Re: Recommendation of Jeffrey Lustick for Whatcom County District Court Judge

Members of the Council,

I have known Jeff Lustick for over five years through the Civil Air Patrol. I followed a similar path in life as him and view him as a mentor and advisor. He started out in the Civil Air Patrol when he was twelve years old. I also started out when I was twelve years old. Both of us excelled through the Cadet Program and reached the pinnacle point of achieving the highest rank of Cadet Colonel which only 0.5% of cadets achieve. Along the way, we both encountered many challenges and overcame them. Additionally, we both were two of the three cadets who received the Cadet of the Year for Washington State two times since 1970. Jeff also volunteered as the Wing Legal Officer for Washington Wing where I also volunteered as a Legal Intern under his supervision. He would give me documents to review to better understand the legal department and further my interest in the legal field.

After CAP, we both decided to attend law school and then commission as officers in the United States Air Force. Throughout the time I was pursuing this similar path as Jeff, I would ask him for advice and his thoughts on how I was approaching each milestone and obstacle. He was always excited and open to providing advice to me and helping me achieve my goals. Jeff cares about his community and mentoring others. This is an important trait as a judge not just to mentor attorneys, but also younger judges in the future. His mentorship can be seen throughout all my experiences with him. Jeff has the experience, mentorship, and attitude to

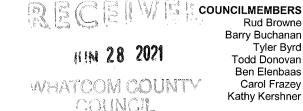
perform outstandingly in a judicial position. His caringness is also an important trait to have as well when it comes to ensuring justice is served for what is fair and not just to better the statistics and numbers. I believe that Jeff far exceeds what a good judge entails.

Zachary C. Lam

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

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





APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY DISTRICT COURT JUDGE TO FILL VACANCY

Name:	Melissa Nelson
Street/Mailing Address:	
City/State:	Zip 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: **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 herby 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.

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 & Daugert, 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

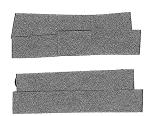
- 2021 President's Team Recognition Award, WWU Covid-19 Incident Management Team
- 2016-2020 Performance Plus Award
- 2015 Senior Counsel Award
- 2013 Attorney General's Office Excellence Award Winner
- 2005 Recognition Award from DSHS Children's Administration
- 2001 Commendation Letter from Attorney 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 statemandated 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 VANGLUBTAdministrator



June 24, 2021

MATTHEW S. ELICH DAVID M. GRANT Judges

ANTHONY S. PARISE Commissioner

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 *protempore* 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 1st, Mr. Bruce Van Glubt has my personal contact information and can share that with you as needed.

Respectfully,

David M. Grant



OM 445, MS 9001 516 High Street Bellingham, Washington 98225 (360) 650-3839 www.wwu.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

Sincerely.

Melynda Huskey, Ph.D.

Vice President, Enrollment and Student Services

Western Washington University



EVANFREEDMANPhD, ABPP

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

RECEIVE

JUN 24 2021

Whatcom County Council Attn: Dana Brown-Davis, Clerk 311 Grand Avenue, Suite 105 Bellingham, WA 98225-4038 WHATGOM COUNTY
COUNCIL

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

From: riseandfish _nish

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 should you wish to do so. Thank you.

Sincerely, Drew Nishiyama

From: Anne Egeler

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

From: Jon McGough

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 <u>disabled and low-income people have been incarcerated in our state</u>. 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



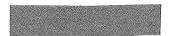
Orrick, Herrington & Sutcliffe LLP 701 Fifth Avenue Suite 5600 Seattle, WA 98104-7097

+1 206 839 4300 orrick.com

June 28, 2021

Via Email

Whatcom County Council 311 Grand Avenue, Suite 105 Bellingham, WA 98225-4038 Rob McKenna



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,

Rob McKenna

RolMKenna



Washington State Court of Appeals Division Two

909 A Street, Suite 200, Tacoma, Washington 98402 REBECCA R. GLASGOW, JUDGE

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 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,

Ladune

Lea M. Aune, MBA, CLRP, SHRM-CP

From: Angela Cuevas <

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

From: John Meyer <

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,

Ken Levinson

Ken denus

Nooksack Child Support Director/Staff Attorney



Old Main 450 MS 9000 516 High Street, Bellingham, Washington 98225 (360) 650-3480 - Fax (360) 650-6141 www.wwu.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 Kandhawa Sabah Randhawa President 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 shear 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

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,

Dr. Janiš Velasquez Farmer

Director of Equity, Diversity, and Inclusion - Bellingham Public Schools

Founder, Co-Owner of Emerge Strategic Designs



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

811

Office of the Attorney General-Bellingham

Jacqueline Lassiter

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F	ro	m:	

Council

Sent:

Thursday, July 15, 2021 9:59 AM

To:

Jacqueline Lassiter

Subject:

RE: District Court Judge Position applicant Melissa Nelson

From: Dona Bracke

Sent: Monday, June 28, 2021 12:32 PM

To: Rud Browne <<u>RBrowne@co.whatcom.wa.us</u>>; Todd Donovan <<u>TDonovan@co.whatcom.wa.us</u>>; Tyler Byrd

<<u>TByrd@co.whatcom.wa.us</u>>; Kathy Kershner <<u>KKershne@co.whatcom.wa.us</u>>; Ben Elenbaas

<<u>BElenbaa@co.whatcom.wa.us</u>>; Barry Buchanan <<u>BBuchana@co.whatcom.wa.us</u>>; Carol Frazey

<CFrazey@co.whatcom.wa.us>

Subject: District Court Judge Position

Members of the Whatcom County Council-

I currently hold the position of Assistant Chief Criminal Deputy in the Whatcom County Prosecutor's Office. I have been practicing law for over 42 years. I have been a prosecutor, a criminal defense attorney, a civil litigator and a Court Commissioner over that span of time. When informed that Melissa Nelson was applying for the position being vacated by Judge Grant's retirement, I felt it important to weigh in on the selection process.

I have known Ms. Nelson in a professional capacity only. She was a regular Judge Pro Tempore for the Felony 3:00 incustody calendar for Superior Court. From the first day appearing in front of her she exhibited a calm, judicial demeanor and was balanced in her approach, questions and rulings. She maintained that same behavior during each time I appeared in front of her. I was impressed with her breadth of knowledge and overall presence in the courtroom.

Given her background, legal training and experience it is no wonder she was able to perform in the manner I have described. I am not aware of all of the candidates vying for this position, however, I would be surprised if they were able to exceed her level of experience and demeanor. She would be an excellent choice for this position.

Thanks for taking the time to consider my input. If you have any questions I would be happy to speak with you.

Sincerely,

Dona Bracke

Jacqueline Lassiter

From:

Lance Calloway

Sent:

Friday, July 16, 2021 2:59 PM

To:

Council

Subject:

FW: Consideration of Melissa Nelson for Whatcom County District Court Judge

Lance Calloway

From: Lance Calloway

Sent: Tuesday, June 22, 2021 2:47 PM **To:** rbrowne@co.whatcom.wa.us

Subject: Consideration of Melissa Nelson for Whatcom County District Court Judge

Good afternoon Councilmember Browne,

I am submitting my letter of support for the appointment of Melissa Nelson to fill the vacancy for judge on the Whatcom County District Court. I have known Melissa for approximately 8 years and during this time I have gained a huge respect for her. Over this period of time, I have gained an appreciation of her intelligence, consideration of thought, and commitment to her family and community. I have appreciated Melissa as she has continually exhibited her ability to share thoughtful perspectives in casual discussions as to our community and society overall. Melissa has always been one to step up and volunteer to assist, whether it's helping with her son's sports endeavors or if it is taking on the responsibility and care of a horse of a close friend who had recently passed away. Melissa cares and does not shy away from stepping in to assist.

My relationship with Melissa is personal and not professional. However, I've learned through numerous conversations with her that she takes the same commitment and passion into her professional life as she does in her personal life. I was amazed as to learn of the challenges she had shared as Senior Counsel for the Washington Attorney General's office in working with juveniles in our community's justice system. The decisions and situations she had to manage with care and compassion while balancing the law for the betterment of the young people she was charged with exhibits knowledge and experience in making the tough decisions on what is beneficial to all in the long run. I can only sense it is this type of consideration, compassion, intelligence, and experience which is a key component we all want to see within our judicial system.

I want to reiterate my support for Melissa Nelson to fill the vacant Whatcom County District Court position as I believe she exhibits the strong character and intelligence to serve the citizens of Whatcom County with equity and fairness.

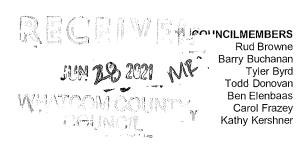
Thank you in advance for hearing my thoughts on Melissa becoming our newest District Court Judge.

Lance Calloway

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

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





APPLICATION FOR APPOINTMENT AS WHATCOM COUNTY **DISTRICT COURT JUDGE TO FILL VACANCY**

Name:	Shoshana Paige	
Street/Mailing Address:		
City/State:	Zip Code:	
Day Telephone:	Evening	
Fax Number:	n/aE-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 herby 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: 0/28/21

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.

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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

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,

Kellen B. Kooistra

Superior Court of the State of Washington For Whatcom County

311 Grand Avenue, Bellingham, Washington 98225

Chambers of Judge Lee Grochmal



Brooke Anderson, Judicial Assistant (360) 778-5604 banderso@co.whatcom.wa.us

Department 3

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,

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,

Application – Whatcom County District Court Judge Shoshana L. Paige Ouestions

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.

Application – Whatcom County District Court Judge Shoshana L. Paige Questions

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.

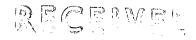
Whatcom County Superior Court Therapeutic Treatment Court

311 Grand Avenue, 3rd 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



JUN 2 4 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 olients.

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,

Stephen Gockley Attorney at Law

Tophen Gockly

Jacqueline Lassiter

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.

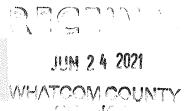
I am not endorsing any candidate for District Court Judge. I will say, however, that if Shoshana Paige is appointed to replace the honorable

1

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-



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/-

Superior Court of the State of Washington

Hon. Evan Jones, Dept. 2

Email: cmartin@whatcomcounty.us (360) 778-5632 Fax: (360) 778-5561

Judge's Chambers and Courtroom on 2nd floor



Whatcom County Courthouse 311 Grand Avenue, Suite 301 Bellingham, Washington 98225

Send judge's copies to: PO Box 1144 Bellingham, WA 98227-1144

July 7, 2021

Whatcom County Council 311 Grand Avenue, Suite 105 Bellingham, WA 98225 ATTN: District Court Judicial Appointment

RE: Application of Shoshana Paige

Councilmembers,

I understand that Council is now engaged in the important process of filing the expected vacancy in Whatcom County District Court. 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 and respected Shoshana Paige for over ten years. Shoshana and I have interacted professionally -with her at the Public Defender's office and me at the Prosecutor's Office- but also socially, sharing many mutual friends in the community. Shoshana is a wonderful attorney, a strong proponent of positive reform, and generally a nice person to be around. She is smart, friendly, and a real leader on issues of criminal justice.

Shoshana is easy to admire because of her dedication. She has been standing up for the rights of individuals in the courtroom for as long as I have known her. While others talk about it, Shoshana is the type of person that actually does it. That is why people, including me, regularly ask for and respect her opinion. She speaks from a practical perspective. Shoshana knows how legal decisions made in the courtroom will actually affect people's lives.

I know that if selected, Shoshana will bring that same work ethic, empathy, and dedication to the bench. She'll require that effects of decisions be known and

appreciated before any decision is made. In turn, she will give individuals the serious deliberation that they deserve from a judge.

Please feel free to follow up with any questions you might have.

Sincerely,

Judge Evan Jones

Whatcom County Superior Court, Dept. 2

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

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





JUN 25 2021

WHATCONI COUNTY COUNCIL 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

Kimberly Thulin

Name:	
Street/Mailing Address	
City/State:	
Day Telephone:	Evening Telephone:
Fax Number:	_ E-mail Address:
A. Qualifications: Per must:	RCW 3.34.060, to be eligible to serve as a district court judge, a person
	oter of the district court district and electoral district, if any; and itted to practice law in the state of Washington.
-	ter of Whatcom County? (^X) Yes ()No ted 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 herby 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 publication

Signature of applicant:

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.			
	• Panaganted the Weshington State Division of Child Support in			

- 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

<u>Education</u>				
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.			

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,

Mary Kan Becker

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,

Bedy Brenk

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 Sigmar,

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.

Kimberly Thulin Whatcom County Judicial Application

- 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-today 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,th 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

Kimberly Thulin Whatcom County Judicial Application 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.

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



MEMORANDUM

TO: Whatcom County Council

FROM: Council Staff

RE: Draft Interview Questions for District Court Judge Appointment (AB2021-339)

DATE: July 20, 2021

The Whatcom County Council will conduct interviews of District Court Judge applicants. The following are draft interview questions to assist Council with July 27th discussions on the process to appoint a judge, including finalizing interview questions. The first five questions are taken from a previous Council appointment process, and the last question is an additional question.

Draft Interview Questions

- 1. What do you believe are the central attributes of a good judge?
- 2. Why do you believe you possess those qualities and what experience do you possess that demonstrates those qualities?
- 3. What ideas do you have for office and caseload management of the district court?
- 4. What is the most cost-effective thing the County could do to maintain or enhance the effectiveness of the district court?
- 5. What role should district court judges have in regards to establishing budget priorities with the County Council and the law and justice system in the County?
- 6. What changes would you like to make to District Court that could help the people you will be interacting with each day?

Please contact Dana Brown-Davis at ext. 5015 with any questions.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-411

File ID: AB2021-411 Version: 1 Status: Agenda Ready

File Created: 07/13/2021 Entered by: AHester@co.whatcom.wa.us

Department: Public Works File Type: Discussion

Department

Assigned to: Council Committee of the Whole-Executive Session Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Discussion regarding potential property acquisition for the Flood Control Zone District [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(b)]

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding potential property acquisition for the Flood Control Zone District with Public Works staff [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(b)]

HISTORY OF LEGISLATIVE FILE					
Date:	Acting Body:	Action:	Sent To:		
Attachn	nents:				



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-421

File ID:	AB2021-421	Version: 1	Status:	Agenda Ready
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File Created: 07/14/2021 Entered by: RMcconne@co.whatcom.wa.us

Department: Public Works File Type: Discussion

Department

Assigned to: Council Public Works & Health Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Discussion with Public Works Department regarding request for temporary closure of a portion of Gulf Road

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memo and letters

HISTOR	HISTORY OF LEGISLATIVE FILE					
Date:	Acting Body:	Action:	Sent To:			

Attachments: Staff Memo, Letter of Request, Proposal

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings Director



James P. Karcher, P. E.

County Engineer 322 N. Commercial Street, Ste 301 Bellingham, WA 98225-4042 Phone: (360) 715-7450 Fax: (360) 715-7451

MEMORANDUM

To:

Whatcom County Council Public Works & Health Committee

Through:

Jon Hutchings, Public Works Director

From:

James P. Karcher, PE, County Engineer 9pk

Doug Ranney, PE, Engineering Manager ark TOR PK

Date:

July 27, 2021

Re:

Request for temporarily closure of a portion of Gulf Road

Public Works was recently contacted by Pacific International Holdings, LLC ("PIH") with a request to temporarily close a portion of Gulf Road. Public Works often assists community stakeholders with facilitation of solutions and brings this request to the Committee for discussion.

The current request from PIH consists of constructing a gate across Gulf Road near the intersection with Henry Road for the purpose of resolving health, safety and security issues.

Skip Sahlin with PIH requests the opportunity to address Council during this discussion session. He has submitted a formal request package, a letter supporting that request from Cherry Point Industries, LLC & Cherry Point Industrial Park Ltd which are included as attachments to this memo.

Public Works requests a discussion with the Committee for feedback and guidance on how to proceed with this matter.

Please contact Doug Ranney at x6255 with any questions you may have.

Via email: jkarcher@co.whatcom.wa.us

Jim Karcher, County Engineer Whatcom County Public Works 5280 Northwest Drive Bellingham, WA 98226

Subject: Temporary Closure at Gulf Road South of Henry Road

Dear Mr. Karcher,

Cherry Point Industries, LLC and Cherry Point Industrial Park Ltd, (together "CPIP") owns 335 acres of industrial zoned land within the Cherry Point Industrial District in Whatcom County, Washington State (the "Property"). The Property abuts ALCOA – Intalco Works facility, Pacific International Holdings ("PIH") property and is bounded by Henry Road, Gulf Road and the Straits of Georgia. There is a gated access point to the Property at the vacated dead end of Gulf Road.

CPIP would appreciate your help resolving an issue concerning our Property. The Gulf Road area has persistently suffered from undesirable, illegal activities including dumping, vandalism, drug and alcohol uses, damage from fires and shooting. CPIP writes in support of PIH's proposed ordinance to temporary close Gulf Road just south of the intersection with Henry Road to public access. The upland and beach areas around this southern section of Gulf Road have been experiencing an increased incidence of illegal activities and trespassing by individuals who are accessing privately-owned properties via the County's Gulf Road right-of-way creating a public health and safety issue.

CPIP's caretaker has requested Whatcom County Sheriff's assistance in dealing with trespassers and illegal activities at the Gulf Road entrance to our Property, but the unlawful conduct continues. Neither the Sheriff's Office nor Whatcom County Fire District #7 has the resources to dedicate patrol officers to monitor the activities on an ongoing basis or respond to illegal beach fires left burning at the Gulf Road location. The unrestricted public access may create liability for both the County and private landowners. We do not want to see accidents and illegal activities continue at Gulf Road.

We believe it is in the County's best interest to stop destruction of private property and impacts to the environment caused by these unlawful activities. Installing a gate just south of Henry Road would eliminate vehicular access curbing most of the illegal activity at Gulf Road, while still allowing pedestrians to access the County owned right-of-way.

CPIP will work with PIH to address access our Property via Gulf Road as needed. As with other gates at Cherry Point CPIP authorized individuals will have key access so the proposed gate will not impact our ability to access the area as needed.

In sum, CPIP asks that Whatcom County Public Works and Councilmembers approve PIH's proposed ordinance to temporarily close Gulf Road just south of the intersection with Henry Road. Such temporary closure will help control unauthorized and unlawful uses occurring on private land, limiting liability for both CPIP and the County, while continuing to allow pedestrian access in this area.

Sincerely,

Steven Shropshire

Legal Counsel for CPIP

June 21, 2021 Via email: jkarcher@co.whatcom.wa.us

Jim Karcher, County Engineer Whatcom County Public Works 5280 Northwest Drive Bellingham, WA 98226

Subject: Temporary Closure and Signage at Gulf Road South of Henry Road

Dear Mr. Karcher,

Pacific International Holdings, LLC ("PIH") owns 1097-acres of uplands and 14-acres of tidelands within the Cherry Point Industrial District in Whatcom County, Washington State (the "Property"). The Property is adjacent to the BP Cherry Point Refinery, Cherry Point Industrial Park and ALCOA Intalco Works properties. We have seen an increase in illegal activities, including illegal dumping, abandoned vehicles, alcohol and drug use, the discharging of firearms, unauthorized fires, destruction of private property, and trespass along Whatcom County ("County") rights-of-way and onto private property. These illegal activities are a public health, safety and security concern specifically along the section of Gulf Road just south of the intersection with Henry Road. Unfortunately, current efforts by law enforcement, private security and adjacent property owners to stop the misconduct have been ineffective

Accordingly, PIH is requesting County Public Works recommend to Whatcom County Council Public Works & Health Committee an ordinance to temporarily close this section of County right-of-way found in **Exhibit A** and **Exhibit B**. The closure would address public health, safety, and security concerns, control unauthorized uses of private land and limit potential liability from public activities occurring from, and on the County right-of-way.

PIH is proposing a two-tiered approach which has been successful in curtailing illegal activities at Cherry Point in the past. First, we would like to continue our efforts to educate the public by installing accurate signage making clear that property not directly on the County right-of-way is private and closed to the public. And second, we would like to put in place a temporary closure ordinance such as ORD.#2001-53 and ORD.#2002-001. These ordinances temporarily closed Aldergrove Road, Gulf Road, Lonseth Road and Henry Road due to frequent trespassing and illegal dumping activity; both ordinances are attached to this letter. We request a similar ordinance temporarily closing the southern section of Gulf Road from the corner of Henry Road adjacent to the currently installed gate at Henry Road as depicted in **Exhibit B**. PIH will have the responsibility for constructing gates, coordinating access for emergency vehicles, authorized personnel and affected adjacent property owners, and for removing the gates at the end of the closure.

Regarding signage, PIH requests the County post signs that accurately describes their right-of-way at Gulf Road. This can be seen throughout the County as a means of notifying the public of what is expected. Signage should state, for example: (a) "End of County Right of Way, No

Outlet" (b) "No Public Access", (c) "No Beach Fires Permitted"; and (d) Day Use Permitted on Whatcom County Right-of-Way Only." These signs are necessary to curb illegal and dangerous activities that are currently being facilitated by the County's right-of-way at Gulf Road.

We believe there is support for a temporary closure ordinance and accurate signage providing clarity at Gulf Road from Whatcom County Sheriff's Office, Whatcom County Fire District #7, and adjacent landowners. The closure could still allow for pedestrian access on the County right-of-way but eliminate the vehicular access stemming illegal activity at Gulf Road. It also would help alleviate the immediate need for the County to repair the washed-out section of Gulf Road that is causing encroachment from public vehicular use onto PIH's property.

PIH has had a standing no trespass letter filed with Whatcom County Sheriff's Office. But neither the Whatcom County Sheriff's Office nor Whatcom County Fire District #7 have the resources to dedicate patrol officers to monitor the illegal activities on an ongoing basis or respond to fires left burning on the County right-of-way and private property in this area. The unfettered public access may create liability for both the County and PIH as landowners. As private landowners, we owe no duty to trespassers except to refrain from causing willful or wanton injury. Nonetheless, we do not want to see accidents or illegal activities at Gulf Road, and we want to stop destruction of private property and impacts to the environment caused by the illegal activities.

Please find enclosed the following documents to facilitate your consideration of PIH's request for temporary closure of Gulf Road:

- Exhibit A: Legal Description
- Exhibit B: Maps and Exhibits
- Exhibit C: Proposed Draft Ordinance
- Exhibit D: Existing Ordinances: Whatcom County Ordinance No 2001-053, Whatcom County Ordinance No 2002-001
- Exhibit E: Pacific International Holdings letter to WCSO

We sincerely appreciate County Public Works working with us to resolve the health, safety, security and trespassing issues at Gulf Road.

Sincerely,

Skip Sahlin

Vice President, Project Development

Enclosures

Exhibit A: Legal Description

GULF ROAD CLOSURE LEGAL DESCRIPTION

THAT PORTION OF THE GULF ROAD (COUNTY ROAD NO. 340) RIGHT OF WAY SITUATED IN NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 1 EAST OF W.M., LYING SOUTH OF THE SOUTH MARGIN OF HENRY ROAD RIGHT OF WAY AND WEST OF THE PORTION OF VACATED GULF ROAD PER AUDITOR'S FILE NO. 940510068.

THE NORTH/SOUTH PORTION OF GULF ROAD RIGHT OF WAY IS 50 FEET WIDE FROM HENRY ROAD TO THE INTERSECTION OF THE STRAIT OF GEORGIA.

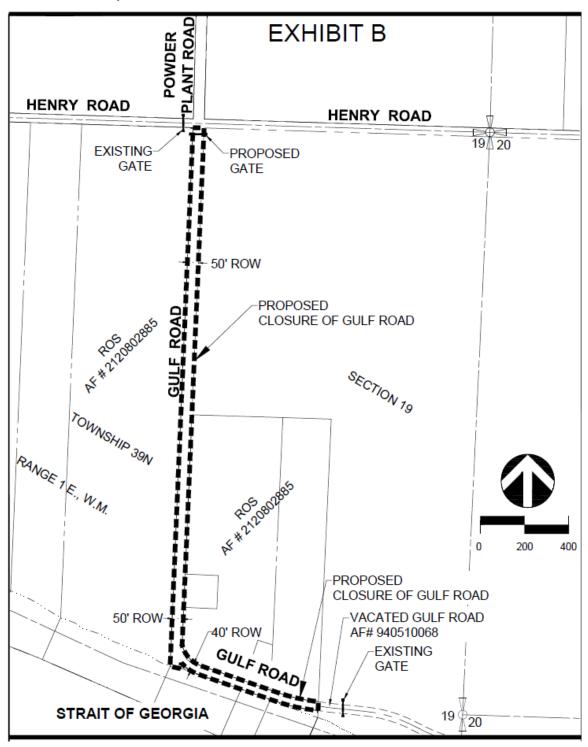
THE WEST/EAST PORTION OF GULF ROAD RIGHT OF WAY PARALLEL WITH THE SHORE OF THE STRAIT OF GEORGIA IS 40 FEET WIDE AS ESTABLISHED BY DEED PER AUDITOR'S FILE NO 510394. CENTERLINE OF THIS 40 FOOT WIDE RIGHT OF WAY WAS ESTABLISHED BY ASBUILT LOCATION OF EXISTING ROADWAY.

CONTAINING 148,742 SQUARE FEET (3.4 ACRES)-MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SEE ATTACHED EXHIBIT "B"

Exhibit B: Maps and Exhibits



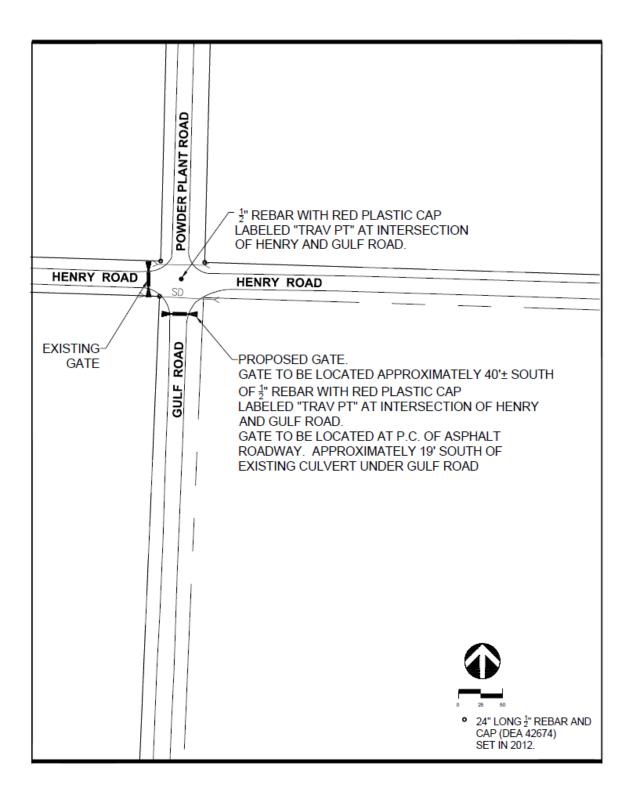


Exhibit C: Proposed Draft Ordinance

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	SPONSORED BY:
	PROPOSED BY: Public Works
	INTRODUCTION DATE:
ORDINANCE NO	

CDONGODED DA

ORDERING THE TEMPORARY CLOSURE OF GULF ROAD SOUTH OF HENRY ROAD

WHEREAS, the Whatcom County Council has been requested by Pacific International Holdings to close a portion of Gulf Road south of Henry Road (a "County right-of-way"), as depicted and described on attached Exhibits A and B, for public health, safety, security, and liability reasons; and

WHEREAS, the closure is requested due to pervasive dumping, abandoned vehicles, alcohol and drug use, the discharging of firearms, unauthorized fires, destruction of private property and trespass (hereinafter, "illegal activities"), having taken place along that portion of County's right-of-way and on adjoining vacant private properties for many years; and

WHEREAS, the increased frequency of illegal activities on the County's right of way and on the adjoining vacant private properties create significant threats to public health, safety, environmental damage and liability on both the County right-of-way and adjoining properties; and

WHEREAS, the Whatcom County Sheriff's Office has dispatched Sheriff's Deputies to the area on numerous occasions over the years at taxpayers' expense to respond to the illegal activities and has indicated support for a closure to conserve Sherriff's Office resources; and

WHEREAS, Whatcom County Fire District #7 has been forced to utilize public resources to respond to fires set on both the County right-of-way and by trespassers on private adjoining properties; and

WHEREAS, the affected adjacent property owners have indicated support for the closure; and

WHEREAS, law enforcement, private security and adjacent property owners efforts to stop the illegal activities have been ineffective; and

WHEREAS, the County right-of-way dead ends and there are no residential structures along the County right-of-way, and

WHEREAS, the closure of a portion of the County's right-of-way will not eliminate pedestrian public access to the County right-of-way, but will restrict vehicular traffic to emergency vehicles and authorized personnel; and

WHEREAS, Whatcom County Public Works will install accurate signage notifying the public that the property not directly on the County right-of-way is private and closed to the public; and

WHEREAS, Pacific International Holdings shall bear the responsibility for constructing gates, coordinating access for emergency vehicles, authorized personnel and affected adjacent property owners, and for removing the gates at the end of the closure; and

WHEREAS, Whatcom County shall bear the responsibility for maintaining the County's infrastructure, namely Gulf Road, any easements and appurtenant structures within the County rightof-way, in the current surveyed position and condition or better throughout the period of the closure, and Pacific International Holdings shall ensure the County has access to that portion of Gulf Road subject to the closure to do any required maintenance or repair; and

WHEREAS, nothing herein shall be construed to obviate or limit the right of Pacific ational Holdings at a future date to petition for vacation under RCW 36.87.130 of the portion

Gulf Road subject to this Ordinance; and	on for vacation under RCW 36.87.130 of the portion of
	eld a public hearing on the proposed closure on close the road according to the provisions of RCW
Works Department of Whatcom County is he	ED by the Whatcom County Council that the Public reby directed, subject to further consideration for rest, to close a portion of Gulf Road south of Henry Road.
ADOPTED this day of	, 2021.
ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
Council Clerk	Council Chair
APPROVED AS TO FORM:	() Approved () Denied
	County Executive Date:
Civil Deputy Prosecutor	

EXHIBIT "A"

GULF ROAD CLOSURE LEGAL DESCRIPTION

THAT PORTION OF THE GULF ROAD (COUNTY ROAD NO. 340) RIGHT OF WAY SITUATED IN NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 1 EAST OF W.M., LYING SOUTH OF THE SOUTH MARGIN OF HENRY ROAD RIGHT OF WAY AND WEST OF THE PORTION OF VACATED GULF ROAD PER AUDITOR'S FILE NO. 940510068.

THE NORTH/SOUTH PORTION OF GULF ROAD RIGHT OF WAY IS 50 FEET WIDE FROM HENRY ROAD TO THE INTERSECTION OF THE STRAIT OF GEORGIA.

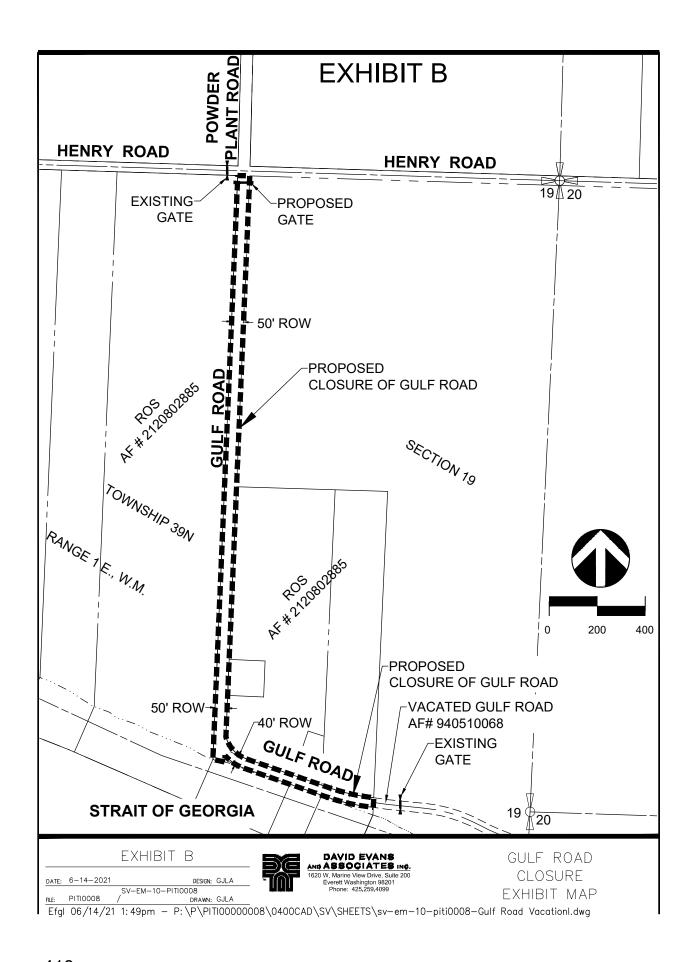
THE WEST/EAST PORTION OF GULF ROAD RIGHT OF WAY PARALLEL WITH THE SHORE OF THE STRAIT OF GEORGIA IS 40 FEET WIDE AS ESTABLISHED BY DEED PER AUDITOR'S FILE NO 510394. CENTERLINE OF THIS 40 FOOT WIDE RIGHT OF WAY WAS ESTABLISHED BY ASBUILT LOCATION OF EXISTING ROADWAY.

CONTAINING 148,742 SQUARE FEET (3.4 ACRES)-MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SEE ATTACHED EXHIBIT "B"

EXHIBIT "B"



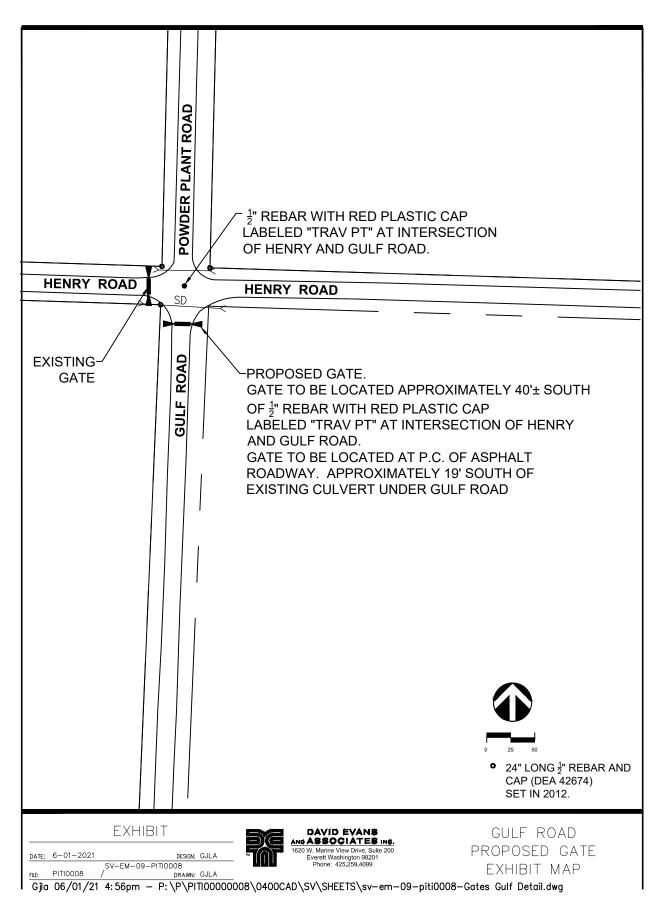


Exhibit D: Existing Ordinances: Whatcom County Ordinance No 2001-053, Whatcom County Ordinance No 2002-001

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J:\AGENDA BILL_doc

2001-329

CLEARANCES	Initial Date	Date Received in Council Office	Agenda Date	Assigned to:	
Originator:	BGM 9-27	Date Received in Council Office	10-9-01	Public Works Committee / Introduction	
Bruce Mills Division Head:	BGM 9-27	RECEIVE	0-23-01	Hearing	
Bruce Mills	2011	THEREIME) ,	Troubles	
Dept. Head:	Jm 9/28/	007.02.004	11/13/01	PW + COUNCIL	
Prosecutor	D4 4/28/01		1 /-1		
Purchasing/Budget;	Q4D 16/026	WHATCOM COUNTY			
Executive:	D)	COUNCIL			
	PK 10-1-	0(
SUBJECT:		7			
D	1.01			SER SEE F	
Discussion of Propo	sed Closure of Henry	y Road and Lonseth Road, Wo	est of Powder	Plant Road	
(
ATTACHMENTS:	E (10	11			
	Executive and Coun	1011			
 Letter from BP Map 					
4. Proposed Ordinar	nce				
4. Troposed Ordina	icc				

Related County Contract	t #:	Should Clerk schedule a hearing	g: NO/_/ YI	ES / x / Requested Date: 10/23/01	
SUMMARY STATE	MENT:	1	Ordinance & Resolution Distribution Request		
			To keep down our copying costs, indicate only those who <u>must</u> receive a copy after Council action. List names to the right.		
The state of the s	하는 [1:10]	BP Cherry Point Refinery to	ADS Facilities M		
		st of Powder Plant Road.	ADS Finance		
The state of the s	me and the second secon	ent illegal dumping, trespass	ADS Human Res	220000000	
and shooting activitie	es.		ADS Info Service	25	
			Assessor		
			Auditor		
			Cooperative Exte	nsion	
			District Court		
			Executive		
	Discourse of the control of the cont		Health		
RECOMMENDED .		77 747 1410 194 as 10	Hearing Examin	er	
		ntroduced to the County	Jail		
Council for consider	ation and adoption.		Juvenile		
			Parks		
			Planning		
COUNCIL ACTION	TAKEN:		Prosecutor		
2001 - 329	10/9/2001: Introduced	Public Works Committee and	Public Works	Bruce Mills	
	Council		Sheriff Superior Court		
	11/13/2001: Amended and #2001-053	d adopted 6-1, Hoag opposed, Ord.	Treasurer		
	2001 000		Other		
Palat		_	Lating Services	on Pagalutian Number	
Relati			Orainance	or Resolution Number ORD.#2001-053	
			(inis item):	OKD.# 2001-022	

SPONSORED BY: Consent

PROPOSED BY: Public Works

INTRODUCTION DATE: October 9, 2001

ORDINANCE NO. 2001-053

ORDERING THE CLOSURE OF HENRY ROAD AND LONSETH ROAD WEST OF POWDER PLANT ROAD

WHEREAS, the Whatcom County Council has been requested by BP Cherry Point Refinery to close Henry Road and Lonseth Road, each west of Powder Plant Road, and

WHEREAS, the closure is requested because illegal dumping has taken place in that area for many years and efforts to stop the dumping have been ineffective, and because of frequent trespass and illegal shooting activities on adjoining vacant property, and

WHEREAS, these roads are dead-end roads with no residential structures along them, and

WHEREAS, the County Council held a public hearing on the proposed closure on October 23, 2001, and is authorized to close the road according to the provisions of RCW 36.32.120.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Public Works Department of Whatcom County is hereby directed, subject to further consideration for reestablishing access for adjoining property owners, to close Henry Road and Lonseth Road, west of Powder Plant Road.

BE IT FURTHER ORDAINED that two parking spaces will be provided by BP Cherry Point Refinery at the east end of Henry Road, just west of Powder Plant Road, along with a sign designating pedestrian and non-motor vehicle access along Henry Road.

ADOPTED this 13th day of November, 2001.

Dana Brown-Davis, Council Clerk

APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL

WHATCOM COUNTY, WASHINGTON

L. Ward Nelson, Council Chair

(Approved () Denied

Pete Kremen, County Executive

Date: /2-//-0/

Page 1

ATTEST

WHATCOM COUNTY DEPARTMENT OF PUBLIC WORKS

DIVISION OF ENGINEERING

Jeffrey M. Monsen, P.E. - Director

Bruce G. Mills, P.E. - County Road Engineer

5280 Northwest Drive, Suite C Bellingham, WA 98226

MEMO TO: Pete Kremen, County Executive and

County Council Public Works & Capital Projects Committee Members

FROM: Bruce Mills, County Road Engineer

SEP 2 8 2001

DATE: September 27, 2001

Possible Closure of Henry Road and Lonseth Road,

West of Powder Plant Road

PETE KREMEN COUNTY EXECUTIVE

Background:

SUBJECT:

Whatcom County received a request from BP Cherry Point Refinery to close Henry Road and Lonseth Road, just west of Powder Plant Road. BP supplied the County with a copy of over 100 incident reports of security issues they have dealt with on these two dead-end unoccupied roads in the past 15 years. These incidents involve frequent illegal dumping of trash, trespass, destruction of property, and illegal shooting activities, which endanger BP workers and other neighbors.

Whatcom County Public Works has spent significant time and resources in frequently collecting and disposing of dumped materials, and the Sheriff's department has logged many calls in response to these two dead-end roads.

Recently BP completed purchase agreements to obtain ownership of all land that adjoins these two sections of road, which have no residential structures along them. BP is anxious to close these roads at this time, as a security measure, and they are willing to install locking gates, at their own expense, and to provide keys to applicable County personnel.

Information:

Letter from BP Cherry Point Refinery Map of affected area

Requested Action:

The Public Works Department recommends the closure of these two sections of road. We request that the County Council review, introduce and adopt the proposed ordinance to close Henry Road and Lonseth Road, west of Powder Plant Road.

Should you have questions, please contact me.

Thank you.

cc: Jeff Monsen

bgm\

Phone: (360) 676-6730 County: (360) 380-8110 FAX: (360) 676-6558 423



BP Cherry Point Refinery 4519 Grandview Road Blaine, WA 98230

August 6, 2001

Honorable Pete Kremen County Executive Whatcom County 311 Grand Avenue Bellingham, WA 98225

Re: Cherry Point Road Closures

Dear Pete:

We would appreciate your help in resolving an issue that concerns BP and the employees of the Cherry Point Refinery. We own property adjacent to the ends of the Henry and Lonseth roads on the west side of the Gulf road. These roads have chronically suffered from undesirable activities including the illegal dumping of garbage, vandalizing of vehicles, damage from campfires, and shootings heard over the Cherry Point dock.

Over the past 16 years, our refinery security personnel have logged a list of over 100 incidents notable enough to be recorded at these sites. However, the frequency and severity of these incidents are becoming more of a problem. The latest and most dangerous of these was the destruction of a tree, which was shattered by shots from a high-powered rifle. These shots were heard overhead by Cherry Point employees working on our dock facility, who in fear of becoming injured, found safety inside. While we don't believe that the shots were aimed at our people, we are concerned that it could happen again with a different outcome.

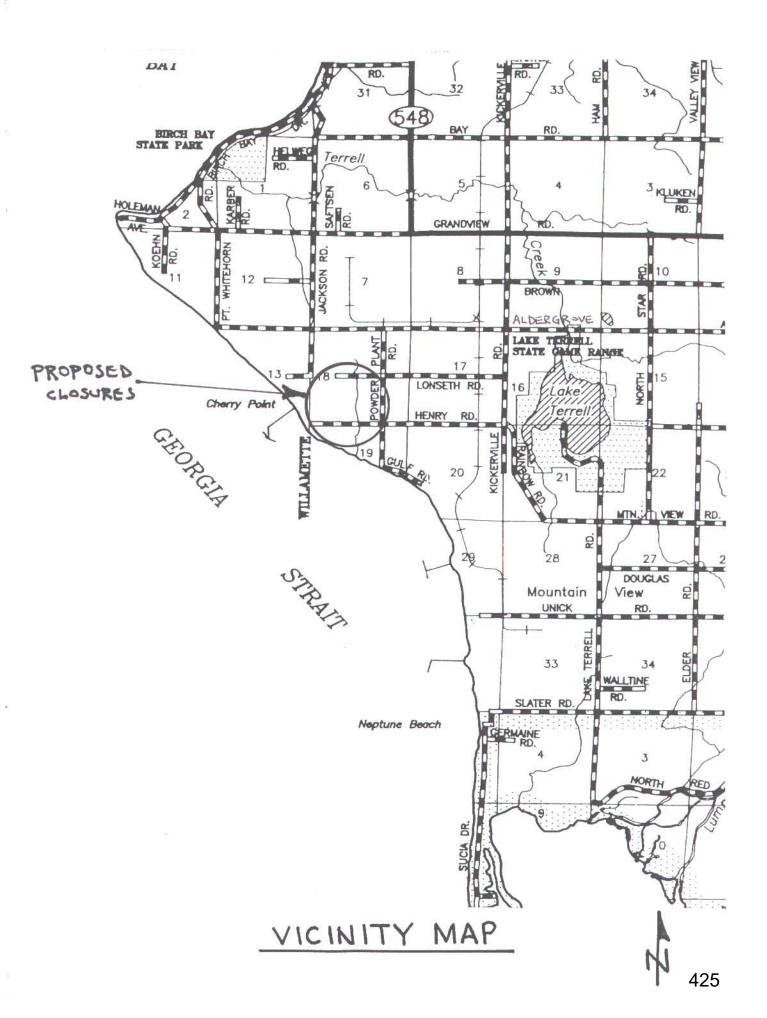
This situation could be avoided in the future by blocking the access to the Gulf and Henry roads. Property owners that require access to the road could be issued keys to a lock on the gate. This would not affect any shoreline access in the area.

BP Cherry Point Refinery values its employees and our safety record. We would sincerely appreciate the county's help on this matter.

Respectfully,

Scott Walker

External and Governmental Affairs



CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Bruce Mills	BGM	12-10	-	12-11-01	Introduction
Division Head: Bruce Mills	BGM	12-10		1-15-02	Hearing
Dept. Head;	Jm	12/10/01			
Prosecutor	II.	12/10/01			
Purchasing/Budget:					
Executive;	PR	12-11-01			

Discussion of Proposed Closure of Portions of Aldergrove Road and Gulf Road

ATTACHMENTS:

- 1. Memo to County Executive and Council
- 2. Letters from BP and Chevron
- 3. Maps of affected area
- 4. Proposed Ordinance

Related County Contract #:	Should Clerk schedule a hearing	g: NO/_/ YES /_x_/ I	Requested Date: 1/15/02
SUMMARY STATEMENT:	Ordinance & Resolution Distribution Request To keep down our copying costs, indicate only those who must receive a copy after Council action. List names to the right.		
Whatcom County has been requested by close portions of Aldergrove Road and (ADS Facilities Management ADS Finance	or. List names to the right.	
requested for security purposes to limit	ADS Human Resources		
accessing potentially vulnerable refinery	ADS Info Services		
		Assessor	
		Auditor	
		Cooperative Extension	
		District Court	
	Executive		
	Health		
RECOMMENDED ACTION:	Hearing Examiner		
Request that the proposed ordinance be	Jail		
Council for consideration and adoption.		Juvenile	
•	Parks		
		Planning	
COUNCII ACTION TAKEN.		Prosecutor	
2001 - 442 12/11/2001: Introduced 1/15/2002: Adopted 7-0, Ord.	#2000 004	Public Works	Bruce Mills
11 10/2002. Adopted 7-0, Ord. 1	42002-001	Sheriff	Brace Willis
		Superior Court	
	Treasurer		
		Other	
Relai	Ordinance or Resolut (this item):	tion Number	

SPONSORED BY: Pete Kremen, County Executive, and

Ward Nelson, County Council Chair

PROPOSED BY: Public Works

INTRODUCTION DATE: _12/11/01

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ORDINANCE NO. 2002-001

WHEREAS, the Whatcom County Council has been requested by BP Cherry Point

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35 36 37 ORDERING THE CLOSURE OF ALDERGROVE ROAD, FROM JACKSON ROAD TO 0.3 MILES EAST OF GULF ROAD, AND GULF ROAD (AKA POWDER PLANT ROAD), FROM LONSETH ROAD TO ALDERGROVE ROAD

Refinery to close a portion of Aldergrove Road, from Jackson Road to 0.3 miles east of Gulf Road, AND a portion of Gulf Road (aka Powder Plant Road), from Lonseth Road to Aldergrove Road, and

WHEREAS, the closure is requested for security reasons to limit vehicular traffic from accessing potentially vulnerable refinery facilities, and

WHEREAS, the closure of these portions of roads will not eliminate public access to other destinations in this area, and there are no residential structures along said road portions, and

WHEREAS, BP Cherry Point Refinery will accept responsibility to maintain said portions of roads during the length of closure, and to construct gates, a guard station and proper turnarounds, along with removal of said facilities at the end of said closure, and

WHEREAS, the County Council held a public hearing on the proposed closure on January 15, 2002, and is authorized to close the roads according to the provisions of RCW 36.32.120.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Public Works Department of Whatcom County is hereby directed, subject to further consideration for re-establishing access for adjoining property owners and the public, to close Aldergrove Road, from Jackson Road to 0.3 miles east of Gulf Road, AND a portion of Gulf Road (aka Powder Plant Road), from Lonseth Road to Aldergrove, to vehicular traffic.

BE IT FURTHER ORDAINED that as a condition of closure, BP Cherry Point Refinery will install proper signs and gates approved by Whatcom County Public Works at each closure location allowing pedestrian and non-motor vehicle access along said portions of closed roads.

ADOPTED this 15th day of January, 2002.

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3		WHATCOM COUNTY COUNCIL
4	ATTEST:	WHATCOM COUNTY, WASHINGTON
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6 7	Tender	1. align
8	Dana Brown-Davis, Council Clerk	L. Works No Boy Council Chair
10 11	APPROVED AS TO FORM:	(*) Approved () Denied
12	Diniel I Hikan	The heures
14	Civil Deputy Prosecutor	Pete Kremen, County Executive
15		Date: 1-23-02

WHATCOM COUNTY DEPARTMENT OF PUBLIC WORKS

DIVISION OF ENGINEERING

Jeffrey M. Monsen, P.E. - Director

Bruce G. Mills, P.E. - County Road Engineer

5280 Northwest Drive, Suite C Bellingham, WA 98226

MEMO TO: Pete Kremen, County Executive and

County Council Members

RECEIVED

FROM:

Bruce Mills, County Road Engineer

DEC 1 1 2001

DATE:

December 10, 2001

PETE KREMEN COUNTY EXECUTIVE

SUBJECT: Possible Closure of Portions of Aldergrove Road and Gulf Road

Background:

Whatcom County received a request from BP Cherry Point Refinery to close a portion of Aldergrove Road, from Jackson Road to 0.3 miles east of Gulf Road, AND a portion of Gulf Road (aka Powder Plant Road), from Lonseth Road to Aldergrove.

BP Cherry Point feels strongly that the closure is necessary for security reasons to limit vehicular traffic from accessing potentially vulnerable refinery facilities, especially in light of recent terrorist activities and national security concerns.

Upon examination, proposed closure of these portions of roads will not eliminate public access to other destinations in this area, and there are no residential structures along said road portions. BP Cherry Point and Chevron Companies own all of the properties bordering the closure area, and both are in favor of the closure.

BP Cherry Point Refinery will accept responsibility to maintain said portions of roads during the length of closure, and to install gates, a guard station and proper turnarounds, at their expense, along with removal of said facilities at the end of said closure. They will provide keys to applicable County and emergency response personnel.

Information:

Letter from BP Cherry Point Refinery Letter from Chevron Companies Maps of affected area

Requested Action:

The Public Works Department recommends the closure of these two sections of road. We request that the County Council review, introduce and adopt the proposed ordinance to close protions of Aldergrove Road and Gulf Road.

Should you have questions, please contact me.

Thank you.

cc:

Jeff Monsen

Phone: (360) 676-6730 County: (360) 380-8110 FAX: (360) 676-6558 429

bp

Michael R. Abendhoff

Manager, Government & Public Affairs



BP Cherry Point Refinery 4519 Grandview Road Building 1 Blaine, WA 98231

Office: (360) 303-5278 Fax: (360) 371-1450 email: abendhmr@bp.com

Date: December 10, 2001

To: Mr. Bruce Mills

County Road Engineer

Subject: Temporary Road Closure Proposal

Whatcom County Public Works Department

5280 Northwest Drive, Suite C Bellingham, WA 98226-9098

Dear Mr. Mills,

The recent, tragic events in New York have forced America to re-visit every aspect of personal and business security. We at BP have always had a long commitment to the safety of our people and the neighbors that border our operations.

After recent terrorist threats to the energy industry and warnings from Attorney General John Ashcroft and Homeland Security Director, Tom Ridge, BP reviewed our operations at Cherry Point. We believe there are some vulnerable points just south of our property, off Aldergrove Road. To better secure our people and our neighbors, we respectfully request the following: (see the attached map of the area)

- Temporarily close and restrict motor vehicle traffic on Aldergrove from Jackson Road to a
 point approximately .3 mile east of Gulf Rd.
- 2. Temporarily close and restrict motor vehicle traffic on Gulf Road, between Lonseth Road and Aldergrove.

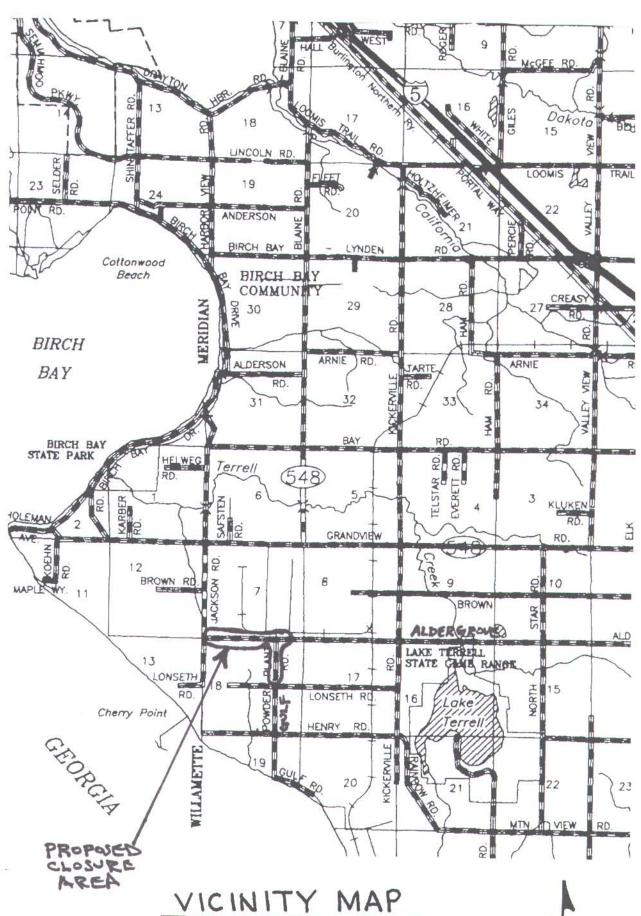
We are open to allowing foot and bicycle traffic on these roads, similar to the closure agreements reached on Henry and Lonseth Roads. In addition, BP will help maintain the roads during the closure. We will work with your office to determine an acceptable maintenance agreement.

Finally, we have full endorsement from Roger Sahlin, President of Home Port Properties. They have the long term purchase option rights on the Chevron and Puget Western lands just south of Aldergrove Road. He recognizes our security concerns and provided a letter of endorsement.

Thank you for reviewing our request and please contact me to discuss the next steps in the process.

Sincerely,

Michael Abendhoff





----Original Message-----

From: Roger Sahlin [mailto:RSAHLIN@ssofa.com]

Sent: Monday, December 10, 2001 8:29 AM

To: 'abendhmr@bp.com'
Subject: road closures

Dear Mr. Mike Abendhoff,

Please be advised that HomePort Properties has long term purchase and options agreements on Chevron and Puget Western lands to the south and adjoining your Cherry Point Refinery. We support the temporary closure of portions of Gulf and Aldergrove roads for control of unpermitted waste dumping and for security of assets. Please advise Bruce Mills and Whatcom County.

C. Roger Sahlin, President, HomePort Properties

Exhibit E: Pacific International Holdings letter to WCSO

<Remaining page is blank>

April 2, 2021

Whatcom County Sheriff's Office Attn: Station Deputy 311 Grand Avenue Bellingham, WA 98225

RE: No Trespassing Letter - Pacific International Holdings Property at Cherry Point

Dear Whatcom County Sheriff's Office ("WCSO"),

Pacific International Holdings, LLC ("PIH") owns 1097-acres of uplands and 14-acres of tidelands within the Cherry Point Industrial District in Whatcom County, Washington State (the "Property"). The Property is adjacent to the BP Cherry Point Refinery and ALCOA Intalco Works. A boundary map of the property can be found in **Exhibit A** and parcel numbers can be found in **Exhibit B.** I am writing on behalf the of the company to reaffirm our May 19, 2020 "No Trespassing" letter is still on file with WCSO. All the Property in the exhibits are privately held. There is no public access agreement to the Property.

The Property owner does not allow for trespass, cutting firewood, setting beach fires, dumping, access for ATVs, hunting or the use of firearms, alcohol or drugs on the Property.

We want to stop unauthorized uses of the Property. Areas of specific concern are at the Gulf Road beach and behind the gates at Henry Road and Lonseth Road. The Property owners do not have a cooperative hunting agreement with Washington Department of Fish & Wildlife and do not have a public access agreement to use any of the Property, including uplands, shoreline and tidelands. Whatcom County ("County") has a 40' easement across PIH's property for the Gulf Road, see Exhibit C and enclosed record of survey filed with the County. There is no public access granted beyond this 40' right of way. Any parking needs to be done within the County right of way. The County also has a temporary closure ordinance on Henry and Lonseth Roads. There is no public access beyond the County right of way behind those gates.

We are working to control unauthorized and illegal uses of the Property and are requesting extra patrols from WCSO to help reduce incidents of trespass. These activities pose a security risk to the neighboring property owners, their facilities, employees and a safety risk to our employees and contractors working on the site, in addition to creating damage to the Property and a liability issue. To protect the Property, we continue to replace the No Trespassing, No Parking and No Hunting signs that have been removed or damaged.

If the WCSO has questions or want to discuss security issues at Cherry Point, please don't hesitate to call me at (206) 654-3510. Thank you for your assistance.

Sincerely,

Skip Sahlin

cc: BP Cherry Point FSO

Whatcom County Fire District #7

Enclosures: May 19, 2020 Whatcom County Sheriff's Office "No Trespass" Letter

ALTA Record of Survey Pg. 14 Gulf Road

PACIFIC INTERNATIONAL INTERNAT 390119214451 CHERRY POINT PACIFIC INTERNATIONAL INTERNAT CHERRY POINT MOUSTRIAL PARK 390120095477 PACIFIC AVERTATIONAL TERMINALS INC. CHERRY PORT INDUSTRIAL PARK 335.94 ec. PACEL INTERACTIONAL TERMINALS INC... THE PAGE OF THE P THE STANDARD OF THE

Exhibit A: Pacific International Holdings Parcel Map

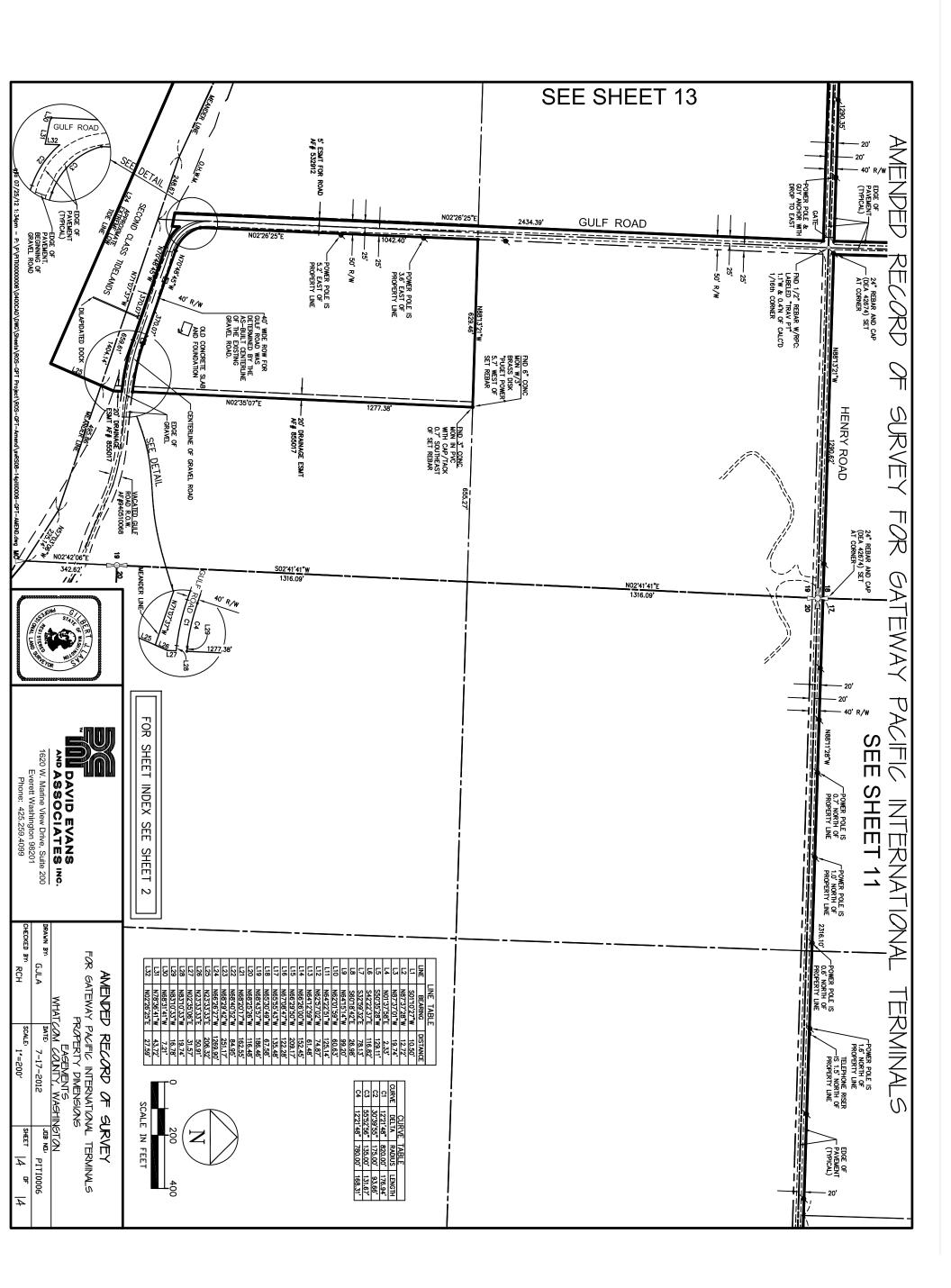
Exhibit B: Pacific International Holdings Parcels

Cherry Point Property

Pacific International Holdings, LLC

Pacific international Holdings, LLC								
	Property	Parcel			Upland	Tideland		
#	ID	Township	X	Υ	Acre	Acre	Туре	Ownership
1	87578	0390117	473	110	71.00	0.00	9130	Pacific International Holdings, LLC
2	87567	0390117	067	334	177.72	0.00	9130	Pacific International Holdings, LLC
3	87570	0390117	205	467	148.46	0.00	9130	Pacific International Holdings, LLC
4	87566	0390117	065	466	510.29	0.00	4911	Pacific International Holdings, LLC
5	87585	0390118	117	050	22.51	0.00	9130	Pacific International Holdings, LLC
6	87591	0390119	198	377	0.00	2.39	9350	Pacific International Holdings, LLC
7	87592	0390119	199	451	6.12	0.00	9130	Pacific International Holdings, LLC
8	87593	0390119	214	451	5.53	0.00	9130	Pacific International Holdings, LLC
9	87594	0390119	246	354	0.00	3.73	9350	Pacific International Holdings, LLC
10	87595	0390119	252	449	26.12	0.00	4811	Pacific International Holdings, LLC
11	87596	0390119	298	423	15.02	1.38	9130	Pacific International Holdings, LLC
12	87597	0390119	327	425	11.42	0.91	9130	Pacific International Holdings, LLC
13	87598	0390119	349	425	11.95	0.85	9130	Pacific International Holdings, LLC
14	87599	0390119	388	424	27.76	1.71	4811	Pacific International Holdings, LLC
15	87600	0390119	424	335	0.52	0.00	9130	Pacific International Holdings, LLC
16	87601	0390119	438	360	10.47	1.25	9130	Pacific International Holdings, LLC
17	87603	0390119	454	299	0.63	0.58	9110	Pacific International Holdings, LLC
18	87604	0390119	469	346	6.66	1.04	9130	Pacific International Holdings, LLC
19	87589	0390119	092	500	32.63	0.00	9130	Pacific International Holdings, LLC
20	87590	0390119	172	456	11.96	0.00	9130	Pacific International Holdings, LLC
21	112880	0395124	546	546	0.30	0.00	9130	Pacific International Holdings, LLC
		Total			1097.07	13.84		

Exhibit C: Record of Survey, Whatcom County 40' Right of Way Gulf Road ROAD GULF FND 6" CONC MON W/3" BRASS DISK "PUGET POWER" 5.7' WEST OF SET REBAR N02"26"25"E 655.27 FND 3° CONC MON IN PVC WITH CAP/TACK 0.7° SOUTHEAST OF SET REBAR POWER POLE IS 3.6' EAST OF PROPERTY LINE -POWER POLE IS 5.2' EAST OF PROPERTY LINE 5' ESMT FOR ROAD AF# 532912 20' DRAINAGE ESMT AF# 855017 r40" WIDE ROW FOR GULF ROAD WAS DETERMINED BY THE AS-BUILT CENTERLINE OF THE EXISTING GRAVEL ROAD. Ġ OLD CONCRETE SLAP AND FOUNDATION CENTERLINE OF GRAVEL ROAD EDGE OF -GRAVEL SECOND CLASS TIDELANDS MEANDER LINE VACATED GULF ROAD R.O.W. AF#940510068 20' DRAINAGE ESMT AF# 855017 19 1404.14 ROAD DILAPIDATED DOCK EDGE OF PAVEMENT (TYPICAL) GULF -EDGE OF PAVEMENT. BEGINNING OF GRAVEL ROAD



May 19, 2020

Whatcom County Sheriff's Office Attn: Station Deputy 311 Grand Avenue Bellingham, WA 98225

RE: No Trespassing Letter - Pacific International Holdings Property at Cherry Point

Dear Whatcom County Sheriff's Office ("WCSO"),

Following up on WSCO's May 11, 2020 request for submitting a "No Trespassing" letter (see **Exhibit A**), Pacific International Holdings, LLC ("PIH") owns 1097-acres of uplands and 14-acres of tidelands within the Cherry Point Industrial District in Whatcom County, Washington State (the "Property"). The Property is adjacent to the BP Cherry Point Refinery and ALCO Intalco Works. A boundary map of the property can be found in **Exhibit B** and a list of parcel numbers can be found in **Exhibit C**. All the Property in the exhibits are privately held. There are no public access agreements to the Property.

The Property has been experiencing an increase in unauthorized uses and trespassing specifically at the Gulf Road beach and behind the gate at Henry Road. We have reported illegal dumping, abandoned vehicle, cutting firewood, setting beach fires, property destruction by ATVs and 4x4 trucks and the use of firearms, alcohol and drugs on the Property. The Property owners do not allow any of these activities.

Please note, the Property owners do not have a cooperative hunting agreement with Washington Department of Fish & Wildlife and do not have a public access agreement to any of our property, including upland, shoreline and tidelands. Whatcom County has a 40' easement across PIH's property for the Gulf Road. There is no public access granted beyond this 40' right of way. We are working to control unauthorized and illegal uses of our property and are requesting extra patrols from Whatcom County Sheriff to help reduce incidents of trespass. Currently we have three open case numbers. They are:

- 20A14087 Hit and run, Trespass
- 20A14205 Trespass
- 20A14169 Cutting wood

These activities pose a security risk to the neighboring property owners, their facilities, employees and a safety risk to our employees and contractors working on the site, in addition to creating damage to the Property and a liability issue. To protect the Property, we are replacing the No Trespassing, No Parking and No Hunting signs that have been removed or damaged.

If the WCSO has questions or want to discuss security issues at Cherry Point, please don't hesitate to call me at (206) 654-3510. Thank you for your assistance.

Sincerely,

Skip Sahlin

cc: BP Cherry Point FSO

Exhibit A: WSCO Letter Request

----Original Message----

From: crimereport@co.whatcom.wa.us <crimereport@co.whatcom.wa.us>

Sent: Monday, May 11, 2020 11:45 AM

To: Skip Sahlin < Skip.Sahlin@SSAMarine.com

Subject: Crime Report Incident

We are unable to accept the report you recently filed with the Sheriff's Office. The reviewing deputy made the following comments regarding the reason for not accepting the report:

Good Morning Sir,

Please submit a "No Trespassing" letter and mail the hard copy to:

Whatcom County Sheriff's Office

311 Grand Ave.

Bellingham, WA.98225 Attn: Station Deputy

WCSO requires a written letter on file. Thank you and have a great day.

Thank you.

----Original Message----

From: crimereport@co.whatcom.wa.us <crimereport@co.whatcom.wa.us>

Sent: Friday, May 8, 2020 4:28 PM

To: Skip Sahlin <Skip.Sahlin@SSAMarine.com>

Subject: Crime Report Incident

Thank you for using our online reporting system. Your report has been received by the Sheriff's Office, and will be reviewed as soon as possible.

If further information is necessary you will be contacted by either phone or email. If you need to contact the Sheriff's Office please call 360-778-6600.

PACIFIC INTERNATIONAL INTERNAT 390119214451 PACIFIC INTERNATIONAL INTERNAT CHERRY POINT MOUSTRIAL PARK 390120095477 PACIFIC AVERTATIONAL TERMINALS INC. CHERRY PORT INDUSTRIAL PARK 335.94 ec. PACETA
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Exhibit B: Pacific International Holdings Parcel Map

Exhibit C: Pacific International Holdings Parcels

Cherry Point Property

Pacific International Holdings, LLC

	Facilic international holdings, LLC							
	Property	Parcel			Upland	Tideland		
#	ID	Township	X	Υ	Acre	Acre	Туре	Ownership
1	87578	0390117	473	110	71.00	0.00	9130	Pacific International Holdings, LLC
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4	87566	0390117	065	466	510.29	0.00	4911	Pacific International Holdings, LLC
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11	87596	0390119	298	423	15.02	1.38	9130	Pacific International Holdings, LLC
12	87597	0390119	327	425	11.42	0.91	9130	Pacific International Holdings, LLC
13	87598	0390119	349	425	11.95	0.85	9130	Pacific International Holdings, LLC
14	87599	0390119	388	424	27.76	1.71	4811	Pacific International Holdings, LLC
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16	87601	0390119	438	360	10.47	1.25	9130	Pacific International Holdings, LLC
17	87603	0390119	454	299	0.63	0.58	9110	Pacific International Holdings, LLC
18	87604	0390119	469	346	6.66	1.04	9130	Pacific International Holdings, LLC
19	87589	0390119	092	500	32.63	0.00	9130	Pacific International Holdings, LLC
20	87590	0390119	172	456	11.96	0.00	9130	Pacific International Holdings, LLC
21	112880	0395124	546	546	0.30	0.00	9130	Pacific International Holdings, LLC
	Total		1097.07	13.84				



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-304

File ID: AB2021-304 Version: 1 Status: Agenda Ready

File Created: 05/19/2021 Entered by: JNixon@co.whatcom.wa.us

Department: Council Office File Type: Report

Assigned to: Council Criminal Justice and Public Safety Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Report from the Incarceration Prevention and Reduction Task Force

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Incarceration Prevention and Reduction Task Force Co-Chairs Stephen Gockley and Jack Hovenier will present the Task Force's Annual Report

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Report



Whatcom County Incarceration Prevention and Reduction Task Force

2021 Annual Report

June 14, 2021

TASK FORCE MEMBERS

Barry Buchanan Whatcom County Council

Anne Deacon

Human Services Manager, Health Department

Bill Elfo

Whatcom County Sheriff

Arlene Feld Citizen Representative **Heather Flaherty** Citizen Representative

Seth Fleetwood Mayor, City of Bellingham **David Freeman** Superior Court Judge

Stephen Gockley

Co-Chair; Health and Social Services Representative

Daniel Hammill

Council Member, City of Bellingham

Deborah Hawley Consumer Representative

Mike Hilley

EMS Manager, Whatcom County

Jack Hovenier

Co-Chair; Consumer Representative

Raylene King Blaine Court Administrator

Scott Korthuis Mayor, City of Lynden Byron Manering

Executive Director, Brigid Collins

Moonwater

Executive Director, Whatcom Dispute Resolution Center

Darlene Peterson

Court Administrator, Bellingham Municipal Court

Dave Reynolds

Whatcom County Superior Court Administrator

Eric Richey

Whatcom County Prosecuting Attorney

Tyler Schroeder

Whatcom County Deputy Executive Representative

Flo Simon

Acting Police Chief, City of Bellingham

Donnell Tanksley Police Chief, City of Blaine Bruce Van Glubt Whatcom County District Court

Maialisa Vanyo

Chief Deputy, Whatcom County Public Defender's Office

Greg Winter

Executive Director, Opportunity Council

BEHAVIORAL HEALTH COMMITTEE

Dan Hamill, Co-Chair Megan Ballew

Nathan Bajema Mike Hilley Chris Cochran **Byron Manering Doug Chadwick** Perry Mowery

Arlene Feld Mike Parker, Co-Chair Seth Fleetwood Michael G. Smith Heather Flaherty **Brien Thane**

Stephen Gockley

CRISIS STABILIZATION FACILITY COMMITTEE

Doug Chadwick Anne Deacon, Chair **Todd Donovan** Mike Hilley Jack Hovenier Michael McCauley Tyler Schroeder

LEGAL AND JUSTICE SYSTEMS COMMITTEE

Bill Elfo

Arlene Feld, Co-Chair **David Freeman** Stephen Gockley **Deborah Hawley** Raylene King, Co-Chair Jackie Mitchell

Moonwater Darlene Peterson Eric Richey Flo Simon **Donnell Tanksley** Bruce Van Glubt Maialisa Vanyo

INFORMATION NEEDS & DATA EXCHANGE (INDEX) COMMITTEE

Ryan Anderson Brenda Beeman Barry Buchanan Amy Ebenal

Caleb Ericksen, Chair

Erin Herschlip Amy Hockenberry Wendy Jones Dave Reynolds Perry Rice Kathy Smith Bruce Van Glubt Maia Vanyo

^{*}Task Force Committees may include Task Force members, their proxies, or other agency staff or community members.

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Overview of Task Force Activities	9
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Legal and Justice Systems Committee	19
Behavioral Health Committee	24
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Information Needs & Data Exchange (INDEX) Committee	30

I. Executive Summary

TASK FORCE STATEMENT OF PURPOSE. The Incarceration Prevention and Reduction Task Force was formed by an ordinance of the Whatcom County Council in 2015 to review Whatcom County's criminal justice and behavioral health programs and recommend changes to reduce incarceration of individuals struggling with mental illness and chemical dependency, and to reduce jail use by pretrial defendants who can be safely released. The Task Force includes a broad range of participants, including representatives from organizations involved in criminal justice and law enforcement, policy makers, service providers, members of the public, and consumers of services. In 2019, the Task Force's role was broadened by the County Council to also serve as the County's Law and Justice Council, responding to a requirement in state law and creating an ongoing oversight function for the group.

The Task Force has established four committees to work on criminal justice or behavioral health issues and needs. A Crisis Stabilization Facility Committee is advising the County on the development and operation of an expanded crisis facility. A Legal and Justice Systems Committee examines existing and potential reforms in criminal justice system practices. A Behavioral Health Committee identifies improvements in the delivery of mental health and substance use disorder services and programs that target prevention and early intervention efforts to divert individuals from entering the criminal justice system. The Information Needs and Data Exchange (INDEX) Committee is a coalition of staff working to improve data systems, information-sharing across jurisdictions, and availability of outcome data.

LEGAL AND JUSTICE SYSTEMS COMMITTEE

Committee Education on Existing Programs and Needed Opportunities

The Legal and Justice Systems Committee focused mid-2020 on the significant financial and operational impacts that the criminal justice system was experiencing due to Covid. The committee members reported on the impacts to their programs, ranging from increased use of electronic home monitoring, the availability and level of pretrial services, and participation in Drug Court and Mental Health Court. In response to nationwide protests against racial injustice in policing, the Committee spent several meetings reviewing the availability and benefits of implicit bias training for all individuals throughout the criminal justice system, jail statistics, the challenges of gathering accurate race and ethnicity statistics, and how to encourage more diverse populations to participate with the Committee.

• Launch of the Law Enforce Assisted Diversion (LEAD) Program

The Whatcom County Prosecutor's Office, in collaboration with a multidisciplinary team, has been working since 2019 to create a program that delivers a suite of support services to those who are regularly involved in the criminal justice system, with the goal of reducing future criminal behavior. After securing significant grant monies to fund the program for three years, the LEAD program launched on September 23, 2020. The program provides treatment, housing, transportation, and other support services to individuals who are referred to the program by law enforcement and other community partners. The program currently serves approximately 50 individuals, with a capacity of 80 to 100.

Pretrial Diversion

Pretrial diversion services, which allow a jurisdiction to monitor defendants released to the community pending their trial dates, have been in place in district and municipal courts for several years. These courts of limited jurisdiction engaged the services of either District Court Probation's electronic monitoring program or Friendship Diversion Services to provide judicial officers an alternative to jail or bail for defendants. A pretrial release program allows defendants to maintain housing, employment, and social support systems, which results in better overall outcomes for the defendant.

Unlike the courts of limited jurisdiction, Superior Court judicial officers had no options available to them for pretrial release other than bail or releasing someone on personal recognizance (PR). After several years of working toward developing a pretrial services program and obtaining funding in the 2019-2020 biennial budget, Superior Court opened its Pretrial Services Unit, a new program to provide pretrial monitoring to Superior Court defendants. Services are intended to be provided in tandem with a pretrial risk assessment tool to guide judicial officers in assigning an appropriate level of monitoring. Since the onset of the Covid pandemic, the court delayed implementation of the risk assessment tool and the pretrial services unit staff currently provide remote-only check-in with program participants.

BEHAVIORAL HEALTH COMMITTEE

• Review of Existing Community Programs

The County Council expanded the purpose of the Task Force to include early intervention and prevention strategies that may have a future impact on reducing entry into the criminal justice system in 2019. The Behavioral Health Committee began to focus much of its work on prevention and early intervention programs and services available in the community. This additional focus fits within Intercept 0 - Community Services on the sequential intercept model, which the Task Force has used as its roadmap for evaluating programs, needs, and gaps in the system. The Committee has reviewed children's initiatives and youth intervention available in the school districts, community programs that target young adults, and treatment options for pregnant and parenting women. In addition to these early intervention programs, the Committee continues to review the possibility for expansion of existing behavioral health programs such as the Homeless Outreach Team (HOT), Program for Assertive Community Treatment (PACT), and the Ground-level Response and Coordinated Engagement (GRACE) Program.

• Expanded Committee Participation

To bolster its focus on prevention and early intervention, the Committee expanded its membership to include stakeholder representatives from community agencies that share this focus, including the Bellingham School District, Bellingham Whatcom Housing Authority, and Lake

Whatcom Residential Treatment Center. With this expanded representation, the committee has become a robust forum for discussing how best behavioral health prevention and early intervention efforts can divert people from entering the criminal justice system.

• Implementation of the GARE Toolkit

Expanding committee participation ensures that the committee membership includes a broad spectrum of voices and perspectives, including individuals who may experience bias and inequity in the behavioral health and criminal justice systems. This is an important step in successfully administering the Government Alliance on Race and Equity (GARE) toolkit, which the Task Force adopted in November. Integral to successful implementation of the toolkit is identifying goals, objectives and measurable outcomes. To that end, the Committee is beginning the conversation on data elements that are critical to knowing how well our system is operating for all individuals.

CRISIS STABILIZATION FACILITY COMMITTEE

• Construction Completion

Whatcom County's new Crisis Stabilization Center opened in January 2021. The facility is comprised of two units that provide around-the-clock mental health and substance use disorder services to individuals in crisis. This brand new facility adds much-needed bed space and supportive care services to the community. Total capacity of the new Center is more than double the capacity of the previous crisis triage facility. Despite this increase in number of beds available for crisis care, there is still need in the community for more of these types of services.

• Operational Funding

Securing a stable source of funding for the ongoing costs of operation has been a challenge. The Center currently relies on a mix of Medicaid and state funds, but ongoing operational funding must also be ensured by the Managed Care Organizations at the "firehouse model" level of funding so all operational costs are funded, allowing the facility to be fully staffed 24/7. County leadership is working with State legislators, the State Health Care Authority, and the North Sound Behavioral Health Administrative Services Organization to secure operational funds beyond the current budget cycle.

INDEX COMMITTEE

New Case Management Systems

Many local and state agencies within the criminal justice system are undergoing significant upgrades to their case management systems. Some of these current systems are 25 years old or paper-based, making it extremely difficult to collect the data necessary to inform policy-makers of the current trends occurring in the system. In the next 12 to 24 months, new or upgraded case management systems will be implemented in several county departments and in the Cities' municipal courts.

• Racial and Ethnic Data

In the wake of the social unrest that is occurring throughout the country, the INDEX Committee has recognized the need to evaluate local criminal justice and social service systems through the lens of racial and ethnic disparity. Unfortunately, that data has been either difficult to gather or nonexistent. Moving forward, the Committee will work with agencies to find and implement a data platform that can aggregate data across all case management systems and improve the quality of data and trend analysis available to policy-makers and the community.

II: Incarceration Reduction Programs and Initiatives

A. Introduction

The Incarceration Prevention and Reduction Task Force was formed by the Whatcom County Council in 2015. Its purpose, as stated in Whatcom County Code Chapter 2.46, is to "...continually review Whatcom County's criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pretrial defendants who can safely be released." The Task Force is made up of participants from a broad range of sectors, including local judicial and law enforcement agencies, behavioral health organizations, local government executive and legislative representatives, members of the public, and consumers of services. In 2019, the Task Force role was broadened to also serve as the County's Law and Justice Council, fulfilling a requirement in state law and creating an ongoing oversight and coordination function for the group.

Due to the emergence of the novel coronavirus (COVID-19) virus and resultant worldwide pandemic beginning early in 2020, the Task Force and its committees cancelled all meetings from March through mid-June. Once the Governor lifted the emergency prohibition of public meetings to allow remote-only meetings, Task Force and committee meetings resumed in the summer of 2020, and meetings were held via Zoom webinar. The new meeting format allows video recording of Task Force and committee meetings. Video recordings are now uploaded to the IPRTF playlist on the WhatcomCountyGov YouTube channel and made available to the community.

Throughout this report are summaries of a broad range of activities and outcomes resulting from the work of the Task Force and its involved agencies.

B. Overview of Task Force Activities

The past year has been challenging for the Incarceration Prevention and Reduction Task Force, but it has also achieved a number of long-range goals, including the much-anticipated opening of the new Crisis Stabilization Center in January 2021. The primary reason for creating the Task Force was to develop plans for a new crisis triage center for individuals struggling with mental illness and chemical dependency. The new Center expands the capacity of the County's previous triage facility and provides much better access for law enforcement and emergency services as an alternative to the hospital's emergency department or jail. In addition to the new Center, the past year has seen the launch of the new Superior Court Pretrial Services Unit, a new program based on best practices that allows judicial officers to release qualifying defendants with conditions. The new Law Enforcement Assisted Diversion (LEAD) program, spearheaded by the Whatcom County Prosecutor, received a three-year federal grant for its operation and has been launched under the auspices of the Ground-Level Response and Coordinated Engagement (GRACE) Program.

CRISIS STABILIZATION CENTER OPENING

Since the inception of the Task Force in 2015, its priority task has been to develop plans for a new or expanded crisis triage center for individuals struggling with mental illness and chemical dependency, including facility construction plans, more efficient and effective services, and funding for construction and operation. In January, the new Crisis Stabilization Center opened its doors to the community and to emergency and law enforcement responders, who can now bring people directly to the Center.

NOVEL CORONAVIRUS (COVID-19) IMPACTS

The COVID-19 pandemic and workforce shortages have had an impact on criminal justice and social services throughout the community. Programs had to adjust procedures and protocols to accommodate new pandemic social distancing requirements. Personnel in both nonprofit and governmental agencies were diverted away from social and public health programs to pandemic response. The financial burden of pandemic response necessitated budget cuts to many programs. The cumulative result of these impacts significantly reduced access and available capacity to some behavioral health and incarceration reduction programs.

Whatcom County Jail. The jail experienced reduced capacity due to Covid and planned remodeling of the jail facility. Jail staff have been concerned about Covid in the facility that would expose inmates, staff, and medical providers. Booking restrictions were implemented. Jail staff and leadership met with medical staff to institute Covid screening protocols for everyone in the facility. Restrictions have been instituted to reduce exposure to the COVID-19 virus for both jail employees and the offender population, either of which will have a significant impact on capacity and workforce availability. Some community service programs, such as Goodwill Industries, that provide reentry services to jail inmates have been suspended during the pandemic.

In response to the Covid-19 pandemic, the State Supreme Court substantially relaxed its rules for keeping people in jail pretrial. As a result, the jail population was substantially reduced, and has remained very low in comparison to previous levels. During phase one of the pandemic lockdown, there was a spike in domestic violence cases due to people staying at home while struggling with economic and mental health issues. Auto theft was up, but other crimes have gone down. Mental health cases are up 42 percent. The number of calls that are dispatched to a mental health component are also up significantly.

Local Courts. Courts around the county were shut down for a time during the pandemic, resulting in a backlog of cases. The judicial officers in Superior Court were on the cusp of implementing the pretrial risk assessment when the pandemic occurred. Judicial officers finalized the pretrial risk assessment questionnaire in March, but the coronavirus pandemic shutdown began the same week that they planned to implement its use. Because the court experienced a limited shut down of its services and caseloads, training, data collection, and program evaluation were delayed. Since restarting court services with proper protocols in place, Superior Court has held only one jury trial.

The Court streamlined its process for getting pretrial release motions before the Court, so they could release the maximum number of people. For example, people who failed to appear in court were rescheduled rather than levied penalties.

<u>District Court and District Court Probation</u>. District Court has adapted to the new COVID-19 environment by implementing social distancing measures and, in addition:

- Held remote and virtual court hearing appearance options both telephonically and by Zoom for most cases
- Installed TV monitors in the hallways outside of each courtroom for the public to determine if socially distanced seating is available

District Court Probation Department has adapted to the new COVID-19 environment in several significant ways, including:

- Remote and virtual client appointments are held telephonically and by Zoom
- Remote and virtual court appearances are often approved
- Text message communication with the clients has increased significantly
- Website resources have increased

The Department has had to adapt to other impacts of COVID-19 such as extensive staff absences, implementation of new technology, adjusting to new processes and procedures to assure the safety of employees and the public, and increasing interdepartmental cross training.

<u>Small Cities Municipal Courts.</u> At the outset of the pandemic, municipal courts in the small cities were initially limiting hearings or holding hearings remotely through Zoom. Recently, some courts have resumed court sessions using protective measures, limiting attendees, accommodating those with health concerns, and making sure everyone wears masks.

Bellingham Municipal Court and Electronic Home Monitoring. The Covid-19 pandemic had a significant impact on programs in the City of Bellingham. The use of the GPS bracelets dropped by 57% to 199 defendants being monitored and the use of the SCRAM bracelets grew 78% to 228 defendants being monitored, which is an alternative to jail either pre-trial or post-sentencing. Two factors during 2020 considerably affected these numbers.

- 1. The number of criminal cases filed with the City dropped from 2,939 cases in 2019 to 1,909 cases in 2020, a drop of 1,020 cases filed as officers issued fewer charges to people because of jail booking restrictions from the jail remodeling project, and as a result of efforts to minimize the jail population during COVID. Also, the Court was closed in April and May.
- 2. The length of time to resolve defendants' cases increased due to the temporary suspension of court hearings directed by the Supreme Court of Washington based on concern for public safety.

Specialty Courts. Drug court and mental health court referrals were down due to COVID, but were beginning to rise to normal levels by fall of 2020. Drug court activities are occurring via alternate methods due to COVID. The drug court created virtual and in-person ways for people to participate. However, compliance from participants in drug court deteriorated during the pandemic.

RACIAL EQUITY IN THE CRIMINAL JUSTICE SYSTEM

The full Task Force and all the committees engaged in discussions on racial equity in the criminal justice system. The Task Force reviewed and discussed the Government Alliance on Race and Equity (GARE) program and ultimately adopted the use of the GARE Racial Equity Toolkit within the work of the Task Force. The toolkit is essentially a curated list of six critical questions that are designed to be applied to the work of the task force.

The Racial Equity Tool (from GARE):

- 1. Proposal: What is the policy, program, practice or budget decision under consideration? What are the desired results and outcomes?
- 2. Data: What's the data? What does the data tell us?
- 3. Community engagement: How have communities been engaged? Are there opportunities to expand engagement?
- 4. Analysis and strategies: Who will benefit from or be burdened by your proposal? What are your strategies for advancing racial equity or mitigating unintended consequences?
- 5. Implementation: What is your plan for implementation?
- 6. Accountability and communication: How will you ensure accountability, communicate, and evaluate results?

Much of the work to operationalize the toolkit is actually in the connections and conversation as the task force sub-committees asses processes, analyze data, and then implement changes or make recommendations. The Legal and Justice Committee received a presentation on racial bias and potential training efforts. The Behavioral Health Committee is considering how to operationalize the racial equity framework within the Committee and examining the makeup of the Behavioral Health Committee to determine if additional representation is needed. All committees are discussing the data elements necessary to know how well the system is operating for all individuals. These activities serve as the foundation of future work.

TASK FORCE IN TRANSITION

With the opening of the new Crisis Stabilization Center in January, the Task Force has completed all the goals specified in its original enabling ordinance. Beyond the original functions and goals, the Task Force's value to the community has become clear. The Task Force has worked toward creating alliances among formerly siloed programs, services, and information within participating agencies and in cooperation with other stakeholders in the community. In the coming year, the Task Force will revisit its strategic plan as the framework for reviewing existing programs and new programs that come forward.

IPRTF Influence on Participating Stakeholders. Since it was formed, the Task Force provided a venue for stakeholders and community leaders to come together and reinforce how important it is to reduce entry to and recidivism within the criminal justice system. Members embrace the importance of recognizing and mitigating the societal impacts of untreated mental health and substance use disorder issues. The exchange of ideas and lively discussion from many different perspectives inspire Task Force members to

consider and implement creative solutions within their own agencies. For example, several of the small cities have learned from the success the City of Bellingham has had with Friendship Diversion Services electronic monitoring and are now using these techniques within their own jurisdictions.

IPRTF Influence on Other Community Efforts. The commitment to reduce and prevent incarceration has motivated many efforts outside the Task Force itself. The Task Force has a broad impact on community betterment initiatives that have taken root in the past few years. Other integrated efforts are happening in the community, partly due to the Task Force.

In recognition of gaps within the current justice system and bolstered by the growing interest in restorative justice, the Whatcom Dispute Resolution Center (WDRC) collaborated with the Bellingham-Whatcom Commission on Sexual and Domestic Violence to develop and implement a six-part learning series for community stakeholders on the intersection of restorative justice and sexual and domestic violence. A five-member planning team, which included staff from the WDRC, the Commission, the Lummi Tribe, and the community designed learning module themes to develop a shared understanding of restorative justice and domestic violence treatment principles and values, and explore different restorative justice applications from peacemaking circles to Title IX to grassroots efforts. Participants - approximately 25-65 per session - ranged from nonprofit staff, law enforcement, court personnel, higher education staff, and community members at large. A robust repository of resources was created to support future learning and exploration.

New partnerships. New partnerships have flowed through the work of the Task Force. Task Force members participate in related groups and organizations and are able to connect the work of the Task Force with other efforts in the community. One example of this influence was expanding the use of Shelter Plus Care vouchers. Many people experiencing behavioral health issues are unhoused, and achieving stable housing may require ongoing behavioral health support. Behavioral Health Committee members discussed the opportunity to increase housing options for individuals in programs such as GRACE and LEAD via expanded availability of housing vouchers from the HUD Shelter Plus Care program. These vouchers are funded but underutilized because there are not enough case managers to provide concurrent behavioral health support. A small core team of stakeholders across jurisdictions and agencies is examining opportunities to increase case management so that these vouchers can be accessed.

FUNDING FOR INCARCERATION PREVENTION AND REDUCTION PROGRAMS

The Task Force has recommended many different programs and services for implementation over the years. The county works with community partners to design these programs and reviewing potential funding sources that may be available to support implementation and continued programming. A goal to identify sustainable funding is a priority so that consistency in services can be maintained.

The County and its partners have relied on grant awards from federal and state sources to launch programs. Once implemented, sustainable funding typically comes from federal, state or local dollars, and sometimes from foundations. Since each funding source has specific requirements of eligible costs,

a number of programs have multiple funding sources that allow for the creation of complete and comprehensive services.

When local funds are utilized to support programs, the county advisory committee associated with that fund source must support its use for the stated purpose. These advisory committees have strategic plans for the use of the fund and ensure that the recommended program fits within the plan.

DATA

Data is collected by all jurisdictions at many different levels of the criminal justice and behavioral health systems, including law enforcement agencies, courts, prosecutors and public defenders, the jail, and the new Crisis Stabilization Center. New case management systems are being deployed over the next 2 years for many of these agencies. The big barrier to disseminating relevant data and statistical information is that none of these systems "talk to each other" to provide a comprehensive overview of the entire criminal justice system. The criminal justice system needs data that is reliable and consistent across all case management platforms. The INDEX Committee is looking at options for a potential new central repository that gathers data from across all parts of the criminal justice system and allows users to find information, report trends, and analyze the success of programs.

COMMUNICATIONS STRATEGY AND PUBLIC AWARENESS

The Task Force has played a role over the past six years in making significant changes for the better in our community. The opening of the new Crisis Stabilization Center, the wildly successful Ground-level Response and Coordinated Engagement (GRACE) Program, and the launching of the Superior Court Pretrial Services Unit are just a few examples. Yet, the work of the Task Force is invisible to the broader community. There seems to be discourse within the community that indicates a lack of awareness of the steps that Task Force members and stakeholders have taken and measures that have been implemented at the cross-section of the criminal justice and behavioral health systems.

The question now is how to communicate the work of the Task Force to the family member who is searching for help for a loved one in crisis, to the individual who is struggling to turn his or her life around, and to the community member who is forming political opinions without a base of knowledge of the Task Force's work How do we enter the local discourse and educate the public?

The Task Force does complicated work. The framework used to piece together programs and systems via the sequential intercept model are difficult to communicate. We must figure out how to communicate complex information as simply as possible and talk about what's changing in government. Communications is more productive when it's goal-oriented.

In the next year, the Task Force will join other groups within local government to enhance communication of its tasks and work products to the community at-large. Several other related efforts are underway. One tactic is to organize all the communication efforts under the large umbrella of behavioral health. County staff are considering the possibility of developing an open Request for Qualifications or Proposals (RFQ/P)

to build a roster of communication strategists, from which the Task Force and other County staff could call upon when needed. Another step would be to identify target audiences with an interest in receiving information, such as professionals and service organizations, community members concerned about criminal and legal issues that overlap with homeless issues, and people involved with the justice system, and proactively deliver content relevant to their interests.

To successfully boost Task Force communications, an investment in the services of a consultant to develop a communications strategy and campaign is required. The Steering Committee is developing a scope of work and qualifications specific to the Task Force that can be included with the open RFQ/P roster, in the hopes of attracting experts who can help the Task Force define its target audiences, tailor its content and messaging to those audiences, and develop effective distribution channels for its message.

Housing

Housing is needed post-incarceration, during treatment programs, and for those with long-term behavioral health needs. Local program partners have been successful in procuring funding for housing for Drug Court participants and other individuals in local treatment programs, however capacity remains insufficient. Necessary service improvements and additions include adding more staffing and housing capacity to the current inventory. Discussions are occurring about pairing housing resources with GRACE and LEAD program participants, for example. While they are on the way to achieving some increases, there is still a great need in the community for more.

Recovery House. Whatcom County is collaborating with the Opportunity Council and Lifeline Connections to bring a new 16-bed Recovery House to Whatcom County for individuals with co-occurring mental health and substance use disorder issues. The house will provide stable housing and counseling services for individuals with co-occurring mental health and substance use disorder issues. Treatment will include additional services such as housing, food, legal support, and wrap-around care to address co-occurring mental health and other health conditions. It is anticipated that residents will stay in the facility an average of six months.

RCW 82.14.530/House Bill (HB) 1590 (2019-2020). The City of Bellingham and Whatcom County adopted ordinances to take advantage of new State legislation that allows counties to collect a sales tax for funding affordable housing and behavioral health facilities and services. One intent for collecting these dollars is to fill the gaps of care that are needed for people's health and psychological welfare so they don't resort to criminal activity. This new funding stream will bring in approximately \$5 million annually countywide to provide local funding to match resources expected to be available from private and other government sources. This will prevent loss of momentum, as various projects currently in the pipeline locally can receive critical local funding.

NEXT STEPS FOR THE TASK FORCE

Crisis Response Expansion Program. Local jurisdictions are working to develop an alternative to police response for individuals who are experiencing a behavioral health crisis. Currently, law enforcement

responds to calls to 911 dispatch. Once on the scene, they triage the situation and determine whether or not to call the Mobile Crisis Outreach Team (MCOT) to provide mental health crisis services. With the new crisis response model, mobile teams would be dispatched via the 911 system to situations involving a behavioral health crisis, low level behavioral "nuisance" issues, or instances where someone on the street needs minor medical attention.

Program design is influenced by models operating in other cities around the country. Local program development is being led by representatives from the Bellingham City and Whatcom County Councils, the Bellingham Police Department, Whatcom County Sheriff's office, Bellingham Fire Department, Emergency Medical Services, 911 dispatch, treatment providers, MCOT, the GRACE program, and Whatcom County Human Services.

Discussion of program design options, and consultation with the community will occur the first half of this year. The program design team is examining 911 data to estimate the number of calls that could be diverted. Early analysis indicates that only a small proportion of calls both begin and end as behavioral health incidents.

Law enforcement shares anecdotally that the vast majority of calls have a behavioral health component, although many of these calls may still require a law enforcement response. The program should address concerns from law enforcement about defining the decision tree on when to send law enforcement, medical professionals, and/or mental health professionals by themselves. In the outer reaches of Whatcom county, there may be a need for law enforcement to respond, but it would take time for officers to arrive. The first priority of the program is the safety of all those involved. More data collection and analysis are required to design a crisis response program that maximizes safety and predictability of 911 call outcomes.

A pilot program in the City of Bellingham will likely be the first step, and law enforcement personnel will be dispatched along with a behavioral health specialist during the first phase. Data from the initial operations of the program will be analyzed, and a second phase will dispatch a behavioral health professional and an EMT to calls not requiring a police response.

Limiting or Eliminating Cash Bail. Shortly after the creation of the Incarceration Prevention and Reduction Task Force, Whatcom County contracted the Vera Institute of Justice to report on jail reduction strategies. The Vera Institute is widely considered a national expert on criminal justice, and the report has been used by the Task Force and other stakeholders since it was presented.

Vera noted that, "Between 1970 and 2014, the number of people in jail in Whatcom County grew almost nine-fold—from 45 to 391 on any given day—while the overall county population only grew two-and-a-half times." The Vera Report Executive Summary identified six factors that contribute to jail overuse in Whatcom County and offered five recommendations to reduce unnecessary jail use. A full copy of the Vera Report is available on the IPRTF website.

Since the report was received in November 2017, the Task Force has advocated for and explored many of Vera's recommendations for Whatcom County. For example, the significant number of persons in custody for Driving While License Suspended has been reduced due to actions from the Whatcom County Prosecutor as well as other stakeholders.

One area the Task Force will continue to explore is Vera's recommendation that pretrial detention be reduced overall. While progress has been made in pretrial risk assessment, financial bail continues to be widely used in Whatcom County despite it inherently disproportionately burdening people with limited financial resources. Many of these people are frequently persons of color. In 2021, the State of Illinois eliminated most cash bail, and many other states and jurisdictions are exploring limiting or eliminating cash bail, particularly for misdemeanors and non-violent offenses for low-risk persons. The Task Force hopes to explore this recommendation and consider the advantages and challenges of implementation.

III. Committee Progress Reports

A. Introduction

The Task Force has established four committees to work on specific criminal justice or behavioral health issues:

- A *Legal and Justice System Committee* is examining reforms in law enforcement and judicial practices to safely divert more people from jail, or reduce time in incarceration when possible.
- A *Behavioral Health Committee* is identifying ways to improve delivery of mental health and substance use disorder treatments to help people avoid entanglement with the justice system, or help them successfully transition out of it.
- A *Crisis Stabilization Facility Committee* is supporting development of an expanded Crisis Stabilization Facility for initial treatment of individuals experiencing acute behavioral health issues and to provide an alternative to jail and the hospital emergency department.
- An *Information Needs and Data Exchange (INDEX) Committee* is working to improve data availability, provide jurisdictions with data to improve operations, and making information on incarceration trends available to the public and policy makers.

Although all the Task Force committees work independently, they come together to collaborate on a number of projects when necessary. The INDEX Committee supports the work of the other committees as they review programs. The Legal and Justice Systems and Behavioral Health Committees meet jointly twice per year on projects that impact both groups. Reentry and behavioral health crisis response are two examples of services that impact both the criminal justice and behavioral health systems in the community.

B. Progress Report: Legal and Justice Systems Committee

The Legal and Justice Systems Committee resumed a regular meeting schedule in July 2020, following a brief hiatus due to the coronavirus pandemic. Protests around the country regarding racial injustice in the criminal justice system was a focus of the Committee's work as it returned to meetings. The Committee has had a number of discussions over the past year on the community's desire to develop a crisis response alternative to 911 that would dispatch unarmed behavioral health professionals for individuals experiencing a behavioral health crisis. In addition, this time period included the launch of the Law Enforcement Assisted Diversion (LEAD) Program, led by the Whatcom County Prosecutor, who regularly engaged the Committee throughout development of the new program. The Committee continued to keep pretrial services a priority in its work plan through regular review of existing pretrial services available in municipal courts and District Courts, as well as Superior Court's new Pretrial Services Unit and plans for implementation of a risk assessment.

LAW ENFORCEMENT ASSISTED DIVERSION (LEAD) PROGRAM

Law Enforcement Assisted Diversion (LEAD) was brought to Whatcom County by the Whatcom County Prosecutor's Office. The effort brought together a multidisciplinary team to consider Whatcom County's specific criminal justice needs and developed a program to deliver support services to those who are regularly involved in the criminal justice system with hopes that services will reduce future criminal behavior. The targeted clientele is people who have committed low-level law violations, including malicious mischief, disorderly conduct, and drug charges. Services provided are broad and include treatment, housing, transportation, counselling, and family reunification. The Whatcom County Prosecutor's Office secured grants from the Department of Justice in the amount of \$900,000 for three years and the Washington Health Care Authority in the amount of \$662,804 for one year. No local dollars were needed to develop and launch this program.

LEAD began on September 23, 2020 with a LEAD Supervisor and five Intensive Case Managers to provide outreach and wrap-around services. Referrals to the LEAD program are made by local law enforcement and community partners. Currently, program participants result from "social referrals" from law enforcement, social service agencies, and the community and include individuals with various risk factors for criminal activity, but who are not actively involved in activities that could result in criminal charges. In the second phase of development, the program will also start diverting people who would otherwise be subject to arrest for low-level crimes. All referrals are discussed in the Operational Work Group meeting, which currently has approved 46 LEAD participants who receive wrap-around services and 11 individuals in outreach status at the end of the first six months. With a team of five Intensive Case Managers, the program has a capacity to approve 80-100 individuals into the program. LEAD is currently expanding to offer support seven days per week, with the goal of operating 24/7 and implementing direct diversion from the field.

LEAD, like many social service programs, can only be as good as the availability of treatment, housing in the community, and sustainable funding. As the program continues to grow, the support from our community partners and elected officials will play a critical role in securing the resources needed to maintain this robust program within Whatcom County.

PRETRIAL PROCESSES

Superior Court. The Pretrial Processes Work Group was formed under the auspices of Whatcom County Superior Court judicial officers to reduce the high number of defendants incarcerated while awaiting trial, as noted in the Vera Institute for Justice's Final Report. A Pretrial Processes Work Group has proceeded in coordination with the Task Force's Legal and Justice Systems subcommittee.

By early 2020, the Pretrial Processes Work Group had successfully promoted the creation of a Pretrial Services Unit within the Superior Court to monitor defendants released to the community pending their trial dates. At that same time, Superior Court judicial officers approved the Work Group recommendation

to employ a pretrial risk assessment instrument called the Public Safety Assessment (PSA), developed by Arnold Ventures (formerly the Arnold Foundation) to provide judicial officers with consistent, transparent, and statistically validated information on which to base pretrial release decisions. Use of the PSA around the country demonstrated that it also effectively minimized racial and ethnic disparities in release decisions.

Arnold Ventures provided software, on-site training, and technical assistance to Pretrial Services Unit staff for local use of the PSA. Right at that point, however, the COVID-19 pandemic essentially shut down the operation of the courts. Under state orders, almost all pretrial defendants were released, Pretrial Services staff could only monitor those defendants remotely, and no cases were able to proceed to jury trial.

This spring, Superior Court judicial officers and Pretrial Services staff have finally been able to plan the resumption of trials and develop options for appropriately monitoring defendants who are being released. This will still be a slow and complicated process, and the Pretrial Processes Work Group is actively supporting this effort in its advisory role. A key part of that role will be overseeing periodic evaluation of how well the PSA and community monitoring are achieving their goals in actual practice. The Work Group will continue to receive professional data analysis over time from the state Administrative Office of the Courts. The Work Group is currently exploring ways to include community representatives in its ongoing assessment of pretrial services, in an effort to insure a broad perspective in the group's work, and foster greater trust in the larger community that court reforms can be implemented in an inclusive and equitable manner.

District Court. District Court Probation provides pretrial monitoring services to District Court and, by contract, five municipal courts. The department assists defendants released on pretrial conditions to successfully comply with court ordered requirements. This is done by reviewing and clarifying with each defendant the court ordered conditions of their release. Conditions often include the surrender of weapons, installation of ignition interlock devices, installation of clubs and surrender of license plates. The department also monitors for compliance with court ordered electronic device installations and ongoing compliance. To date, approximately 100 district court pretrial defendants have been placed on electronic devices. When substance testing is ordered, the department has the ability to offer urine, breath and oral swab tests. When appropriate, the department will assess defendant needs and make referrals to appropriate community resources. Appointments are offered on site, telephonically, and by Zoom. Court hearing reminders are provided during appointments, through text messaging, and phone call reminder programs. Currently, there are four staff members who are Certified Pretrial Services Professionals by the National Association of Pretrial Services Agencies.

Bellingham Municipal Court. Bellingham Municipal Court began utilizing GPS electronic home monitoring in 2016 in lieu of incarcerating qualifying defendants – both pre-trial and post-conviction – through the nonprofit agency Friendship Diversion Services. Alcohol monitoring was added approximately 6 months later as the use of the alternative program grew significantly. In 2019, 347 pretrial and post-conviction defendants were placed on GPS bracelets for home monitoring and 179 defendants directed to wear alcohol monitoring bracelets, SCRAM, for community safety. The cost of the bracelets is \$14.50 per day

with the City of Bellingham subsidizing the fee for all indigent defendants. This is a significant savings as the per diem rate for one day in jail is currently \$193.00 plus a \$13.00 daily capital fee. It has also allowed defendants to retain their employment and housing and allowed them to attend school, treatment, medical appointments, attorney consultations, and probation.

Small Cities' Municipal Court. Currently, the Cities of Everson, Sumas, and Blaine use Friendship Diversion Services. The Lummi Nation also has a bracelet monitoring program. In general, the District Court and Friendship Diversion models have more contact with clients. Pretrial monitoring is an incentive for their clients to appear in court and resolve their cases sooner.

NEXT STEPS FOR THE LEGAL AND JUSTICE SYSTEMS COMMITTEE

Reentry. Reviewing and enhancing reentry services for incarcerated individuals has been on the Committee's work plan since the its inception. Reentry is Intercept 4 on the Task Force's sequential intercept service summary. It encompasses a wide variety of existing programs and services, but many gaps remain. Committee members have engaged in self-education and exploration on reentry needs and best practices. It has hosted experts to present their programs, experience, and knowledge on reentry issues, including representatives from Goodwill Industries, which does a significant amount of work to help offenders re-integrate into the community after incarceration.

When the state transitioned publicly-funded behavioral health care to Managed Care Organizations (MCOs), the state required these health plans to provide re-entry services to their covered lives. The MCOs were not interested in funding the position currently performing this work. Instead they chose to perform most of their obligation remotely from offices outside the county. In-person care is critical to successful re-entry for people who have multiple disabling conditions, including behavioral health disorders. The County continues to fund this position. The County has had a contract in place with a local provider for part-time behavioral health reentry services for jail inmates for several years, however recent workforce shortages have left the position vacant. The County is currently reviewing a Memorandum of Agreement to coordinate care with the MCOs.

The Health Department reentry program has focused on much needed behavioral health services for individuals in the County jail facility. The jail is adding a function to connect inmates with Medicaid prior to release. The Behavioral Health Advisory Committee oversees local dollars that provide some reentry services. Moving forward, the Committee will work in tandem with the Behavioral Health Committee on reentry services for individuals being released from incarceration from both County jail and the State prison system.

Domestic Violence Offender Treatment. The Domestic Violence and Sexual Assault Services of Whatcom County (DVSAS) originally approached the Legal and Justice Systems Committee in June 2018 to propose a new program to provide domestic violence offender treatment. A comprehensive domestic violence treatment system requires treatment programs for offenders. Treatment is often required by judicial

officers on domestic violence charges and convictions. However available treatment options have historically been few or nonexistent.

Eventually the County and City of Bellingham approved funding for the program. However, the DVSAS proposal did not develop as expected. On request, District Court Probation used those funds to develop the Domestic Violence Perpetrator Opportunity for Treatment Service (DVPOTS) program, in consultation with the Health Department and local DV advocates and treatment providers.

The current program, however, has a number of challenges and service gaps that the Committee would like to explore in the next year. First, the program was originally budgeted for over \$210,000, but due to COVID-19, the total funding combined between the City and the County was reduced to \$40,000 for 2021 and 2022. As of now, there are only two certified domestic violence offender treatment providers in the community who have contracts with the County to provide services to indigent defendants using DVPOTS funding. Two providers is not enough capacity to serve the demand, but it has been difficult to recruit certified providers. A local request went out for anyone in the state to help with indigent treatment, but no one has come forward. Finally, there is concern among local service providers and clinicians about whether the state offender treatment protocol and modality are effective, which creates doubt about allocating local government dollars to this program.

Restorative Justice. Understanding Restorative Justice (RJ), also known as transformative justice, and exploring how RJ programs and an RJ philosophy can be integrated into the justice system has been an ongoing interest of the Committee since its inception. Operating with the premise that restorative justice is a paradigm – and an approach to justice that differs from (but can be integrated with) a traditional retributive system – the Committee recognizes that while there is no one program, there are shared practices and guiding questions, principals, and goals.

Restorative justice in a legal and justice context approaches criminal behavior or wrongdoing with an eye for identifying needs and obligations, repairing harm, and engaging those impacted. Programs can range from fully to partially restorative, depending on their focus and whether and how they involve those impacted by harm, those who caused harm, and the community at large.

There is a recognition that there are existing programs available in Whatcom County (e.g. specialized courts, diversion, mediation, and others) that have restorative elements. With a shared emphasis on behavioral health and trauma-informed practices, the possible applications of restorative justice in new arenas are ripe with opportunity for our community.

Moving forward, the Committee intends to support building more awareness and understanding of RJ and its possible applications locally – through specific programs and as a philosophical lens.

C. Progress Report: Behavioral Health Committee

The Behavioral Health Committee works collaboratively across jurisdictions to support the creation of programs that provide effective mental health and substance use disorder treatment available to all County residents. A July 2019 County Council ordinance expanded the Task Force purpose to include identifying, examining, and recommending programs and policies that focus on early intervention strategies to prevent incarceration. The Committee spent 2020 learning more about existing early intervention and prevention programs and needed expansions. The Committee also worked to strengthen racial equity considerations in its work.

IMPROVEMENTS IN BEHAVIORAL HEALTH SERVICES AND COORDINATION

Continued development of the Ground-level Response and Coordinated Engagement (GRACE) program. GRACE provides flexible, intensive services for people who have complex challenges and whose encounters with various systems have not proven effective in meeting their needs. GRACE participants, known as "members" of the program, are those with frequent contacts with law enforcement, EMS/Fire, the hospital emergency department, and the county jail. A GRACE program manager triages people referred to the program and assigns a case manager if they fit program criteria. Program management and staff is provided by SeaMar Community Health Center. The GRACE team consists of the program manager, a nurse practitioner, and law enforcement and EMS teams. Members are supported by partner agencies that provide services such as behavioral health counseling, transportation, housing, and health care. After entering the program many people are able to achieve sufficient support to improve their quality of life and reduce their contacts with various first-response systems. An analysis of participants pre- and post-program shows a 95% reduction in jail bookings and an 86% drop in EMS contacts.

In the July 2019 through July 2020 period the program achieved the following outcomes:

- 179 unique individuals served
- 59 people graduated into stable situations
- 15 participants passed away, with the GRACE team often participating in end of life planning
- 50 participants achieved stable housing
- 100 members were connected to behavioral health and medical services

The program caseload in early 2021 consisted of 81 individuals. The program is currently being expanded to incorporate LEAD participants under the GRACE.

Law Enforcement Assisted Diversion (LEAD). The LEAD program, developed by the County Prosecutor's Office with a multidisciplinary team, launched in September 2020. Program participants are offered a path out of the criminal justice system and into intensive case management. More information on program development is in the report from the Legal and Justice Systems Committee.

LEAD and GRACE programs and their staff operate parallel to each other. SeaMar Community Health Center, which oversees GRACE, also has the contract to manage LEAD. Both programs use the same case management model, data collection system, and management teams. The program has hired five intensive case managers and a supervisor. LEAD is funded through grants from the Department of Justice and the Washington State Health Care Authority. The program is ramping up rapidly. From October to April, the number of approved individuals increased from 12 to 45 participants. Staff of GRACE and LEAD are reviewing the Government Alliance on Racial Equity (GARE) racial equity toolkit to integrate equity considerations into both programs.

Expansion of funding for housing and behavioral health facilities and services. The Behavioral Health Committee discussed options for new revenue sources to fund housing and behavioral health resources. This included discussion of House Bill 1590, which authorizes a local option sales tax of one-tenth of one percent for housing and related services. This funding is attractive because it can help both with the construction of new housing units and the behavioral services needed to keep some people housed. In 2021, proposals were made to both the City and County Councils to adopt this tax, and each jurisdiction passed an ordinance authorizing such funding. Together these two measures will bring in approximately \$5 million annually countywide.

ADVANCING RACIAL EQUITY AND JUSTICE

Behavioral Health Committee members discussed the need for the adoption of a racial equity framework for their activities. There was a presentation on and discussion of the Government Alliance on Race and Equity (GARE) program, and the Committee endorsed this model and adopted the GARE racial equity toolkit.

The Committee discussed ways to bring racial equity considerations into the operation of local programs. There is a need for an effective information plan so the community can monitor progress. This could include creation of a community dashboard containing racial and ethnicity breakdowns on topics such as how many calls to the police are related to mental health issues; how many are diverted from jail to treatment and case management; and outcomes for those who receive treatment. The Committee discussed making a request to the INDEX Committee for data to track this information.

The following topics were discussed in Committee:

- How to operationalize the racial equity framework within the Committee
- Examining the makeup of the Behavioral Health Committee to determine if additional representation is needed
- Understanding racial aspects of the social determinants of health that lead to future criminogenic outcomes
- Gathering diversity data in the behavioral health provider workforce
- Reviewing booking data by race/ethnicity and jurisdiction
- Determining who is being offered services and what the outcomes are

- That programs should not be afraid to ask for racial and ethnic data during contacts with individuals
- The need to observe the racial and ethnic patterns in outcomes of programs such as GRACE, LEAD, Mobile Crisis Outreach Team (MCOT), and other programs.

BEHAVIORAL HEALTH COMMITTEE EXPANDED REPRESENTATION

Behavioral Health Committee members moved to broaden representation on the Committee to include a focus on including people whose organizations represent upstream solutions to reduce incarceration risk. People added to the Committee include Nathan Bajema, Behavioral Health Specialist, Whatcom County Public Defender's Office; Chris Cochran, Counselor, Bellingham Public School District; Brien Thane, Executive Director, Bellingham Whatcom Housing Authority; and Michael G. Smith, Clinical Supervisor, Lake Whatcom Center.

ISSUES AND OPPORTUNITIES

- Lack of available skilled behavioral health staff is a major impediment to program stability and expansion. Solutions may include more attention to the training and education pipeline, and improvements in salaries.
- Federal COVID relief funds helped stabilize some programs during this challenging period. Additional money from state and federal sources will be available in the near future, both as direct payments to localities and as a pass-through from state or federal agencies. Continued monitoring and appropriate action to respond to funding opportunities will be necessary.
- To monitor the achievement of racial equity in various programs, data collection improvements and data system integration will be needed.

PRIORITIES AND NEXT STEPS

Committee priorities for the short and medium term include continuing review of early intervention and prevention services available to children, young adults, and families to positively influence social determinants of health and the risk factors for criminal behavior. The Committee will continue to explore evidenced-based and promising practices in behavioral health with Whatcom County service providers and law enforcement. Topical areas include:

- Substance use disorder -- figuring out treatment options for methamphetamine use.
- Upstream prevention -- program development and/or a children's initiative.
- Increasing funding and reviewing current spending --- possibilities include using state-authorized revenue streams, Economic Development Investment (EDI) funds, and the real estate excise tax

(REET) fund. The Committee also expressed an interest in reviewing how funds are being spent from the one-tenth of one percent sales tax.

- Data needs -- work with other committees, such as INDEX, to make sure needed data is available.
- Services assessment and needs -- review issues at the nexus of behavioral health and criminal justice and recommend promising new practices or expansion of existing programs and practices.
- Racial equity apply a GARE overlay to everything the Committee does, including when developing priorities.
- Expand behavioral health capacity locally -- this could include establishing training programs at local colleges or using local funds that don't have as many restrictions as State or federal funds.

D. Progress Report: Crisis Stabilization Facility Committee

CONSTRUCTION COMPLETION

Construction of the new Crisis Stabilization Center was complete in time for opening the first week of January 2021. The new facility provides 24,450 square feet that includes two separate treatment units, a central lobby and conference room, a full-size commercial kitchen, and two separate admission areas where First Responders can bring people directly to the Center. Each treatment unit can serve 16 adults at any given time, providing single sleeping rooms for privacy and quiet, as well as large open common areas for socializing and support. Information on the project, including pictures of both the exterior and interior of this grand facility, is available on the County website.

The completion of this new Center increases capacity for mental health stabilization and substance withdrawal management. The 32-bed facility equates to an increase in treatment capacity of 19 additional beds from the previous facility.

To access services, a call to the main line will initiate the process: **360-676-2020 Extension #2** for Mental Health Stabilization/Triage *Treatment provided by Compass Health*

Extension #5 for Substance Withdrawal Management/Detox *Treatment provided by Pioneer Human Services*

TREATMENT SERVICE ENHANCEMENTS

Detox. The two separate treatment units will enhance the treatment services from what was previously provided. The substance withdrawal management treatment unit (better known as "Detox"), now provides medically-monitored detox. This unit provides 24/7 nursing staff, which allows for on-site medical screening for admission to treatment. Previously, people had to present first at the hospital emergency room for this screening, as well as for any medication prescription. This new Center now conducts screening on-site, including COVID testing to ensure the safety of others. On-site prescription of medications that help alleviate the discomfort of detox is provided and administered by nursing staff. Medication-assisted treatment for people who are addicted to opiates is also provided. As before, discharge planning includes the connection to ongoing treatment services as indicated. This planning is conducted in partnership with the client/guest receiving detox services at the Center, with a goal to support recovery efforts into the future.

The Detox program accepts self-referrals, provider referrals, as well as drop-offs from first responders and the Community Paramedics. Discussions are underway to see if an ambulance will be able to transport people directly to the Center, designated as an "alternate destination" from the hospital's emergency department. This is a complicated issue that requires approval from local and state officials, as it is a rare practice. If successful in diverting from the emergency department, this direct transport would provide cost savings to the healthcare system and provide a smoother transition to care for the people needing the detox services.

Triage. The mental health stabilization treatment unit (better known as "Triage") provides services to help stabilize a person who is experiencing a mental health crisis, yet who doesn't need the more intensive setting of a hospital. As with Detox, nursing staff are available 24/7 to ensure onsite medical screening for admission, medication prescribing or coordination with medication prescribers, and administering of prescribed medications. Treatment services are focused on calming the crisis and planning stability and support for the future. Discharge preparations include connection to ongoing treatment services to include medications when indicated.

Triage currently operates as a voluntary treatment unit. Like the Detox treatment unit, clients/guests may leave and discontinue treatment as they wish, although intensive support is provided to help meet their needs while staying at the Center. The Incarceration Prevention and Reduction Task Force has highlighted the need to have the Triage treatment unit serve as a diversion from arrest and incarceration when law enforcement encounters someone who is committing a low-level crime. Rather than booking the person into jail, it may be a more effective intervention to "hold" the person at a treatment facility. This diversion option would allow people known to have a serious mental illness the ability to be placed at the new Center when treatment is more appropriate than arrest or incarceration. In order to accomplish this diversion to treatment a number of things must be addressed first.

Triage must obtain a certification as "Triage with Involuntary Placement" status with the state. This hold is allowable pursuant to RCW 10.31.110. A Peace Officer (law enforcement officer) may transport and

place a person at the Triage unit in lieu of arrest. In order to secure the stability of that placement, at times it may be necessary for the Peace Officer to place an "involuntary hold" for up to 12 hours to keep the person at the facility and encourage him/her to make use of the treatment immediately available. During the hold period, a mental health evaluation is conducted and services offered to help stabilize the person so they can consider next steps in their journey to mental health and well-being.

The goal of the involuntary placement at Triage is to provide the most appropriate option of care to people who are not able to make a commitment on the spot that may be in their best interest. Arrest and incarceration have been some of the few options for people who appear to have committed a low-level crime while experiencing distress symptoms of mental illness. Providing a diversion from arrest and placement at the Triage unit is a more humane option when it is an appropriate alternative.

OPERATIONAL FUNDING

Grants from the state and regional Behavioral Health Organization and local behavioral health dollars provided the funding for construction of the Crisis Stabilization Center. Ongoing funding to fully support the programming and services must come from the funders of behavioral health treatment. These funders include commercial health plans, Managed Care Organizations (MCOs), and the North Sound Behavioral Health Administrative Services Organization (ASO).

State Representative Sharon Shewmake was successful in securing initial operational funding for two years, totaling \$1 million. This was welcomed support to help cover start up costs that come with increasing staff and transitioning to a new facility.

State Representative Alicia Rule has also been successful in securing the requested \$400,000 for the next two-year period to help transition the Triage program to allow for involuntary placements. This new program will serve as a pilot program for the state to evaluate its successes in diverting people from arrest and incarceration and into treatment. The pilot will demonstrate costs savings to the state's healthcare system as it breaks the cycle of criminal justice involvement and focuses instead on stabilizing symptoms of mental illness and promoting health and recovery.

County Human Services staff have been working with the state Health Care Authority, the five MCOS, and the ASO to ensure that the new Center is adequately reimbursed for all operational costs. This has been an involved process that includes recalculating actuarial assumptions, capturing the true costs of operating these sophisticated programs, and holding the funders accountable for their contractual obligations to cover necessary treatment costs for their covered lives. The partnerships between the County and these funders is critical to the ongoing success of this new treatment center.

QUALITY ASSURANCE

Now that the Crisis Stabilization Center is open, it is important to ensure quality assurance and oversight of the programming offered. Although the County won't be paying for services, it has subsidized rent to the two treatment providers in an effort to optimize a focus on treatment. The County made a commitment to its community to ensure this new Center will divert people from the criminal justice system and the emergency department when appropriate. Additionally, the new Center will serve as a hub to the local behavioral health crisis system, creating connections among the various providers of crisis services.

In order to deliver on these commitments, the County has established a Crisis Stabilization Center Program Advisory Committee. Its membership in this first phase consists of representatives from the Center's treatment providers, law enforcement agencies, Emergency Medical Services, GRACE program, and associated crisis service programs. As the Center's programs solidify under the new facility, additional members will be invited to join the Committee to include people who have used the services, concerned citizens, and possibly funders.

E. Progress Report: Information Needs and Data Exchange (INDEX) Committee

Access to accurate and timely data is necessary to measure progress in reducing incarceration. The Information Needs and Data Exchange (INDEX) Committee is working across all jurisdictions to identify or develop useful data and program information to measure progress in reducing jail use and to document the use of jail alternatives. Data is also being developed to track the effectiveness of programs that divert individuals from incarceration. Lastly, the Committee is facilitating information-sharing across jurisdictions to support improved program operation and cross-jurisdictional system improvements.

The INDEX Committee structure includes a technical subcommittee and a policy subcommittee. The policy subcommittee drives the process and guides the work of the technical subcommittee. The Incarceration Prevention and Reduction Task Force serves as the policy subcommittee and determines the policies and outcomes of the INDEX Committee.

The Technical Subcommittee includes the information technology, department, and agency staff who work with the systems and data to measure outcomes. The Technical Subcommittee interacts with the policy subcommittee to identify options to achieve those outcomes, and identifies existing data or develops improved data practices to monitor progress. The technical subcommittee includes representatives from law enforcement, behavioral health organizations and agencies, local courts, prosecutors/city attorneys, and public defenders.

The Committee has achieved the following beginning tasks outlined in its mission statement:

- Development of multiple automated and on demand reports that are deliverable to various stakeholders in the community including the Public Defender's Office, Courts, and Prosecutors.
- Upgraded and replaced the inmate databases stored on the Whatcom County website to include up-to-date and interactive information as well as an expanded dataset to include specific reasons each person is held in Sheriff's Office custody facilities.

New Committee Leadership

The Committee is now chaired by Lt. Caleb Erickson of the Whatcom County Sheriff's Office Corrections Bureau. Caleb's knowledge of the many and varied datasets throughout the criminal justice system made him a good candidate for leadership. The change at the committee chair, however, didn't mean a change in direction. The Committee continues to operate in the same spirit of cooperation with the stakeholders as before.

NEW CASE MANAGEMENT SOFTWARE THROUGHOUT CRIMINAL JUSTICE SYSTEM

As a result of COVID-19, many of our criminal justice systems have had to wait for much-needed updates in their methods of storing data. In the next 12-36 months, agencies throughout the county will be updating and installing new case management software. To name a few:

- Courts of limited jurisdiction
- Public Defender
- Prosecutor

Most of the information the courts of limited jurisdiction collect is paper-based. There is some use of a very old system to catalog information, but it is limited and not available for connection to queries.

The State of Washington has begun the process of moving all courts of limited jurisdiction to a centralized records management system using a product through Tyler Technologies. This includes all municipal courts and Whatcom County District Court. This effort is immense both in scope and in application. Our community won't begin to see this conversion until 2023 or 2024.

The Whatcom County Public Defender's Office will be installing a records management system. This is scheduled to happen in 2021. Up to now, the Public Defenders have used paper to manage all their cases.

Much of information their office collects will not be available for release, but to the extent data is public we will be looking forward to that.

The Whatcom County Prosecutor's Office will similarly be installing a new case management system. The Prosecutor's Office has used the iSeries for years, but it is antiquated and information is difficult to pull from the system.

STATUS OF RACIAL AND ETHNIC DATA COLLECTED THROUGHOUT THE SYSTEM

So far, INDEX has not had access to data across the criminal justice system. The information available has been provided by the Sheriff's Office and doesn't represent a complete picture of the entire system.

Additionally, in 2019, federal coding standards changed, which impacted historic demographic information in Spillman and, therefore, data on ethnicity was removed. The only data now in Spillman is that which has been collected since the change.

In order to make meaningful recommendations to policy makers, INDEX will need to integrate information from the Courts, Prosecutors, Public Defenders, Probation, State Department of Corrections, and many others.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-406

File ID:	AB2021-406	Version:	1	Status:	Agenda Ready
File Created:	07/07/2021	Entered by:	AReynold@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		
Assigned to:	Council Criminal Justice and Public Safety Committee Final Action:		tion:		
Agenda Date:	07/27/2021			Enactme	nt #:
TITLE FOR	act Email: dreynold@co	o.whatcom.wa.	us		
SUMMARY	STATEMENT OR L	EGAL NOT	ICE LANGUAGE:		
Juvenile Cou	rt's annual report to Co	ouncil			
HISTORY OF LEGISLATIVE FILE					
Date: Actin	g Body:		Action:	Sent To:	

Attachments:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-418

File ID: AB2021-418 Version: 1 Status: Agenda Ready

File Created: 07/14/2021 Entered by: JFleisch@co.whatcom.wa.us

Department: Planning and File Type: Discussion

Development Services

Department

Assigned to: Council Planning and Development Committee Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Discussion of proposed ordinance amending the Whatcom County Comprehensive Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A Comprehensive Plan Map amendment and zoning code amendment for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest. The proposed map amendment will amend the Mineral Resource Lands Comprehensive Plan Designation to Rural Forestry, to match the zoning district. The zoning code amendment will include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone. The proposal affects approximately 66 acres of privately held lands on/near Wells Creek Road, off of State Route 542 - Mt Baker Hwy, Assessor's Parcel Numbers 400831580150, 400831450200, 390806550550.

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Staff Memo, Staff Report, Proposed Ordinance, Presentation

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: July 14, 2021

SUBJECT: PLN2020-00004 - Rural Forestry Designation and Text Amendment -

Nooksack Falls

This memo is intended to provide background on a docketed amendment for a Comprehensive Plan Map amendment and zoning code amendment for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest.

The subject properties totaling approximately 66 acres exist as privately held lands surrounded by the Mount Baker -Snoqualmie National Forest. These lands were part of an Interim Zoning Ordinance from 1972 which was extended repeatedly until Ordinance 99-013 established Comprehensive Plan Designations and Title 20 Zoning for these (and other) fee lands within the National Forest, Wilderness and Recreation areas. The subject exclave received a Comprehensive Plan Designation of Mineral Resource Lands (MRL) and the Rural Forestry zoning designation.

In the early 1900's, mining related activities and hydroelectric power were the primary uses of the subject property. However, mining activities in this area ceased over 50 years ago and there is no mining on or near the property, as the applicant states that mining is no longer feasible at the site due to economic, environmental, topographic and other factors. Meanwhile, Nooksack Falls has attracted increasing numbers of visitors given its proximity to other recreational destinations. The proposed Comprehensive Plan Map and zoning code text amendments are in response to these changed circumstances.

The Planning Commission held a public hearing on the proposal on July 8th. Upon conclusion of the public hearing, the Planning Commission moved to recommend this amendment to the County Council for approval along with the findings of fact. The motion carried by a vote of 7-0-1.

Final approval of Comprehensive Plan Map amendment 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.

WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES STAFF REPORT

<u>I.</u> <u>OVERVIEW</u>

File # PLN2020-00004

File Name: RF - Nooksack Falls.

Applicant: Ali Taysi/ AVT Consulting

Owner: Excelsior Properties LLC & Excelsior Properties II LLC

Summary of Request: Remove the Nooksack Falls Area Exclave properties (3 tax parcels) from their current Mineral Resource Land (MRL) Comprehensive Plan designation, retaining the underlying Rural Forestry (RF) zoning designation. Add language to WCC 20.42.155 (RF conditional uses) to include the Nooksack Falls Area Exclave

Location: The site is located on Wells Creek Road, off Mt Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. Assessor's Parcel #'s 400831580150, 400831450200, 390806550550

Use of Subject Site: Presently used for recreation activities, including visiting Nooksack Falls, hiking, picnicking, wildlife viewing, etc. The property is also developed with a power generation facility, associated outbuildings and infrastructure, and a single-family residence.

Use of Surrounding Properties: Rural Forestry and Mount Baker-Snoqualmie National Forest

II. BACKGROUND

The subject property exists as an exclave within the M. Baker-Snoqualmie National Forest. Pursuant to the Planning Enabling Act (RCW 36.70.790) Whatcom County adopted an Interim Zoning Ordinance in July 1972 which included this exclave, as well as other fee lands within the National Forest, Wilderness and Recreation areas. The Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established Comprehensive Plan Designations and Title 20 Zoning for these fee lands within the Mt. Baker Snoqualmie National Forest. The subject exclave received a Comprehensive Plan Designation of Mineral Resource Lands (MRL) and an underlying Rural Forestry (RF) zoning designation.

In the early 1900's, mining and hydroelectric power were the primary uses of the subject property. However, mining activities in this area ceased over 50 years ago and there is no mining on or near the property, as the applicant states that mining is no longer feasible at the site due to economic, environmental, topographic and other factors. Meanwhile, Nooksack Falls has attracted increasing numbers of visitors given its proximity to other recreational destinations. The proposed Comprehensive Plan and Zoning Code text amendments are in response to these changed circumstances.

III. ANALYSIS OF THE PROPOSED COMPREHENSIVE PLAN AMENDMENT

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that all of the following criteria are satisfied in order to approve the proposed Comprehensive Plan amendments.

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.

Growth Management Act

The Growth Management Act (GMA) includes a planning goal to "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses" (RCW 36.70A.020(8)). Additionally, the GMA required counties to designate mineral resource lands that have long-term significance for extraction of minerals and adopt regulations to assure conservation of these mineral resource lands (RCW 36.70A.170 and 36.70A.060).

<u>Staff Comment:</u> Consistent with WAC 365-190-070, Mineral Resource Land designation criteria were adopted as part of the Whatcom County Comprehensive Plan. As detailed below through review for consistency with the Whatcom County Comprehensive Plan, the subject site does not meet the designation criteria necessary for designation as mineral resource lands of long-term commercial significance.

Furthermore, WAC 365-190-040(5)(e) states: "Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that Mineral Resource Lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is complete." Mining on the site has not occurred within the past 50 years, as it is not economically feasible. Consistent with WAC 365-190-040(5)(e), a change of designation from Mineral Resource Lands to Rural Forestry is appropriate.

Whatcom County Comprehensive Plan

The Comprehensive Plan contains twenty specific criteria for designating MRLs (17 applicable to non-metallic mineral deposits and 3 applicable to metallic and industrial mineral deposits). These designation criteria, along with other applicable goals and policies, are set forth in italics and addressed below.

This application is a request to de-designate Mineral Resource Lands. While Whatcom County has designation criteria, there are not de-designation criteria. Without de-designation criteria, the County took the position that just as a proposal must meet all the criteria for designation as mineral resource lands of long-term commercial significance, if the proposal does not meet all the criteria, it is appropriate for de-designation.

- 1. Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation.
 - Staff Comment: It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material. The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt, Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that ~ 15 acres (over multiple mining areas) might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of ~40-45 feet with shear vertical walls in order to meet this volume threshold. Staff does not believe this designation criteria could feasibly be met given the known and unknown constraints.
- 2. Minimum MRL Designation size is twenty acres.
 - <u>Staff Comment:</u> The present MRL is greater than 20 acres. Therefore, staff finds that this designation criterion has been met.
- 3. Expansion of an existing MRL does not need to meet criteria 1 or 2.
 - <u>Staff Comment:</u> The proposal is not for expansion of an existing MRL. This criterion is not applicable.
- 4. MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.
 - <u>Staff Comment:</u> The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
- 5. All pre-existing legal permitted sites meeting the above criteria will be designated.

<u>Staff Comment:</u> The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

- 6. The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot).

<u>Staff Comment:</u> The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

7. *MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.*

<u>Staff Comment:</u> The subject site is zoned Rural Forestry and is surrounded by Mt. Baker-Snoqualmie Nation Forest. Therefore, staff finds that this designation criterion has been met.

8. MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.

Staff Comment: The subject site is not located within a designated wellhead protection area

of any public water system. Therefore, staff finds that this designation criterion has been met.

9. *MRL Designation should not enclose by more than 50% non-designated parcels.*

<u>Staff Comment:</u> There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

10. Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.

<u>Staff Comment:</u> Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.

11. MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan.

<u>Staff Comment:</u> Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.

12. Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations.

<u>Staff Comment:</u> The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.

13. Criterion 13 is specific to designated urban and rural areas, and therefore not applicable.

The Comprehensive Plan contains an additional criterion for designated forestry areas.

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

<u>Staff Comment:</u> It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

- 15 Criterion 15 is specific to designated agricultural areas, and therefore does not apply.
- 16 Criterion 16 is specific to river and stream gravel, and therefore does not apply.
- 17 Criterion 17 is specific to river and stream gravel, and therefore does not apply.
- 18. For metallic and rare minerals, mineral designation status extends to all patented mining claims.
 - <u>Staff Comment:</u> The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.
- 19. Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance.
 - <u>Staff Comment:</u> The site does not contain industrial minerals. This criterion is not applicable.
- 20. All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 15, as applicable.
 - <u>Staff Comment:</u> The site was designated MRL as a result of patented mining claims. This criterion is not applicable.

In addition to the designation criteria, there are Comprehensive Plan policies and goals within Chapter 8 – Natural Resources that apply to the subject application:

Policy 8G-2: Provide appropriate land use regulation for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

<u>Staff Report:</u> Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the Comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

Policy 8R-6: Consider removal of land from Mineral Resource Designation after mining and subsequent reclamation is completed.

<u>Staff Comment:</u> Mining has not occurred on the site in more than 50 years, as it is no longer feasible due to economic, environmental, topographic and other factors. Mining predates adoption of the Washington State Surface Mining Act, therefore reclamation of the site is not

required and is likely infeasible to require beyond what may have been required through the Federal regulatory process. Consideration of removal of the MRL designation appears to be supported by this policy.

County-Wide Planning Policies

<u>Staff Comment:</u> Staff did not identify County-Wide Planning Policies that would be applicable to a change in Comprehensive Plan Designation from MRL to RF.

Interlocal Agreement

Staff Comment: Staff is not aware of any interlocal agreements affecting the subject site.

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.

The subject site was identified for designation as Mineral Resource Lands through a 1972 Interim Zoning Ordinance due to historic mining operations. This Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established the Comprehensive Plan Designations and Title 20 Zoning of the site. Today, mining is no longer feasible within the designated Nooksack Falls Mineral Resource Land Exclave due to economic, environmental, topographic and other factors. This proposed amendment is in response to these changed conditions.

- 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.

<u>Staff Comment:</u> If approved, there would be no effect upon the rate or distribution of population growth beyond what is presently allowed. If approved, the zoning code would provide the opportunity for future uses such as an educational center, cafe, lodging structures, and other improvements related to access and safety to Nooksack Falls

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.

<u>Staff Comment:</u> The subject site is an exclave within the Mt. Baker-Snoqualmie National Forest. There is no anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water purveyors, sewer purveyors. fire districts, and

others as applicable, to provide adequate services and public facilities including transportation facilities.

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

<u>Staff Comment:</u> There is no anticipated impact upon designated forestlands or mineral resource lands as a result of the change in designation from MRL to RF. The site is presently, and would continue to be, regulated through the Rural Forestry section of the Whatcom County Zoning Code. The site is presently designated as Mineral Resource Lands of long-term commercial significance, however due to site constraints, the site does not appear to have proven and extractable mineral resources of long-term commercial significance.

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).

In 1997, the Washington Supreme Court, in the case of *Citizens for Mount Vernon v. The City of Mount Vernon* (133 Wn.2d 861) indicated ". . . Spot zoning is 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 . . ."

<u>Staff Comment:</u> The proposal does not appear to include nor facilitate illegal spot zoning. Rather than singling out a smaller area from a larger area for designation that is different from, and inconsistent with, the classification of surrounding land, the proposal appears to correct a previous designation that was inconsistent with surrounding land uses. The result of the proposal would be a Rural Forestry designation that is surrounded by the Mount Baker Snoqualmie National Forest (MBSNF), rather than the present Mineral Resource Land designation surrounded by the MBSNF.

IV. ANALYSIS OF THE PROPOSED ZONING CODE AMENDMENT

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that the amendment is consistent with the Comprehensive Plan in order to approve the proposed amendment to the development regulations

Policy 8G-8: Review Title 20.42 (Rural Forestry) and 20.43 (Commercial Forestry) for

opportunities to provide compatible non-forest uses that encourage forest landowners to keep their land in productive forest uses.

<u>Staff Comment:</u> The proposed amendment to Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone.

<u>Policy 2L-4:</u> Support the rural economic base by permitting natural resource based industries, cottage industries, forestry, fishing and agriculture in rural areas, as well as commercial and industrial activity contained within designated Rural Communities.

<u>Staff Comment:</u> The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone. These facilities would add to the economic base of eastern Whatcom County, through initial development and ongoing operations.

<u>Policy 2FF-4:</u> Allow home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

<u>Staff Comment:</u> The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for an educational center, cafe, lodging structures and other improvement related to access and safety of a popular tourist attraction.

V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

- 1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
- 3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
- 4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
- 5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.

- 6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
- 7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
- 8. On May 25, 2011 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 Whatcom County Comprehensive Plan does not contain specific criteria for dedesignating Mineral Resource Lands.
- 10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
- 11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
- 12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been demonstrated that this designation criterion has been met.
- 13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
- 14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
- 15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
- 16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites

meeting the above criteria (criteria 1-4) will be designated." The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

- 17. Mineral resource designation criterion #6 states "The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."

The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

- 18. Mineral resource designation criterion #7 states "MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities." The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.
- 19. Mineral resource designation criterion #8 states "MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor." The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.
- 20. Mineral resource designation criterion #9 states "MRL Designation should not enclose by more than 50% non-designated parcels." There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

- 21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
- 22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
- 23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
- 24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
- 25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
 - soil conditions
 - quality of mineral resource
 - sustainable productivity of forest resource

It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

- 26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
- 27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
- 28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
- 29. Mineral resource designation criterion #18 states "For metallic and rare minerals, mineral designation status extends to all patented mining claims." The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion

has been met.

- 30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
- 31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
- 32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
- 33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

VI. PROPOSED CONCLUSION

The subject amendment is consistent with the approval criteria of WCC 22.10.060.

VII. RECOMMENDATION

Staff recommends approval of the proposed comprehensive plan map amendment and zoning text amendment.

ATTACHMENTS:

- Draft Ordinance
- Exhibit A Proposed Comprehensive Plan Map Amendment
- Exhibit B Proposed Zoning Code Amendment
- Exhibit C Determination of Non-Significance (DNS) issued April 23, 2021 and Distribution List

SI	PONSORED BY:	
	PROPOSED BY:	
	INTRODUCTION DATE: _	
ORDINANCE #_		

AN AMENDMENT TO THE OFFICIAL COMPREHENSIVE PLAN MAP FOR THE APPROXIMATELY 66-ACRE NOOKSACK FALLS EXCLAVE WITHIN THE MOUNT BAKER SNOQUALMIE NATIONAL FOREST, AND AMENDMENT TO THE RURAL FORESTRY ZONING CODE TO INCLUDE THE NOOKSACK FALLS EXCLAVE AS AN AREA WHERE CERTAIN CONDITIONAL USE PERMIT APPLICATIONS MAY BE SUBMITTED.

WHEREAS, an application has been submitted by AVT Consulting to amend the Comprehensive Plan Map to change the Mineral Resource Land (MRL) designation to Rural Forestry for the approximately 66-acre Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest, and to amend the Rural Forestry zoning code to include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone.

WHEREAS, the site is located on Wells Creek Road, off Mt. Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. The proposal is situated within portions of Section 31, T40N, R8E and Section 6, T39N R8E W.M. Assessor's Parcel #'s 400831580150, 400831450200, and 390806550550; and

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

WHEREAS, the proposed amendment meets the approval criteria for comprehensive plan amendments, as required by Whatcom County Code (WCC) 22.10.060; and

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

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

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

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

WHEREAS, the County Council has adopted the following findings of fact and conclusions:

FINDINGS

- 1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
- 3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
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- 6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
- 7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
- 8. On May 25, 2011 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 Whatcom County Comprehensive Plan does not contain specific criteria for de-designating Mineral Resource Lands.
- 10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
- 11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
- 12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been

demonstrated that this designation criterion has been met.

- 13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
- 14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
- 15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
- 16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites meeting the above criteria (criteria 1-4) will be designated." The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.
- 17. Mineral resource designation criterion #6 states "The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."

The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

- 18. Mineral resource designation criterion #7 states "MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities." The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.
- 19. Mineral resource designation criterion #8 states "MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is

prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor." The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.

- 20. Mineral resource designation criterion #9 states "MRL Designation should not enclose by more than 50% non-designated parcels." There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.
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- 25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
 - soil conditions
 - quality of mineral resource
 - sustainable productivity of forest resource

It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available

- through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.
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 The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.
- 30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
- 31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
- 32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
- 33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

CONCLUSIONS

1. The proposed amendment is consistent with the approval criteria of WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan map is hereby amended from Mineral

Resource Lands (MRL) to Rural Forestry as shown in Exhibit A.

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

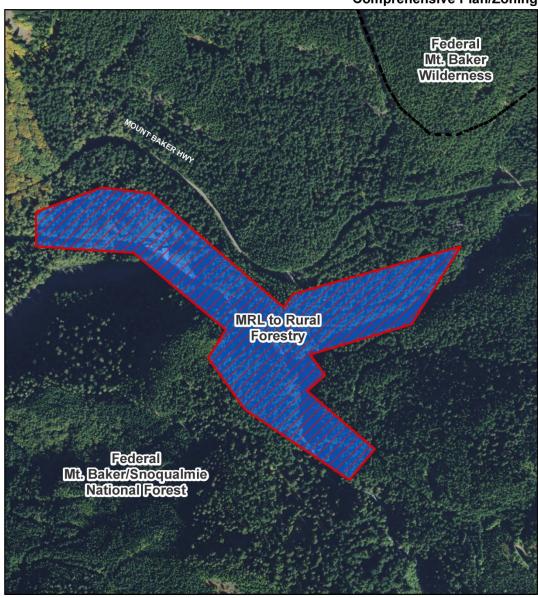
BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed 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	
ATTEST:		WHATCOM COUNTY, WASHINGTON	
Dana Brown-Davis, Clerk of the Council		Barry Buchanan, Council Chair	
		WHATCOM COUNTY EXECUTIVE	
APPROVED AS TO FORM:		WHATCOM COUNTY, WASHINGTON	
Royce Buckingham		Satpal Sidhu, County	
Executive Civil Deputy Pr	secutor	, ,	
		() Approved () Denied	
		Date Signed:	

Exhibit A

Comprehensive Plan Map Amendment

Comprehensive Plan/Zoning



PLN2020-00004 - Rural Forestry Designation and Text Amendment Comprehensive Plan Designation - Mineral Resource Lands (MRL) to Rural Forestry for approximately 66 acres in the Nooksack Falls exclave





Exhibit B

Title 20 Zoning Amendments

Chapter 20.42 RURAL FORESTRY (RF) DISTRICT

20.42.150 Conditional Uses

.155 The operation of facilities intended to provide education related to forestry, natural resource and wildlife and the purpose of this district, including but not limited to demonstration forests and conservation laboratories, educational meeting facilities and related uses including rental cabins or other lodging structures, cooking and dining facilities, retail sales or meeting supplies and gifts, in the Foothills Subarea, South Fork Valley, the Newhalem Exclave, and the Baker Lake Exclave, and the Nooksack Falls Exclave, provided the following standards are met:

- (1) Density shall not exceed one sleeping unit per one gross acre or a maximum for 50 beds for the entire development.
- (2) Each cabin shall have a maximum of three sleeping units.
- (3) Must be located with vehicular access fronting on paved county roads or private roads improved to county standards.
- (4) Front yard setback shall be 75 feet, with 100-foot side and rear yard setbacks to adjacent properties.
- (5)Lot coverage for all facilities, including the rental cabins, shall not exceed 20 percent, clustered on no more than 50 percent of the property.

Exhibit C

SEPA Threshold Determination SEPA Distribution List

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax



SEPA Determination of Nonsignificance (DNS)

File: SEP2021-00038

Project Description: Amend Whatcom County Comprehensive Plan Map designation from Mineral Resource Land to Rural Forestry, to match the zoning district. Amend Whatcom County Code WCC 20.42.155 to include the Nooksack Falls Area Exclave.

Proponent: Excelsior Properties LLC & Excelsior Properties II LLC

Address and Parcel #: 12251 Mt Baker Highway / 400831580150, 400831450200 &

390806550550

Lead Agency: Whatcom County Planning & Development Services

Zoning: RF **Comp Plan:** MRL **Shoreline Jurisdiction:** Conservation

The lead agency for this proposal has determined that no significant adverse environmental impacts are likely. This proposal will also be reviewed for compliance with all applicable Whatcom County Codes (WCC) which regulates development activities, including but not limited to: WCC 15 – Buildings and Construction, WCC 16.16 – Critical Areas, WCC 17 – Flood Damage Prevention, WCC 20 – Zoning, WCC 21 - Land Division Regulations, WCC 23 – Shoreline Management Program, the Whatcom County Development Standards and/or the Washington State Stormwater Manual. Mitigation may be a requirement of Whatcom County Code. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

 $\underline{\mathbf{X}}$ Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by 4:00 p.m. on $\underline{\mathsf{May}}$ 7, 2021 and should be sent to: Josh Fleischmann via email at JFleisch@co.whatcom.wa.us

Responsible Official: Mark Personius, mpersoni@co.whatcom.wa.us

Title: Director

Telephone: 360-778-5937

Address: 5280 Northwest Drive

Bellingham, WA 98226

Date of Issuance: April 23, 2021 Signature:

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding May 17, 2021.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax



SEPA Distribution List SEP2021-00038 Date of Issuance: April 23, 2021

Please review this determination. If you have further comments or questions, phone the responsible official at (360) 778-5900. Please submit your response by the comment date noted on the attached notice of determination.

WA State Department of Archaeology and Historic Preservation via email Stephanie Jolivette, stephanie.jolivette@dahp.wa.gov
SEPA@dahp.wa.gov

SEPA Unit, WA State Department of Ecology, Olympia via email sepaunit@ecy.wa.gov

WA State Department of Fish and Wildlife
Wendy D. Cole via email wendy.cole@dfw.wa.gov

WA State Department of Natural Resources via email Rochelle Goss, sepacenter@dnr.wa.gov
Brenda Werden, Brenda.werden@dnr.wa.gov

SEPA Unit, WA State Department of Transportation, Burlington via email Roland Storme, stormer@wsdot.wa.gov
Judy Johnson, JohnsJu@wsdot.wa.gov

Lummi Nation Natural Resources

Merle Jefferson, Sr. via email - <u>merlej@lummi-nsn.gov</u> Tamela Smart - <u>tamelas@lummi-nsn.gov</u>

Nooksack Indian Tribe

George Swanaset, JR via email - <u>george.swanasetjr@nooksack-nsn.gov</u> Trevor Delgado via email - <u>tdelgado@nooksack-nsn.gov</u>

Skagit River System Cooperative

Nora Kammer via email - nkammer@skagitcoop.org

WCFD #19 - Glacier

Fire Chief Ben Thompson via email - ben@morewoohoo.org

Applicant

Ali Taysi via email - <u>ali@avtplanning.com</u> Arch@westford.co

Other and/or Parties of Record

National Forest Service, Mt. Baker Snoqualmie National Forest c/o Greta Smith via email - gretchen.v.smith@usda.gov

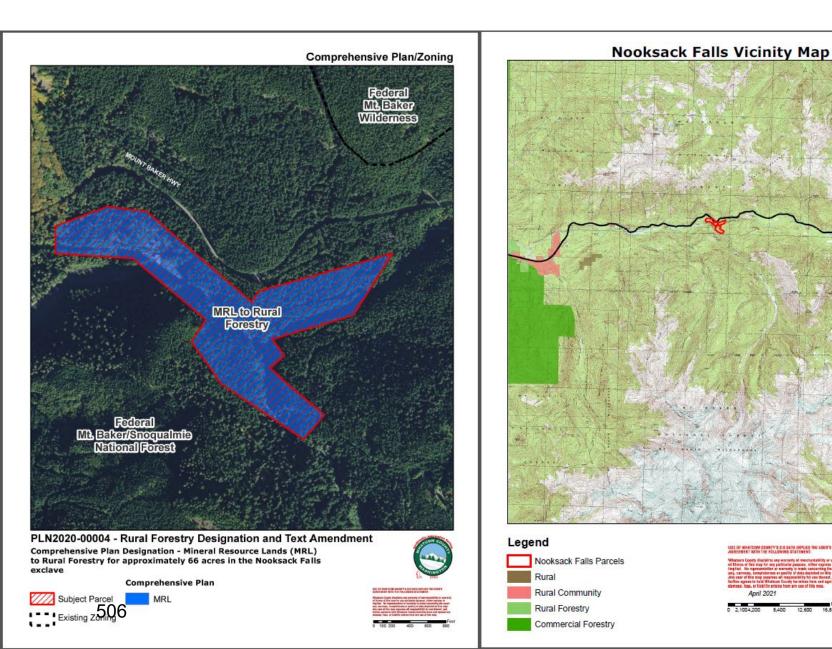
PLN2020-00004 Nooksack Falls

Comprehensive Plan Map Amendment/ Zoning Code Amendment

Nooksack Falls Background

- Privately owned land within Mount Baker Snoqualmie National Forest (MBSNF)
- Includes Nooksack Falls
- Historically associated with mining claims and hydroelectric power
- Mining activities on/near property ceased 50+ years ago
- ORD1999-013 (Interim since 1972)
 - Comprehensive Plan Designation Mineral Resource Lands (MRL)
 - Zoning District Rural Forestry (RF)

Site and Vicinity Map



Proposed Amendments

- Comprehensive Plan Map Amendments
 - Comprehensive Plan Designation from MRL to RF.
 - The subject property is presently zoned RF.
 - Amendment would align designation and zoning.
- Zoning Text Amendment
 - Amend Whatcom County Code (WCC) 20.42.155 to include the Nooksack Falls Exclave as an area where a Conditional Use Permit (CUP) application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the RF zone.

Comprehensive Plan Map Amendment Approval Criteria

- Conform to requirements of Growth Management Act (GMA)
- Internally consistent with CWPP
- Consistent with interlocal agreements.
- Studies made or accepted by PDS show changed conditions that show need for amendment.
- The public interest will be served
- Not include or facilitate illegal spot zoning.

Approval Criterion: Conformance with Requirements of GMA

- Designate "Mineral resource lands...that have longterm significance for the extraction of minerals".
- MRL Designation Criteria
 - If subject property does not meet all designation criteria, de-designation is appropriate.
- Subject site does not appear to meet designation criteria necessary for designation as mineral resource lands of long-term commercial significance.

Approval Criterion: Internally consistent with county-wide planning policies and interlocal planning agreements

- Staff did not identify County-Wide Planning Policies that would be applicable to a change in Comprehensive Plan designation from MRL to RF.
- Staff are not aware of any interlocal agreements affecting the subject site.

Approval Criterion: Studies made or accepted by PDS must show changed conditions that show need for amendment

- The site was identified for designation through 1972 Interim Zoning Ordinance due to historic mining operations.
- ▶ ORD1999-013 adopted interim designation.
- Mining has not occurred on or around site in 50+ years. Mining is no longer feasible within exclave due to economic, environmental, topographic or other factors.

Approval Criterion: The public interest will be served by approving amendment.

- No effect upon the rate or distribution of population growth.
- No anticipated effect on employment growth
- No anticipated effect on development
- No anticipated effect on conversion of land
- No anticipated effect upon ability of service providers to provide adequate services and public facilities.
- No anticipated impact upon resource lands. Site is presently and would continue to be zoned RF.

Approval Criterion: The amendment does not include nor facilitate illegal spot zoning

- "...Spot zoning is a zoning action by which a smaller area is singled out of a larger or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land..."
- Rather than singling out a smaller area from a larger area, the proposal appears to correct a previous designation that was inconsistent with existing zoning and surrounding land uses. Proposal would result in RF designation surrounded by MBSNF.

Zoning Code Amendment Approval Criteria

- Must be consistent with Comprehensive Plan
 - Amendment would allow landowners to apply for a conditional use permit to operate facilities intended for education related to forestry, natural resources and wildlife and the purpose of the RF zone
 - Supported by Policies 8G–8, 2L–4, 2FF–4.

Conclusion & Recommendation

- The subject amendment is consistent with the approval criteria of WCC 20.10.060.
- Staff recommends approval of the proposed comprehensive plan map amendment and zoning text amendment.



Whatcom County

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

Final Action:

Agenda Bill Master Report

File Number: AB2021-425

File ID: AB2021-425 Version: 1 Status: Agenda Ready

File Created: 07/15/2021 Entered by: CStrong@co.whatcom.wa.us

Department: Planning and **File Type:** Discussion

Development Services Department

Assigned to: Council Planning and Development Committee

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Discussion of an ordinance adopting amendments to Whatcom County Code Title 20, Zoning to allow and regulate Battery Energy Storage Systems

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion of proposed amendments to WCC Title 20 (Zoning) to allow and regulate Battery Energy Storage Systems in Whatcom County

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Staff Memo, Draft Ordinance, Exhibit A, Application

Whatcom County Planning & Development Services Staff Report

Battery Energy Storage Systems Zoning Amendment

I. FILE INFORMATION

File #: PLN2021-00001

File Name: Title 20 Zoning Code Amendments – Battery Energy Storage Systems

Applicants: NextEra Resources Development, LLC, attn: Keleigh Wright

Summary of Request: Amend Whatcom County Code (WCC) Title 20 to allow Battery Energy Storage

Systems (BESS).

Location: Countywide.

II. BACKGROUND

Battery energy storage systems (BESS) are rechargeable battery systems that store energy from the electrical grid and then sell energy back to the energy provider when needed or provide energy directly to a home or business. Excess energy from the grid is stored in the BESS during times of low usage and is discharged from the system at times of high usage. BESS can also increase the resiliency of the energy grid in the nearby communities by providing backup power during outages. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.

As this is a new technology not anticipated when our code was written, Battery Energy Storage Systems are not a specified use in Title 20. Since the WCC is structured such that any use not identified as permissible is prohibited¹, a code amendment is necessary in order to allow the use in Whatcom County.

III. CODE AMENDMENTS

NextEra Resources Development, LLC, requests that WCC Title 20 (Zoning) be amended to allow Battery Energy Storage Systems (BESS) as a conditional use in the Rural zone (see Attachment C).

However, after consideration, and in order to accommodate future anticipated BESS facilities, PDS has expanded on NextEra's request and proposes to allow BESS in several zoning districts, along with adding some standards so as to minimize impacts on surrounding residences and other adjacent uses. Because BESS is a new technology that staff believes will become more and more prevalent, we propose that:

• BESS of any storage capacity be a permitted use in the Light Impact Industrial (LII) and Heavy Impact Industrial (HII) districts.

¹ Each district has a "Prohibited Uses" section reading "All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited" (e.g., WCC 20.36.200).

- BESS of less than 5 MWs of storage capacity be allowed with an Administrative Approval Use Permit in the Residential Rural (RR), Residential Rural Island (RRI), and Rural (R) zoning districts, with setback, screening, lighting, and noise standards.
- BESS of 5 MW or more of storage capacity and within one (1) mile of an existing electrical substation be allowed in the Rural (R) district as a Conditional Use, with setback, screening, lighting, and noise standards. Proposed BESS of 5 MW or more storage capacity that are more than one (1) mile of an existing electrical substation will be prohibited.
- A definition of BESS be added in WCC 20.97 to clarify the use.

Please note that any project that requires an administrative use permit approval is required to send a notice of application to surrounding property owners within 300 (if within a UGA) or 1,000 feet (outside of a UGA) so that they may comment on the project. Similarly, any project that requires a conditional use permit is required to send notice to surrounding property owners within the same distances, and must also have a public hearing before the Hearing Examiner. Such projects must also meet the approval criteria for Conditional Use Permits found in WCC 22.05.026(3). Under either process an application could be approved subject to conditions or denied.

Also note that the lot coverage limit in the Rural zone (WCC 20.36.450) is 5,000 square feet or 20% of the total lot area, whichever is greater, not to exceed 25,000 square feet (unless specified otherwise). Staff proposes that the maximum lot coverage for BESS with more than 5 MW of storage capacity be up to 40% of the total lot area, with no limit on structure (or combination of structures) size. Amending the lot coverage limit in the Rural zone for BESS will allow larger facilities near existing substations in the Rural zone with conditional use permit approval. BESS of 5 MW or less of storage capacity are smaller in size and should not exceed the existing lot coverage limit in any of the zones where it would be allowed with administrative use permit approval.

NextEra has reviewed staff's expanded proposal and is in agreement with this approach.

Realize that approval of this code amendment does not permit NextEra (or any other BESS developer) to install their BESS project; it only allows them to submit a permit to do so. Such permits would be processed and evaluated for consistency with this and all other relevant codes before approval.

IV. COMPREHENSIVE PLAN EVALUATION

The Comprehensive Plan contains four policies that support the development and use of new utility and information technologies.

- Policy 5B-1: Facilitate the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.
- Policy 5B-2: Support development and use of new technologies.
- Policy 5F-1: Periodically review existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.

Policy 7C-3: Work with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

Staff found no policies with which the proposed amendments would be inconsistent.

V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

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

- NextEra Resources Development, LLC, has submitted an application for amendments to WCC
 Title 20 Zoning to allow Battery Energy Storage Systems.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2021.
- 3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 2, 2021, for their 60-day review.
- 4. The Planning Commission held a public hearing on the proposed amendments on July 8, 2021, notice of which was published in the Bellingham Herald on June 25, 2021.
- 5. The County Council held a duly noticed public hearing on the proposed amendments on August 10, 2021.
- 6. The amendments are consistent with Comprehensive Plan Policy 5B-1, which supports the facilitation of the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result
- 7. The amendments are consistent with Comprehensive Plan Policy 5B-2, which supports development and use of new technologies
- 8. The amendments are consistent with Comprehensive Plan Policy 5F-1, which supports periodically reviewing existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.
- 9. The amendments are consistent with Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

VI. PROPOSED CONCLUSIONS

- 1. The amendments to the zoning code are in the public interest.
- 2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VII. RECOMMENDATION

Planning and Development Services recommends that the County Council approve the proposed amendments as shown in Exhibit A, based on the Findings of Fact and Conclusions provided in this staff report.

ATTACHMENTS

- A. Draft Code Amendments
- B. Draft Ordinance
- C. Code Amendment Application

	PROPOSED BY:	
	INTRODUCTION DATE:	
ORDINANCE NO		

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING TO ALLOW AND REGULATE BATTERY ENERGY STORAGE SYSTEMS

WHEREAS, NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems (BESS).

WHEREAS, as BESS is a new technology not anticipated when our code was written, BESS are not a specified use in Title 20 and thus prohibited and a code amendment is necessary to allow such use; and,

WHEREAS, The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and,

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

- 1. NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems as a conditional use in the Rural district.
- 2. After consideration of the application, and in order to accommodate future anticipated BESS facilities, PDS, has expanded on NextEra's request and proposes to allow BESS in several zoning districts, along with adding some standards so as to minimize impacts on surrounding residences and other adjacent uses, to which the applicant agrees.
- 3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2021.
- 4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 02, 2021, for their 60-day review.
- 5. The Planning Commission held a public hearing on the proposed amendments on July 8, 2021, notice of which was published in the Bellingham Herald on June 25, 2021.
- 6. The County Council held a duly noticed public hearing on the proposed amendments on August 10, 2021.
- 7. The amendments are consistent with Comprehensive Plan Policy 5B-1, which supports the facilitation of the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.
- 8. The amendments are consistent with Comprehensive Plan Policy 5B-2, which supports development and use of new technologies
- 9. The amendments are consistent with Comprehensive Plan Policy 5F-1, which supports periodically reviewing existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.

10. The amendments are consistent with Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

CONCLUSIONS

- 1. The amendments to the zoning code are the public interest.
- 2. The amendments are consistent with the Whatcom County Comprehensive Plan.

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

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and undate any cross-

Section 2. Staff is authorized to work with Code Preferences made ineffective by these amendments.	ublishing to correct and update any cross-
ADOPTED this day of, 202	21.
WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON	
ATTEST:	
Dana Brown-Davis, Council Clerk	Barry Buchanan, Council Chair
APPROVED as to form:	() Approved () Denied
Civil Deputy Prosecutor	Satpal Sidhu, Executive
	Date:

EXHIBIT A

Proposed Battery Energy Storage Systems (BESS) Amendments to the Whatcom County Code

WCC Title 20 Zoning

Chapter 20.32
RESIDENTIAL RURAL (RR) DISTRICT

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20.32.130 Administrative approval uses.

.

.136 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and the public roads.
- (4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

. . . .

Chapter 20.34 RESIDENTIAL RURAL-ISLAND (RRI) DISTRICT

. . .

20.34.130 Administrative approval uses.

• • • • •

.135 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and public roads.

(4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

. . . .

Chapter 20.36 RURAL (R) DISTRICT

. . . .

20.36.130 Administrative approval uses.

• • • •

.139 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and public roads.
- (4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

. . . .

20.36.150 Conditional Uses.

.

.198 Battery energy storage systems with more than 5 MW of storage capacity, provided:

- (1) The facility is located within one mile of an existing electrical substation.
- (2) The facility shall be no closer than 25 feet from any property line.
- (3) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (4) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and the public roads.
- (5) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

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20.36.450 Lot coverage (Adopted by reference in WCCP Chapter 2.)

Except as follows, nNo structure or combination of structures shall occupy or cover more than 5,000 square feet or 20% of the total lot area, whichever is greater, of the total lot area, not to exceed 25,000 square feet, except as follows:

- 1. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35% of a lot, with no limitation on structure (or combination of structures) size.
- Battery energy storage systems with more than 5 MW of storage capacity approved pursuant to <u>WCC 20.36.198 shall occupy or cover no more than 40% of the total lot area, with no limitation on structure (or combination of structures) size.</u>
- <u>1.3.</u> Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

. . . .

Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

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20.66.050 Permitted uses.

. . . .

.095 Battery energy storage systems of any storage capacity.

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Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

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20.68.050 Permitted uses.

. . . .

.109 Battery energy storage systems of any storage capacity.

. . . .

Chapter 20.82 PUBLIC UTILITIES

20.82.040 Other applicable regulations

- (1) Solid waste facilities and large scale electrical generating plants are not conditional uses under the name "public utilities" but are restricted to where they have been named as uses.
- (2) The provisions of this chapter shall not apply to wireless communications services and facilities which are regulated under Chapter 20.13 WCC.
- (3) The provisions of this chapter shall not apply to Battery Energy Storage Systems (BESS), which are regulated under the applicable zoning district.

Chapter 20.97 DEFINITIONS

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20.97.026 Battery Energy Storage System (BESS).

"Battery energy storage system" (BESS) means an energy storage system that can store and deploy generated energy, typically a group of batteries that charge (i.e., collect energy) and store electrical energy from the grid or energy generation facility and then discharge that energy at a later time to provide electricity or other grid services when needed. BESS generally consist of batteries, battery storage containers, on-site switchyard, inverters, associated interconnection transmission line, and supervisory control and data acquisition system.



Our Energy Storage Business







A **Promising Future** For Energy Storage

Technology offers flexibility, value in today's energy market

Meeting today's energy challenges is complicated. The power infrastructure must be able to balance supply and demand instantaneously while taking into account the impacts of intermittent renewable energy. Consumers are also looking for energy services and products that provide flexibility and value in the areas of renewable energy, grid reliability and peaking power.

NextEra Energy Resources is helping meet these needs through battery energy storage technology, which is providing a promising way to store electrical energy so it can be available to meet demand whenever needed. While there are many energy storage technologies, NextEra Energy Resources has focused on the use of batteries as costs have declined, but is continuing to evaluate other storage technologies.

"(Our) company expects to invest more than \$1 billion in storage in 2021, which would be the largest-ever annual battery storage investment by any power company in history."

Jim Robo, Chairman and CEO, NextEra Energy, April 22, 2020

Energy storage delivers advantages to the power grid and our customers

What makes energy storage attractive is that it allows energy to be delivered instantly, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, integrating renewable resources and helping investment decisions.

- » Grid enhancement. Energy storage can balance load on the power system grid by moving energy when demands are low to times when demands are high. The technology also allows for a seamless switch between power sources and protects equipment by controlling voltage and frequency.
- » Renewable resources. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.
- » Electrical system investments. By reducing the load on congested transmission and distribution systems, energy storage may defer expensive upgrades. In some cases, storage may also reduce new investment in conventional resources, such as adding generating plants to meet systemwide peak load.



In 2018, NextEra Energy Resources' 20-megawatt (MW) Pinal Central Solar Energy Center in Arizona became the company's first project to pair solar energy with an on-site, state-of-the-art 10-MW battery storage system (shown in cover photo, lower right, February 2020). More than 50% of the company's new solar projects in 2019 also included a storage component. Renewable energy projects, coupled with battery storage, provide power to customers long after the sun goes down and demand for electricity goes up.



NextEra Energy Resources employees at the 16.2-MW Casco Bay Energy Storage Facility in Maine (April 2017). The company is developing additional energy storage facilities across North America.

Projects require little land, provide many benefits

Energy storage projects do not require a large area for development, are scalable in size and can be located in many places. NextEra Energy Resources generally seeks to site a project as close as possible to existing electrical transmission or distribution infrastructure and often, close to an existing renewable project.

Other benefits of energy storage include no greenhouse gases or other air pollutants, no use of water to generate electricity, and a renewable supply of energy.

Interest in energy storage is growing

The growing interest in energy storage is being driven by a number of factors, including:

- » Reductions in technology costs.
- » The rapid development of intermittent renewable energy resources.
- » The evaluation of new policy initiatives by states.
- » Regulatory changes.

For example, the Federal Energy Regulatory Commission has mandated policy changes in the frequency regulation market that have helped spur the use of energy storage for this purpose. Certain markets are now encouraging utilities to use energy storage to manage the intermittent energy that flows into the grid and to supply the grid with energy during times of peak use.

Costs are expected to decline

While emerging technology costs tend to be higher and therefore less competitive during the early evolution phase, technological efficiencies, improved manufacturing productivity and economies of scale help lower cost over time. As batteries gain wider industry adoption, prices are expected to decrease further.

Energy storage is safe, reliable

Safety is always a top priority in NextEra Energy Resources' operations, and energy storage systems are no exception.

Our energy storage systems are safe and reliable. Overall, energy storage has been a part of the U.S. electric system since the 1930s. Today, it makes up approximately 2% of the nation's generation capacity, according to the Energy Storage Association. The safety record of the industry is similar to or better than other forms of power generation or distribution.

NextEra Energy Resources is experienced in energy storage

Our team of specialists has spent years researching energy storage technologies, applications and use cases, leading to two demonstration projects in 2012 and 2013.

Today, NextEra Energy Resources has more than 145 MW of operational energy storage, including the Lee DeKalb Energy Storage Facility in Illinois and the Blue Summit Energy Storage Facility in Texas. These facilities are being used for frequency regulation. Traditionally, fossil and hydroelectric power plants have been used for frequency regulation. Now, batteries can also accomplish this task more efficiently.

In addition to the growth of operational facilities, the company has a robust pipeline of development projects across the U.S. and Canada.



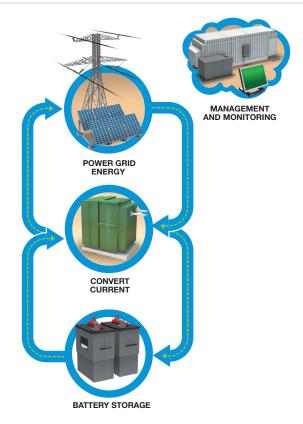
racks similar to a computer server. There are also monitoring, control and power conversion systems, as well as cooling and fire suppression systems.



NextEra Energy Resources' Minuteman Energy Storage Facility in Massachusetts went into service in 2019. It provides 5 MW of energy storage.

How energy storage systems work

- » A battery management system monitors the individual cells and controls the voltage, temperature and current for safe, reliable transfer of energy. The system automatically shuts off if the batteries are operating outside of predefined parameters.
- » A computerized monitoring system provides up-to-date weather forecasts, power prices, historical electrical use, the amount of charge remaining in the batteries and when to use the energy storage system.
- » Energy from the power grid or from renewable energy sources is delivered via a bidirectional inverter, which converts the energy from alternating current (AC) into direct current (DC). Today's batteries can only store DC. This energy goes into an array of batteries that is typically housed within a battery container or a building structure.
- » When the energy is needed on the power system, the inverters are then used again, but this time to convert the DC from the batteries into AC. Once the power has been transformed, it is stepped up in voltage and subsequently sent to an on-site substation or directly to a distribution or transmission line.
- » The electricity is then distributed to homes, schools, businesses and other consumers.



NextEra Energy Resources has a proven reputation for excellence

As the world's largest generator of renewable energy from the wind and the sun, NextEra Energy Resources has earned a reputation for excellence. Our scale, size and scope of services allow us to offer innovative energy solutions to customers, and energy storage is a natural extension of our development business.

By working with NextEra Energy Resources, customers can realize the monetary benefits of energy storage while mitigating technology complexity and vendor risk. With our significant purchasing power, we can buy energy storage equipment at the lowest possible costs. With our best-in-class development skills, we can also build customized storage solutions to meet customers' unique requirements.

Energy storage has the potential to be a game changer for the energy industry, and NextEra Energy Resources is a leader in the market.

NextEraEnergyResources.com

NextEra Energy Resources, LLC | 700 Universe Boulevard | Juno Beach, Florida 33408



530

December 28, 2020

Mr. Mark Personius Director, Planning and Development Services Whatcom County 5280 Northwest Drive Bellingham, WA 98226

Subject: NextEra Resources Development, LLC

Development Regulation Amendment Application

Battery Energy Storage Systems

Mr. Personius:

On behalf of NextEra Resources Development, LLC, we respectfully submit the attached Development Regulation Amendment Application to request the County consider text amendments to the Whatcom County Code Title 20 (Zoning) including the Rural Zoning District WCC Chapter 20.36 for the creation of a land use permitting pathway for battery energy storage systems. The proposed text amendments are described in the attached materials, along with a demonstration of compliance with the Countywide Planning Policies and Comprehensive Plan.

We look forward to working with you and the Whatcom County Planning and Development Services on this text amendment request. If you have any initial questions, please do not hesitate to contact me at 503.200.0005 or Paul.Seilo@Jacobs.com.

Sincerely,

Paul Seilo, AICP

Paul T. Seilo

Senior Project Manager

Cc: Chris Powers/NextEra

Keleigh Wright/NextEra Tim McMahan/NextEra David Lawlor/NextEra Erika Sawyer/Jacobs

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax PDS@whatcomcounty.us



Mark Personius, AICP Director

01/26/2021

Comprehensive Plan and/or Development Regulation Amendment Application REVISED

Date Received:	12/29/2020	File #:	PLN2021-00001	1
	or more of the follow			
□ Comprehens	sive Plan Map			
☐ Comprehens	sive Plan Text			
□ Developmen	nt Regulation Map			
□ Developmen	nt Regulation Text			
developmen • Title 2 • Title 2	should be used fo It regulations in the N 16 - Environment, 20 - Zoning, 21 - Land Division Re 23 - Shoreline Manag	Whatcom Cou	inty Code:	the following
Topic of Proposed	Amendment:			

A. General Information – All applicants must complete this section. Applicant Name_____ Mailing Address: _____City_____ State____Zip Code_____Phone # ()_____ Agent/Contact Name: Mailing Address: City State____Zip Code____Phone # ()____ Email Please complete the questions below. Attach additional pages as needed **B. For Map Amendments Parcel Information** Tax Parcel Number(s) (APN) Total Acreage - Gross ______ Net:_____ Site Address _____ Township: _____ Range: ____ Section: _____ ¼ Section: _____ Owner Name_____ Mailing Address: ______City_____ State_____Phone # ()_____ Email 1. Existing Comprehensive Plan Designation: ______ 2. Existing Zoning Designation: ______ 3. Proposed Comprehensive Plan Designation: ______ 4. Proposed Zoning Designation: ______

5. The Present Use of the Property is:

The site is currently served by:	6.	The Intended Future Use of the Property is:
Please provide the following information regarding the availability of services: The site is currently served by:	7.	Surrounding Land Use:
If sewer the purveyor is: The site is currently served by: Public Water System Well If public water the purveyor is: The site is located on a: Public Road Private Road Name of Road: Name: School District #: No No No School District #: No No School District #: No No No School District #: No No No School District #: No No No No School District #: No No No No No School District #: No	8.	Services: Please provide the following information regarding the availability of services:
The site is currently served by: Public Water System Well If public water the purveyor is: The site is located on a: Public Road Private Road Name of Road: Fire District #: Name: School District #: Name: 9. Transfer of Development Rights (TDRs): Are TDRs required under section 20.89.050 of the Whatcom County Code? Yes No If so, please explain how your proposal complies with the TDR requirements		The site is currently served by: Sewer Septic
If public water the purveyor is: The site is located on a: Public Road Private Road Name of Road:		If sewer the purveyor is:
The site is located on a: Public Road Private Road Name of Road: Name: Name: School District #: Name: Name		The site is currently served by: $\ \square$ Public Water System $\ \square$ Well
Name of Road: Fire District #: Name: School District #: Name: 9. Transfer of Development Rights (TDRs): Are TDRs required under section 20.89.050 of the Whatcom County Code? Yes		If public water the purveyor is:
Fire District #: Name: School District #: Name: 9. Transfer of Development Rights (TDRs): Are TDRs required under section 20.89.050 of the Whatcom County Code? Yes No If so, please explain how your proposal complies with the TDR requirements.		The site is located on a: Public Road Private Road
School District #: Name: 9. Transfer of Development Rights (TDRs): Are TDRs required under section 20.89.050 of the Whatcom County Code? Yes No If so, please explain how your proposal complies with the TDR requirements.		Name of Road:
 9. Transfer of Development Rights (TDRs): Are TDRs required under section 20.89.050 of the Whatcom County Code? Yes No If so, please explain how your proposal complies with the TDR requirements. 		Fire District #: Name:
Are TDRs required under section 20.89.050 of the Whatcom County Code? Yes No If so, please explain how your proposal complies with the TDR requirements		School District #: Name:
\square Yes \square No If so, please explain how your proposal complies with the TDR requirements	9.	Transfer of Development Rights (TDRs):
		If so, please explain how your proposal complies with the TDR requirements and/or how you qualify for modification/exceptions from the TDR requirements

C	For	Teyt	Amen	dme	nts.
v.	T OI	ICAL	AIIIEI	ulli	รเเเว.

Identify the sections of the Comprehensive Plan and/or development regulation th you are proposing to change and provide the proposed wording.	at
D. For All Amendments:	
1. Why is the amendment needed and being proposed?	
2. How does the proposed amendment conform to the requirements of the Growth Management Act?	ıe
3. How is the proposed amendment consistent with the County-Wide Plannir Policies for Whatcom County?	ıg
,	

4.	How is the proposed amendment consistent with the Whatcom County Comprehensive Plan?
5.	If within an Urban Growth Area, how is the proposed amendment consistent with interlocal agreements between the County and the City?
6.	What changed conditions or further studies indicate a need for the amendment?
7.	How will the public interest be served by the amendment? Please address the factors identified below.
	• The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.
	 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.

	 Anticipated impact upon designated agricultural, forest and mineral resource lands.
8.	Does the amendment include or facilitate illegal spot zoning? \square Yes \square No Please explain.
Su	pporting Information – Attach the Following:
A.	A vicinity map showing property lines, roads, existing and proposed Comprehensive Plan and Zoning designations. (This information is required for map amendments only).
В.	Mailing labels with names and mailing addresses of the owners of all property included within the area proposed for re-designation and:

For a map amendment within an existing urban growth area, mailing labels with the typed address of each property owner within 300 feet of the external boundaries of the subject property as shown by the records

• For a map amendment outside existing urban growth areas, mailing

of the county assessor.

E.

labels with the typed address of each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

- For map amendments that involve rezoning property to an Airport Operations District, mailing labels with the typed address of each property owner within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor.
- For map amendments that involve rezoning property to a Mineral Resource Land (MRL) designation, mailing labels with the typed address of each property owner within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.
- C. State Environmental Policy Act (SEPA) Checklist
- D. For Comprehensive Plan map amendments that propose to re-designate property to a MRL designation, a Comprehensive Plan MRL Application Supplement form is required.

F. Fees

Applicants pay a docketing fee when submitting an application and additional amendment application fees if the County Council decides to docket the application. The Whatcom County Code 22.10.020(3)(b) states that, when docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.

A.	Are		questing ⁄es		ounty Cour	ncil waive the	applica	tion fees?	?
	•	•	describe a whole.	the	proposed	amendment	clearly	benefits	the

E. Authorization:		
Signature of Applicant(s) or Agent:		
Keleigh Wright	Date:	January 21, 2021
	Date:	

_Date: _____

Attachment 1. Whatcom County Development Regulation Amendment Application Battery Energy Storage System

Parts A, E, F and G of the application are included on the preceding Whatcom County Development Regulation Amendment Application form. Part B does not apply as it is only applicable when a Map Amendment is proposed. This document includes information for Parts C and D of the application.

Part C. For Text Amendments:

Identify the sections of the Comprehensive Plan and/or development regulation that you are proposing to change and provide the proposed wording.

The proposal seeks to amend the Whatcom County Code (WCC) Definitions Chapter 20.97 by adding a definition for Battery Energy Storage System (BESS) and modifying the existing definition of a Public Utility; to amend the Rural (R) District zoning district (WCC Chapter 20.36) to add BESS as a conditional use and to increase the lot coverage allowance in the R district for BESS; and to add BESS as a conditional use in WCC Chapter 20.82 Public Utilities.

The <u>underlined</u> statements below indicate a proposed amendment to the WCC section to include this verbiage.

Chapter 20.97 Definitions

20.97.025 Battery Energy Storage System (BESS)

"Battery energy storage system" (BESS) means an energy storage system that can store and deploy generated energy, typically a group of batteries that charge (i.e., collect energy) and store electrical energy from the grid or energy generation facility and then discharge that energy at a later time to provide electricity or other grid services when needed. BESS generally consist of batteries, battery storage containers, on-site switchyard, inverters, associated interconnection transmission line, and supervisory control and data acquisition system.

20.97.329.1 Public utility.

"Public utility" means a use owned or operated by a public or publicly licensed or franchised agency <u>including energy uses proposed by an independent energy facility developer</u> which provides vital public services such as telephone exchanges, electric <u>generation and storage</u>.

<u>energy</u> substations, radio and television stations, wireless communications services, gas and water regulation stations and other facilities of this nature. (Ord. 2004-014 \S 2, 2004; Ord. 2000-006 \S 2, 2000).

Chapter 20.36 Rural (R) District

20.36.150 Conditional uses.

.166 Battery energy storage systems.

20.36.450 Lot coverage (Adopted by reference in WCCP Chapter 2.)

Except as follows, no structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total lot area, not to exceed 25,000 square feet. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35 percent of a lot, with no limitation on structure (or combination of structures) size. Battery energy storage system shall occupy or cover no more than 40 percent of a lot, with no limitation on structure (or combination of structures) size. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement. (Ord. 2019-033 Exh. A, 2019; Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 88-29, 1988).

Chapter 20.82 Public Utilities

20.82.030 Conditional uses.

(11) Battery energy storage systems operating at voltages greater than 55 kV (55,000 volts).

Part D. For All Amendments

1. Why is the amendment needed and being proposed?

Response: The text amendments are proposed to:

- (1) To promote the siting of battery energy storage systems (BESS) in a manner that is compatible with existing zoning districts, land uses, character of the surrounding area, and where BESS can be located adjacent to existing energy and utility infrastructure;
- (2) To increase the resiliency of the energy grid in the nearby communities of Bellingham, Ferndale, and the greater Whatcom County area; and
- (3) To provide alternatives to store and deploy energy in an efficient manner.

A Promising Future For Battery Energy Storage Systems

Technology offers flexibility and value in today's energy market. Meeting today's energy challenges is complicated. Energy infrastructure must be able to balance supply and demand instantaneously while taking into account the impacts of intermittent renewable energy. Consumers are also looking for energy services and products that provide flexibility and value in the areas of renewable energy, grid reliability and peaking power. Battery energy storage system technology is providing a promising way to store electrical energy so it can be available to meet demand whenever needed.

Energy storage delivers advantages to the power grid. What makes energy storage attractive is that it allows energy to be delivered instantly, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, integrating renewable resources and helping investment decisions.

- Grid enhancement. Energy storage can balance load on the power system grid by moving energy when demands are low to times when demands are high. The technology also allows for a seamless switch between power sources and protects equipment by controlling voltage and frequency.
- Renewable resources. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.

 Electrical system investments. By reducing the load on congested transmission and distribution systems, energy storage may defer expensive upgrades. In some cases, storage may also reduce new investment in conventional resources, such as adding generating plants to meet systemwide peak load.

Projects require little land, provide many benefits. Energy storage projects do not require a large area for development, are scalable in size and can be located in many places. The optimum BESS siting is as close as possible to existing electrical transmission or distribution infrastructure and often, close to an existing renewable project. Other benefits of energy storage include no greenhouse gases or other air pollutants, no use of water to generate electricity, and a renewable supply of energy.

Interest in energy storage is growing. The growing interest in energy storage is being driven by a number of factors, including:

- Reductions in technology costs.
- The rapid development of intermittent renewable energy resources.
- The evaluation of new policy initiatives by states.
- Regulatory changes.

For example, the Federal Energy Regulatory Commission has mandated policy changes in the frequency regulation market that have helped spur the use of energy storage for this purpose. Certain markets are now encouraging utilities to use energy storage to manage the intermittent energy that flows into the grid and to supply the grid with energy during times of peak use.

Costs are expected to decline. While emerging technology costs tend to be higher and therefore less competitive during the early evolution phase, technological efficiencies, improved manufacturing productivity and economies of scale help lower cost over time. As batteries gain wider industry adoption, prices are expected to decrease further.

Energy storage is safe, reliable. Overall, energy storage has been a part of the U.S. electric system since the 1930s. Today, it makes up approximately 2% of the nation's generation capacity, according to the Energy Storage Association. The safety record of the industry is similar to or better than other forms of power generation or distribution.

2. How does the proposed amendment conform to the requirements of the Growth Management Act?

The proposed text amendments will help Whatcom County comply with Goal 12 of the Growth Management Act which is as follows under Revised Code of Washington (RCW) 36.70A.020: (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Response: Battery energy storage systems allow energy to be delivered instantly to the grid, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, so it remains adequate to support development. Battery energy storage systems balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high. Battery storage also reduces the load on congested transmission and distribution systems, and energy storage may defer expensive upgrades.

3. How is the proposed amendment consistent with the County-Wide Planning Policies for Whatcom County?

<u>Response</u>: The proposed text amendments to provide a land use permitting pathway for battery energy storage systems are consistent with the following Whatcom County Countywide Planning Policies (Whatcom County, 2016):

B. Urban Versus Rural Distinctions

3. Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial, industrial and intensive residential development greater than a rural development density. These areas should be clearly delineated, and not expanded beyond logical outer boundaries in accordance with RCW 36.70.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas.

<u>Response:</u> The proposed text amendments are consistent with the Countywide Planning Policy B.3 for Urban Versus Rural Distinctions as infill battery energy storage systems in the rural zoning district may allow for the clustering of public utilities in manner that enhances energy efficiency and electrical grid stability, while still maintaining a rural character in surrounding areas.

I. Economic Development and Employment

- 8. 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.

Response: The proposed text amendments are consistent with several of these economic development-related policies [8(a)(b) and (f)]. Battery energy storage systems provide energy efficiency and electrical grid stability on a relatively small footprint. Furthermore, battery energy storage systems do not generate greenhouse gases or other air pollutants, nor use water to generate electricity. The proposed amendments are consistent with the community values, to support electric energy supply for future economic growth within the County that is resilient to the impacts of climate change. Battery energy storage systems are a new technology for the County to store energy in a safe and reliable method that increases the resiliency of the energy grid. The emergence of battery energy storage systems supports the County's efforts to increase its energy options which supports current businesses and could be considered important for locational decisions by industries seeking to relocate or expand in the County.

11. Whatcom County encourages siting of industrial uses in proximity to and to further utilization of our access to deep water and port facilities for shipping, rail, airports, roadways, utility corridors and the international border.

<u>Response:</u> The text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The clustering of energy generation facilities creates an orderly use of the land, establishes the infrastructure needed to support similar uses, and minimizes the potential for development in greenfield or environmentally sensitive areas that may be suitable for the preservation of land or other uses.

K. Siting of Public Facilities

1. As part of the comprehensive planning process, the county and the cities shall identify appropriate land for public facilities which meets the needs of the community, such as schools, recreation, transportation and utility corridors, human service facilities, and airport and other port facilities. In order to reduce land use conflicts, policies related to a design component shall be incorporated in the comprehensive plans.

Response: The Comprehensive Plan supports the identification of suitable lands within zoning designations that may support public facilities and utilities. The text amendments will allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. This is an efficient use of land as these clusters may create more orderly development and minimize environmental impacts by not clustering these uses. Energy efficiency and reliability are important considerations for locational decisions by industries seeking to relocate or expand in the County, thus supporting future growth and employment opportunities for the County.

5. Sharing of corridors for major utilities, trails and other transportation rights-of-way is encouraged when not in conflict with goals to protect wildlife, public health and safety.

Response: The text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The sharing of corridors for public utilities leads to uniform development and decreases the potential for land use conflicts. The text amendments allow for flexibility in siting battery energy storage systems in a manner that avoids and may preserve critical areas and protects wildlife. Battery energy storage systems have minimal conflict with public health as the technology does not release greenhouse gases or other air pollutants, and no water is required.

4. How is the proposed amendment consistent with the Whatcom County Comprehensive Plan?

<u>Response</u>: The proposed text amendments are consistent with the following Whatcom County Comprehensive Plan provisions:

Comprehensive Plan, Chapter Five. Utilities

Goal 5B: Support the Development and use of new utility and information technologies.

<u>Response</u>: Battery energy storage systems are consistent with this policy as the new and evolving technology fills in the energy generation gaps resulting from intermittent resources like wind and solar generation and can balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high.

Goal 5F: Identify and remove impediments to effective siting of necessary utility facilities.

<u>Response</u>: The proposed text amendments provide a land use permitting pathway for siting battery energy storage systems. The proposed text amendments provide a definition for this type of use and establish a process under which it can be approved as a conditional use. The proposed text amendments will provide for the orderly, safe and efficient siting of battery energy storage systems in Whatcom County.

Comprehensive Plan, Chapter Seven. Economics

Goal 7C: Ensure adequate infrastructure to support existing and future business development and evolving technology.

Response: Adequate infrastructure is a basic necessity for the reliable operation and expansion of existing and future businesses and the movement of goods and services. The emergence of battery energy storage systems supports the County's efforts to increase its energy options, and the use of battery storage technology will increase the resiliency of the local grid. This enhancement and reliability of the County's infrastructure is considered important for locational decisions by industries seeking to relocate or expand in the County, thereby supporting both existing and future business development.

5. If within an Urban Growth Area, how is the proposed amendment consistent with interlocal agreements between the County and the City?

Response: No specific project location is proposed.

6. What changed conditions or further studies indicate a need for the amendment?

Response: None.

- 7. How will the public interest be served by the amendment? Please address the factors identified below.
- The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

Response: The proposed text amendments will not have a direct impact on population growth, although battery energy storage systems may indirectly lead to population, employment, and economic growth by enhancing the electrical grid, a basic necessity for the reliable operation and expansion of existing and future businesses. The emergence of battery energy storage systems supports the County's efforts to increase its energy options, and the use of battery storage technology will increase the resiliency of the local grid. The proposed text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The sharing of corridors for public utilities leads to uniform development and decreases the potential for land use conflicts. The text amendments allow for flexibility in siting battery energy storage systems in a manner that avoids and may preserve critical areas and protects wildlife.

• 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.

Response: The proposed text amendments will not affect the ability of service providers to provide adequate services and public facilities. Battery energy storage systems will actually enhance local energy efficiency and electrical grid. Battery energy storage systems allow energy to be delivered instantly to the grid, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, so it remains adequate to support development. Battery energy storage systems balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high. Battery storage also reduces the load on congested transmission and distribution systems, and energy storage may defer expensive upgrades.

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

<u>Response:</u> The proposed text amendments will have minimal direct impacts on designated agricultural, forest or mineral resource lands. The text amendments will allow for siting battery

energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. This is an efficient use of land as these clusters may create more orderly development and minimize environmental impacts by not clustering these uses.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-402

File ID:	AB2021-402	Version:	1	Status:	Agenda Ready	
File Created:	07/02/2021	Entered by:	CHalka@co.whatcom.wa.us			
Department:	Council Office	File Type:	Report			

Assigned to: Council Committee of the Whole Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Report on activities in progress pursuant to Homeless Strategies Workgroup recommendations

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Report on activities in progress pursuant to Homeless Strategies Workgroup recommendations

HISTORY OF LEGISLATIVE FILE						
Date:	Acting Body:	Action:	Sent To:			



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-438

File ID: AB2021-438 Version: 1 Status: Agenda Ready

File Created: 07/20/2021 Entered by: JLassite@co.whatcom.wa.us

Department: Council Office **File Type:** Resolution

Assigned to: Council Committee of the Whole Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Resolution approving the Whatcom County Water District No. 7 Water System Plan

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution approving the Whatcom County Water District No. 7 Water System Plan

HISTORY OF LEGISLATIVE FILE Date: Acting Body: Action: Sent To:

Attachments: Proposed Resolution, Water System Plan, Whatcom County Health Department Approval Letter,

Whatcom County Public Works Approval Letter, WA State Department of Health Approval Letter,

WA State Department of Health Comments 12.22.20

57

PROPOSED	BY: CC	DUNCIL	CLERK
INTRODUCTION	DATE:	July 27	, 2021

RESOLUTION NO.

APPROVING THE WHATCOM COUNTY WATER DISTRICT NO. 7 WATER SYSTEM PLAN

WHEREAS, the Whatcom County Water District No. 7 (WCWD7) Water System Plan (the Plan) was prepared at the request of the District Board of Commissioners; and

WHEREAS, per WAC 197-11-845, the Plan proposes to have less than one thousand connections and is therefore exempt from SEPA review; and

WHEREAS, per RCW 57.16.010, Whatcom County Public Works approved the Plan Update on July 12, 2021, with the following notations:

- All work performed in a county right-of-way requires a Revocable Encroachment Permit as a prerequisite. See Whatcom County Code (WCC) 12.16 for additional information.
- Depending on the scope of work of any given WCWD7 planned water system facilities project, the County might require: Other permits (e.g., building, conditional use, land disturbance, shoreline) as a prerequisite to project execution and; stormwater management documentation, with possible required engineered stormwater management system design.
- To accommodate our desire to minimize disturbance to County roadway surfaces, we encourage the WCWD7 to locate, where feasible, new or reworked water system facilities outside the existing pavement of any improved County roadway.
- We encourage the WCWD7 to accomplish, to the maximum extent feasible, its planned water system projects that involve work in County rights-of-way, in advance of our planned road projects. This will minimize roadway patching that would otherwise occur without coordination.
- We encourage the District to renew their franchise agreement with the County as soon as possible.

WHEREAS, per RCW 57.16.010, the Whatcom County Health Department approved the Plan on July 14, 2021; and

WHEREAS, Planning and Development Services has reviewed the Plan and issued a Local Government Consistency Determination; and

WHEREAS, RCW 57.16.010(7) requires the County Council approve, conditionally approve, or reject comprehensive water system plans; and

WHEREAS, Whatcom County Water District No. 7 has submitted a final version of the Plan (revised to address agency comments) to the County Council for review and approval; and

WHEREAS, under the provisions of state law, the Whatcom County Comprehensive Plan, and County-Wide Planning Policies, water service in rural areas must be at rural levels and should not be used as a basis for rezoning property; and

WHEREAS, the County Council has reviewed the Whatcom County Water District 7 Water System Plan for compliance with the approval criteria set forth in RCW 57.16.010(7)) and RCW 57.02.040 and finds that the Plan satisfies these criteria, subject to certain conditions.

What	NOW, THEREFORE, BE IT RESOLVED that t tcom County Water District No. 7 Water System F	
1.	New water lines shall be consistent with WCC2	20.82.030(3).
2.	Provision of water to land outside the Urban G rezoning properties.	rowth Area shall not serve as the basis for
	APPROVED this day of	2021.
ATTI	EST	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
Dana	a Brown-Davis, Clerk of the Council	Barry Buchanan, Council Chair
APP	ROVED AS TO FORM:	
Civil	Deputy Prosecutor	

WHATCOM COUNTY

Health Department



Erika Lautenbach, Director Greg Stern, M.D., Health Officer

July 14, 2021

Carl Reichhardt, P.E. Reichhardt & Ebe Engineering, Inc. P.O. Box 978 Lynden, WA 98264

Dear Mr. Reichhardt

The Whatcom County Health Department has received and reviewed the Whatcom County Water District 7(WCWD7) Water System Plan. We have completed our review in accordance with the provisions in WAC 246-290 and hereby approve your plan.

Sincerely,

John J. Wolpers III RS/REHS

Whatcom County Environmental Health Manager

Cc: Clerk of the Whatcom County Council

Whatcom County Engineer

Whatcom County Planning

Washington State Department of Health, Northwest Regional Office



WHATCOM COUNTY **PUBLIC WORKS DEPARTMENT**

Jon Hutchings

Director



James P. Karcher, P. E.

County Engineer 322 N. Commercial Street, Ste 301 Bellingham, WA 98225-4042 Phone: (360) 778-6210

Fax: (360) 778-6211

July 12, 2021

Mr. Carl Reichhardt, P.E. Reichhardt & Ebe Engineering, Inc. P.O. Box 978 Lynden, WA 98264

Subject: Whatcom County Water District 7 Water System Plan

Dear Mr. Reichhardt:

In reply to your email dated June 24, 2021, I do hereby approve the subject Whatcom County Water District 7 (WCWD7) Water System Plan *contingent* on compliance with the following:

- All work performed in County right-of-way requires a Revocable Encroachment Permit as a prerequisite. See Whatcom County Code (WCC) 12.16 for additional information. Feel free to call 360-778-6220, if you have any questions about this process.
- Depending on the scope of work of any given WCWD7 planned water system facilities project, the County might require:
 - > Other permits (e.g., building, conditional use, land disturbance, shoreline) as a prerequisite to project execution, and;
 - Stormwater management documentation, with possible required engineered stormwater management system design.
- To accommodate our desire to minimize disturbance to County roadway surfaces, we encourage the WCWD7 to locate, where feasible, new or reworked water system facilities outside the existing pavement of any improved County roadway.
- We encourage the WCWD7 to accomplish, to the maximum extent feasible, its planned water system projects that involve work in County rights-of-way, in advance of our planned road projects. This will minimize roadway patching that would otherwise occur without coordination. We are happy to provide you with our current 6-Yr Transportation Improvement Plan upon request.

Finally, I noticed that WCWD7's Franchise agreement expired in 2017. I would encourage the District to renew their franchise agreement with the County as soon as possible.

Sincerely, games F. Kareher

James P. Karcher, P.E.

County Engineer

CC; **County Council**

County Executive

Public Works Director

Engineering Services Development Division Manager

Engineering Services Traffic Division Senior Engineering Technician



JUN 0 7 2021

State of Washington DEPARTMENT OF HEALTH

NORTHWEST DRINKING WATER REGIONAL OPERATIONS 20425 72nd Avenue South, Suite 310 • Kent Washington 98032-2388

June 3, 2021

DAVE OLSON WHATCOM COUNTY WATER DIST NO 7 PO BOX 28700 BELLINGHAM WA 98228

RE:

Whatcom County Water Dist No 7, ID# 95900

Whatcom County Water System Plan Submittal #20-0906

Dear Mr. Olson:

The Whatcom County Water Dist. No. 7 (the District) water system plan (WSP) received in this office on September 28, 2020, with a subsequent submittal on May 27, 2021, has been reviewed and in accordance with the provisions of WAC 246-290-100, is hereby **APPROVED**.

Approval of this WSP is valid as it relates to current standards outlined in Washington Administrative Code (WAC) 246-290 revised January 2017, WAC 246-293 revised September 1997 and is subject to the qualifications herein. Future revisions in the rules and statutes may be more stringent and require facility modification or corrective action. An approved update of this WSP is required on or before **June 3, 2031**, unless ODW requests an update or plan amendment pursuant to WAC 246-290-100(9).

APPROVED NUMBER OF CONNECTIONS

The analysis provided in this WSP shows the water system has sufficient capacity to meet the growth projections during this planning period. The District's water system can support an "unspecified" designation for its approved number of connections. A specific number of approved connections will not be applied at this time. Development may occur in compliance with the schedule and information provided in this WSP. This designation may be rescinded (and replaced with a specified number of approved connections) if ODW determines that the WSP is no longer representative of system activities.

LOCAL GOVERNMENT CONSISTENCY

This document meets local government consistency requirements for WSP approval pursuant to RCW 90.03.386 and RCW 43.20.

SERVICE AREA AND DUTY TO SERVE

Pursuant to RCW 90.03.386(2), the service area identified in this WSP service area map may now represent an expanded "place of use" for this system's water rights. Changes in service area should be made through a WSP amendment.

Public Health - Always Working for a Safer and Healthier Washington





Whatcom County Water Dist June 3, 2021 Page 2

The District has a duty to provide new water service within its retail service area. This WSP includes service policies to describe how your system plans to provide new service within your retail service area.

CONSTRUCTION WAIVERS

Standard Construction Specifications for distribution main extensions in this WSP are approved. Consistent with WAC 246-290-125(2), this system may proceed with the installation of distribution main extensions provided this system completes and keeps on file the enclosed construction completion report form in accordance with WAC 246-290-125(2) and WAC 246-290-120(5) and makes it available for review upon request by ODW.

WATER RESOURCES

Below is the general regulatory language that applies to all water system approvals:

The department's review of your water system plan will not confer or guarantee any right to a specific quantity of water. The approved number of service connections is based on your representation of available water quantity. If the Washington Department of Ecology, a local planning agency, or other authority responsible for determining water rights and water system adequacy determines that you have use of less water than you represented, the number of approved connections may be reduced commensurate with the actual amount of water and your legal right to use it.

Thank you for your cooperation. Whatcom County is being notified of the terms and requirements of this approval and the determination of the approved number of connections. If you have any questions or wish to check our records, you may contact either of us at the numbers listed below.

Laura McLaughlin, P.E.

253 395-6764

WSDOH Regional Engineer

Sincerely,

Richard Rodriguez

WSDOH Regional Planner

253 395-6771

cc:

Encl: Construction Completion Report

Ria Berns, WSDOE-NWRO

Darin Klein, Whatcom Co. Health

Matt Aamot, Whatcom Co. Planning & Development Services

Carl Reichhardt, P.E., Reichhardt & Ebe Engineering.



DEC 2 8 2020 BY:

State of Washington DEPARTMENT OF HEALTH

NORTHWEST DRINKING WATER REGIONAL OPERATIONS 20425 72nd Avenue South, Suite 310 • Kent Washington 98032-2388

December 22, 2020

DAVE OLSON WHATCOM COUNTY WATER DIST NO 7 PO BOX 28700 BELLINGHAM WA 98228

RE:

Whatcom County Water Dist. No 7 ID# 95900

Whatcom County Water System Plan Submittal #20-0906

Dear Mr. Olson:

Thank you for submitting the Water System Plan (WSP) for the Whatcom County Water District #7 (the District) received in this office on September 28, 2020. We have reviewed the plan and offer the following comments. These comments must be adequately addressed prior to approval of the WSP.

Description of Water System

Provide Statements of Local Government Consistency from the City of Bellingham and from Whatcom County Planning.

System Analysis

What is your rationale for using the system's "MDD with conservation" (403 GPD/ERU) to calculate source capacity and tank capacity? This is riskier that using your MDD without conservation (411 GPD/ERU). We don't recommend including expected future water use efficiency savings in water demand projections. How does your analysis compare to using the MDD without conservation? Does the system still have the capacity to meet the system's expected 20-year demand?

Operations & Maintenance

We recommend having a sample site in each pressure zone for easier bacteriological troubleshooting and good representation of the distribution system. Please provide your rational for grouping pressure zones 6-10 into other pressure zones and why you believe four sample stations properly represent the distribution system (Coliform Management Program, Appendix E). Alternatively, address this smaller number of sample sites in your CIP and budget.

In the standard specification (p. 62), I did not see a bacteriological test requirement, in addition to pressure testing, flushing, and disinfection, prior to bringing distribution and transmission mains online. Please add bacteriological testing requirement to protect the distribution from bacterial contamination during the construction process.

Public Health - Always Working for a Safer and Healthier Washington







Whatcom County Water Dist No 7 December 22, 2020 Page 2

Documentation

The water system must meet the consumer input process outlined in WAC 246-290-100(8). Please include documentation of a consumer meeting discussing the WSP, prior to DOH approval of the WSP.

Prior to DOH approval, the District's governing body must approve and adopt the WSP.

A signed SEPA Checklist and DNS was included with the draft WSP.

Include any comments from adjacent purveyors and the District's response to those comments.

We hope that you have found these comments to be clear, constructive and helpful in the development of your final draft WSP. We ask that you submit the revised WSP on or before March 30, 2021. In order to expedite the review of your revised submittal, please include a cover letter summarizing how each of the above comments was addressed in the revised WSP and where each response is located (i.e., page numbers, Appendices, etc.)

Regulations establishing a schedule for fees for review of planning, engineering and construction documents have been adopted (WAC 246-290-990). Please note that we have included an invoice in the amount of \$2280.00 for the review of the Water System Plan. This fee covers our cost for review of the initial submittal, plus the review of one revised document. Please remit your complete payment in the form of a check or money order within thirty days of the date of this letter to: DOH, Revenue Section, and P.O. Box 1099, Olympia, WA 98507-1099.

Thank you again for submitting your draft Water System Plan for our review. If you have any comments or questions concerning our review, please contact either of us.

Sincerely,

Richard Rodriguez Regional Planner

Techand Hanguey

(253) 395-6771

Laura McLaughlin, PE

Imal Mossins

Regional Engineer (253) 395-6761

(233) 373

Enclosure (invoice)

cc:

Darin Klein, Whatcom Co. Health Matt Aamot, Whatcom Co. Planning & Development Services Carl Reichhardt, P.E., Reichhardt & Ebe Engineering, Inc.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-185

File ID: AB2021-185 Version: 1 Status: Referred to Committee

(public testimony already received)

File Created: 03/16/2021 Entered by: DBrown@co.whatcom.wa.us

Department: Council Office File Type: Ordinance

Assigned to: Council Committee of the Whole Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

ORIGINAL PROPOSED BOUNDARIES: At the request of the City of Blaine, this ordinance would establish a no shooting zone in the Drayton Harbor area of Whatcom County. The boundaries of the proposed zone are as follows: That portion of Sections 7 and 18, Township 40 North, Range 1 East and Sections 1, 2, 11, 12, and 13, Township 40 North, Range 1 West, W.M., Whatcom County, Washington described as follows: Beginning along Drayton Harbor Road (Co. Rd. No. 37) at the intersection of the ordinary high water mark of Drayton Harbor with the limits of the city of Blaine, Whatcom County, Washington; thence easterly along said ordinary high water mark to the intersection with the northerly face of an existing bridge over California Creek; thence easterly along said ordinary high water mark to the intersection with said ordinary high water mark; thence northerly along said ordinary high water mark to the intersection with said city limits; thence along said city limits westerly, northerly and southerly to the point of beginning.

REVISED PROPOSED BOUNDARIES FOR JUNE 15, 2021, INTRODUCTION:

Unincorporated Whatcom County all within Drayton Harbor, Blaine Washington, described as follows: Those portions of said harbor within 1,000 feet waterward of the high tide mark of the shoreline of said harbor or the limits of the city of Blaine, Whatcom County, Washington whichever is greater distance

from said high tide mark.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
05/04/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
05/18/2021	Council	HEARD PUBLIC TESTIMONY AND HELD IN COUNCIL	Council Committee of the Whole
06/01/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
06/01/2021	Council	REFERRED TO COMMITTEE	Council Committee of the Whole
06/15/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
06/15/2021	Council	REFERRED TO COMMITTEE	Council Committee of the Whole

Attachments:

Proposed Ordinance for June 15 Introduction, Letter from Mayor of Blaine 4.14.2021, Drayton NSZ Department Comments, WDFW Drayton Harbor, Link to Drayton Harbor - Dearborn Public Comments

PROPOSED BY: <u>CITY OF BLAINE</u> INTRODUCTION DATE: <u>JUNE 15, 2021</u>

ORDINANCE NO.

AMENDING WHATCOM COUNTY CODE 9.32, UNLAWFUL DISCHARGE OF FIREARMS, TO ESTABLISH A NO SHOOTING ZONE IN THE DRAYTON HARBOR AREA OF WHATCOM COUNTY

WHEREAS, pursuant to Whatcom County Code 9.32.050 the County Council may, upon its own initiative, pass a resolution declaring its intent to form a no shooting zone; and

WHEREAS, on July 23, 2019, the Council approved Resolution 2019-035, declaring its intent to conduct a public hearing to consider creating a no shooting zone in the Drayton Harbor area of Whatcom County, as proposed by the City of Blaine; and

WHEREAS, our local Native American tribal members have a limited number of sources to hunt wildlife they have used as an integral part of their cultural traditions since time immemorial; and

WHEREAS, previous laws restricting Non-Native Americans from hunting and fishing in areas where Native Americans have retained their rights under the 1855 Treaty of Point Elliot have resulted in tribal members becoming the target of protests, discrimination and in some cases violence; and

WHEREAS, where possible Whatcom County seeks to harmonize County laws with Tribal treaty rights so as to reduce the potential for misunderstandings, conflict and discrimination; and

WHEREAS, the Lummi restrict tribal members from using firearms within 1,000 feet of an occupied house; and

WHEREAS, pursuant to Whatcom County Code 9.32.020 and RCW 36.32.120 the County Council has the authority and power to establish no shooting zones; and

WHEREAS, a "no shooting zone" is an area designated by the County Council in which the discharge of firearms is prohibited; and

WHEREAS, RCW 9.41.300 (2) specifically states that counties may enact laws and ordinances restricting the discharge of firearms in any portion of their respective jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized; and

WHEREAS, according to the proposal submitted by the City of Blaine (see City of Blaine Resolution No.1765-19, attached as Exhibit A to this ordinance):

- It is difficult for members of the public to distinguish between incorporated and unincorporated areas, particularly on open water, which causes numerous hunters to inadvertently move into areas where hunting and discharge of firearms is illegal;
- Citizens have expressed concerns about gunfire near homes and property and repeatedly call for police response to such incidents;
- Unincorporated portions of Drayton Harbor aquatic area, tidelands, and shoreline are within and adjacent to urban growth areas;
- Population is expanding and housing density is increasing within the areas surrounding Drayton Harbor both within the City and in areas of unincorporated Whatcom County; and

WHEREAS, twenty-three other no shooting zones have been established throughout Whatcom County as a means to protect the public.

NOW THEREFORE, BE IT ORDAINED by the Whatcom County Council that a new section of Whatcom County Code 9.32 shall be added to create a no-shooting zone in the Drayton Harbor area the boundaries of which will be the greater of (a) one thousand (1,000) feet from the high tide mark of the shoreline, or (b) the city limits of Blaine, as outlined in Exhibit B to this ordinance.

BE IT FINALLY O	DRDAINED that	t Tribal members	s exercising	treaty rights	to hunt on	traditional	
hunting grounds that are open and unclaimed are not subject 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:	() Approved () Denied
Approved via email by Karen Frakes / LB	
Civil Deputy Prosecutor	Satpal Sidhu, Executive
	Date:

Exhibit A (Drayton Harbor No Shooting Zone – City of Blaine Resolution)

RESOLUTION NO. 1765-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON, TO SEEK DESIGNATION OF ALL UNINCORPORATED PORTIONS OF DRAYTON HARBOR AQUATIC AREA, TIDELANDS AND SHORELINE AS A NO SHOOTING ZONE PURSUANT TO WHATCOM COUNTY CODE 9.32.

Whereas, portions of the Drayton Harbor aquatic area, tidelands and shoreline are within the city limits, and

Whereas, portions of Drayton Harbor aquatic area, tidelands and shoreline are within Whatcom County jurisdiction, and

Whereas, hunting and the discharge of firearms is prohibited in the city limits, and

Whereas, it is difficult for members of the public to distinguish between incorporated and unincorporated areas particularly on the open water, which causes numerous hunters to inadvertently move into areas where hunting and discharge of firearms is illegal, and

Whereas, our citizens have expressed concerns about gunfire near homes and property and repeatedly call for police response to such incidents, and

Whereas, unincorporated portion of Drayton Harbor aquatic area, tidelands and shoreline are within and adjacent to urban growth areas, and

Whereas, population is expanding and housing density is increasing within the areas surrounding Drayton Harbor both within the City and an areas or unincorporated Whatcom County,

Whereas, the Revised Code of Washington (RCW 36.32.120) provides Whatcom County authority to designate no shooting zones, and

Whereas, Whatcom County Code Section 9.32 "Unlawful Discharge of Firearms" designates twenty-two no shooting zones, most lying within and adjacent to cities, urban growth areas and other locations of higher density development,

Now therefore, the City Council of the City of Blaine hereby resolves to seek designation of all the aquatic areas and tidelands within Drayton Harbor located within Whatcom County as a no shooting zone pursuant to Whatcom County Code Section 9.32.

PASSED BY THE CITY COUNCIL OF BLAINE, WASHINGTON, on the 8th day of July, 2019, and approved by the Mayor on the same day.

CITY OF BLAINE, WASHINGTON

Samuel Crawford, City Clerk

Resolution 1765-19

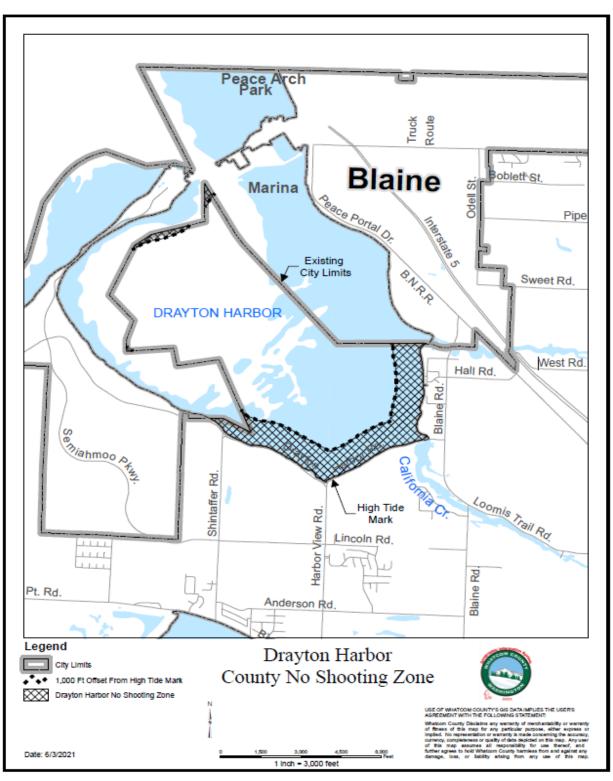
Page 1 of 1

<u>Exhibit B</u> (Whatcom County Drayton Harbor No Shooting Zone)

9.32.350 No shooting zone number ____ established.

UNINCORPORATED WHATCOM COUNTY ALL WITHIN DRAYTON HARBOR BLAINE WASHINGTON DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF SAID HARBOR WITHIN 1,000 FEET WATERWARD OF THE HIGH TIDE MARK OF THE SHORELINE OF SAID HARBOR OR THE LIMITS OF THE CITY OF BLAINE, WHATCOM COUNTY, WASHINGTON WHICH EVER IS GREATER DISTANCE FROM SAID HIGH TIDE MARK.





CITY OF BLAINE

CITY COUNCIL

435 MARTIN STREET, STE. 3000 • BLAINE, WA • 98230
PHONE: (360) 332-8311 • FAX: (360) 543-9978• WEBSITE: www.cityofblaine.com

April 14, 2021

Subject: Proposed Drayton Harbor No Shooting Zone

Honorable Councilmembers:

This letter is submitted in support of the City of Blaine's request to establish a no shooting zone on the unincorporated areas of Drayton Harbor. On July 8, 2019 the Blaine City Council voted unanimously to adopt Resolution 1765-19 requesting the Whatcom County Council to establish a no shooting zone pursuant to Whatcom County Code 9.32.

The City has 5700 residents, many of whom live in the neighborhoods that ring the harbor. The Semiahmoo Uplands, the Semiahmoo Spit resort area, Downtown Blaine, the Salishan neighborhood and the Montfort Park neighborhood contain hundreds of homes and many businesses in close proximity to the harbor. The water and shores are the focus of much activity. With two marinas, several launch points for kayaks, canoes, and paddleboards, public beaches, parks and trails, the shoreline and harbor attract many visitors. Blaine is not a sparsely populated rural area, but is an active urban environment - and Drayton Harbor sits in the middle.

The Whatcom County Comprehensive Plan and the City of Blaine Comprehensive Plan identify Blaine as one of the fastest growing urban areas (UGA) for the 2016-2036 planning period. This planned growth is welcomed by the City, and we know that it will increase recreational pressure on the shoreline and water of Drayton Harbor. Due to past urban growth area planning decisions, portions of the harbor are in the City and portions are in the unincorporated County, with the unincorporated areas generally lying within and bounded by the areas within the city limits. The attached map illustrates the jurisdictional geography of the harbor.

This is an issue of public safety as there are many people who live on the shoreline, who recreate on the shore, and who recreate on the water. As the area becomes more urban, there is more pressure on the area for recreation. Kayakers and canoers do in fact use the harbor in the winter when the water is calm. Bird watchers frequent the area. Residents and visitors enjoy the beaches at all times of year. As the area becomes more urban, the interaction between the population and those who are shooting inevitably increases.

It is not just an issue of actual public safety, but also of perceived safety, or mental wellbeing. If people are concerned and fear for themselves and for their children, this has an adverse impact on their welfare. While some may have testified that this is a noise issue, let us assure you for us it is not. It is a real and perceived public safety issue.

This organization is an Equal Opportunity Provider

There are 22 other no shooting zones in the County, including Wiser Lake. Wiser Lake is an interesting example because there are similarities to Blaine's situation. There are homes surrounding the lake but at lower density and fewer people than we have living around Drayton Harbor. If the shooting restriction is good for Wiser Lake, why isn't it good for Drayton Harbor with an urban area surrounding it?

Over the years, the City has received numerous requests by citizens to stop the shooting on the harbor. These come in the form of direct contact to individual City councilmembers, letters to the editor, comment at Council meetings, calls to staff, and occasional calls for service to the Police Department. The city staff and the Council have only been able to reply that shooting is legal only in the county portion of the harbor (which is a surprise to most that the county has any jurisdiction at all), and that this is out of our hands. It is, however, in your hands, as county elected representatives for the citizens of Blaine. Another facet that makes this dual-jurisdiction area problematic is that, on the water, how can the hunters know where the 'boundary' line is?

There is also a matter of self-determination. In the past the City did not act to annex the entire harbor, and due to decisions made by the County to shrink the Blaine UGA, the City cannot take proactive steps to resolve the issue on our own. We require your help.

We are hoping you will understand the importance of this situation to our community and will agree that the time has come to establish a no shooting zone on Drayton Harbor. We would also ask for the same consideration for the Dearborn Avenue area, which is immediately adjacent to our city limits, is part of our UGA, and considered very much a part of the Blaine community.

Respectfully,

Bonnie Onyon,

Mayor

Attachments:

City of Blaine Resolution 1765-19

Map of Harbor

RESOLUTION NO. 1765-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON, TO SEEK DESIGNATION OF ALL UNINCORPORATED PORTIONS OF DRAYTON HARBOR AQUATIC AREA, TIDELANDS AND SHORELINE AS A NO SHOOTING ZONE PURSUANT TO WHATCOM COUNTY CODE 9.32.

Whereas, portions of the Drayton Harbor aquatic area, tidelands and shoreline are within the city limits, and

Whereas, portions of Drayton Harbor aquatic area, tidelands and shoreline are within Whatcom County jurisdiction, and

Whereas, hunting and the discharge of firearms is prohibited in the city limits, and

Whereas, it is difficult for members of the public to distinguish between incorporated and unincorporated areas particularly on the open water, which causes numerous hunters to inadvertently move into areas where hunting and discharge of firearms is illegal, and

Whereas, our citizens have expressed concerns about gunfire near homes and property and repeatedly call for police response to such incidents, and

Whereas, unincorporated portion of Drayton Harbor aquatic area, tidelands and shoreline are within and adjacent to urban growth areas, and

Whereas, population is expanding and housing density is increasing within the areas surrounding Drayton Harbor both within the City and an areas or unincorporated Whatcom County,

Whereas, the Revised Code of Washington (RCW 36.32.120) provides Whatcom County authority to designate no shooting zones, and

Whereas, Whatcom County Code Section 9.32 "Unlawful Discharge of Firearms" designates twenty-two no shooting zones, most lying within and adjacent to cities, urban growth areas and other locations of higher density development,

Now therefore, the City Council of the City of Blaine hereby resolves to seek designation of all the aquatic areas and tidelands within Drayton Harbor located within Whatcom County as a no shooting zone pursuant to Whatcom County Code Section 9.32.

PASSED BY THE CITY COUNCIL OF BLAINE, WASHINGTON, on the 8th day of July, 2019, and approved by the Mayor on the same day.

CITY OF BLAINE, WASHINGTON

Bonnie Onyon, Mayor

ATTEST/AUTHENTICATE:

Samuel Crawford, City Clerk

Resolution 1765-19

Page 1 of 1



PROPOSED DRAYTON HARBOR NO SHOOTING ZONE ORDINANCE (CITY OF BLAINE PROPOSAL) - COMMENTS FROM WHATCOM COUNTY DEPARTMENTS

Per Whatcom County Code 9.32.060(B), the proposed ordinance to establish a no shooting zone in Drayton Harbor (City of Blaine proposal) was routed to the following County departments for comment: Prosecuting Attorney, Sheriff, Executive, Planning and Development Services, and Public Work.

As of today, May 10, 2021, the following comments have been received:

Public Works (Administration and Engineering): "We reviewed the ordinance. We have no objections, it is good to proceed from our end."

Planning and Development Services: "PDS has no comments."

Sheriff's Department: "We have received few complaints about hunting/shooting over the years in the Drayton Harbor area."

May 5, 2021

Dear Whatcom County Council,

The Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on the proposed Non-Shooting Zone for Drayton and Dearborn Harbor. These areas are important recreational areas to the citizens of Washington and are co-managed by the Point Elliott Treaty Tribes and the WDFW.

WDFW regulates hunting and prioritizes public safety in establishment of hunting regulations throughout the State. The current hunting season in Drayton and Dearborn Harbors is very restricted for firearms and season length. The hunting seasons in these two areas run approximately October towards end of December for big game and towards end of January for waterfowl. WDFW Enforcement officers are the primary responders to hunting and public safety issues in these areas during the hunting seasons. Enforcement reports indicate little to no public safety issues.

According to the Revised Code of Washington 9.41.300 (2)(a): (2) Cities, towns, counties, and other municipalities may enact laws and ordinances: (a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardize; and according to the Whatcom County Code 9.32 Unlawful Discharge of Firearms: the Council may initiate the creation of a non shooting zone if it would be in the best interest of public health, safety, and welfare WDFW has not documented or responded to any incidents that fall into the above categories and would like to respectfully request any documented examples related to above examples collected by the following county departments: prosecutors office, sheriff's office, planning department, public works department and any other applicable departments. This data will allow state, Tribal, and local law enforcement officers to have a more robust discussion and brainstorm solutions.

WDFW is willing to work with local city and county departments to find solutions including education related to legal shooting hours, hunting boundaries, and other concerns from the community. WDFW looks forward to working with Whatcom County and the City of Blaine to continuing to provide recreational opportunities to the citizens of Washington and responding to public safety issues when they arise.

Please let me know if you have any questions or would like to discuss further,

Tenner Varborough

Fenner Yarborough Washington Department of Fish and Wildlife Wildlife Regional Program Manager

<u>Link to Drayton Harbor – Dearborn No Shooting Zone</u> Public Comments



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-439

File ID: AB2021-439 Version: 1 Status: Agenda Ready

File Created: 07/21/2021 Entered by: DBrown@co.whatcom.wa.us

Department: Council Office File Type: Discussion

Assigned to: Council Committee of the Whole Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Brief discussion of Comprehensive Plan amendments scheduled for concurrent review and adoption on July 27, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The following Comprehensive Plan amendments are scheduled for Council review and/or adoption on July 27, 2021:

Note: The proposals below are comprehensive plan amendments initiated over the last few years, with concurrent review delayed for various reasons. The County Council must consider these amendments concurrently so that the cumulative effect of the various proposals can be evaluated (RCW 36.70A.130, WCC 22.10.040).

(AB2021-380) Ordinance adopting amendments to the Whatcom County Comprehensive Plan relating to density credits, PDRs, and TDRs

(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

(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

(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 (this ordinance was adopted by Council on July 13, 2021, but requires review with the other Comprehensive Plan amendments scheduled July 27, 2021)

See attached summary for more information.

Review

HISTORY OF LEGISLATIVE FILE							
Date:	Acting Body:	Action:	Sent To:				

COMPREHENSIVE PLAN AMENDMENTS SCHEDULED FOR CONCURRENT REVIEW ON JULY 27, 2021

Note: The proposals below are comprehensive plan amendments initiated over the last few years, with concurrent review delayed for various reasons. The County Council must consider these amendments concurrently so that the cumulative effect of the various proposals can be evaluated (RCW 36.70A.130, WCC 22.10.040).

AB2021-380 Ordinance adopting amendments to the Whatcom County Comprehensive Plan relating to density credits, PDRs, and TDRs

This ordinance inserts the concept of a density credit program into the Whatcom County Comprehensive Plan. A density credit program would allow development incentives, such as increased land use intensity, in exchange for a voluntary contribution towards preserving agricultural lands and open space. The proposal would also amend purchase of development right (PDR) and transfer of development right (TDR) provisions in the Comprehensive Plan.

This proposal was forwarded by Council on November 7, 2018, to be considered with other proposed Comprehensive Plan and zoning amendments from 2018/2019 (see AB2018-298). Per Whatcom County Code 2.02.115, because the ordinance was not adopted within 120 days of its original introduction date, it was reintroduced on June 29, 2021, and is now ready to be reviewed concurrently with other Comprehensive Plan amendments scheduled July 27, 2021.

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

This ordinance amends the Whatcom County Comprehensive Plan concerning the Lummi Island Ferry. The proposal would modify Policy 6A-1 relating to ferry level of service and delete Policy 6C-9 relating to a ferry feasibility study.

This proposal was forwarded by Council on May 7, 2019, to be considered with other proposed Comprehensive Plan amendments for 2018/2019 (see AB2019-223). Per Whatcom County Code 2.02.115, because the ordinance was not adopted within 120 days of its original introduction date, it was reintroduced on June 29, 2021, and is now ready to be reviewed concurrently with other Comprehensive Plan amendments scheduled July 27, 2021.

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

This ordinance amends 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.

Following the public hearing on this proposal, scheduled for July 27, 2021, staff recommends the following motion: I move to forward this proposal for concurrent review with other Comprehensive Plan amendments scheduled later this evening so the cumulative effect of the various proposals can be evaluated.

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

This proposal requires 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.

This ordinance was adopted by Council on July 13, 2021, but requires review with the other Comprehensive Plan amendments scheduled July 27, 2021, so the cumulative effect of the various proposals can be evaluated.

The following actions are expected to occur at the evening Council meeting on July 27, 2021:

- 1. A public hearing will be held on AB2021- -403. Following the public hearing, Council will approve a motion to forward the proposal for concurrent review with the other Comprehensive Plan amendments scheduled for review.
- 2. AB2021-380, AB2021-381, AB2021-403, AB2021-363 will be scheduled under the following section of the Council agenda (please note, again, AB2021-363 has already been adopted):

APPROVAL OF COMPREHENSIVE PLAN AMENDMENTS

These items have been reviewed by Council and are ready to be considered concurrently so the cumulative effect of the proposals can be evaluated. Each ordinance will be voted on separately, followed by a vote to approve the ordinances as a group.

- 3. AB2021-380, AB2021-381, and AB2021-403 will be adopted.
- 4. AB2021-380, AB2021-381, AB2021-403, AB2021-363 will be approved as a group to satisfy the concurrent review provisions of state law and County Code, for the record.

Whatcom County Code
Chapter 22.10
LEGISLATIVE ACTION PROCEDURES
Sections:
22.10.010 Purpose and applicability.
22.10.020 The docket.
22.10.030 Processing of docketed amendments.
22.10.040 Concurrent review of comprehensive plan amendments.
22.10.050 Notice of public hearing.
22.10.060 Approval criteria.

22.10.010 Purpose and applicability.

This chapter establishes the procedures for legislative actions amending the Whatcom County comprehensive plan and the development regulations that implement that plan. Amendments to the comprehensive plan include changes to the plan's text and maps, and amendments to the development regulations include changes to the official zoning map and the text in WCC Titles 16, 20, 21, and 23. For purposes of this chapter, comprehensive plan amendments include amendments to subarea plans. (Ord. 2018-032 § 1 (Exh. A)).

22.10.020 The docket.

- (1) The department of planning and development services ("department") shall maintain a proposed docket of comprehensive plan and development regulation amendment applications and shall present it to the county council for review once a year on or about March 1st. The county council may, by resolution, approve a docket listing all applications that may be processed per the provisions of this chapter.
- (2) The department, the executive, the planning commission, or the county council by majority vote, may place a proposed amendment on the docket at any time.
- (3) A party other than the county council, executive, the planning commission or the department may suggest an amendment to the comprehensive plan or development regulations by making application on forms provided by the department and submitting any required docketing fee.
 - (a) Applications for suggested amendments must be submitted by December 31st in order to be included on the proposed docket presented to the county council at its next annual docket review. The department shall review the application for completeness and may request additional information to ensure the application is complete before scheduling it for the annual docket review.
 - (b) If the county council dockets a suggested amendment, all required amendment application fees are due within 30 calendar days after it is docketed. If all fees are not paid within 30 calendar days after being docketed, the department shall close the application and remove it from the docket. When docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.
- (4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:
 - (a) The amendment was proposed by a party other than the county council or the department per subsection (3) of this section, and
 - (b) The applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year's docket. (Ord. 2018-032 § 1 (Exh. A)).

22.10.030 Processing of docketed amendments.

- (1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below:
 - (a) For suggested amendment applications filed per WCC <u>22.10.020(3)</u>, the department shall evaluate the applications for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing. Where a development regulation amendment requires a comprehensive plan amendment, the two amendments shall be processed at the same time.
 - (b) The department shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each docketed amendment. Both the report and the result of the environmental review shall be forwarded to the planning commission, and to the applicable city staff if the proposed amendment applies to land within a city's urban growth area.
 - (c) The staff report shall evaluate the proposed amendment(s) in relationship to the approval criteria of WCC $\underline{22.10.060}$, and consider any environmental impacts or mitigation measures identified by the Whatcom County SEPA official. If the proposed amendment includes land within a city's urban growth area, the staff report shall also address any comments from the city regarding consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.
- (2) Docketed comprehensive plan and development regulation amendment applications shall receive a public hearing by the planning commission subject to the notice requirements of WCC $\underline{22.10.050}$. Following the public hearing, the planning commission shall vote to adopt findings of fact and recommended actions, which the department shall transmit to the county council. In addition to the public hearing, the planning commission may hold public work sessions to discuss a proposed amendment.
- (3) The county council may hold a public hearing on the docketed amendment in addition to the planning commission's public hearing. If the county council decides the public interest is better served by considering a final action that differs from the planning commission recommendation, the county council shall hold a public hearing. The county council, by majority vote, may adopt the amendment by ordinance, reject the amendment, or remand the proposed amendment to the planning commission for further review.
- (4) Actions that are quasi-judicial as defined in RCW 42.36.010 (including but not limited to a zoning map amendment for a single lot) are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. For a proposed amendment that is a quasi-judicial action, the planning commission and county council shall process the application in accordance with Chapter 42.36 RCW in addition to the requirements of this section. (Ord. 2018-032 § 1 (Exh. A)).

22.10.040 Concurrent review of comprehensive plan amendments.

- (1) While public hearings and other public discussion of proposed comprehensive plan amendments may take place at any time of the year, the county council's final review and adoption of those amendments shall take place concurrently, no more frequently than once per calendar year, in accordance with RCW 36.70A.130(2)(a). Final adoption should occur on or about February 1st.
- (2) The following comprehensive plan amendments are excluded from the requirement of annual concurrent review and may be adopted at any time:
 - (a) The initial adoption of a subarea plan;
 - (b) Adoption or amendment of the shoreline master program under procedures set forth in Chapter 90.58 RCW;
 - (c) The amendment of the capital facilities element concurrent with adoption or amendment of the county budget;

- (d) Amendments needed to resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board or the court; or
- (e) Amendments necessary in cases where the county council finds an emergency exists. (Ord. 2018-032 § 1 (Exh. A)).

22.10.050 Notice of public hearing.

- (1) The county shall publish notice of the public hearing at least once in the official county newspaper and on the Whatcom County website no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing.

 (2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030(4), the county shall provide the following notice in addition to the requirements of subsection (1) of this section:
 - (a) The county shall mail notice to property owners as follows:
 - (i) For zoning map amendments within existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (ii) For zoning map amendments outside existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iii) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iv) For zoning map amendments that involve rezoning property to a mineral resource land designation: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (b) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 calendar days prior to the hearing.
 - (c) The county shall send notice to the appropriate city, when the proposed amendment is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed amendment at least 10 calendar days prior to the hearing.
 - (d) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven Sea Plane Base: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.
 - (e) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.
 - (f) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be

invited to submit written comments and attend the hearing to provide oral comments. (Ord. $2018-032 \S 1$ (Exh. A)).

22.10.060 Approval criteria.

- (1) In order to approve a comprehensive plan amendment, the planning commission and the county council shall find all of the following:
 - (a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - (b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
 - (c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - (i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - (ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - (iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - (d) The amendment does not include or facilitate spot zoning.
- (2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan. (Ord. 2018-032 § 1 (Exh. A)).

RCW 36.70A.130

Comprehensive plans—Review procedures and schedules—Amendments.

- (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.
- (b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.
- (c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under

RCW <u>36.70A.040</u>, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

- (d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.
- (2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:
- (i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter **43.21C** RCW;
- (ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;
- (iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter **90.58** RCW;
- (iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or
- (v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW **43.21C.440**, provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.
- (b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.
- (3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsections (4) and (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.
- (b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW **36.70A.215**.
- (4) Except as otherwise provided in subsections (6) and (8) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and

development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

- (a) On or before June 30, 2015, for King, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2016, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2017, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2018, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.
- (5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:
- (a) On or before June 30, 2024, and every eight years thereafter, for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2025, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2026, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2027, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.
- (6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.
- (b) A county that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (c) A city that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.
- (7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW <u>36.70A.040(1)</u>. Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter <u>43.155</u> or <u>70A.135</u> RCW:
 - (i) Complying with the deadlines in this section; or

- (ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.
- (b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW **43.17.250**.
- (8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.
- (b) A county that has made the election under RCW <u>36.70A.710</u>(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:
- (i) A work plan has been approved for that watershed in accordance with RCW **36.70A.725**;
- (ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;
- (iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;
- (iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or
 - (v) Three or more years have elapsed since the receipt of funding.
- (c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW **36.70A.710**(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW **36.70A.720**(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.

[2020 c 113 § 1; 2020 c 20 § 1026; 2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

NOTES:

Reviser's note: This section was amended by 2020 c 20 § 1026 and by 2020 c 113 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW $\underline{\textbf{1.12.025}}$ (2). For rule of construction, see RCW $\underline{\textbf{1.12.025}}$ (1).

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but

with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW <u>36.70A.250</u>.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [**2005 c 294 § 3**.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW <u>36.70A.130(2)</u> does not apply to master planned locations in industrial land banks: RCW <u>36.70A.367(2)(c)</u>.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-440

File ID: AB2021-440 Version: 1 Status: Agenda Ready

File Created: 07/21/2021 Entered by: DBrown@co.whatcom.wa.us

Department: Council Office File Type: Presentation

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Presentation on police reform in Washington State

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached summary prepared by City of Bellingham Legislative Analyst Mark Gardner See attached editorial prepared by Whatcom County Sheriff Bill Elfo

HISTORY OF LEGISLATIVE FILE Date: Acting Body: Action: Sent To:

Attachments: Gardner Summary, Elfo Editorial

To: Bellingham City Council

From: Mark Gardner, Legislative Analyst

Re.: 2021 Legislation on Policing Practices and Oversight

Date: May 27, 2021

2021 Washington State Policing Practices and Oversight Legislation:

SB 5051. Oversight and accountability for law enforcement and corrections officers. Expands certification and background check requirements for police officers, identifies conditions where certification can be denied or revoked, and requires consistent reporting by law enforcement agencies on officer status or misconduct charges. Also allows the public to see the results of internal investigations and find out whether an officer was previously held accountable for misconduct.

<u>SB 5066.</u> Rules for a law enforcement officer's duty to intervene. An on-duty officer who witnesses another officer engaging in use of excessive force must intervene when possible to end the excessive use of force. Aid must be rendered to a person injured by excessive use of force as soon as possible. Excessive force is force that exceeds that permitted by law or the policy of the witnessing officer's agency. Witnesses to excessive use of force must report this to a supervisor, or to their agency under accepted procedures.

<u>SB 5259.</u> Improving data collection on use of force. The Attorney General's office must establish an advisory group to assist with the creation of a statewide use of force data program. The advisory group must include three representatives from NGOs or advocacy groups, three from law enforcement agencies or law enforcement advocacy group, and at least one person with experience in data collection. Recommendations are due by April 1, 2022 on how to prioritize implementation of the reporting system, identify the needed data, identify practices used by agencies to report data, and identify avenues for the public to report on use of force incidents. The group must also identify ways to make the data accessible to the public and researchers.

<u>SB 5263.</u> Defenses in personal injury and wrongful death actions. Under current state law, a person may use as part of their defense in a civil trial the fact that another person was in the process of committing a felony when injured or killed. For law enforcement personnel, this bill limits the "felony bar" affirmative defense in civil actions to situations

where a defendant can prove each element of the defense beyond a reasonable doubt. This bill goes into effect in late July 2021.

SB 5353. Partnership grants for community engagement with law enforcement. The Department of Commerce is directed to create a grant program to foster community engagement through neighborhood organizing, law enforcement and community partnerships, youth mobilization, and business engagement. Grants can go to public agencies or NGOs and grantees must be able to demonstrate experience with public safety community engagement initiatives. Participants must build law enforcement and community partnerships; mobilize youth to partner with neighborhood groups and law enforcement to prevent violence; and engage businesses to help prevent crimes through safety training and other prevention initiatives.

<u>SB 5476</u>. Responds to the Blake decision that vacated convictions for drug possessions in cases where it could not be proven that a person was aware they had drugs on their person or property. Reestablishes a penalty for knowingly possessing drugs, making this a gross misdemeanor. This penalty expires on July 1, 2023. Law enforcement is required to refer a person to a recovery navigator program. The first and second possessions must be diverted from prosecution and diversion is allowed thereafter. Requires the Health Care Authority to create a substance use recovery advisory committee to make recommendations on a substance use recovery state plan.

HB 1054. Requirements for tactics and equipment used by officers. The bill prohibits chokeholds and neck restraints, restricts law enforcement agencies from acquiring or using certain types of military equipment, restricts vehicular pursuits and firing on vehicles, prohibits no-knock search warrants, and limits the use of tear gas. It creates a consistent statewide standard for these tactics and provides greater oversight when they are employed by officers. The Criminal Justice Training Commission is directed to convene a work group to develop model policies on the use and training of canine teams.

HB 1088. Disclosures of information regarding credibility of police officers as witnesses. By July 1, 2022, each county prosecutor must adopt a written protocol for disclosures of information that would call into question the credibility of an officer. When police officers are government witnesses, such impeachment evidence can include a prior conviction related to dishonesty, abuse of authority, or evidence of a bias or motive to lie. The law also requires law enforcement agencies to report to prosecuting authorities an officer's misconduct or any act of an officer that would reduce their credibility in a criminal case. Prior to hiring an officer with previous law enforcement experience, law enforcement agencies must inquire whether the officer has ever been subject to potential impeachment disclosure.

<u>HB 1089.</u> Compliance audits of deadly force in investigations. The State auditor must review any completed deadly force investigation to determine whether all rules and procedures were followed. On request of the Criminal Justice Training Commission, the state auditor must review a law enforcement agency for compliance with rules governing training and certification of officers. Takes effect in late July 2021.

HB 1140. Juvenile access to attorneys when contacted by law enforcement. Requires that law enforcement provide access to an attorney when questioning a juvenile during a custodial interrogation, detaining a juvenile under probable cause, or when requesting consent to search a juvenile's property or vehicle. Exceptions can be made if officers believe a person is a victim of trafficking or to protect their life against imminent threat. Attorneys are to be provided by the Office of Public Defense when necessary. Takes effect January 1, 2022.

HB 1223. Electronic recording of custodial interrogations. Interrogations by law enforcement must be recorded if involving a juvenile or related to a felony. Law enforcement agencies must establish rules and procedures for accuracy, preservation, and access to electronic recordings. Some exceptions are allowed, e.g. when making a recording could disclose the identity of a confidential witness. The electronic recording provisions take effect on January 1, 2022.

HB 1267. Creation of new Office of Independent Investigations (OII). OII will conduct unbiased investigations of police use of force. These investigations will be independent of any involved law enforcement agency and will investigate use of force incidents occurring after July 1, 2022. In cases of use of deadly force, OII investigators will take control of the scene of the incident after it is secured and any needed lifesaving measures are taken. Investigations must conclude within 120 days. The office will be overseen by an elevenmember board. Any investigators hired by the office must not have been police officers in the last 2 years; civilian investigators will take over within 5 years.

HB 1310. Permissible uses of force. Establishes a civil standard for permissible use of force. Permissible uses are: when force is used to protect against criminal conduct and there is a probable cause for an arrest; to effect an arrest; to prevent an escape; or to protect against an imminent threat of bodily injury. Officers should use the least amount of physical force necessary. Deadly force is only permissible when there is an imminent threat of physical injury or death to an officer or another person. Less lethal alternatives are to be used first when possible. The law takes effect July 25, 2021 and all law enforcement agencies must adopt policies consistent with the standards of this act by December 31, 2022.

POLICE REFORM IN WASHINGTON STATE

An editorial from your local law enforcement officials July 15, 2021

Washington recently enacted a myriad of new "police reform" laws. While law enforcement leadership in Whatcom County supports efforts to enhance training, professionalism, and accountability, as well as to provide treatment alternatives to arrest, the new laws will significantly affect officers' ability to detect and prevent crime, hinder the apprehension of criminals and render our community less safe.

The legitimate use of reasonable force to detain, arrest and capture criminals has long been a necessary hallmark of community safety. New legislation now restricts officers from using *any* degree of force unless "*probable cause*" exists to arrest, prevent an escape, or protect someone from *imminent harm*. "Probable cause" is a fairly high legal standard that represents a radical departure from long-standing court precedent authorizing temporary investigative detentions (<u>Terry</u> stops) under the lesser standard of "reasonable suspicion." Officers heavily rely on <u>Terry</u> stops to interrupt crime and protect citizens. Eliminating this investigative tool undoubtedly will result in Increased victimization and many criminals remaining free.

Law enforcement has long applied prudent safety criteria to vehicular pursuit decisions. Pursuits were authorized for serious crimes based on the reasonable suspicion standard. Pursuits are now limited to circumstances where *probable cause* exists to arrest for *serious violent offenses* defined as murder/manslaughter/homicide, assault in 1st degree, kidnapping 1st degree, and rape. Pursuits for DUI continue to be allowed based on reasonable suspicion. Officers very frequently encounter situations wherein they have reasonable suspicion to believe criminal activity may be afoot but lack probable cause for arrest until the vehicle is stopped and an investigation is conducted. This significant limitation on the standards for engaging in pursuits for serious violent crime, and the prohibition against pursuing vehicles even when probable cause is present for other serious crimes (including felony assaults such as domestic violence related offenses, burglaries and high-value thefts) are unique to Washington and will affect safety.

Officers traditionally have responded to incidents involving people in behavioral health crises that have the potential to escalate and create public safety risks. If grave circumstances exist, officers have the ability to take the person into protective custody. However, the new legislation limits officers from using reasonable force when necessary to do so. The legislature has signaled its intent to reduce police interactions and transfer responsibilities to behavioral health professionals to the point of stating officers "should leave the area." While law enforcement generally supports behavioral health intervention there are not sufficient behavioral health professionals available or willing to take on risks associated with people who have a propensity towards violence without law enforcement protection.

While law enforcement prefers referring drug users to treatment rather than the criminal justice system, legislation re-classified all drug possession, regardless of quantity, from felonies to simple misdemeanors, and directed that for an offender's first two offenses, they not be referred to prosecution. Sufficient substance use disorder treatment resources are not available to effectuate this and there will be little law enforcement can effectively do about neighborhood and public drug activity.

Limitations on some long-standing police tactics and restrictions on less-lethal alternatives will increase risks to officers' safety and personal civil and criminal liability. Concerns have resulted in the retirements and resignations of good experienced officers and affected recruitment efforts to replace them.

The above represents just a sample of ramifications. Restrictions on interrogations, canine deployment and others will have substantial impacts as well.

Law enforcement in Whatcom County has always strived for excellence in public safety. Achieving this and capturing criminals will now be more challenging. Please be assured that despite these changes, officers will do the best they possibly can under the new laws to protect you and your family.

Bill Elfo, Sheriff, Whatcom County

Flo Simon, Chief of Police, Bellingham

Dan MacPhee, Chief of Police, Everson-Nooksack

Kevin Turner, Chief Police, Ferndale

Donnell Tanksley, Chief of Police, Blaine

Daniel Debruin, Chief of Police, Sumas

Steve Taylor, Chief of Police, Lynden



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-055

File ID: MIN2021-055 Version: 1 Status: Agenda Ready

File Created: 07/14/2021 Entered by: KFelbing@co.whatcom.wa.us

Department: Council Office File Type: Minutes Consent

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Committee of the Whole for July 13, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE Date: Acting Body: Action: Sent To:

Attachments: Draft Minutes Committee of the Whole Exec Jul 13 2021

Whatcom County Council Committee of the Whole-Executive Session

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



Committee Minutes - Draft Minutes

VIRTUAL MEETING - ENDS NO LATER THAN 10:55 A.M. (TO PARTICIPATE, SEE INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)

Tuesday, July 13, 2021

10:15 AM

Virtual Meeting

COUNCILMEMBERS

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

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 10:17 a.m. in a virtual meeting.

Roll Call

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben

Elenbaas, and Kathy Kershner

Absent: None

Announcements

Committee Discussion

Attorneys Present: George Roche and Karen Frakes.

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW 42.30.110(1)(i). Executive session will conclude no later than 10:55 a.m. If the meeting extends beyond the stated conclusion time, Council staff will make a public announcement.

Browne moved to go into executive session until no later than 10:55 a.m. to discuss the agenda items pursuant to the RCW citations as announced by the Council Chair. The motion was seconded by Byrd.

The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

Nay: 0

Temporarily Absent: 1 - Kershner

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)]

This agenda item was DISCUSSED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

Whatcom County Page 1

The meeting adjourned at 10:39 a.m.	
ATTEST:	
	WHATCOM COUNTY COUNCIL
	WHATCOM COUNTY, WA
Dana Brown-Davis, Council Clerk	Barry Buchanan, Council Chair
Kristi Felhinger Minutes Transcription	

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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: MIN2021-056

File ID: MIN2021-056 Version: 1 Status: Agenda Ready

File Created: 07/15/2021 Entered by: KFelbing@co.whatcom.wa.us

Department: Council Office File Type: Minutes Consent

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Committee of the Whole for July 13, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

Date: Acting Body: Action: Sent To:

Attachments: Draft Minutes Committee of the Whole Jul 13 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 BY 5 P.M. (TO PARTICIPATE, SEE INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010); AGENDA REVISED 7.8.2021

Tuesday, July 13, 2021

2:25 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 12:25 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. AB2021-395 Discussion and periodic update of the Shoreline Management Program

Cliff Strong, Planning and Development Services Department, briefed the Councilmembers on the update process and answered questions about whether there is a hard deadline for the update, getting redline versions of the documents to Councilmembers and online, an example of a Shoreline Management Program (SMP) policy currently in the Whatcom County Code that would end up in the Comprehensive Plan via the update, whether there will be a separate document for the Shoreline Management Plan or if it will be a chapter in the Comprehensive Plan and then codified in the Whatcom County Code, whether proposed changes are similar to what they were several years ago, and how Councilmembers would like to review the proposed changes in future workshops.

This agenda item was DISCUSSED.

2. AB2021-339 Discussion to establish a process for filling district court judicial vacancy

The following Council Office staff briefed the Councilmembers:

- Dana Brown-Davis, Clerk of the Council
- Cathy Halka, Council Legislative Analyst

Halka stated as per the Council's vote at a previous meeting, evaluations by the Whatcom County Bar Association and Washington Women Lawyers should be back to the Council by the 23rd of July.

Councilmembers and staff discussed whether they are still planning on coming up with questions and interviewing candidates, whether the evaluators will rank the candidates or just vet who is qualified or not, and when the evaluations will come back from the two groups.

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Frazey moved to schedule an Executive Session on the next meeting date with District Court to get their perspective. The motion was seconded by Byrd.

Karen Frakes, Prosecuting Attorney's Office, answered a question about having court employees as part of the interview process.

Frazey clarified her motion to have an Executive Session on the next meeting date with current and past District Court judges (Judge Elich and Judge Grant) and the Administrator to get their perspective on the position.

Frakes answered whether the meeting should be a regular public meeting or an Executive Session.

Browne suggested a friendly amendment to expand it to more than the District Court judges and invite past and present Superior Court judges.

Frazey stated she would be open to the friendly amendment but would like to hear others' perspective so Councilmembers and Frakes discussed the motion, the language in the Open Public Meetings Act regarding allowing an Executive Session under these circumstances, whether the Superior Court judges should be included, setting a deadline for when a decision should be made, and whether they would talk to the District Court judges about the job or about the applicants.

Browne moved to amend the motion to expand it to include the Superior Court judges. The motion failed for lack of a second.

Councilmembers continued to discuss the motion and whether they should ask the judges about the applicants or just the job.

Frazey restated the motion to have an Executive Session at the next meeting with District Court judges, Judge Grant and Judge Elich, and the Administrator to get input on the candidates.

The motion carried by the following vote:

Aye: 5 - Browne, Buchanan, Byrd, Elenbaas, and Frazey

Nay: 2 - Donovan and Kershner

Browne moved that the Council make their decision no later than August 10, 2021. The motion was seconded by Kershner.

Councilmembers and Brown-Davis discussed the motion and whether the

Whatcom County Page 2

timeline should be aspirational as opposed to a hard deadline, getting interviews set up now and whether that means they would be interviewing all the candidates since it would be before they are narrowed down, how long it will take to get the interview questions together, how long each interview would be, whether the interviews will be a public process, and finding a date in August for a special meeting.

The motion carried by the following vote:

Aye: 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Kershner, and Browne **Nay**: 0

Councilmembers discussed again whether August 10 is a hard date and stated that it is aspirational.

This agenda item was DISCUSSED AND MOTION(S) APPROVED to have an Executive Session at the next meeting with District Court judges, Judge Grant and Judge Elich, and the Administrator to get input on the candidates and;

that they make their decision no later than August 10, 2021.

3. <u>AB2021-345</u> Discussion regarding reopening Council operations to the public

The following people spoke and discussed the item with Councilmembers and described three options for setting up hybrid meeting capability:

- Dana Brown-Davis, Clerk of the Council
- Perry Rice, Administrative Services Department
- Karen Frakes, Prosecuting Attorney's Office

Councilmembers and staff discussed a suggested timeline for trying a hybrid meeting, which option to recommend, and not being able to remain fully remote in the long term.

Donovan moved to pursue the hybrid models. The motion was seconded by Browne.

Kershner suggested a friendly amendment that they give direction to staff to pursue option three.

Donovan accepted the friendly amendment.

Councilmembers discussed the motion and whether they should go to live meetings yet.

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The motion carried by the following vote:

Aye: 7 - Byrd, Donovan, Elenbaas, Frazey, Kershner, Browne, and Buchanan

Nay: 0

This agenda item was DISCUSSED AND MOTION(S) APPROVED to pursue the hybrid models and give direction to staff to pursue option three.

Committee Discussion and Recommendation to Council

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

Browne briefed the Councilmembers on the Council's role as listed in the County Emergency Management Plan, the part of the plan which states the Deputy Executive would replace the County Executive as the leader of the County's response to emergency management in the event that he/she cannot serve, and the command structure.

Councilmembers discussed how the County Emergency Management Plan reconciles with the Charter which lists the Executive Pro Tem as the person who would perform most duties of the Executive in the case of the absence or temporary disability of the Executive, how long a review process should take and when it should start, making a more thorough and long-term solution, and finding a retired judge who can come in with experience and objectivity.

The following people spoke:

- Erika Lautenbach, Health Department Director
- Satpal Sidhu, County Executive

Councilmembers and the speakers discussed why the Council would not use the existing emergency management professionals to do a hotwash and after-action report instead of spending money for someone from the outside, whether there is still a state of emergency, starting the review right away, reviewing the County's emergency response to the COVID-19 pandemic as well as the Emergency Management Plan, extending the date for completing and delivering a report on the review from October 31, 2021 to March 31, 2022, and whether Browne would be willing to help in the process even though he will not be a Councilmember.

Kershner moved to recommend approval of the ordinance to the Council with a date change to March 31, 2022 for the completed product. The motion was seconded by Browne.

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Councilmembers discussed whether there would be an expenditure and whether it would come to the Council as a separate budget item.

Dana Brown-Davis, Clerk of the Council, asked who would be on the commission but Browne clarified the intent to have just a commissioner with support staff.

Councilmembers and the speakers discussed the motion, finding someone who would be independent of the Council and the Executive's Office, whether a commission would need to be appointed since it is written that way in the ordinance, and putting out a request for proposal spread wide enough to cast a net that enables them to get good applicants.

Browne moved to amend the 1st "BE IT FURTHER ORDAINED" statement to remove "to head the commission" and change it to "to conduct the inquiry."

Kershner accepted Browne's motion as a friendly amendment to her motion.

Kershner stated that they would also need a job description and a budget and recommended someone who could help with that process.

Kershner's motion that the Ordinance be RECOMMENDED FOR ADOPTION WITH PROPOSED AMENDMENT(S) (to change the date to March 31, 2022 for the completed product and to amend the 1st "BE IT FURTHER ORDAINED" statement to remove "to head the commission" and change it to "to conduct the inquiry") carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

Items Added by Revision

1. <u>AB2020-219</u> Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

Erika Lautenbach, Health Department Director, updated the councilmembers on the upcoming retirement of John Wolpers from the Health Department.

Greg Stern, Whatcom County Health Officer, gave a presentation (on file) on case and hospital rates and vaccination progress, COVID-19 variants circulating in Washington State and the rest of the country, how the Delta

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variant is responding to immune responses from prior infection and vaccine as well as immunotherapy, seroprevalence (infection-acquired immunity) levels in Washington compared to other states in the country and within age and gender groups, and COVID-19 vaccine safety and efficacy.

He answered a question about the strength of natural immunity.

This agenda item was DISCUSSED.

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There was no other business.

Adjournment

The meeting adjourned at 5:05 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription

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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: MIN2021-057

File ID: MIN2021-057 Version: 1 Status: Agenda Ready

File Created: 07/16/2021 Entered by: KFelbing@co.whatcom.wa.us

Department: Council Office File Type: Minutes Consent

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Regular County Council for July 13, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

Date: Acting Body: Action: Sent To:

Attachments: Draft Minutes Council Jul 13 2021

Whatcom County Council

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



Minutes - Draft Minutes

VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)

Tuesday, July 13, 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 6:02 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 fill 3 vacancies on the Drayton Harbor Shellfish Protection District Advisory Committee. The vacancy must be filled by someone with a direct interest in the district. If you are interested in filling this vacancy and meet the qualifications, please let us know at 360-778-5010 or email the council at Council@co.whatcom.wa.us.

COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, stated he did not have a report.

MINUTES CONSENT

Kershner moved to accept the minutes consent items. The motion was seconded by Donovan (see votes on individual items below).

1. MIN2021-053 Committee of the Whole for June 29, 2021

Kershner 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. MIN2021-054 Regular County Council for June 29, 2021

Kershner 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

Council staff played a short instructional video about how to speak at the meeting.

1. 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

Josh Fleischmann, Planning and Development Services Department, briefed the Councilmembers.

Buchanan opened the Public Hearing and the following person spoke:

• Kyler Danielson

Browne moved and Donovan seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Fleischman and Royce Buckingham, Prosecuting Attorney's Office, answered questions about the comments of the speaker, where the responsibility for pipeline integrity lies, whether the process for reviewing an application and veto powers should be included, and the process and rights for appeals.

Councilmembers discussed the item and whether a determination in favor of the miner would be increasing the County's liability.

Browne's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:

Aye: 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Abstain: 1 - Byrd

Enactment No: ORD 2021-040

2. AB2021-370

Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

Donovan gave an explanation of the program and answered whether it

applies to residential property.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Frazey moved and Donovan seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Councilmembers discussed the motion.

Frazey's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0 **Absent:** 0

Enactment No: ORD 2021-041

OPEN SESSION (20 MINUTES)

The following people spoke:

- Brien Thane
- Trevor Smith
- Brent Jones
- Markis Dee Stidham
- Christopher Watrobka
- Rod Roth
- Natalie Chavez
- Shean Halley
- Denise Jones
- Jean Purcell
- Enoch Mann
- Misty Flowers

Hearing no one else, Buchanan closed the Open Session.

CONSENT AGENDA

Browne reported for the Finance and Administrative Services Committee and **moved** to approve Consent Agenda items one through six. Councilmembers voted on those items (see votes on individual items below).

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

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

Browne reported for the Finance and Administrative Services Committee and moved that the Bid Award be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nav: 1 - Elenbaas

Absent: 0

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion

carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nav: 1 - Elenbaas

Absent: 0

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. <u>AB2021-346</u> Ordinance amending the project budget for the Silver Lake Park Improvement Fund, request no. 3

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 2021-042

AB2021-365

Ordinance amending the Whatcom County Budget, request no. 11, in the amount of \$5,728,416

Browne reported for the Finance and Administrative Services Committee and **moved** that the Ordinance be ADOPTED.

Councilmembers discussed the motion.

Donovan moved to amend the proposal to have the \$525,000 from the Affordable & Supportive Housing Fund (1406) be replaced with American Rescue Plan Act Fund (ARPA) dollars. The motion was seconded by Kershner.

Councilmembers discussed the motion to amend and whether the ARPA funds should be used without having a plan for them first and how the funds are tracked, and the following people also spoke and answered questions:

- Tyler Schroeder, Executive's Office
- Satpal Sidhu, County Executive
- Anne Deacon, Health Department

The motion to amend carried by the following vote:

Aye: 5 - Donovan, Frazey, Kershner, Browne, and Buchanan

Nay: 2 - Elenbaas and Byrd

Browne's motion that the Ordinance be ADOPTED AS AMENDED carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2021-043

3. AB2021-375 Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership

Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nav: 1 - Elenbaas

Absent: 0

Enactment No: ORD 2021-044

4. <u>AB2021-393</u>

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Abstain: 1 - Elenbaas

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

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

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

7. <u>AB2021-401</u>

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

Browne reported for the Finance and Administrative Services Committee and moved that the Agreement be AUTHORIZED. The motion carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

(From Council Committee of the Whole)

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

Buchanan reported for the Committee of the Whole and stated there is a substitute version as revised in committee.

Browne moved and Frazey seconded that the SUBSTITUTE Ordinance be ADOPTED. The motion carried by the following vote:

Ave: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 1 - Elenbaas

Absent: 0

Enactment No: ORD 2021-045

(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

Karen Frakes, Prosecuting Attorney's Office, briefed the Councilmembers and stated that she recommends that they approve the plan.

Frazey moved and Kershner seconded that the Request for Motion be Approved.

Browne thanked Frakes for her work.

Frazey's motion that the Request for Motion be APPROVED 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. AB2021-384 Request confirmation of the County Executive's reappointments of David Warren and Daniel Larner to the Bellingham-Whatcom Public Facilities District

Byrd moved and Buchanan seconded that the Executive Appointment be CONFIRMED. The motion carried by the following vote:

Ave: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0
Absent: 0

ITEMS ADDED BY REVISION

There were no agenda items added by revision.

INTRODUCTION ITEMS

Browne moved to introduce items one and two. The motion was seconded by Donovan (see votes and discussion on individual items below).

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

Browne moved and Donovan seconded that the SUBSTITUTE Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING.

Karen Frakes, Prosecuting Attorney's Office, answered how the changes in the substitute version of AB2021-403 are considered non-substantive.

Tyler Schroeder, Executive's Office, and Frakes walked through the email describing the changes in the proposed substitute.

Browne's motion that the SUBSTITUTE Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING carried by the following vote:

Ave: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

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

Browne moved and Donovan 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

Buchanan reported for the Committee of the Whole Executive Session.

Donovan moved and Browne seconded the following motion from Committee of the Whole Executive Session:

The County Council met in executive session concerning the lawsuit 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 Case No. 21-2-01395-31.

Pursuant to Whatcom County Code 2.56, the Council hereby finds the following:

- A. Wendy Jones was acting in a matter in which the county had an interest;
- B. Wendy Jones was acting in the discharge of a duty imposed or authorized by law;
- C. Wendy Jones acted in good faith.

The officers, officials, agents or employees will be defended and indemnified pursuant to and consistent with the provisions in WCC Chapter 2.56.

The motion carried by the following vote:

Aye: 7 - Kershner, Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey **Nay**: 0

Councilmembers continued to give committee reports.

Dana Brown-Davis, Clerk of the Council, reported on the process to appoint a District Court Judge and the discussion regarding reopening Council

operations to the public.

The meeting adjourned at 8:23 p.m.

Frazey confirmed that the executive session with the judges will be on July 27, 2021.

Councilmembers discussed other business including cannabis code amendments, YouTube censoring Council meetings, putting together a video template to put in place of a censored video to redirect viewers to a different posting of the video, scheduling a discussion about the YouTube issue, and the retirement of the Health Department's John Wolpers.

Satpal Sidhu, County Executive, spoke about the Ordinance to establish an independent review of the community response to the COVID-19 Pandemic and an upcoming farmers parade in Lynden on July 17, 2021.

ADJOURN

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: MIN2021-059

File ID: MIN2021-059 Version: 1 Status: Agenda Ready

File Created: 07/20/2021 Entered by: KFelbing@co.whatcom.wa.us

Department: Council Office File Type: Minutes Consent

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Water Work Session for July 20, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE Date: Acting Body: Action: Sent To:

Attachments: Draft Minutes Water Work Session Jul 20 2021

Whatcom County Council Water Work Session

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



Minutes - Draft Minutes

VIRTUAL MEETING - (TO PARTICIPATE, SEE INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)

Tuesday, July 20, 2021 10:30 AM Virtual Meeting

COUNCILMEMBERS

Rud Browne Barry Buchanan

Tyler Byrd

Todd Donovan

Ben Elenbaas

Carol Frazey

Kathy Kershner

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 10:32 a.m. in a virtual meeting.

Roll Call

Present: 5 - Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, and Carol Frazey

Absent: 2 - Rud Browne, and Kathy Kershner

Announcements

Water Resources Update

Gary Stoyka, Public Works Department, updated the Councilmembers on the following:

- Where things are with talks about adjudication and potential settlement and a readiness assessment being done by Cascadia Policy Solutions to determine if the involved parties are ready to engage in a collaborative process to try to resolve water issues.
- The County's work on Drainage Based Management to help resolve water quality, quantity, habitat, and instream flow issues
- The Public Utility District's (PUD) Regional Water Supply process working in the three pilot basins
- The completion of the peer review of the groundwater model of the northern part of Whatcom County
- Water Use Efficiency
- Meetings of the Watershed Management Board
- The County's work on integrated monitoring and central data management by hiring a consultant to help create a data hub

He answered questions about how legal authority gets purveyed if there is a negotiated settlement, how the Council can get more information from the pre-settlement meetings, Department of Ecology's pre-adjudication process and timeline, whether settlement discussions will wait until the pre-adjudication process is done, and whether information about using surface water storage to bring instream flows up could be included in the groundwater model.

Lake Whatcom TMDL Update

Cathy Craver, Public Works Department, updated the Councilmembers and gave a presentation. She answered what the acronym in "CE-QUAL W2 (Lake Response model)" means, and whether they are doing a heat map of

just the public lands.

Potential South Fork Property Acquisitions

Chris Elder, Public Works Department, updated the Councilmembers and gave a presentation.

He answered questions about who owns the Stewart Mountain property and where is located in relation to Lake Whatcom Park, how long this process will take and whether funding will come to the Council piece by piece as it lines up or whether it will be done as one package, how many total acres the projects add up to, and the plan for Black Slough Wetland Restoration Complex.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

The meeting adjourned at 11.37 a m

Kristi Felbinger, Minutes Transcription

Adjournment

The meeting adjourned at 11.57 a.m.	
ATTEST:	
	WHATCOM COUNTY COUNCIL
	WHATCOM COUNTY, WA
Dana Brown-Davis, Council Clerk	Barry Buchanan, Council Chair



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-403

File ID: AB2021-403 Version: 1 Status: Substitute Introduced

for Public Hearing

File Created: 07/06/2021 Entered by: DBrown@co.whatcom.wa.us

Department: Council Office File Type: Ordinance Requiring a Public Hearing

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
07/13/2021	Council	SUBSTITUTE INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Substitute (07/09) Proposed Ordinance for July 13 Introduction, Code and RCW Language Related

to Concurrent Review

PROPOSED BY: <u>Council</u> INTRODUCTION DATE: July 13, 2021

O	RD	IN	1 A	NCE	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

 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.

On April 25, 2021, the Washington State Legislature adopted SB 5126, the 69. 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 of 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 heighted 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 COU WHATCOM COUNTY, WAS			
ATTEST:			
Dana Brown-Davis, Coun	cil Clerk	Barry Buchana	nn, Chairperson
APPROVED as to form:		() Approved	() Denied
/s/ Karen Frakes			
Civil Deputy Prosecutor		Satpal Sidhu,	Executive
		Date:	

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Exhibit A

Comprehensive Plan (Chapter 2)

- 3 Major Industrial Urban Growth Area / Port Industrial
- 4 Cherry Point Text

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- 5 Change Second Paragraph of Cherry Point Text
- 6 Because of the special characteristics of Cherry Point, including deep water port access, rail access, and
- 7 proximity to Canada, this area has regional significance for the siting of large industrial or related
- 8 facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet
- 9 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.

13 Amend Policy 2CC-11

- Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point
- 15 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;
- 17 Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the
- 18 Cherry Point Herring stock and Southern Resident Killer Whales;
- 19 Update the Optimally implement the Whatcom County Shoreline Master Program to conform with this
- 20 policy fulfill the Shoreline Management Act's shorelines of statewide significance policy to preserve
- 21 natural character, result in long-term over short-term benefit, and protect the resources and ecology of
- 22 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
- 25 Point tidelands and bedlands from the general leasing program and the species recovery goals of the
- 26 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, t-The Prosecuting Attorney and/or the County
 Administration should provide the County Council written notice of all known preapplication
 correspondence or permit application submittals and notices, federal, state, or local that involve activity
 with the potential to expand the export of fossil fuels from Cherry Point "Fossil Fuel Refinery, Renewable
 Fuel Refinery, 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:

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.

Essential Public Facilities

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 1-5, 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
- designated as essential public facilities are Amtrak Cascades passenger rail service, the Burlington
- Northern Santa Fe railroad tracks, and the Cherry Point marine port facilities. Such facilities in the City of
- 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
- 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.
- 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.
- In a manner that avoids or mitigates wetland impacts.
- 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.
- 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 <u>the State of Washington Department of Natural Resource Cherry Point Aquatic Reserve Management</u>
- 101 Plan.

Exhibit B

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CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

₅ 16.08.090. Environmental checklist

- 6 E. Evaluation/Worksheet for Fossil and Renewable Fuel Facilities: Air and environmental health are elements of the
- 7 environment in WAC 197-11-444 and subjects addressed in WAC 197-11-960, Environmental Checklist. As provided in
- 8 WAC 197-11-906(1)(c), Whatcom County hereby adds a procedure and criteria to help identify the affected environment,
- 9 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.
- 14 The form of the worksheet shall be prepared and updated as needed by the SEPA Responsible Official in consultation with
- 15 <u>the Planning Commission and the County Council. The expert evaluation or Worksheet shall analyze the "significance" of</u>
- direct, indirect, and cumulative impacts arising from:
 - 1. Windborne transport of fossil or renewable fuel emissions across Whatcom County;
- Lifecycle greenhouse gas emissions for the project's incremental change for renewable facilities and fossil fuel
 facilities;
- 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,
- 29 "the severity of an impact should be weighed along with the likelihood of its occurrence" and "an impact may be significant
- 30 <u>if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred."</u>
- The information provided in the expert evaluation or Worksheet required for fossil and renewable fuel facilities shall be
- 32 considered procedures and criteria added to Whatcom County's SEPA policies and procedures pursuant to WAC 197-11-
- 33 906(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
- 35 <u>impact statement is prepared.</u>

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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:
- 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
- 2. Such conditions are in writing; and
- 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 sufficient to mitigate the identified impacts; and
- 5. Such conditions are based on one or more policies <u>or provisions</u> in subsection D<u>, E, or F</u> of this section and cited in 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:
- 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
 - 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 - 3. The denial is based on one or more policies <u>or provisions</u> identified in subsection D<u>or F</u> of this section and identified in writing in the decision document.
 - D. The county designates and adopts by reference the following policies as the basis for the county's exercise of SEPA authority pursuant to this section:
 - 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - d. Preserve important historic, cultural, and natural aspects of our national heritage;
 - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
 - 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
 - 3. The county adopts by reference the policies in the following county documents:

- Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 76 Whatcom County Shoreline Management Program
- 77 Whatcom County Subdivision Ordinance
- 78 Whatcom County Solid Waste Management Plan
- 79 Whatcom County Critical Areas Ordinance
- All official land use controls adopted by Whatcom County.
- E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these
 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific
 adverse environmental impact has been adequately addressed by an existing rule or law of another agency with
 jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In
 making this deferral, the County shall base or condition its project approval on compliance with these other existing
 rules or laws. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to address

a particular impact of a project or would be less restrictive than County Code.

F. Specific Environmental Policies

1. Air Quality and Climate:

- a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life. Mitigation of air pollutant impacts will normally be the subject of air permits required by the Northwest Clean Air Agency (NWCAA) and/or State Department of Ecology (DOE) and no further mitigation by the County shall be required. However, where a project being reviewed by the County generates public nuisance impacts, odors or greenhouse gas emissions impacts not addressed through the regulations of NWCAA or DOE, the County may require mitigation under SEPA.
- b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads, dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be authorized by the County address greenhouse gas emissions impacts.
 - i. Greenhouse Gas Emissions: The following shall apply to projects that: (1) are expansions of Fossil Fuel Refineries and Fossil Fuel Transshipment Facilities, as defined in WCC 20.68.153 and WCC 20.68.154, or new, or expansion of Renewable Fuel Refineries and Renewable Fuel Transshipment Facilities; and (2) will have reasonably foreseeable, probable, direct greenhouse gas emissions resulting from new or modified equipment of greater than 10,000 MT/year (CO₂e) as determined by the Northwest Clean Air Agency using methodology consistent with 40 CFR § 98.253, Calculating GHG Emissions (for Petroleum Refineries) and 40 CFR § 98.33, Calculating GHG Emissions (for Stationary Fuel Combustion Sources), as applicable.
 - (a) Emissions Assessed: The SEPA Responsible Official shall require assessment of the lifecycle greenhouse gas emissions of the project, with a focus on the reasonably foreseeable, probable, direct and indirect, gross greenhouse gas emissions caused by the project, consistent with WAC 197-11-060(4)(d). The assessment shall estimate the incremental gross direct emissions change from a baseline established in current Prevention of Significant Deterioration and/or Minor New Source Review Permit Technical Support Documents.
 - (b) Impact Assessment: Greenhouse gas emissions impacts shall be assessed using current scientifically valid modeling techniques, accounting for project emissions and gross increases of existing directfacility emissions resulting from the proposed expansion project. The range of greenhouse gas emissions impacts assessed may be greater than the range of greenhouse gas emissions impacts for which mitigation is required.
 - (c) Mitigation: The County decision-maker shall require the applicant to identify options for mitigation of greenhouse gas emissions that are caused by the project pursuant to WAC 197-11-660 and WCC 16.08.160.B, and in accordance with the following considerations:

123	(1) Mitigation measures must be imposed on the permittee as provided in WAC 197-11-660(1)(d).
124	The County decision maker must require mitigation to address the project's direct greenhouse gas
125	emissions and may require mitigation to address the project's indirect emissions. Voluntary
126	additional mitigation may occur, per WAC 197-11-660(1)(d). Mitigation shall not be required for
127	projects shown in SEPA assessment to reduce greenhouse gas emissions of existing facilities on a
128	lifecycle basis.
129	(2) The SEPA Responsible Official shall not require duplicative mitigation of greenhouse gas
130	emissions (MT CO ₂ e) that are reasonably foreseeable, probable, and caused by the project to the
131	extent these emissions or a portion of these emissions are otherwise mitigated under other local,
132	state, or federal laws, rules, or permits.
133	(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
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135	measures or projects are reasonable, capable of being accomplished, are likely to protect or
136	enhance environmental quality, and meet current state rules and standards. Alternatively,
137	mitigation may be achieved through 1) projects located outside of the local area/region, or 2)
138	through purchase of carbon offsets from any carbon registry approved by the Planning
139	Department, NWCAA, or any Washington state agency, subject to the provisions of item (6),
140	below. Mitigations for the project being permitted may concurrently satisfy any other
141	requirements imposed by County, State or Federal governments for the same project.
142	(4) When considering the total mitigation required, a multiplier of 1.5 shall be applied to the
143	tonnage of all mitigations performed locally (including those selected from the current Whatcom
144	County Climate Action Plan) after [the effective date of this ordinance] as a means to encourage
145	local investment. This multiplier shall not apply to emission reduction units generated by and
146	purchased from local third-party projects or activities that were implemented prior to the effective
147	date of this ordinance.
148	(5) Applicants are encouraged, but not required, to select mitigation proposals from the Whatcom
149	County Climate Action Plan and to select projects that yield energy efficiency gains, local
150	economic benefits such as creation of jobs with living wage or use of prevailing wages, and/or
151	local economic development.
152	(6) Mitigations based on emissions reductions from activities or programs must be: (a) real,
153	specific, identifiable, and quantifiable; (b) permanent; (c) enforceable; (d) verifiable; and (e)
154	except as allowed by (3) above, additional to reductions required under other laws, rules, or
155	permits for unrelated projects or expansions.
156	(7) The County decision maker may not deny a permit based upon lack of availability of local or
157	regional mitigation.
158	(d) Should a Washington state greenhouse gas assessment and mitigation permitting or project requirement
159	be adopted, such as a rule adopted pursuant to the Washington Governor's Directive 19- 18, Environmental
160	Assessment of Greenhouse Gas Emissions, Title 16.08.160.F.1.b.i shall no longer apply as of the effective
161	date of the requirement or rule. Should a new Federal greenhouse gas assessment and mitigation permitting
162	or project requirement with the same force and effect of Title 16.08.160.F.1.b.i be adopted Title
163	16.08.160.F.1.b.i shall no longer apply as of the effective date of the requirement or rule.
164	ii. Greenhouse Gas Emissions – Other Uses Within the Heavy Impact Industrial District:
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165	(a) Method of analysis: Determined by SEPA Responsible Official following consultation with federal and
166	state agencies with jurisdiction or expertise.
167	(b) Mitigation: Determined by SEPA Responsible Official. See 1.c.
168	c. It is the County's policy to minimize or prevent adverse air quality impacts. Federal, state, regional, and county
169	regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts. If the
170	decision-maker makes a written finding that the applicable federal, state, regional, and/or County regulations did
171	not anticipate or are inadequate to address the particular impact(s) of the project, the decision-maker may
172	condition the proposal to mitigate its adverse impacts or, if impacts cannot be mitigated, may deny a project under
173	the provisions of the State Environmental Policy Act.
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2. Plants and Animals:

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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:

196 WAC

197 197-11-700 Definitions.

198 197-11-702 Act.

199 197-11-704 Action.

200 197-11-706 Addendum.

201 197-11-708 Adoption.

202 197-11-710 Affected tribe.

203 197-11-712 Affecting.

204 197-11-714 Agency.

205 197-11-716 Applicant.

206 197-11-718 Built environment.

207 197-11-720 Categorical exemption.

208 197-11-721 Closed record appeal.

197-11-722 Consolidated appeal.

210 197-11-724 Consulted agency.

211 197-11-726 Cost-benefit analysis.

212 197-11-728 County/city.

213 197-11-730 Decision maker.

214 197-11-732 Department.

215 197-11-734 Determination of nonsignificance (DNS).

216 197-11-736 Determination of significance (DS).

217 197-11-738 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.
250 251		those definitions contained within WAC 197-11-700 through 197-11-799, when used in this article, g terms shall have the following meanings, unless the context indicates otherwise:
252 253 254	<u>Transshi</u>	missions" means greenhouse gas emissions associated with Fossil Fuel Refineries, Fossil Fuel pment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based upon ing and processing of Fossil Fuels located within the Cherry Point Heavy Industrial area."
255 256 257	determin	ice" means the county's response to an applicant stating whether it considers issuance of a nation of significance (DS) likely for the applicant's proposal (mitigated determination of ficance (MDNS) procedures).
258	C. "ERC" me	eans environmental review committee established in WCC 16.08.045.

259 260 261 262 263	D. "Greenhouse Gas Emissions" means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), state clean air act (Chapter 70A.15 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.45 RCW) or any directly superseding provisions of state or federal law.
264 265	E. Gross emissions mean the actual incremental emissions increases or decreases resulting from the project. Gross emissions do not include reductions or additions from offsite mitigation or lifecycle impacts.
266 267 268	F. Indirect emissions mean emissions resulting from offsite generation of power purchased for consumption at the facility and emissions from other contiguous or adjacent utilities directly supplying the facility (examples include cogeneration of steam, offsite hydrogen production).
269 270 271 272 273	G. "Lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.
274	H⊆ . "Ordinance" means the procedure used by the county to adopt regulatory requirements.
275 276	ID . "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA process or his/her designee.
277 278	JE. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 98-048 Exh. A; Ord. 84-122 Part 8).
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Exhibit C

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298	CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT
299 300 301	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:
302	.201 Reserved.
303	.202 Adult businesses except those allowed as an administrative approval use under WCC 20.66.131.
304 305 306	.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.
307	.204 New Fossil-Fuel Refinery or new Fossil Fuel Transshipment Facilities.
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CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

326 20.68.050 Permitted uses.

- 327 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, Project Permit Procedures Variances,
- 329 Conditional Uses, Administrative Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County
- 330 Subdivision Ordinance and the Whatcom County Shoreline Management Program, and implementing regulations. The
- 331 purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use
- 332 identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular
- 333 subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity
- 334 listed below.)

- 335 .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:
- 337 (1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate
- animals intended for processing within 24 hours.
- 339 (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.
- 341 (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);
- 343 (b) Industrial stormwater permit general permit (Chapter 173-226 WAC);
- 344 (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).
- 345 .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.
- 347 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and
- prefabricated wood products; wooden containers and cooperage.
- 349 .054 The following are permitted uses except as otherwise prohibited:
- 350 (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill
- 351 products.
- 352 (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.
- 355 (3) Refining and storage of petroleum and asphalt.
- 356 $(\underline{34})$ The manufacture and processing of rubber and plastic products.
- 357 $(\underline{45})$ Leather tanning and finishing.
- 358 (56) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic
- 359 mineral products.
- 360 (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.
- 363 (7) Storage of asphalt in the Heavy Impact Industrial Zone.

- 364 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
- 365 fixtures, structural metal and stamping.
- 366 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
- 367 materials handling equipment; machine tools and dies; and special and general industrial equipment.
- 368 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.
- 369 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
- 370 railroad equipment, bicycles and motorcycles.
- 371 .059 Bulk commodity storage facilities, and truck, rail, vessel and pipeline transshipment terminals and facilities except as
- conditionally permitted under WCC 20.68.153 and .154 or prohibited under WCC 20.68.200.
- 373 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
- with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
- 375 (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.
- 376 .061 Heavy construction contractors.
- 377 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
- park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
- 379 noncommercial uses, excluding state education facilities and correction facilities.
- 380 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
- and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
- shall contain no indoor plumbing but may be served with electrical power for lighting.
- 383 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
- the Heavy Impact Industrial District in the Bellingham UGA.
- 385 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.
- 386 .066 Marijuana production or processing facility.
- 387 .068 Existing Fossil Fuel Refineries, existing Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, Renewable
- Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that
- when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must
- disclose any capacity changes defined under WCC 20.68.153 and WCC 20.68.154 to the county permitting authorities.
- Provided that a conditional use permit is not required by WCC 20.68.153 or WCC 20.68.154, permitted uses include repairs,
- improvements, maintenance, modifications, remodeling or other changes including but not limited to the following.:
- 393 (1) Accessory and appurtenant buildings, structures, and processing equipment.
- 394 <u>(2) Office space.</u>
- 395 (3) Parking lots.
- 396 (4) Radio communications facilities.
- 397 (5) Security buildings, fire stations, and operation centers.
- 398 (6) Storage buildings.
- 399 (7) Routine maintenance and repair.
- 400 (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with
- 401 <u>federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes of co-processing</u>
- 402 biomass with petroleum.
- 403 (9) Road projects and bridges.

- 404 (10) Temporary trailers.
- 405 (11) Heating and cooling systems.
- 406 (12) Cable installation.
- 407 (13) Information technology improvements.
- 408 (14) Continuous emissions monitoring systems or analyzer shelters.
- 409 (15) Wastewater and stormwater treatment facilities.
- 410 (16) Replacement and upgrading of existing equipment.
- 411 (17) Safety upgrades.
- 412 (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.
- 413 (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.
- 414 (20) Renewable fuel production and shipment.
- 415 (21) Transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved;
- 416 (22) Necessary Fossil Fuels transfers during turn-arounds or maintenance periods.
- 417 (23) Storage tanks, provided that the County decision maker shall include in any approval of an application for storage tanks
- at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel
- 419 Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and
- 420 approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of
- fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or
- will not be used for transshipment.
- 423 (24) Other similar structures or activities.
- 424 .070 New Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, except that new piers, docks, or wharves
- in the Cherry Point Industrial District are prohibited.
- 426 0.71 Expansion of existing legal Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, provided that the
- 427 <u>expansion is for Renewable Fuels only.</u>
- .081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.
- .082 Marine port facilities, except as prohibited under WCC 20.68.200.
- 430 .085 Type I solid waste handling facilities.
- 431 .086 Type II solid waste handling facilities.
- 432 20.68.100 Accessory uses.
- 433 .101 Employee recreation facilities and play areas.
- 434 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
- 435 district.
- 103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 437 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
- 438 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 439 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

- .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
- conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.
- 442 .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.
- 445 .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
- 449 (Exh. A), 2006).
- 450 20.68.150 Conditional uses.
- The following uses require a conditional use permit in the HII Zoning District.
- 452 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:
- 453 (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.
- 455 (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to
- 456 protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal
- 457 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.
- 459 .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:

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- A. <u>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</u>
- B. <u>Cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000</u>
 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a <u>licensed professional engineer in accordance with 20.97.230.1; or</u>
- 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.
- 471 If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.
- 472 .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
- 474 <u>cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or</u>
- 475 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with
- 476 20.97.230.1.

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477 <u>If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.</u>

- 483 .15<u>5</u>4 Treatment and storage facilities for hazardous wastes subject to the following:
- (1) The eight criteria for a conditional use listed under WCC 22.05.02620.84.200.
- 485 (2) The most current state siting criteria under Chapter 173-303 WAC.
- 486 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,
- 487 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those
- wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.
- 489 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County
- by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from
- 491 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10
- percent of the total local hazardous waste stream.
- 493 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been
- 494 constructed consistent with state requirements.
- 495 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,
- 496 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to
- the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit
- restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,
- following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be
- documented by county staff.
- 501 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of
- all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county
- for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and
- inspection reporting procedures.
- 505 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an
- inspection by a qualified and independent inspection agency satisfactory to the county.
- 507 (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health
- and safety, the permit may be revoked by the approving body following a public hearing.
- 509 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.
- 510 .157 Trailheads with parking areas for more than 30 vehicles.
- 511 .158 Athletic fields.
- 512 .180 Major passenger intermodal terminals.
- 513 .187 Type III solid waste handling facilities; provided, that:
- 514 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site
- will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at
- least three feet in elevation higher than the floodway elevation;
- 517 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
- 518 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 519 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 520 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

521	(d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
522	(e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
523	(f) This 1,500-foot buffer does not apply to:
524 525	(i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;
526	(ii) Inert landfills;
527	(3) Inert landfills shall be located at least 500 feet from the following:
528	(a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
529	(b) Public parks, public recreation areas, or publicly-owned wildlife areas;
530	(c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
531	(d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
532	(e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
533	(f) This 500-foot buffer does not apply to:
534 535	(i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;
536 537 538	(4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;
539 540 541	(5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;
542 543 544	(6) The facility or site has complied with the provisions of WCC <u>22.05.02620.84.200</u> and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites;
545 546	(7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:
547 548	(a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and
549 550	(b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;
551 552	(8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);
553 554	(9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's delineated wellhead protection area;
555 556 557 558	(10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;
559	(11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to

protect the value and enjoyment of existing adjacent uses.

- 561 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
- permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
- processed as a major development project pursuant to Chapter 20.88 WCC.
- ₅₆₄ 20.68.200 Prohibited uses.
- All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not
- limited to the following, which are listed here for purposes of clarity:
- 567 .201 Reserved.
- 568 .202 Adult businesses.
- 569 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
- 570 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
- products derived thereof; and primary metal industries.
- .204 New Fossil Fuel Refineries.
- 573 .205. New Fossil Fuel Transshipment Facilities.
- .206. New piers, docks, or wharves in Cherry Point Industrial District.
- .207 Coal-fired power plants.
- 576 (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-
- 577 075, 1991).
- ₅₇₈ 20.68.250 Minimum lot size.
- The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and
- development standards of the district. (Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996).
- 581 20.68.255 Minimum lot frontage.
- For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility
- development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the
- frontage be less than 30 feet. (Ord. 99-045 § 1, 1999).
- ₅₈₅ 20.68.350 Building setbacks.
- 586 Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.68.550. (Ord. 99-078, 1999).
- 20.68.400 Height limitations.
- No maximum height is established; however, when a building exceeds 50 feet, the setback requirements of WCC 20.80.200
- shall be increased by one foot for each foot of building height in excess of 50 feet, as applicable to all setbacks.
- ₅₉₀ 20.68.450 Lot coverage.
- The maximum building or structural coverage shall not exceed 60 percent of the lot size.
- ₅₉₂ 20.68.500 Open space.
- 593 Repealed by Ord. 97-057. (Ord. 96-046, 1996).
- ₅₉₄ 20.68.550 Buffer area.
- 595 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
- District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual

- 597 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
- 598 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.
- 599 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
- structures shall be established consistent with the following options:
- 601 (1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum
- setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security
- 603 roads, parking, or open space.
- 604 (2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the
- district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the
- setback(s) may be used for security roads, parking, or open space.
- 607 (3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to
- the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be
- situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.
- 610 (4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban
- Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be
- 612 increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.
- (5) In no case shall the setback from the northern and western boundaries of the Cherry Point heavy industrial area not
- contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and
- security or protective uses.
- 616 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
- 617 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.
- 618 .554 If any part of said buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so
- separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
- 620 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,
- 621 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).
- 622 20.68.600 Sign regulations.
- Sign regulations shall be administered pursuant to WCC 20.80.400.
- 624 20.68.650 Development criteria.
- 625 (Ord. 96-056 Att. A § A1, 1996).
- 626 20.68.651 Landscaping.
- Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).
- 20.68.652 Off-street parking and loading.
- Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must
- be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on
- 631 public rights-of-way.
- 632 20.68.653 Drainage.
- All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
- project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A §
- 635 A2, 1996; Ord. 94-022, 1994).

- 636 20.68.654 Driveways.
- 637 Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of
- 638 Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).
- 639 20.68.655 Access.
- 640 Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).
- 641 20.68.656 Maintenance.
- The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be
- responsible for assuring the care and maintenance of any natural growth, where appropriate.
- 644 20.68.657 Enclosure.
- All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature,
- including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).
- 20.68.700 Performance standards.
- 20.68.701 Pollution control and nuisance abatement.
- Each industry is required to continuously employ the best pollution control and nuisance abatement technology when
- 650 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or
- 651 regulations provide for the level of technology to be employed, the appropriate standards shall apply.
- 652 20.68.702 Heat, light and glare.
- 653 All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used
- as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.
- 655 20.68.703 Ground vibration.
- No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is
- discernible without instruments, at or beyond the property line for the use concerned.
- 658 20.68.704 Odors.
- No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in
- such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe
- upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).
- 662 20.68.705 Noise.
- No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-
- 664 075, 1991).
- 20.68.706 Toxic gases and fumes.
- Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control
- 667 Authority standards. (Ord. 91-075, 1991).
- 668 20.68.707 Liquid pollutants.
- There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).

20.68.708 Appearance. New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999). 20.68.709 Marijuana odor. For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh. A, 2015).

CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

707 20.74.010 Purpose.

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- 708 The purpose of the Cherry Point Industrial District is to implement the policies of the Cherry Point Major Industrial Urban
- Growth Area section of the Whatcom County Comprehensive Plan by establishing a range of land uses and types of
- development appropriate for the Cherry Point UGA and to encourage large scale master planning of industrial sites to
- preserve sites of sufficient size to accommodate major port and industrial development. (Ord. 98-083 Exh. A § 57, 1998).

712 20.74.020 Applicability.

This chapter is applicable to the entire Cherry Point Major Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

₇₁₄ 20.74.030 Permitted uses.

- 715 (1) Primary permitted uses:
- 716 (a) Area south of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Heavy 717 Impact Industrial District, Chapter 20.68 WCC, as well as large scale high technology businesses.
- (b) Area north of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Light Impact Industrial District, Chapter 20.66 WCC.
- 720 (2) Secondary permitted uses shall include smaller scale industrial uses, nonretail commercial uses, and industry-related
- 721 professional services, provided the secondary use supports or is supported by primary permitted uses in the Cherry Point
- 722 Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).
- 723 20.74.040 Accessory uses.
- Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
- 725 083 Exh. A § 57, 1998).
- 726 20.74.050 Conditional uses.
- 727 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
- 728 083 Exh. A § 57, 1998).
- 729 <u>20.74.055</u> Prohibited uses.
- 730 Prohibited uses shall be the same as those prohibited in the Light Impact Industrial District (Chapter 20.66) and the Heavy
- 731 <u>Impact Industrial District (Chapter 20.68 WCC), as applicable, and the following:</u>
- 732 (1) New piers, docks, or wharves.
- 733 (2) Conversion of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility to a Fossil Fuel Refinery or Fossil
- 734 Fuel Transshipment Facility.
- 735 20.74.060 Master site plan requirements.
- 736 (1) Development in the Cherry Point Industrial District requires the review and approval of a master site plan, including
- 737 SEPA review. Acceptable master site plans include site plans and supporting information submitted and approved for
- 738 applications for a building permit, a short subdivision, a preliminary plat, a binding site plan, a major project permit or a
- 739 planned unit development.
- 740 (2) The minimum area for a master site plan (planning block) shall be 160 acres, or the entire property under common
- ownership if the common ownership is less than 160 acres.

- 742 (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
- 743 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
- shall be waived.
- 745 (4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.
- 746 (5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit,
- short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject
- to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site
- 749 plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private
- facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation
- 751 required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

752 20.74.070 Minimum lot size and parcelization.

- 753 The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be
- 754 permitted as follows:
- 755 (1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent
- with the master site plan requirements in this chapter.
- 757 (2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC
- 758 consistent with the master site plan requirements of this chapter.
- 759 (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master
- site plan requirements of this chapter.
- 761 (4) When the administrator finds that the lot(s) will be developed with a use(s) that is consistent with the intent of the district
- and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.
- 763 (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083
- 764 Exh. A § 57, 1998).

₇₆₅ 20.74.080 Design standards.

- 766 Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site
- design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District,
- 768 Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District,
- 769 Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

20.74.090 Traffic demand management.

- 771 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
- Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
- employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least 12
- continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.
- 775 (1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by
- 776 December 1, 2011.
- 777 (2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the
- 778 requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

20.74.100 Drainage.

- All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
- 781 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

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784 CHAPTER 20.88 MAJOR PROJECT PERMITS

20.88.100 Major project permits.

- .110 All major developments shall, prior to any construction, obtain a major project permit.
- .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
 16.16 WCC and for any proposed development that meets any two of the following conditions:

Cost	
(estimated construction cost exclusive of land value)	\$5,000,000
Size	
Retail	75,000 square feet
office or industrial (gross leasable floor space)	200,000 square feet
Residential	300 dwelling units
motel/hotel	200 units
Number of Employees	250
SEPA Review	An EIS is required
221111011011	Zib is required

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- In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the technical review committee that any project be considered a major development, if in the opinion of the administration it is of a nature that council review would be appropriate.
- 130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application based on the following criteria:
- 797 (1) Will comply with the development standards and performance standards of the zone in which the proposed major 798 development will be located; provided where a proposed major development has obtained a variance from the development 799 and performance standards, standards as varied shall be applied to that project for the purposes of this act.
- 800 (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for the issuance of a conditional use permit for the zone in which the project is located.
- 802 (3) Will be consistent with applicable laws and regulations.

- 804 (3) Prior to commencement of any site preparation or construction activities, will obtain, if required, a state aquatic lands 805 lease, and all other necessary permit consultations and authorizations, including federal determinations that the project will 806 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 807 Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean 808 Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into 809 waters of the U.S.) and a state Section 401 water quality certification.
- 811 (4) Will not substantially interfere with the operation of existing uses.
- 812 (5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as 813 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 814
- appropriate agency or division thereof. 815

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- (6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and 816 will not impose uncompensated costs on other property owned. 817
- (7) Will be appropriately responsive to any EIS prepared for the project. 818
- 819 .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 820
- environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with 821
- the policies for environmental protection set forth in the Comprehensive Plan. The County decision maker may approve a 822 major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting 823
- requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it 824
- has fulfilled that condition. 825
- .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major 826
- project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC 827
- and provide relief from the specific standards and requirements thereof. 828

20.88.200 Procedure. 829

- .205 If a major project permit is determined to be required, an application shall be completed and filed along with the 830 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as 831
- part of the application for a major project permit. The master plan document shall include all elements required per the 832
- department's administrative manual. 833
- .210 Development Standards. The master planmajor project permit may propose standards that will control development of 834
- the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as 835
- height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade 836
- treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to 837
- county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally 838
- within an urban growth area, concurrence of the affected city will be required. 839
- 840 .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 planmajor project permit review. 841
- (a) Any modifications, additions or changes to an approved master plan are subject to the following: 842
- (i) Minor changes shall be reviewed for compliance and compatibility with the approved master planmajor project 843 844 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.

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- 888 "Fossil fuels" refers to hydrocarbon compounds and composites formed as a result of geologic processes acting on the
- 889 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.

- 893 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
- 896 Materials, and asphalt. Fossil Fuel Refinery uses include, but are not limited to: receiving feedstocks, bulk storage,
- 897 <u>manufacturing, or processing of Fossil Fuels, Intermediate Materials or byproducts, and shipment of those processed</u>
- 898 <u>materials to downstream customers. The following activities do not render a Fossil Fuel Refinery a Fossil Fuel</u>
- 899 <u>Transshipment Facility: (i) inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils</u>
- and blendstocks, (ii) transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be
- 901 moved, and (iii) necessary Fossil Fuels transfers during turn-arounds or maintenance periods. This definition shall exclude
- 902 <u>Small Fossil or Renewable Fuel Storage and Distribution Facilities.</u>

903 20.97.160.4 Fossil Fuel Transshipment Facility.

- 904 <u>"Fossil Fuel Transshipment Facility" is an entire complex, consisting of its individual units, equipment, or components,</u>
- which in aggregate, engages primarily in the process of off-loading Fossil Fuels from one or more modes of shipment (i.e.,
- 906 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
- 908 Point Industrial District. This definition shall exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

20.97.163 Greenhouse Gas Emissions.

- 910 "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
- 913 (Chapter 70A.15 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.45 RCW) or any directly superseding
- 914 provisions of state or federal law.

20.97.190.2 Intermediate Materials

- 916 "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

- 920 "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
- 922 distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the
- 923 ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming

924 potential.

20.97.230 Maximum Atmospheric Crude Distillation Capacity.

- 926 "Maximum Atmospheric Crude Distillation Capacity" or "MACDC" is the maximum number of barrels of input that the
- 227 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
- 929 <u>licensed in the State of Washington and shall be measured in barrels per day.</u>

20.97.230.1 Maximum Transshipment Capacity

- 731 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:
- 933 (a) The maximum physical limit of a facility's capacity for off-loading Fossil Fuels from one or more modes of
- 934 shipment (i.e., rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels, without processing through a
- 935 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
- 938 methods, including the capacities or other physical attributes of the facility's equipment, including but not limited to
- 939 <u>capacities of:</u>

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- 940 (i) loading equipment;
 - (ii) offloading equipment;
- 942 (iii) pumps and/or compressors;
- 943 (iv) bulk storage;
- 944 (v) piping hydraulics; or
- 945 (vi) any combination of the above.
- The capacity calculation shall exclude any equipment installed with a permit condition that prohibits that equipment
- 947 <u>from being used for transshipment purposes.</u>
- 948 (b) Shipment limitations imposed by County, State or Federal authorities that can be demonstrated by the applicant to
- 949 restrict the frequency and/or annual amount of Fossil Fuel shipments at its facility. If any such limitations form the
- 950 <u>basis of a Maximum Transshipment Capacity calculation, then any future increases in Fossil Fuel shipments above</u>
- 951 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:
- 954 (1) Planted crops and crop residue harvested from agricultural land.
- 955 (2) Planted trees and tree residue from a tree plantation.
- 956 (3) Animal waste material and animal byproducts.
- 957 (4) Slash and pre-commercial thinnings.
- 958 (5) Organic matter that is available on a renewable or recurring basis.
- 959 (6) Algae.
- 960 (7) Separated yard waste or food waste, including recycled cooking and trap grease.
- 961 (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to
- 962 <u>customary feedstock production and transport.</u>

963	<u>20.97.340.4</u>	Renewab	<u>le Fuel.</u>

- 964 "Renewable Fuel" means liquid or gaseous fuels produced from renewable biomass, woody biomass or landfill wastes and
- 965 limited in terms of blending with fossil fuels. Renewable fuels shall also include fuels produced from renewable electricity
- 966 including hydrogen and synthetic fuels. Common renewable fuels include ethanol, renewable diesel and biodiesel:
- 967 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is
- nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of
- 969 <u>American society of testing and materials specification D 5798.</u>
- 970 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable
- 971 <u>oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal</u>
- 972 environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 and meets the requirements of American
- society of testing and materials specification D 975.
- 974 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or
- 975 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other
- 976 <u>feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State</u>
- 977 <u>Department of Ecology or US EPA.</u>

978 20.97.340.5 Renewable Fuel Refinery.

- 979 <u>A "Renewable Fuel Refinery" means a facility that processes or produces renewable fuels. This definition excludes Small</u>
- 980 Fossil or Renewable Storage and Distribution Facilities.

981 20.97.340.6 Renewable Fuel Transshipment Facility.

- 982 "Renewable Fuel Transshipment Facility" is an entire complex, consisting of its individual units, equipment, or components
- 983 which in aggregate engages primarily in the process of off-loading Renewable Fuels and/or Renewable Biomass from one
- mode of shipment (i.e., rail, truck, pipeline, etc.) then storing and/or loading such fuels without processing through a
- 985 Renewable Fuel Refinery or Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated
- 286 zoning district boundaries, such as the Cherry Point Industrial District. This definition shall exclude Small Fossil or
- 987 Renewable Fuel Storage and Distribution Facilities.

988 20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities.

- "Small Fossil or Renewable Fuel Storage and Distribution Facilities" means:
- 990 (1) Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or
- 991 (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation,
- and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel
- 993 <u>transshipment facilities.</u>

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20.97.434.1 Technical committee.

- "Technical committee" or "technical review committee" means the designated representatives of the Whatcom County
- 996 Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and
- 997 <u>the Whatcom County Health Department Director.</u>
- 998 *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.
- 1002 (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.

035	(4) Approval Criteria for expansion of Fossil Fuel Refineries pursuant to WCC 20.68.153 and expansion
036	of Fossil Fuel Transshipment Facilities pursuant to WCC 20.68.154. Before approving an application, the
037	hearing examiner shall ensure that any specific standards of the zoning district defining the use are
038	fulfilled, and shall find adequate evidence showing that:
039	(a) The conditional use permit approval criteria listed under WCC 22.05.026(3) are met;
040	(b) Within shorelines, if applicable, County approval shall be contingent upon approval of a
041	shoreline permit;
042	(c) The applicant has documented to the County decision maker (as applicable):
043	(i) All of the anticipated types and volumes of substances to be processed, stored, or
044	transferred in bulk with the proposed expansion,
045	(ii) Changes in the Maximum Transshipment Capacity or the Maximum Atmospheric
046	Crude Distillation Capacity occurring as a result of the proposed expansion, as
047	applicable; and
048	(iv) The mode of shipment vessels to be loaded or unloaded with the proposed
049	equipment and/or as a result of the proposed expansion.
050	The permit shall be limited exclusively to those types and volumes of materials or products
051	as documented and approved.
052	(d) Insurance requirements meet the provisions of WCC 22.05.125.
053	(e) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation
054	Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction.
055	(f) Mitigation of impacts to other services including fire and emergency response capabilities,
056	water supply and fire flow, to address risks created by expansions.
057	(g) Plans for stormwater and wastewater releases have been approved.
058	(h) Prior to commencement of any site preparation or construction activities, all necessary state
059	leases shall be acquired for any piers or aquatic lands improvements, and it shall be
060	demonstrated to the zoning administrator that the project applicant has met any federal or state
061	permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson
062	Amendment through state and federal permitting decisions.
063	(i) The County decision maker may approve a conditional use permit with a condition to obtain
064	relevant leases and complete any necessary federal and state permitting requirements, and may
065	restrict the conditional use permittee from undertaking site preparation or construction activities
066	until it has fulfilled that condition.
067	(j) The permittee must inform the county permitting authorities of a change in the aforementioned
068	disclosures so that the department can document current capacity levels to ensure that the
069	cumulative thresholds under WCC 20.68.153 or WCC 20.68.154 (as applicable) have not been
070	exceeded.
071	(k) The County decision maker shall include, in any approval of an application for an expansion,
072	as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in
073	the manner described by the project proponent in the application and approved in the permit.

- 1074 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 1075 1076 not be used for transshipment. 1077 (54) Revisions. The hearing examiner may administratively approve revisions to conditional use permits; 1078 provided, that the proposed changes are within the scope and intent of the original permit. "Within the 1079 scope and intent of the original permit" shall mean the following: 1080 (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of 1081 the original permit; provided, that: 1082 (i) Revisions involving new structures not shown on the original site plan shall require a new 1083 permit; 1084 (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 1085 (iii) Any revisions shall be reviewed for consistency with the Comprehensive Plan; 1086 1087 (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 1088 1089 permit and is consistent with the regulations for the area in which the project is located; 1090 (c) The use authorized pursuant to the original permit is not changed; 1091 (d) No additional over-water construction will be involved for shoreline conditional use permits; 1092 (e) No substantial increase in adverse environmental impact will be caused by the project revision. 1093 (Ord. 2020-045 § 1 Exh. A). 22.05.110 Final decisions - Type I, II, and III applications. 1094 (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 1095 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to 1096 comply with all applicable codes. 1097 (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) 1098 shall either grant or deny the application or appeal. 1099 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the 1100 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives 1101 1102 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives 1103 of Whatcom County.
 - (b) Requirements:

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- (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.

113 114	(d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as provided herein.
115 116 117	(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)).
118 119	22.05.120 Recommended Recommendations and final decisions to county council. Type IV applications
120 121 122 123 124	(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.
125 126 127 128	(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.
129 130	(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.
131	(4) For planned unit developments and major project permits the following shall apply:
132 133	(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.
134 135	(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.
136 137	(c) The county council shall conduct the following within the specified time frames, except as provided in subsection (4)(c)(iii) of this section:
138 139	(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.
140	(ii) Issue a final written decision within 21 calendar days of the public meeting.
141 142 143 144	(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).
145 146	(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.
147 148	(a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.
149 150	(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.
151 152 153 154 155	(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)).

1156	22.05.125 Proof of insurance for hazards created in the County
11 <i>57</i>	For expansion projects requiring approval under a Conditional Use Permit or Major Project Permit at new or existing
1158	facilities per WCC 20.68.153 or WCC 20.68.154, financial assurance for the benefit of Whatcom County shall be required.
1159	For such expansion projects, a permittee must demonstrate proof of financial assurance (such as trust funds, letters of credit,
1160	insurance, self-insurance, financial tests, corporate guarantees, payment bonds, or performance bonds) sufficient to comply
1161	with the financial responsibility requirements set forth in State and Federal law, as applicable, prior to permit approval by a
1162	Whatcom County Decision Maker. If the financial assurance is in the form of insurance policies, the policies must name
1163	Whatcom County as an additional insured and provide Whatcom County with a certificate of insurance to that effect.
1164	The permittee must maintain the approved level of financial assurance coverage for new or expanded uses while operating
1165	the permitted facility. At the request of the permittee, the Whatcom County Decision Maker may approve new or altered
1166	forms of financial assurance to meet the requirements of this section, provided that the new or altered form is consistent with
1167	the scope and intent of the original permit condition.
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1169	22.05.126 Supplemental Procedures for Fossil Fuel Refinery and Fossil Fuel Transshipment
1170	Facility Permitting
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1172	(1) Upon request of the County, Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities shall fill out a supplemental
1173	checklist for the purpose of determining whether a project qualifies as a permitted use or requires a conditional use
1174	permit as specified in WCC 20.68.153 or WCC 20.68.154. The checklist shall contain supplemental information to
1175	<u>include:</u>
1176	(a) Impact on Maximum Atmospheric Crude Distillation Capacity (MACDC), Maximum Transshipment Capacity, and
1177	fossil fuel unit train shipment frequency from the proposed activity;
1178	(b) Confirmation of the acceptance of potential permit conditions as outlined in 20.68.068 subsection (23);
1179	(c) Applicant name, property owner information, and parcel information as appropriate; and
1180	(d) An attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant
1181	and certified by a Notary Public.
1182	(2) Confidential Business Information
1183	(a) For the purpose of checklists, permit applications and all other materials submitted by Fossil Fuel Refineries or
1184	Fossil Fuel Transshipment Facilities for activities in the Cherry Point Heavy Impact Industrial District, the following
1185	shall apply:
1186	(i) The applicant shall clearly identify information the applicant considers to be Confidential
1187	Business Information, not subject to disclosure under chapter 42.56 RCW (Public Records
1188	Act) and/or WCC 1.32.090. If such information is contained in submittal documents, the
1189	applicant shall submit two copies of materials for County use as follows:
1190	1. A copy with Confidential Business Information clearly identified, with a watermark
1191	indicating the document contains such information; and
1192	2. A copy with Confidential Business Information redacted, and a watermark added
1193	indicating that the document does not contain such information and is suitable for public
1194	<u>disclosure.</u>

1195	(ii) Confidential Business Information may include:
1196	1. Processing equipment technical specifications on internals, sidestream/pumparounds,
1197	design specifications, and process controls;
1198	2. Process unit design, instrumentation and controls;
1199	3. Feedstock, product, or process unit pump capacity and configuration; and
1200	4. Contractual agreements and all terms contained therein.
1201	(iii) The information listed above is not meant to be all-inclusive. Other information related to the
1202	applicant's processing activities, feedstock and product purchase, and/or sale and
1203	transportation methods and costs may be Confidential Business Information and, if so, shall
1204	be marked as such when submitted.
1205	(iv) Calculation and permit material submittals may contain, but are not required to contain any of
1206	the above information.
1207	(v) Where no increase to MACDC, Maximum Transshipment Capacity, or unit train frequency is
1208	proposed, submittal of Confidential Business Information specifically related to the criteria of
1209	WCC 20.68.153 and WCC 20.68.154 shall not be required to be submitted with the permit
1210	application materials.
1211	(3) Where calculations are to be submitted for Maximum Transshipment Capacity of Maximum Atmospheric Crude
1212	Distillation Capacity, the applicant shall provide calculations performed and certified by a professional engineer
1213	licensed in the state of Washington, clearly indicating the impact on MACDC and Transshipment Capacity.
1214	Confidential Business Information shall be clearly identified as required by WCC 22.05.126(2)(a)(i) above.
1215	(4) If the County receives a public records request for records containing information the applicant has clearly indicated
1216	to be Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i), the County will notify the applicant of
1217	the request and provide the applicant with a reasonable period of time of at least 1530 days to file for an injunction
1218	under RCW 42.56.540 to prevent the disclosure of such information. If the applicant does not file for an injunction
1219	within the period of time set by the County, the County will disclose the records containing the information that the
1220	applicant has designated as Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i).
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Whatcom County Code
Chapter 22.10
LEGISLATIVE ACTION PROCEDURES
Sections:
22.10.010 Purpose and applicability.
22.10.020 The docket.
22.10.030 Processing of docketed amendments.
22.10.040 Concurrent review of comprehensive plan amendments.
22.10.050 Notice of public hearing.
22.10.060 Approval criteria.

22.10.010 Purpose and applicability.

This chapter establishes the procedures for legislative actions amending the Whatcom County comprehensive plan and the development regulations that implement that plan. Amendments to the comprehensive plan include changes to the plan's text and maps, and amendments to the development regulations include changes to the official zoning map and the text in WCC Titles 16, 20, 21, and 23. For purposes of this chapter, comprehensive plan amendments include amendments to subarea plans. (Ord. 2018-032 § 1 (Exh. A)).

22.10.020 The docket.

- (1) The department of planning and development services ("department") shall maintain a proposed docket of comprehensive plan and development regulation amendment applications and shall present it to the county council for review once a year on or about March 1st. The county council may, by resolution, approve a docket listing all applications that may be processed per the provisions of this chapter.
- (2) The department, the executive, the planning commission, or the county council by majority vote, may place a proposed amendment on the docket at any time.
- (3) A party other than the county council, executive, the planning commission or the department may suggest an amendment to the comprehensive plan or development regulations by making application on forms provided by the department and submitting any required docketing fee.
 - (a) Applications for suggested amendments must be submitted by December 31st in order to be included on the proposed docket presented to the county council at its next annual docket review. The department shall review the application for completeness and may request additional information to ensure the application is complete before scheduling it for the annual docket review.
 - (b) If the county council dockets a suggested amendment, all required amendment application fees are due within 30 calendar days after it is docketed. If all fees are not paid within 30 calendar days after being docketed, the department shall close the application and remove it from the docket. When docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.
- (4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:
 - (a) The amendment was proposed by a party other than the county council or the department per subsection (3) of this section, and
 - (b) The applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year's docket. (Ord. 2018-032 § 1 (Exh. A)).

22.10.030 Processing of docketed amendments.

- (1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below:
 - (a) For suggested amendment applications filed per WCC <u>22.10.020(3)</u>, the department shall evaluate the applications for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing. Where a development regulation amendment requires a comprehensive plan amendment, the two amendments shall be processed at the same time.
 - (b) The department shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each docketed amendment. Both the report and the result of the environmental review shall be forwarded to the planning commission, and to the applicable city staff if the proposed amendment applies to land within a city's urban growth area.
 - (c) The staff report shall evaluate the proposed amendment(s) in relationship to the approval criteria of WCC $\underline{22.10.060}$, and consider any environmental impacts or mitigation measures identified by the Whatcom County SEPA official. If the proposed amendment includes land within a city's urban growth area, the staff report shall also address any comments from the city regarding consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.
- (2) Docketed comprehensive plan and development regulation amendment applications shall receive a public hearing by the planning commission subject to the notice requirements of WCC $\underline{22.10.050}$. Following the public hearing, the planning commission shall vote to adopt findings of fact and recommended actions, which the department shall transmit to the county council. In addition to the public hearing, the planning commission may hold public work sessions to discuss a proposed amendment.
- (3) The county council may hold a public hearing on the docketed amendment in addition to the planning commission's public hearing. If the county council decides the public interest is better served by considering a final action that differs from the planning commission recommendation, the county council shall hold a public hearing. The county council, by majority vote, may adopt the amendment by ordinance, reject the amendment, or remand the proposed amendment to the planning commission for further review.
- (4) Actions that are quasi-judicial as defined in RCW 42.36.010 (including but not limited to a zoning map amendment for a single lot) are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. For a proposed amendment that is a quasi-judicial action, the planning commission and county council shall process the application in accordance with Chapter 42.36 RCW in addition to the requirements of this section. (Ord. 2018-032 § 1 (Exh. A)).

22.10.040 Concurrent review of comprehensive plan amendments.

- (1) While public hearings and other public discussion of proposed comprehensive plan amendments may take place at any time of the year, the county council's final review and adoption of those amendments shall take place concurrently, no more frequently than once per calendar year, in accordance with RCW 36.70A.130(2)(a). Final adoption should occur on or about February 1st.
- (2) The following comprehensive plan amendments are excluded from the requirement of annual concurrent review and may be adopted at any time:
 - (a) The initial adoption of a subarea plan;
 - (b) Adoption or amendment of the shoreline master program under procedures set forth in Chapter 90.58 RCW;
 - (c) The amendment of the capital facilities element concurrent with adoption or amendment of the county budget;

- (d) Amendments needed to resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board or the court; or
- (e) Amendments necessary in cases where the county council finds an emergency exists. (Ord. 2018-032 § 1 (Exh. A)).

22.10.050 Notice of public hearing.

- (1) The county shall publish notice of the public hearing at least once in the official county newspaper and on the Whatcom County website no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing.

 (2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030(4), the county shall provide the following notice in addition to the requirements of subsection (1) of this section:
 - (a) The county shall mail notice to property owners as follows:
 - (i) For zoning map amendments within existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (ii) For zoning map amendments outside existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iii) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iv) For zoning map amendments that involve rezoning property to a mineral resource land designation: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (b) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 calendar days prior to the hearing.
 - (c) The county shall send notice to the appropriate city, when the proposed amendment is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed amendment at least 10 calendar days prior to the hearing.
 - (d) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven Sea Plane Base: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.
 - (e) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.
 - (f) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be

invited to submit written comments and attend the hearing to provide oral comments. (Ord. $2018-032 \S 1$ (Exh. A)).

22.10.060 Approval criteria.

- (1) In order to approve a comprehensive plan amendment, the planning commission and the county council shall find all of the following:
 - (a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - (b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
 - (c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - (i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - (ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - (iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - (d) The amendment does not include or facilitate spot zoning.
- (2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan. (Ord. 2018-032 § 1 (Exh. A)).

RCW 36.70A.130

Comprehensive plans—Review procedures and schedules—Amendments.

- (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.
- (b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.
- (c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under

RCW <u>36.70A.040</u>, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

- (d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.
- (2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:
- (i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter **43.21C** RCW;
- (ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;
- (iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter **90.58** RCW;
- (iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or
- (v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW **43.21C.440**, provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.
- (b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.
- (3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsections (4) and (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.
- (b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW **36.70A.215**.
- (4) Except as otherwise provided in subsections (6) and (8) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and

development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

- (a) On or before June 30, 2015, for King, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2016, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2017, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2018, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.
- (5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:
- (a) On or before June 30, 2024, and every eight years thereafter, for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2025, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2026, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2027, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.
- (6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.
- (b) A county that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (c) A city that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.
- (7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW <u>36.70A.040(1)</u>. Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter <u>43.155</u> or <u>70A.135</u> RCW:
 - (i) Complying with the deadlines in this section; or

- (ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.
- (b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW **43.17.250**.
- (8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.
- (b) A county that has made the election under RCW <u>36.70A.710</u>(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:
- (i) A work plan has been approved for that watershed in accordance with RCW **36.70A.725**;
- (ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;
- (iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;
- (iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or
 - (v) Three or more years have elapsed since the receipt of funding.
- (c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW **36.70A.710**(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW **36.70A.720**(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.

[2020 c 113 § 1; 2020 c 20 § 1026; 2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

NOTES:

Reviser's note: This section was amended by 2020 c 20 § 1026 and by 2020 c 113 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW $\underline{\textbf{1.12.025}}$ (2). For rule of construction, see RCW $\underline{\textbf{1.12.025}}$ (1).

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but

with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW <u>36.70A.250</u>.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [**2005 c 294 § 3**.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW <u>36.70A.130(2)</u> does not apply to master planned locations in industrial land banks: RCW <u>36.70A.367(2)(c)</u>.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-380

File ID: AB2021-380 Version: 1 Status: Forwarded for

Concurrent Review

File Created: 06/21/2021 Entered by: DBrown@co.whatcom.wa.us

Department: Council Office File Type: Ordinance

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Whatcom County Comprehensive Plan relating to density credits, PDRs, and TDRs

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance would insert the concept of a density credit program into the Whatcom County Comprehensive Plan. A density credit program would allow development incentives, such as increased land use intensity, in exchange for a voluntary contribution towards preserving agricultural lands and open space. The proposal would also amend purchase of development right (PDR) and transfer of development right (TDR) provisions in the Comprehensive Plan.

This proposal was forwarded by Council on November 7, 2018, to be considered with other proposed Comprehensive Plan and zoning amendments from 2018/2019 (see AB2018-298). Per Whatcom County Code 2.02.115, because the ordinance was not adopted within 120 days of its original introduction date, it must be reintroduced, notice of introduction republished, and at least 13 days elapsed before the ordinance can come up for final consideration by the Council

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
11/07/2018	Council	FORWARDED FOR CONCURRENT REVIEW	Council
06/29/2021	Council	INTRODUCED	

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax



Mark Personius
Director

Memorandum

October 8, 2018

TO: The Honorable Jack Louws, Whatcom County Executive

The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Director w?

RE: Density Credit Program – Comp Plan Amendments (PLN2018-00002)

The Whatcom County Council adopted a policy in the 2016 Comprehensive Plan update that included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.

In accordance with this policy, the County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. The Work Group met a total of 15 times between March 2017 and October 2018. The Work Group issued final recommendations on October 3, 2018.

The primary recommendation of the TDR/PDR Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer voluntarily makes a cash payment (instead of purchasing TDRs) to access development incentives (such as density bonuses). Any cash raised through this program would provide supplemental funding to the County's PDR program to help protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities. Therefore, the subject Comprehensive Plan amendments propose a shift in emphasis from a traditional TDR program to a density credit program.

The TDR/PDR Work Group made preliminary recommendations relating to the Whatcom County Comprehensive Plan amendments on March 7, 2018. It was discussed at this March 7 meeting that the Planning Commission may review these preliminary recommendations prior to issuance of the Work Group's final report.

The County Planning Commission recommended approval of these amendments on July 12, 2018. The TDR/PDR Work Group issued their final recommendations on October 3, 2018, which did not modify their preliminary Comprehensive Plan amendment recommendations from March.

We are now requesting Council review of the amendments and anticipate that the County Council would make a final decision in 2019, when all comprehensive plan amendments are reviewed concurrently.

Thank you for your consideration of this matter. We look forward to discussing it with you.

WHATCOM	COUNT	Y COU	NCIL AGEND	A BILL	NO	2018-298		
CLEARANCES	Initial	Date	e Date R	eceived in Council Offic	ce Agenda Date	Assigned to:		
Originator: Matt W. Aamot	М.А.	10/8/20	018		10/23/2018	Planning and		
Division Head:				CEINEL	0	Development Committe		
Mark Personius	WP	10 - 10.	-(a		10/23/2018	Introduction		
Dept, Head: Mark Personius	inp	10-10-	18	OCT 1 6 2018	11/7/18	Hearing		
Prosecutor: Royce Buckingham	28	10-12-	-18 WHA	TOM COUNTY				
Purchasing/Budget:	1			COUNCIL				
Executive: Jack Louws 1165		Linu	5.18					
TITLE OF DO	UMINT:		5./8					
1. Memorar 2. Draft Orc 3. Planning 4. Planning	evelopmen TS: Indum dinance with Commissi Commissi	th Exhibits on Finding	it A ngs tes	relating to density control of the second relating to t				
				The report (Oct 2010)	- son file at the Coun.			
SEPA review requii SEPA review compl	,	X) Yes X) Yes	() NO () NO	Should Clerk schedule a hearing? (X) Yes () NO				
•	,	,	() , , , ,	NOTE: Final approval of these amendments would occur as part of concurrent review of comprehensive plan amendments in 2019.				
hearing, you must p clear in explaining to The Whatcom Co Whatcom County Increased land us	provide the lathe intent of ounty Courty Compreh se intensity proposal w	inguage for the action neil will of tensive P r, in exch yould also	or use in the require consider a propost lan. A density cr ange for a volunt amend purchase	ANGUAGE: (If this d public notice. Be spectal to insert the concredit program would ary contribution tower of development rig	eific and cite RCW or Weept of a density creduallow development is	it program into the incentives, such as cultural lands and		
COMMITTEE A	CTION			COUNCIL AC	TION.			
0/23/2018: Discus				10/23/2018: Intr		review 7-0		
Related County (Contract #.	<u>. r</u>	Dalated Et - N	web and	0.1'	7 .0 SV -		
Courcu County (omraci #:		Related File Num County Planning I PLN2018-00002		Ordinance or Rese	olution Number:		

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on

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the County's website at: www.co.whatcom.wa.us/council.

PROPOSED BY: <u>Planning & Development Services</u> INTRODUCTION DATE: <u>October 23, 2018</u>

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ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO DENSITY CREDITS, PDRs, AND TDRs

WHEREAS, The Whatcom County Transfer of Development Right (TDR)/Purchase of Development Right (PDR) Multi-Stakeholder Work Group issued recommendations on the proposed amendments; and

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered the TDR/PDR Multi-Stakeholder Work Group and Planning Commission recommendations; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

- The subject amendments relate to the following Chapters of the Whatcom County Comprehensive Plan:
 - a. Chapter 2 Land Use;
 - b. Chapter 3 Housing;
 - c. Chapter 8 Resource Lands; and
 - d. Chapter 10 Environment.
- 2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on April 4, 2018.
- 3. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 21, 2018.
- 4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 26, 2018.

Page 1 of 8

- Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 29, 2018.
- 6. Notice of the Planning Commission hearing and that the proposal had been posted on the County website was sent to citizen, media, and others on the County's e-mail list.
- 7. The Planning Commission held a public hearing on the subject amendments on July 12, 2018.

Comprehensive Plan Approval Criteria

- 8. The criteria of Whatcom County Code (WCC) 22.10.060, shown below, must be satisfied in order to approve a comprehensive plan amendment.
 - a. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b. Further studies made or accepted by the department of planning and development services indicate changed conditions that show a need for the amendment.
 - c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - The anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.

Intergovernmental Coordination / Public Participation

- Growth Management Act (GMA) planning goals are set forth in RCW 36.70A.020. The GMA citizen participation and coordination planning goal is to "Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts" (RCW 36.70A.020(11)).
- 10. The Whatcom County Council adopted a policy in the Comprehensive Plan in the 2016 update which included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.
- 11. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. This Work Group issued recommendations to amend the Whatcom County Comprehensive Plan on October 3, 2018.

Growth Management Act / County Comprehensive Plan

- 12. GMA planning goal # 1 is to "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner" (RCW 36.70A.020(1)). Under the GMA, urban growth areas (UGAs) have been designated pursuant to RCW 36.70A.110.
- 13. GMA planning goal # 2 is to "Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development" (RCW 36.70A.020(2)).
- 14. GMA planning goal # 8 is to "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses" (RCW 36.70A.020(8)).
- 15. GMA planning goal # 9 is to "Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities" (RCW 36.70A.020(9)).
- 16. The subject amendments insert the concept of a density credit program in the Whatcom County Comprehensive Plan.
- 17. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to access incentives specifically set forth in the zoning code.

- 18. The GMA also requires internal consistency within a comprehensive plan (RCW 36.70A.070).
- 19. Whatcom County Comprehensive Plan policies relating to urban growth include:
 - Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
 - Policy 3C-6: In UGAs, consider easing lot consolidation criteria, increasing density, and decreasing minimum lot sizes, in the interest of serving housing affordability.
 - Policy 3G-4: Allow development of smaller lots and creative options.
- 20. Whatcom County Comprehensive Plan goals and policies relating to development in rural and agricultural areas include:
 - Goal 2DD: Retain the character and lifestyle of rural Whatcom County.
 - Goal 8A: Conserve and enhance Whatcom County's agricultural land base for the continued production of food and fiber.
 - Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:
 - . . . Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .
- 21. The Whatcom County Comprehensive Plan seeks to retain rural character and conserve agricultural lands. These goals and policies are primarily implemented through the Whatcom County Zoning Code, which restricts the uses and densities allowed in rural and agricultural areas. However, the County also adopted an "Agricultural Purchase of Development Rights Program" in 2002 (WCC 3.25A). The purpose of this program is:

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).

- 22. Whatcom County Comprehensive Plan Goal 2F is to "Make use of incentive programs that can effectively encourage achievement of land use goals." Policy 2F-3 is to "Revise regulations to include incentive programs."
- 23. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by seeking to concentrate urban levels of growth in UGAs, increase density, allow smaller lots, and provide creative options for developers in a UGA.
- 24. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing developer incentives to voluntarily contribute funds that would be utilized in the Agricultural Purchase of Development Rights Program, thereby helping to preserve rural character and agricultural lands.
- 25. In the past, the Agricultural Purchase of Development Rights Program has received matching funds (primarily from the federal government). Therefore, the potential exists to leverage additional matching funds with dollars from the new density credit program.
- 26. The subject amendments address a density credit program, providing incentive provisions that are entirely optional. A developer may choose to develop at the existing base densities allowed by a given zoning district. Alternatively, a developer may choose to utilize the incentives that allow increased land use intensity on a site through the purchase of density credits.
- 27. The subject amendments are internally consistent with the goals and policies of the Whatcom County Comprehensive Plan by promoting a voluntary program that would allow incentives, such as increased land use intensity, in designated areas while contributing to preservation of rural and agricultural lands.

County-Wide Planning Policies

- 28. Countywide Planning Policies include the following:
 - C-5 Urban Growth areas should be established in a way that preserves agricultural land, forestry, mineral resources, water resources, and critical areas. Urban growth shall maintain proper buffers from natural resource areas to minimize conflicts with natural resources and industries based on them.
 - D-4 Existing cities should absorb additional population at a range of densities appropriately responsive to the city's community vision before extending city Urban Growth Areas into areas where growth would adversely impact critical areas and resource lands. . .

- D-5 All cities should grow in an efficient manner while maintaining their character and, where reasonable, shall provide for adequate open space between cities to prevent strip development.
- D-6 Cities should be encouraged to provide positive incentives for in-fill.
- E-2 Non-city urban growth areas, for already urbanized unincorporated residential areas shall be encouraged to infill in a way that will facilitate efficient provision of facilities and services consistent with the scale of development.
- H-1 Adequate open space is vital to the quality of life and sense of place in Whatcom County. The county, cities, Port of Bellingham, and other appropriate jurisdictions should coordinate protection of linked greenbelts, within and between Urban Growth Areas, parks, and open space to protect wildlife corridors and to enhance recreational opportunities, public access and trail development.
- H-3 The county and the cities shall encourage, to the extent it is feasible, separation of Urban Growth Areas through planning, zoning, development regulations, open space purchase, conservation easements and other mechanisms which may be appropriate. Also, an array of incentives such as density bonuses, design flexibility and transferable development rights shall be offered to affected land owners.
- I-9 The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.
- 29. The density credit policies would encourage increased densities in urban areas and contributions towards preservation of rural and agricultural lands.

Interlocal Agreements

30. Whatcom County and cities have interlocal agreements that address TDRs, PDRs, and in lieu fee programs. The subject amendments do not conflict with these interlocal agreements.

Further Studies/Changed Conditions

31. The Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report was issued on October 3, 2018

32. The primary recommendation in the TDR/PDR Multi-Stakeholder Work Group Final Report (October 2018) is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities.

Public Interest

- 33. The public interest will be served by approving the amendment.
 - a. The density credit program would encourage development in UGAs, thereby potentially facilitating population growth in these areas as envisioned in the Comprehensive Plan.
 - b. Prior to actual development, review would be conducted to ensure that service providers are able to provide adequate services and public facilities.
 - c. The density credit program is intended to conserve designated agricultural lands, as envisioned in the Comprehensive Plan.

Spot Zoning

34. The subject Comprehensive Plan amendments do not include nor facilitate spot zoning.

CONCLUSION

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

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

Section 1. The Whatcom County Comprehensive Plan is hereby amended as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this	day of	, 2019.	
WHATCOM COUNTY COU WHATCOM COUNTY, WA			
ATTEST:			
Dana Brown-Davis, Cour	ncil Clerk	Rud Browne, C	Chairperson
APPROVED as to form:		() Approved	() Denied
	2		
Civil Deputy Prosecutor		Jack Louws, Ex	kecutive
		Date:	

Exhibit A – Comprehensive Plan Amendments

Chapter 2 (Land Use)

Policy 2A-14:

Maintain a density credit program to incentivize increased land use intensity in designated areas and decrease residential density in agricultural and rural areas by authorizing density credits. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a higher density as specifically set forth in the Whatcom County Zoning Code.

Strive to establish by December 2017 a clear, predictable, and fair process for allowing expansion of urban growth areas that considers reasonable measures to mitigate the impacts of residential development in rural lands, agricultural areas (broadly defined), and sensitive watersheds. This process should include:

- 1. Consultation with a focus group of potential TDR/PDR users in the building industry.
- 2. Convening a multi-stakeholder work group, including the Cities, tasked with:
 - · Reviewing the current TDR and PDR programs.
 - Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.
 - Identifying opportunities and solutions for creating a workable TDR program.
 - Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.
 - Recommending policy and regulatory amendments necessary to implement the above policy.
 - Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.
 - Identifying receiving areas.

- Identifying other factors and/or growth management tools.
- Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.
- Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.
- Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.

Rationale: In November 2017, the Whatcom County Council adopted a density credit program applicable to portions of the Birch Bay UGA (Ordinance 2017-062). The proposed Comprehensive Plan amendments would shift the emphasis in County Policy from a traditional TDR program, which has not worked well over the years, to the density credit program. Advantages of a density credit program, compared to a traditional TDR program, include:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);
- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios.

Summarized from *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* by Nelson, Pruetz, and Woodruff, 2012, pp. 45 and 47).

Additionally, the TDR/PDR Multi-Stakeholder Work Group will issue recommendations in 2018. It is anticipated that the County Council will make a final decision on these Comprehensive Plan amendments in 2019, after the Work Group completes its work.

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as cluster density bonuses in urban growth areas in association with the density credit program, purchase of development rights, transfer of development rights, and tax deferrals.

Rationale: This change incorporates a reference to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2H-2: Establish incentive programs such as cluster density bonuses in urban growth areas in association with the density credit program, and purchase of development rights, and voluntary, workable transfer of development rights, where appropriate, to compensate property owners if rights are unduly infringed.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2N-3: Consider <u>development incentives</u>, <u>such as density bonuses</u>, <u>in cities and UGAs in association with the density credit program.as receiving areas for development rights transferred from sending areas. Encourage cities to consider development incentives in association with a cooperative City-County density credit program.</u>

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to a density credit program. It also encourages cities to establish density credit programs in conjunction with the County.

Policy 2U-5: Review and update the interlocal agreement with Bellingham, prior to expiration of the current interlocal agreement, to provide for:

- Coordinated growth management and capital facility planning;
- timing and provision of utility services and other urban services;
- timing and procedures to be used for review of adequate land supply;
- timing of annexations;
- revenue sharing formulas prior to and after annexation;
- development standards and regulations;

- joint City/County review of development proposals in the UGA;
- affordable housing; and
- <u>a density credit program and/or</u> transfer of development rights within the City of Bellingham.

Rationale: The existing interlocal agreement between Whatcom County and the City of Bellingham is valid through the year 2022. When the interlocal is updated in 2022, it should reference a density credit program. The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been utilized/extinguished.

Policy 2U-7: Whatcom County and Bellingham should designate <u>areas that can accommodate density bonuses in association with a density credit program and/or</u> receiving areas within the City of Bellingham and its UGA for Transfer of Development Rights from the Lake Whatcom Watershed.

Rationale: The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been extinguished.

Policy 2DD-10: Adopt <u>and maintain</u> incentive programs, such as purchase of development rights, <u>the density credit program, transfer of development rights</u>, and tax deferrals, to achieve desired land use policies in rural areas and in areas where there are compelling reasons to do so.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2UU-4: Support the retention of open space and open space corridors through the use of education and incentives, such as purchase or transfer of development rights, density bonuses within UGAs in association with the density credit program, cluster development, and acquisition of easements.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2UU-6: Improve public access to shorelines and other lands using such mechanisms as purchase or transfer of development rights, density bonuses within UGAs in association with the density credit program, and open space tax status.

Rationale: Same as rationale for Policy 2UU-4 above.

Chapter 3 (Housing)

Policy 3F-1: Include incentives in land use regulations, in UGAs and in Planned Unit Developments (PUDs), to offset the reduced profit inherent in more affordable types of housing. Incentives might include transfer of development rights, density bonuses, fee waivers, expedited permit review, and/or infrastructure concessions to protect developers wherever special needs populations are specifically served.

Rationale: This change reflects the shift away from a traditional TDR.

Chapter 8 (Resource Lands)

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

- Maintenance of 100,000 acres of agricultural land to support a healthy agricultural industry.
- A density credit program where development incentives are offered in cities and/or UGAs if density credits are purchased by the developer. Funds from the density credit program would supplement the existing Purchase of Development Rights (PDR) program funding. workable transfer of development rights program (TDR) in which the development potential of a site could be transferred to another location where development is more favorable.
- The workable TDR program shall give priority to the creation of economically viable receiving areas.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It recognizes that monies taken in through the density credit program would go towards reducing development potential in areas suitable for agriculture.

- Developing a marketplace approach to strengthening agricultural practices while enhancing larger-scale watershed processes and functions by identifying feasible opportunities on agricultural land to improve both watershed health and agricultural viability and developing incentives and tools to compensate farmers for actions that exceed minimum regulatory standards.
- Maintaining a Purchase of Development Rights (PDR) program that facilitates
 the removal of development rights from productive farmland and provides
 permanent protection of those agricultural lands through the use of
 conservation easements or other legal mechanisms.
- Incentives and cooperation between landowners and public agencies such as the use of the current use tax assessment provisions.
- Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.
- Discouraging conversion of designated agricultural lands to non-agricultural uses.
- Track acres lost due to conversion, development, or policy implementation such as critical areas ordinance, so mitigation strategies can be implemented to offset the acres lost.
- Education and marketing of programs that emphasize recognition of the local and regional significance of agricultural land as a natural resource and the economic, social and ecological benefits it provides.
- Working cooperatively with local farmers and coordinating with local and state agencies to address water quality impacts of agricultural activities on local streams and groundwater.
- Securing an adequate, sustainable, and legal supply of irrigation water sufficient to support the long-term viability of the local agricultural industry.
- Identify and evaluate any new or changed zoning or comprehensive plan agricultural lands of long term commercial significance designations as needed or warranted for the Rural Study Areas.
- Economic development assistance to agricultural-related enterprises.
- Recognize regulatory impacts and encourage farm friendly regulations.

Chapter 10 (Environment)

Policy 10C-3: Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase/voluntary, workable transfer of development rights, the density credit program, and other mechanisms that assist affected property owners.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 10E-6: Maintain a comprehensive program of regulatory and non-regulatory mechanisms to achieve Natural Hazard goals and policies. This program should include such mechanisms as education, tax incentives, zoning, land use regulations, conservation easements, purchase of development rights, transfer of development rights, and public acquisition.

Rationale: This change reflects the shift away from a traditional TDR. It does not reference the density credit program, because funds from density credits will go towards preserving rural and agricultural lands and are not specifically targeted towards naturally hazardous areas.

Policy 10L-16: Consider establishing-important habitat areas (as set forth in best available science and Wildlife Advisory Committee recommendations) in the Purchase of Development Rights Program Guidelines site evaluation criteria. as sending areas after creating a voluntary, workable transfer of development rights (TDR) program.

Rationale: This change reflects the shift away from a traditional TDR. It also recognizes that the existing PDR Program Guidelines "site evaluation" criteria include conservation values such as wildlife habitat.

Policy 10P-17: Consider establishing the Drayton Harbor Watershed as an area for directed PDR investments and encourage the cities of Blaine and Ferndale to establish density credit programs that provide funding to the County PDR program.sending area when considering a transfer of development rights (TDR) program.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It also encourages a cooperative effort between the County and cities that would provide developer incentives in the cities while reducing development potential in the rural and/or agricultural areas of the Drayton Harbor Watershed.

WHATCOM COUNTY PLANNING COMMISISON

Density Credit Program Comprehensive Plan Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

- 1. The subject proposal amends the following Chapters of the Whatcom County Comprehensive Plan:
 - a. Chapter 2 Land Use;
 - b. Chapter 3 Housing;
 - c. Chapter 8 Resource Lands; and
 - d. Chapter 10 Environment.
- 2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on April 4, 2018.
- 3. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 21, 2018.
- 4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 26, 2018.
- 5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 29, 2018.
- 6. Notice of the Planning Commission hearing and that the proposal had been posted on the County website was sent to citizen, media, and others on the County's e-mail list.
- 7. The Planning Commission held a public hearing on the subject amendments on July 12, 2018.

Planning Commission Findings, Page 2

Comprehensive Plan Approval Criteria

- 8. The criteria of Whatcom County Code (WCC) 22.10.060, shown below, must be satisfied in order to approve a comprehensive plan amendment.
 - a. The amendment conforms to the requirements of Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b. Further studies made or accepted by the department of planning and development services indicate changed conditions that show a need for the amendment.
 - c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.

Intergovernmental Coordination / Public Participation

- 9. Growth Management Act (GMA) planning goals are set forth in RCW 36.70A.020. The GMA citizen participation and coordination planning goal is to "Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts" (RCW 36.70A.020(11)).
- 10. The Whatcom County Council adopted a policy in the Comprehensive Plan in the 2016 update which included convening a multi-stakeholder work group, including the Cities, to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.
- 11. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. This Work Group issued preliminary recommendations on Whatcom County Comprehensive Plan amendments on March 7, 2018.

Growth Management Act / County Comprehensive Plan

- 12. GMA planning goal # 1 is to "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner" (RCW 36.70A.020(1)). Under the GMA, urban growth areas (UGAs) have been designated pursuant to RCW 36.70A.110.
- 13. GMA planning goal # 2 is to "Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development" (RCW 36.70A.020(2)).
- 14. GMA planning goal # 8 is to "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses" (RCW 36.70A.020(8)).
- 15. GMA planning goal # 9 is to "Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities" (RCW 36.70A.020(9)).
- 16. The subject amendments insert the concept of a density credit program in the Whatcom County Comprehensive Plan.
- 17. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to access incentives specifically set forth in the zoning code.
- 18. The GMA also requires internal consistency within a comprehensive plan (RCW 36.70A.070).
- 19. Whatcom County Comprehensive Plan policies relating to urban growth include:
 - Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
 - Policy 3C-6: In UGAs, consider easing lot consolidation criteria, increasing density, and decreasing minimum lot sizes, in the interest of serving housing affordability.
 - Policy 3G-4: Allow development of smaller lots and creative options.
- 20. Whatcom County Comprehensive Plan goals and policies relating to development in rural and agricultural areas include:

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

Goal 8A: Conserve and enhance Whatcom County's agricultural land base for the continued production of food and fiber.

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process.

Measures that can be taken to support working farms and maintain the agricultural land base should include:

... Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms...

21. The Whatcom County Comprehensive Plan seeks to retain rural character and conserve agricultural lands. These goals and policies are primarily implemented through the Whatcom County Zoning Code, which restricts the uses and densities allowed in rural and agricultural areas. However, the County also adopted an "Agricultural Purchase of Development Rights Program" in 2002 (WCC 3.25A). The purpose of this program is:

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).

- 22. Whatcom County Comprehensive Plan Goal 2F is to "Make use of incentive programs that can effectively encourage achievement of land use goals." Policy 2F-3 is to "Revise regulations to include incentive programs."
- 23. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by seeking to concentrate urban levels of growth in UGAs, increase density, allow smaller lots, and provide creative options for developers in a UGA.
- 24. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing developer incentives to voluntarily contribute funds that would be utilized in the Agricultural Purchase of Development Rights Program, thereby helping to preserve rural character and agricultural lands.
- 25. In the past, the Agricultural Purchase of Development Rights Program has received matching funds (primarily from the federal government). Therefore, the potential exists to leverage additional matching funds with dollars from the new density credit program.

- 26. The subject amendments address a density credit program, providing incentive provisions that are entirely optional. A developer may choose to develop at the existing base densities allowed by a given zoning district. Alternatively, a developer may choose to utilize the incentives that allow increased land use intensity on a site through the purchase of density credits.
- 27. The subject amendments are internally consistent with the goals and policies of the Whatcom County Comprehensive Plan by promoting a voluntary program that would allow incentives, such as increased land use intensity, in designated areas while contributing to preservation of rural and agricultural lands.

County-Wide Planning Policies

- 28. Countywide Planning Policies include the following:
 - C-5 Urban Growth areas should be established in a way that preserves agricultural land, forestry, mineral resources, water resources, and critical areas. Urban growth shall maintain proper buffers from natural resource areas to minimize conflicts with natural resources and industries based on them.
 - D-4 Existing cities should absorb additional population at a range of densities appropriately responsive to the city's community vision before extending city Urban Growth Areas into areas where growth would adversely impact critical areas and resource lands. . .
 - D-5 All cities should grow in an efficient manner while maintaining their character and, where reasonable, shall provide for adequate open space between cities to prevent strip development.
 - D-6 Cities should be encouraged to provide positive incentives for in-fill.
 - E-2 Non-city urban growth areas, for already urbanized unincorporated residential areas shall be encouraged to infill in a way that will facilitate efficient provision of facilities and services consistent with the scale of development.
 - H-1 Adequate open space is vital to the quality of life and sense of place in Whatcom County. The county, cities, Port of Bellingham, and other appropriate jurisdictions should coordinate protection of linked greenbelts, within and between Urban Growth Areas, parks, and open space to protect wildlife corridors and to enhance recreational opportunities, public access and trail development.
 - H-3 The county and the cities shall encourage, to the extent it is feasible, separation of Urban Growth Areas through planning, zoning, development regulations, open space purchase, conservation easements and other mechanisms which may be appropriate. Also, an array of incentives such as density bonuses, design

flexibility and transferable development rights shall be offered to affected land owners.

- I-9 The County and the cities recognize the need for the protection and utilization of natural resources and resource lands including agricultural, mineral, forestry and fishing. As part of a broad based economy, productive timber, agriculture and fisheries industries should be supported in a sustainable manner.
- 29. The density credit policies would encourage increased densities in urban areas and contributions towards preservation of rural and agricultural lands.

Interlocal Agreements

30. Whatcom County and cities have interlocal agreements that address TDRs, PDRs, and in lieu fee programs. The subject amendments do not conflict with these interlocal agreements.

Further Studies/Changed Conditions

- 31. The Whatcom County TDR/PDR Multi-Stakeholder Work Group has been working on TDR, PDR, and density credit issues since 2017.
- 32. A preliminary recommendation of the TDR/PDR Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities.

Public Interest

- 33. The public interest will be served by approving the amendment.
 - a. The density credit program would encourage development in UGAs, thereby potentially facilitating population growth in these areas as envisioned in the Comprehensive Plan.
 - b. Prior to actual development, review would be conducted to ensure that service providers are able to provide adequate services and public facilities.
 - c. The density credit program is intended to conserve designated agricultural lands, as envisioned in the Comprehensive Plan.

Spot Zoning

34. The subject Comprehensive Plan amendments do not include nor facilitate spot zoning.

CONCLUSIONS

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

RECOMMENDATION

Based upon the above findings and conclusions, staff recommends approval of:

Exhibit A, Whatcom County Comprehensive Plan amendments.

WHATCOM COUNTY PLANNING COMMISSION

Nicole Oliver, Chair

Commissioners present at the July 12, 2018 meeting when the vote was taken: Gary Honcoop, Stephen Jackson, Kimberly Lund, Jon Maberry, Natalie McClendon, Dominic Moceri, and Nicole Oliver.

Vote: Ayes: 7, Nays: 0, Abstain: 0, Absent: 2. Motion carried to adopt the above amendments.

Planning Commission Exhibit A is attached to the proposed Ordinance.

Regular Meeting 1

Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Northwest Annex at 6:30 p.m.

Roll Call

Present: Nicole Oliver, Natalie McClendon, Gary Honcoop, Dominic Moceri, Stephen

Jackson, Jon Maberry, Kim Lund

Absent: Kelvin Barton, Atul Deshmane

Staff Present: Mark Personius, Matt Aamot, Becky Boxx

Department Update

Mark Personius updated the commission on the following:

- The County Council actions
- The Planning Commission schedule

Open Session for Public Comment

There was no public comment.

Commissioner Comments

There were no commissioner comments.

Approval of Minutes

June 14, 2018: Commissioner Jackson moved to approve the minutes as written. Commissioner Lund seconded. The motion carried.

Public Hearing

File #PLN2018-00002: A proposal to insert the concept of a density credit program into the Whatcom County Comprehensive Plan. A density credit program would allow development incentives, such as increased land use intensity, in exchange for a voluntary contribution towards preserving agricultural lands and open space. The proposal would also delete many of the references to transfer of development rights (TDRs) in the Comprehensive Plan.

Matt Aamot presented the staff report.

Some form of the Transfer of Development Rights (TDR) has existed, in the zoning code, since 1982. In the 1990's and 2000's codes were enacted to try and get the TDR program going but it never got off of the ground. 247 development rights have been certified. Only 18 development rights have been transferred from one property to another.

Regular Meeting 2

The county also has a Purchase of Development Rights (PDR) program that was enacted in 2002. The PDR program's main source of local funding is the Conservation Futures property tax. It is also eligible for federal and state matching funds. Over the last 16 years 130 development rights have been purchased from agricultural and rural lands and there are conservation easements on about 919 acres. The PDR program has been more effective than the TDR program over the years.

1 2

The County Council adopted a new policy in the 2016 Comprehensive Plan update. It says: convene a multi-stakeholder workgroup to review the existing TDR and PDR programs and make recommendations for the future. This new policy specifically mentions that cities would be represented on the work group as they are seen as important partners in this process.

In February, 2017 the County Executive appointed 14 members to the work group, representing a variety of interests. The work group has met 14 times, between March 2017 and June 2018. They have developed preliminary recommendations. They will meet again, in the fall, after a summer break, in order to finalize those recommendations.

 One of the primary, preliminary recommendations of the work group is to transition from a traditional TDR program, which has not worked that well in the past, to a density credit program which would provide supplemental funding to the county's PDR program.

 Based upon this recommendation staff proposed a number of amendments to the Comprehensive Plan which were reviewed by the work group in January and March. On March 7th the work group gave preliminary approval to the draft Comprehensive Plan policies.

What is a density credit program? It is a voluntary incentive program. There is no obligation for a developer to use it. It is a method for developers or land owners to acquire density bonuses or other incentives, in designated areas, without the need to rezone. It would supplement existing funding for preservation of agricultural and rural lands.

In 2017 the Planning Commission reviewed and the County Council approved the first density credit zoning code provisions in the Birch Bay Resort Commercial zone. In that zone a land owner could potentially increase the density, for single family development, from 7 units per acre to 14 units per acre through the planned unit development process if they purchase density credits. Each density credit purchased would allow 1 additional dwelling unit on the property. In the county's Unified Fee Schedule a fee was set of \$4000 per density credit.

A density program has several advantages. One of them is that developers know upfront what the cost is and don't have to spend the time negotiating with TDR sellers. The county can then use those funds on its highest priority preservation areas. Cash

Regular Meeting 3

can be used in the existing PDR program so we don't have to reinvent the wheel. The potential exists to leverage matching funds from federal and state governments.

While the TDR/PDR workgroup recommends focusing on the density credit model in the future, they also recommended retaining the existing TDR program. While it is not used that often there are 247 certified rights, most of which have not been transferred. The county would continue to recognize these rights.

Staff recommends approval of the proposed amendments.

Commissioner McClendon asked if there would be code amendments to go along with the Comprehensive Plan amendments.

Mr. Aamot stated there will be zoning code amendments in the future. This is just the first step of implementation.

Commissioner McClendon asked why the Planning Commission is having a hearing on this now when the work group has not completed its recommendations.

Mr. Aamot stated because this proposal is part of the yearly Comprehensive Plan docket. The review of this docket needs to be done by the end of the year. The work group will not be meeting again until October which does not leave much time for the commission to look at this later. The work group is fine with the commission looking at it now.

The hearing was opened to the public.

Patrick Alesse, Whatcom County: Birch Bay is an area that is served by a water and sewer district. Because the area has this is can grow densely. A lot of the Birch Bay area is wetlands which is a resource that can't be built on. In Birch Bay it seems that someone should be able to transfer a resource to someone else who wants to build at Birch Bay. The money for development at Birch Bay should stay at Birch Bay to perhaps build a park. There is an area near wetlands, about six acres, that someone is planning on putting 46 units on. People have said that with the sea rise there can't be that much density there. He should be able to sell his units and build at higher levels. We have a situation where urban areas are sending its money resources to rural areas which did not sit well with him.

The public hearing was closed.

Commissioner Honcoop asked how the cities will be integrated into this process.

 Mr. Aamot stated the City of Bellingham already has a TDR/PDR program. They had the first significant use of their TDR program, last year, on Telegraph Road. They had a site that would allow 35 units and the developer purchased 48 additional units for \$5,000 each. That money went to Lake Whatcom watershed preservation. The small cities do not have any programs. The county does have interlocal agreements stating

Regular Meeting 4

the cities will work on this issue. The cities have had a somewhat cautious approach to this. They have agreed to talk about it. Part of their concern is money leaving the city.

Ralph Black-local developer and chair of the work group: There will be some difficulty meshing different city's priorities into the program. There are things the county can directly influence the rest will be done through interlocal agreements. Bellingham is most advanced in this process as they have been doing it for a while. They basically have a cash-in-lieu-of program which works in conjunction with two different parts of their program.

Mr. Aamot stated the county PDR administrator would like to integrate environmental preservation and recreation into the program. Some of the cities like that idea of using the money for trails, etc. near their jurisdictions.

Mr. Black stated a lot of the cities have urban growth areas (UGAs) where they have not allowed extension of services without getting annexed. At one point Bellingham allowed a TDR program by using density transfers as ways of extending services into their UGA. There are other creative solutions that may benefit the small cities. The GMA does not prohibit extending services outside of the UGAs provided you are providing water at a rural service level.

Commissioner Lund stated the one advantage to the TDR program is it is less immune to the economics of real estate prices whereas \$4000 is a set price.

Mr. Aamot stated the County Council set the price, based on recommendations of the working group and the price can be changed, on an annual basis, if needed.

Commissioner Honcoop asked where staff sees this being used in the county.

 Mr. Aamot stated they are hoping to work with the small cities. He sees it being used in the Birch Bay UGA and also used for accessory dwelling units. Right now the size of an accessory dwelling unit is 1, 248 square feet and it could be raised by 500 square feet per unit if using density credits. Another requirement of accessory dwelling units is that the landowner has to live in one of the units. An option is to delete this requirement. Currently a maximum density in the R5A zone is five acres. This could be reduced to 2.5 acres with density retired someplace else.

Commissioner Honcoop stated his concerns regarding the timing of this process as the working group has not finalized their recommendations.

Commissioner Oliver asked how much funding has been spent on the PDR program and how is it being monitored.

- Mr. Aamot stated the County Council looks at the funds through the budget process.
- The Conservation Futures fund takes in a bit over one million dollars per year. The
- 46 budget process breaks down what is spent every year.

Regular Meeting 5

Mr. Personius stated the PDR administrator has been very successful in getting matching funds to purchase properties so not as much county money is used.

Commissioner Oliver asked what other things the Conservation Futures money is used for.

Mr. Personius stated the majority of it is used for parks.

Commissioner McClendon moved to recommend approval of Exhibit A and the Findings of Fact.

Commissioner Moceri seconded.

Roll Call Vote: Ayes-Honcoop, Jackson, Lund, Maberry, McClendon, Moceri, Oliver; Nays-0; Abstain-0; Absent: Barton, Deshmane. The motion carried.

File #PLN2018-00003: A proposal to repeal the Cherry Point Ferndale Subarea Plan, which was adopted in 1981. The proposal would also amend related provisions in the Whatcom County Comprehensive Plan and the Whatcom County Zoning Code.

Matt Aamot presented the staff report.

The Cherry Point/Ferndale Subarea Plan was adopted in 1981. At that time the new Title 20 zoning would be applied to each subarea as it was adopted. When the county's Comprehensive Plan was adopted, in 1997, it included text, goals and policies relating to the Cherry Point industrial area. The Cherry Point UGA section of the Comprehensive Plan was most recently updated in 2017. The area around Ferndale is also covered by the subarea plan. The county's Comprehensive Plan contains text, goals and policies relating to the Ferndale UGA. These were last updated in 2016. The subarea plan also includes rural lands which have been subject to a high level of scrutiny because of legal challenges to the county's rural element. These policies were updated in 2016.

The Growth Management Act (GMA) states that a comprehensive plan may include, when appropriate, subarea plans, each of which is consistent with the comprehensive plan. Subarea plans are optional under the GMA.

There are a number of inconsistencies between the subarea plan and the comprehensive plan. The subarea plan's population projections go through the year 2000 whereas the comprehensive plan's projection goes through the year 2036. The subarea plan had a 15 year planning horizon, which has ended. The comprehensive plan has 2036 planning horizon.

The GMA was adopted in 1990 and required counties to designate UGAs for the first time. The subarea plan was adopted in 1981, before the GMA criteria were enacted. The subarea plan included urban reserves and they don't match the current comprehensive plan.

 Malt-Agnot 10/23/18 Planning \$8 2018-298

Density Credit Comprehensive Plan Amendments

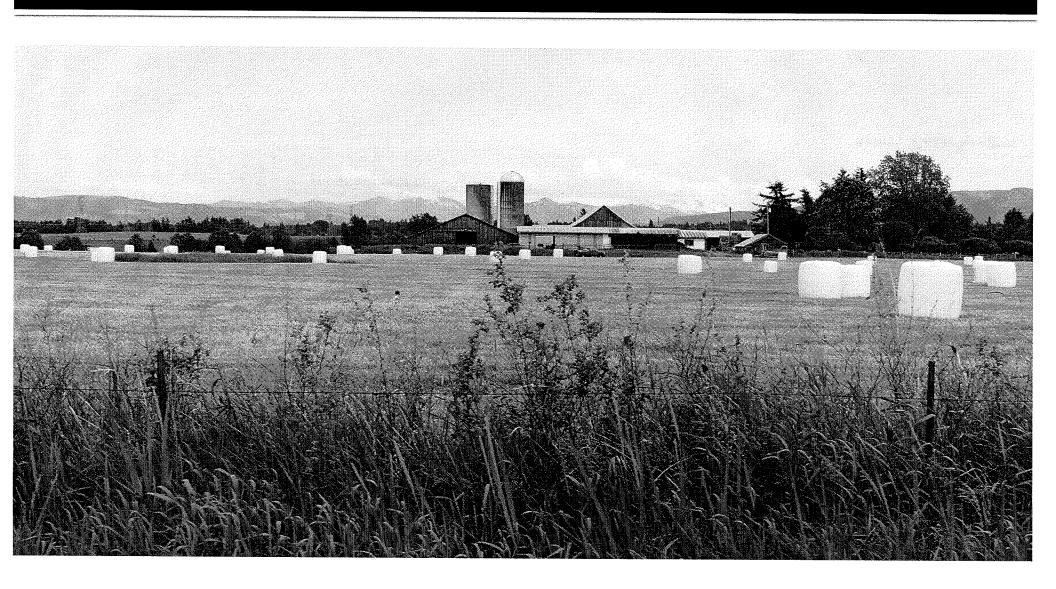
Whatcom County Planning and Development Services
Presentation at County Council's Planning & Development Committee
October 23, 2018

1. Background Information

II. Proposed Comp Plan Amendments

III. Conclusions

I. Background Information



Existing TDR Program

TDR Program Established: 1982

■ TDRs Certified: 247

TDRs Transferred: 18

Existing PDR Program

PDR Program Established: 2002

Development Rights Purchased: 130

Acres: 919

County Comp Plan - 2016 Update

- Convene Multi-Stakeholder Work Group
- Review current TDR and PDR programs
- Make policy recommendations

TDR / PDR Work Group

Ralph Black

Jori Burnett

Chris Behee

Michael Jones

Rollin Harper

Dave Timmer

Bill Henshaw

Betty Sanchez

Myrle Foster

Phil Thompson

Steve Powers

Rod Erickson

Karlee Deatherage

Rud Browne

TDR User (Chair)

City of Ferndale (Vice-Chair)

City of Bellingham

City of Blaine

Cities of Everson, Nooksack, and Sumas

City of Lynden

Building Industry

Realtors

Rural Property owner

Economist

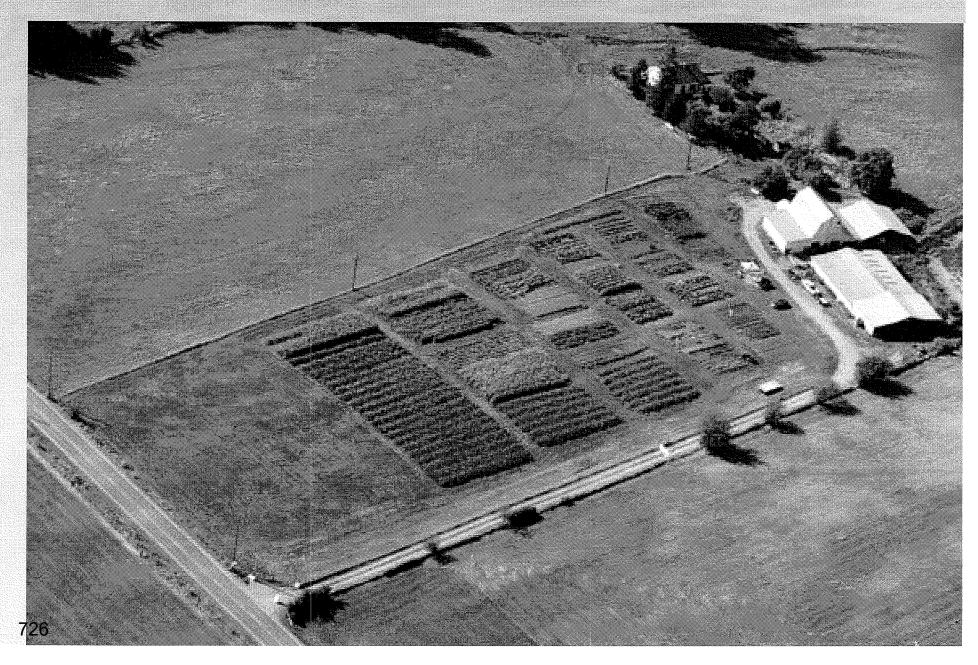
Affordable housing

Agriculture

Environmental

County Council Member

Work Group Recommendation

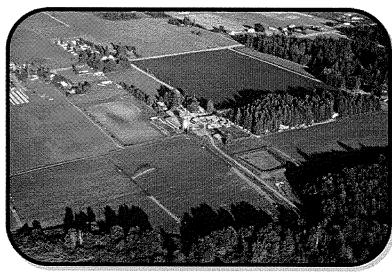


II. Proposed Comp Plan Amendments

Whatcom County Comprehensive Plan



Adopted August 9, 2016 Whatcom County Planning and Development Services



SISSIS Mark Turns







What is a Density Credit Program?

- Voluntary Developers may choose to develop under current zoning or purchase density credits.
- <u>Density</u> Developers can access incentives such as increased density in designated areas.
- Ag Preservation Any funding raised through the density credit program will go into the existing PDR program.

Birch Bay Example (2017)

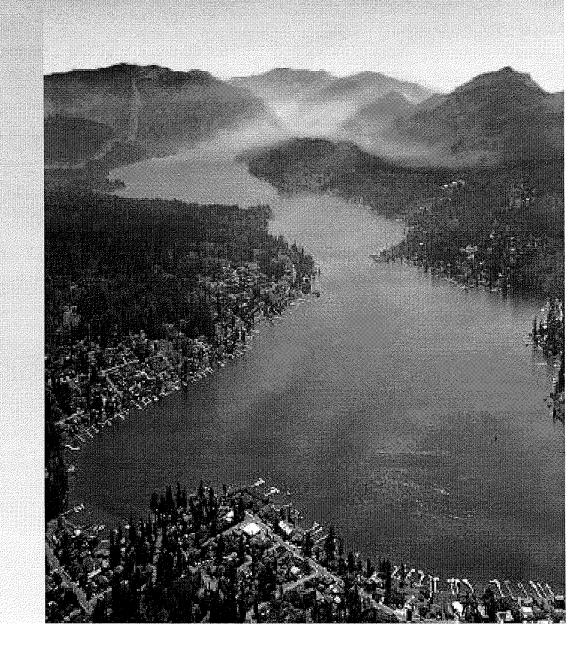


Density Credit - Advantages

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities;
- The cash can be utilized in an existing PDR program; and
- Simplifies administration of the program.

The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs by Nelson, Pruetz, and Woodruff (2012)

Keeping TDR Program



III. Conclusions

Whatcom County TDR/PDR Multi-Stakeholder Work Group

Final Report

October 3, 2018

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1. Introduction

Whatcom County has an important interest in protecting agricultural lands, rural areas, and sensitive watersheds throughout the county. Protection of these areas benefits all County residents, including those living in cities. At the same time, cities have the responsibility to plan for future growth in their communities, providing adequate land and densities to accommodate urban growth over the 20-year planning period. These city planning efforts, intended to attract the majority of population growth into urban areas, also benefit the County as a whole. County and city planning efforts must be coordinated and consistent under the Growth Management Act or GMA (RCW 36.70A.100).

Agricultural and Rural Lands

Agriculture has been an important component of the Whatcom County economy for a long time and remains so today. The *Preliminary Assessment of Drivers of Agricultural Land Conversion in Whatcom County Washington* report (Aug. 2016, hereinafter referenced as "*Drivers of Agricultural Land Conversion* report") states:

. . . The county has always been a leader in agricultural products with dairy being the mainstay. Whatcom is the sixth largest agriculture county in Washington and ranks in the top 3% out of 3,065 U.S. agricultural counties. The 2012 Census of Agriculture shows that 1,702 Whatcom farms representing 115,831 acres produced 357 million dollars of agricultural goods, an average of nearly \$210,000 per farm. . . (pp. 14-15).

The GMA requires counties to designate and conserve agricultural lands of long-term commercial significance (RCW 36.70A.060 and .170). The Whatcom County Comprehensive Plan designates almost 86,000 acres of Agriculture land, most of which is in the central and northern areas of the County. The Comprehensive Plan indicates the purpose of the Agriculture designation is:

To recognize and promote agriculture in Whatcom County and protect prime agricultural soils and productive agricultural lands from conversion to other uses. To prevent conflicts between residential and agricultural uses (p. 2-90).

Designated Agriculture land is located adjacent to five of the seven cities in Whatcom County (Everson, Ferndale, Lynden, Nooksack, and Sumas).

The GMA also requires county comprehensive plans to include rural land use designations to protect rural character (RCW 36.70A.070(5)). Approximately 38,000 acres in the Rural one dwelling/five acres (R5A) and Rural one dwelling/ten acres (R10A) zones, which constitute almost 1/3 of these zoning districts, are actively farmed (*Drivers of Agricultural Land Conversion* report, p. 16). While agriculture is one valued component of rural lands, there are also other factors that make rural lands valuable to County residents. In fact the Whatcom County Comprehensive Plan addresses multiple factors in the purpose of the Rural designation, which is:

To provide opportunity for a variety of low-density residential development including cluster development with the flexibility to practice farming or forestry, or operate a home occupation or cottage industry; to retain a sense of community. Also to encourage agriculture and forestry activities through the use of incentives (p. 2-90).

Maintaining agricultural lands and rural character are both important to the quality of life and sense of place in Whatcom County.

<u>Watersheds</u>

Lake Whatcom is the drinking water source for approximately 100,000 people, many of whom live in Bellingham (http://www.whatcomcounty.us/984/Lake-Whatcom-Management). The Lake also provides swimming, fishing, and boating opportunities for both City and County residents, along with fish and wildlife habitat. The majority of the 36,000 acre watershed is located within unincorporated Whatcom County. Therefore, both the City of Bellingham and Whatcom County have important interests in preserving Lake Whatcom water quality by managing land use in the watershed.

The City of Blaine is located on Drayton Harbor. The Drayton Harbor Watershed is over 36,000 acres. The watershed includes a relatively large area in the City of Blaine, a smaller area in the City of Ferndale, rural lands, and agricultural lands. The Whatcom County Comprehensive Plan states:

Both the County and the City of Blaine are concerned about water quality in Drayton Harbor. Drayton Harbor has a rich history as a shellfish resource. Studies have shown that fecal coliform levels in Drayton Harbor are high and have led to the closure of shellfish harvesting beds. Harvest has been restricted due to fecal pollution since 1952 with closures beginning in 1988. In 1995 the Drayton Harbor Shellfish Protection District was established. Drayton Harbor was entirely closed to commercial shellfish harvest in 1999. In 2004, 575 acres were upgraded to conditionally approved with closures occurring after heavy rainfall. Currently the conditionally approved portion is closed from November through February. Several waterbodies in the watershed are on the 303(d) list, including California and Dakota Creeks. In 2007, the County adopted an update to the Drayton Harbor Shellfish Protection District Recovery Plan. This plan reflects the success of reopening some areas for shellfish harvesting in 2004 and outlines future plans for Drayton Harbor restoration. In 2014, the City initiated a three-year project intended to identify point and nonpoint sources of pollution and take corrective action. . . Land uses throughout the watershed contribute to water quality in the Harbor and efforts by both the County and the City are necessary to manage water quality (p. 2-28).

Both the City and the County have important interests in preserving Drayton Harbor water quality by managing land use in the watershed.

City Planning / Urban Growth

The GMA states that the county must "... designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature..." (RCW 36.70A.110(1)). Additionally, the Whatcom County Comprehensive Plan's vision statement indicates:

Whatcom County is a place where urban growth is concentrated in urban areas, where there is a distinct boundary between urban and rural uses, where agricultural use is encouraged, and where resource lands and water resources are protected. Rural areas are peaceful and quiet with less traffic and congestion than in urban areas. There is low-density development with open spaces allowing for privacy. A sense of community is retained and local input is considered in land use decisions (p. 2-1).

Whatcom County and the cities worked in close cooperation and coordination in the 2016 comprehensive plan updates. The County and cities jointly agreed on population growth allocations to the cities and the remainder of the County, which were incorporated into the Whatcom County Comprehensive Plan by Ordinance 2016-034. Finding 44 of this ordinance states:

The population growth allocations to the UGAs total 58,433 additional people over the planning period (which equates to approximately 84% of countywide population growth). The population growth allocation to the remainder of the county, outside UGAs, totals 11,217 additional people (which equates to approximately 16% of the countywide population growth).

Funneling urban growth into the cities is not only required by the GMA, but also helps preserve agricultural, rural, and environmental areas in unincorporated Whatcom County. Therefore, the cities and Whatcom County have an important shared interest in encouraging growth inside city limits and other urban growth areas (UGAs).

Existing TDR and PDR Programs

The County has an existing transfer of development rights (TDR) program and purchase of development rights (PDR) program. The TDR program is intended to move development rights from the Lake Whatcom Watershed and sensitive environmental areas in the Birch Bay area to urban locations that are more appropriate for growth. The PDR program purchases development rights from agricultural and rural lands and retires these rights in order to reduce development in these areas. The PDR program is funded by a combination of local dollars and grants. The main source of local funding for the PDR program is the Conservation Futures tax. However, Conservation Future funds are also used for park land and other conservation projects. The existing TDR and PDR programs are discussed in more detail later in this report.

Whatcom County Comprehensive Plan Policy 2A-14

The Whatcom County Council adopted the Comprehensive Plan update in August 2016 (Ordinance 2016-034). New Comprehensive Plan Policy 2A-14 includes convening a multi-stakeholder work group tasked with:

- Reviewing the current TDR and PDR programs.
- Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.
- Identifying opportunities and solutions for creating a workable TDR program.
- Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.
- Recommending policy and regulatory amendments necessary to implement the above policy.
- Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.
- Identifying receiving areas.
- Identifying other factors and/or growth management tools.
- Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.
- Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.

The Whatcom County Executive originally appointed the Whatcom County Transfer of Development Rights (TDR)/Purchase of Development Rights (PDR) Multi-Stakeholder Work Group in February 2017. Members of the Work Group are shown below:

Ralph Black

TDR User (Chair)

Jori Burnett

City of Ferndale (Vice-Chair)

Chris Behee

City of Bellingham

Michael Jones

City of Blaine

Rollin Harper

Cities of Everson, Nooksack, and Sumas

Dave Timmer

City of Lynden

Bill Henshaw

Building Industry

Betty Sanchez

Realtors

Myrle Foster

Rural Property owner

Phil Thompson

Economist

Steve Powers

Affordable housing

Rod Erickson

Agriculture

Karlee Deatherage

Environmental

Rud Browne

County Council Member

Former Members: Brad Rader and Steven Globerman

The Work Group met from March 2017 to October 2018. The primary recommendation of the Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer pays cash to receive development incentives instead of purchasing TDRs. The cash can provide supplemental funding to protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other appropriate areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program. The Work Group's full recommendations are set forth in Section 12 of this report.

2. <u>Current TDR Program</u>

The Growth Management Act (GMA), originally adopted by the state legislature in 1990, states "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights" (RCW 36.70A.090). The Whatcom County Comprehensive Plan contains a number of policies relating to TDRs, including:

- Policy 2F-4: Review and adopt, where appropriate, incentive programs such as cluster density bonuses in urban growth areas, purchase of development rights, transfer of development rights, and tax deferrals.
- Policy 8A-2: . . . Measures that can be taken to support working farms and maintain the agricultural land base should include . . . A workable transfer of development rights program (TDR) in which the development potential of a site could be transferred to another location where development is more favorable. . .

Whatcom County has adopted a series of ordinances relating to transfer of development rights over the last 35 years. These include:

- Ordinance 82-58 The County adopted new Chapter 20.89, entitled "Density Transfer Procedure," in the Title 20 Zoning Ordinance in 1982. This code allowed increased multi-family densities when development rights were transferred from undeveloped single family lots or multi-family tracts. These provisions, which were adopted soon after approval of the Lake Whatcom Subarea Plan, were originally applied within Sudden Valley.
- Ordinance 97-046 The County adopted a new Urban Residential Mixed (URMX) zoning district in association with the Urban Fringe Subarea Plan update in 1997. The URMX zone was designated as a TDR receiving area in the Bellingham UGA. Development rights could be voluntarily transferred to increase the density allowed in the URMX zone.
- Ordinance 99-087 Chapter 20.89 underwent a significant re-write and the Lake Whatcom Watershed was officially designated as a "sending area" in 1999.
- Ordinance 2004-044 Several sections of the County Code were amended in 2004 to require TDRs for urban growth area expansions and rezones that increased residential density. However, there were several exceptions to these mandatory provisions, including requests initiated by a government agency.
- <u>Ordinance 2005-002</u> The Official Whatcom County Zoning Map was amended in 2005 to establish sending areas in the Birch Bay area.

At the current time, there are two main categories of TDR provisions in the Whatcom County Code (WCC): Optional provisions and mandatory provisions. These are addressed below.

Optional TDR Provisions

The County Zoning Code allows land owners to increase development in certain urban zones by transferring density from areas where County policy seeks to reduce development potential. These provisions are strictly voluntary. Developers may utilize these provisions, but are not required to use them.

Bellingham UGA - Urban Residential Mixed (URMX) Zoning District. The URMX zoning has a number of different densities including 6-10 dwellings/acre and 6-12 dwellings/acre. The lower density figure can be obtained if public water & sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and development rights are transferred from the Lake Whatcom Watershed. Each development right transferred from the Lake Whatcom watershed may be used to develop three additional dwelling units in the URMX zone (WCC 20.24.252). An example is provided below to illustrate how this could work in the URMX (6-12) zone. The example assumes a 20 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URMX (6-12)

Gross Acres	20
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	10
Units/Net Developable Acre (without using TDRs)	6
Total Units (without using TDRs)	60
Units/Gross Acre (using TDRs)	12
Total Units (using TDRs)	240

In the example above, 60 dwelling units could be constructed on the hypothetical 20 acre site in the URMX (6-12) zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 240. URMX zones only exist in the Bellingham UGA. However, Bellingham generally does not extend public water and sewer outside city limits. The maximum density in the UGA, outside city limits, is one dwelling/10 acres when public water and sewer are not available. Therefore, the URMX zone does not function well as a TDR receiving area.

Birch Bay UGA - Urban Residential Medium Density (URM-24) Zoning District. The URM-24 zoning allows 10 to 24 dwellings/acre. The lower density figure can be obtained if public water and sewer are available to the site. Density can be increased to the higher density figure if public water & sewer are available and

development rights are transferred from the sending areas in the Birch Bay area or the Lake Whatcom Watershed. Each development right transferred may be used to develop three additional dwelling units in the URM-24 zone (WCC 20.22.252). An example is provided below to illustrate how this could work in the URM-24 zone. The example assumes a 40 acre site and that 50% of the site is taken up by wetlands, roads, stormwater facilities, etc.

URM-24

Gross Acres	40
Wetlands, roads, stormwater facilities, etc.	50%
Net Developable Acres	20
Units/Net Developable Acre (without using TDRs)	10
Total Units (without using TDRs)	200
Units/Gross Acre (using TDRs)	24
Total Units (using TDRs)	960

In the example above, 200 dwelling units could be constructed on the hypothetical 40 acre site in the URM-24 zone without using TDRs. If TDRs are utilized, the total number of units could theoretically be increased to 960. This constitutes 760 additional dwelling units that could theoretically be added through the TDR program (at a 3:1 ratio, 254 development rights would have to be purchased to gain 760 more dwelling units). In this example, the gross density would be 24 units/acre (960 units/40 gross acres), but the net density would be 48 units/acre (960 units/20 net acres). It should be noted that the only URM-24 zone in the County is located in the Birch Bay UGA. Public water & sewer are generally available in the Birch Bay UGA and multi-family development is allowed in the URM-24 zone. However, an analysis of subdivisions and short plats conducted during the 2016 UGA review found that achieved net densities in the Birch Bay UGA averaged 5.9 dwellings/net acre (2004-2013). Additionally, wetlands will impact the extent to which future development can occur in the URM-24 zone. Given past development trends, and the critical areas present in the receiving zone, it may be unrealistic to expect the area to develop at the maximum density allowed by zoning with TDRs.

The Whatcom County Zoning Ordinance states:

A TDR that is not associated with a pending development application and that is not proposed for transfer to another parcel at the time of application may be certified administratively by the Whatcom County planning and development services department. Upon satisfactory application for certification of TDRs for future sale or transfer, the number of TDRs on a sending area parcel shall be certified through the issuance of serially numbered individual certificates for each TDR verified for that parcel. . . (WCC 20.89.061).

A total of 247 development rights have been certified for transfer in Whatcom County. Only 18 of these development rights have actually been transferred.

Mandatory TDR Provisions

The Whatcom County Code contains provisions that require utilization of TDRs under certain circumstances. If these conditions are met, then it is mandatory to transfer development rights.

Urban Growth Area Expansions - Proposed urban growth area expansions are required to acquire development rights from a designated TDR sending area at a ratio of one development right for every five acres added to the UGA (WCC 20.89.051(3)). These provisions, which were originally adopted in 2004 in Ordinance # 2004-044, contain several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Urban growth area expansions initiated by a government agency, correction of map errors, properties that are urban in character, or expansions where the public interest is served are also exempt from the TDR requirement.

Rezones in Urban Growth Areas – Proposed rezones that would increase residential density in urban growth areas are required to acquire development rights from a designated TDR sending area (WCC 20.89.051(2)). These provisions, which were also adopted in 2004 in Ordinance # 2004-044, require one development right to be transferred for every three additional dwelling units obtained through rezones within a designated urban growth area. However, as with UGA expansions, there are several exceptions summarized below:

- The county council may modify the TDR requirement if a development agreement has been made. The development agreement should include affordable housing, density, allowed uses, bulk and setback standards, open space, parks, landscaping, buffers, critical areas, transportation and circulation, streetscapes, design standards and mitigation measures.
- Rezones initiated by a government agency, rezone correction of map errors, establishing one zoning district on a property with two or more zoning districts, zoning revisions that are intended to make a nonconforming use a conforming use or rezones where the public interest is served are also exempt from the TDR requirement.

Although these mandatory requirements were adopted in 2004, they have not resulted in transfer of any development rights to date. This is primarily due to the fact that cities requesting UGA expansions are exempt from the TDR requirements.

3. Current PDR Program

Whatcom County Comprehensive Plan Policy 8A-2 is to:

Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

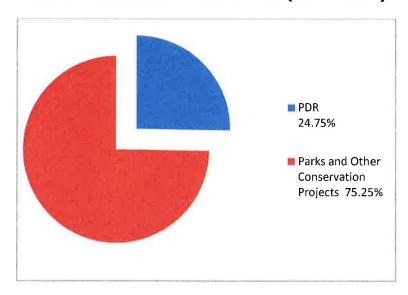
• . . . Maintaining a *Purchase of Development Rights (PDR)* program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms. . .

In 1992, the County established the Conservation Futures Property Tax Levy and Fund (Ordinance 92-002, now codified as WCC 3.25). This County Code states "... The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation" (WCC 3.25.010). As of 2018, the Conservation Futures tax rate is just under four cents per \$1,000 assessed valuation (Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County, Whatcom County Assessor). The revenue from the fund:

. . . shall be used solely to acquire rights and interests in open space land, farm and agricultural land, and timber land . . . so as to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use or enjoyment . . . (WCC 3.25.030).

Approximately \$1.1 million in Conservation Future taxes will be collected from County and city land owners in 2018. Additionally, as of the beginning of 2018, the Conservation Futures fund balance was about \$3.6 million. The fund is used for PDR easement purchases and acquisition/maintenance of parks and other conservation projects, as shown below.

Use of Conservation Futures Tax (2002-2017)



In 2001, the Whatcom County Council approved Resolution 2001-049 *In Support of Expenditures from Conservation Futures Fund to Acquire Property Interests in Agricultural Land for Strategic Conservation Purposes.* This Resolution recognized that productive farms have long served and still serve as a crucial component of the economic and cultural life of Whatcom County. The Resolution also stated:

- . . . The Council commits itself to expend a fair and significant share of the Conservation Futures Funds for acquiring interests in agricultural lands;
- . . . a Purchase of Development Rights Steering Committee be created by the Executive with the charge of developing a PDR program for Whatcom County in concert with the Whatcom County Agriculture Advisory Committee. . .

The Purchase of Development Rights Steering Committee issued its recommendations in May of 2002. The Whatcom County Council adopted the "Agricultural Purchase of Development Rights Program" (WCC 3.25A) in September 2002 under Ordinance No. 2002-054. This Ordinance stated that "Whatcom County government recognizes agriculture as a major contributor to the local economy and a high quality of life for Whatcom County citizens." The purpose of the PDR Program is:

To establish a voluntary agricultural purchase of development rights program for Whatcom County which will enhance the protection of the county's farmland, enhance the long-term viability of the agricultural enterprises within the county and provide public benefit by retaining properties in permanent resource use (WCC 3.25A.020).

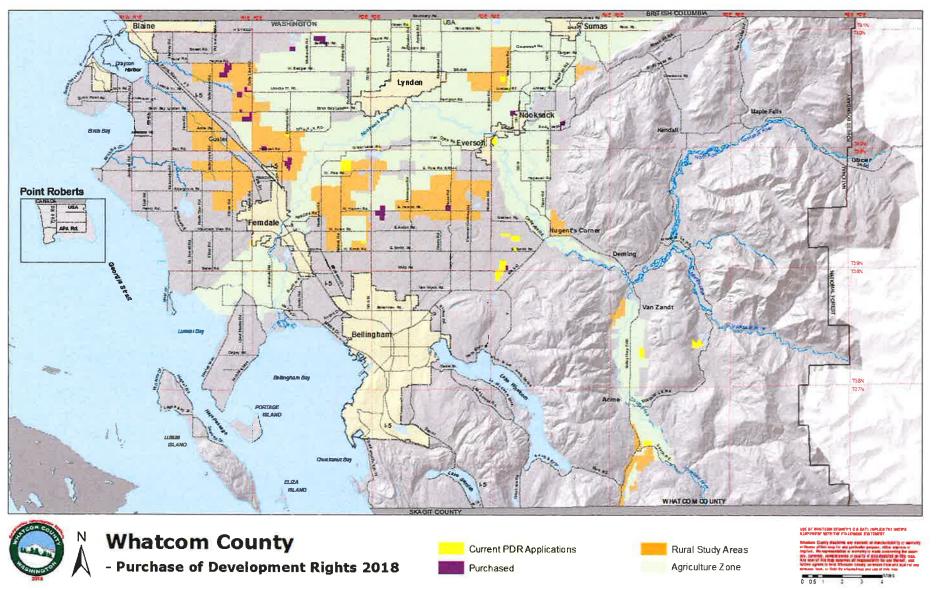
The Whatcom County Agricultural Purchase of Development Rights Program Guidelines (revised April 2013) provide the rules and procedures for operating the PDR Program. Properties must be in the Agriculture or Rural zoning districts to be

eligible for the PDR Program. The Guidelines provide five site selection criteria to guide the review of eligible properties:

- Land Evaluation (relating to soil characteristics);
- Site Evaluation (parcel size, # of development rights, % of parcel actively farmed, etc.);
- Special Considerations (historical significance, views, wetlands, wildlife habitat, etc.);
- Bargain Sale Opportunity (offer below market value);
- Bonus Points (sites in target or rural study areas).

Staff ranks the applications, with review and adjustments by the PDR Oversight Committee. If the County Council approves the application, the County pays the land owner fair market value for the development rights, a conservation easement is placed on the land restricting future development, and the farmer continues agricultural practices on the land.

Since creation of the PDR Program, the County has purchased 130 development rights on 919 acres in the R5A, R10A, and Agriculture zoning districts. The total price tag has been approximately \$6.1 million. The County has spent more than \$3.2 million from the Conservation Futures Fund to purchase these development rights. The other \$2.9 million has come primarily from the U.S. Department of Agriculture (with relatively small shares from the state and a local non-profit organization). Agricultural conservation easements that the County has already purchased, along with current PDR applications, are shown on the map below.



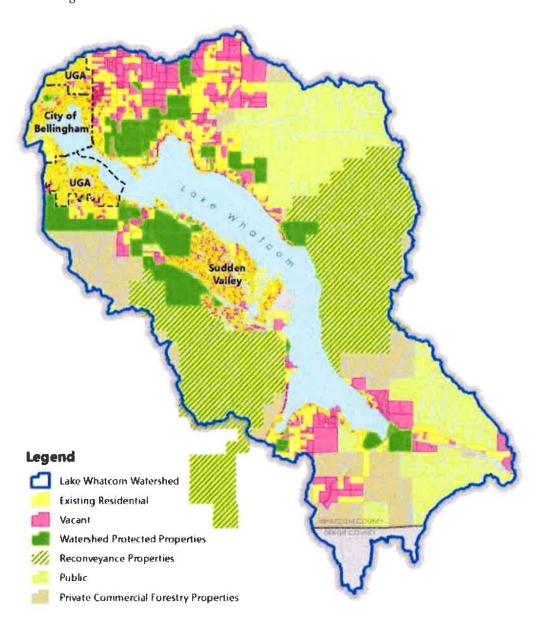
4. Current Sending and Receiving Areas

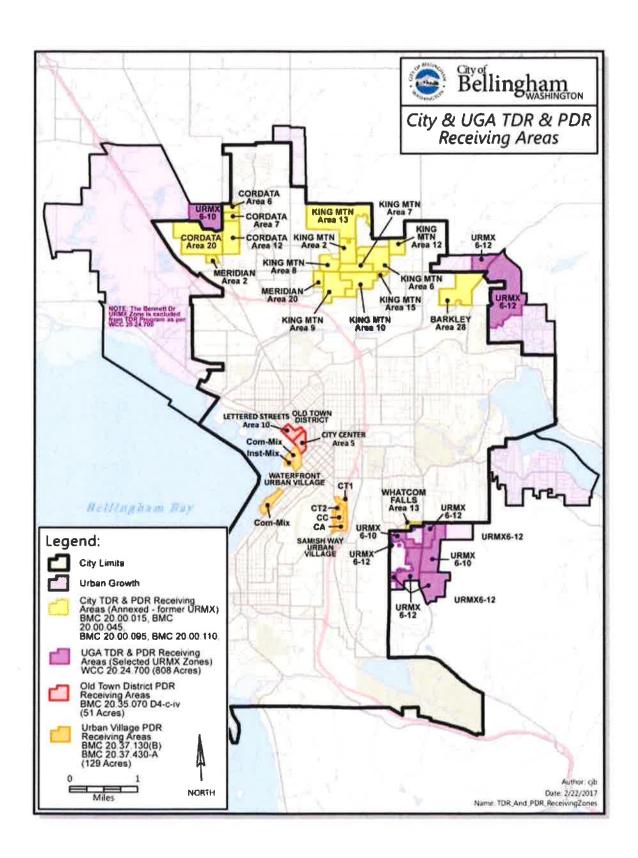
Lake Whatcom / Bellingham

In 1997, the Whatcom County Council adopted a new Urban Residential - Mixed (URMX) zoning district, which served as a TDR receiving area in the Bellingham UGA (Ordinance 97-046). In 1999, the Lake Whatcom Watershed was designated as a TDR sending area (Ordinance 99-087). Only development rights from the Lake Whatcom Watershed sending area may be transferred to receiving areas within the Bellingham UGA (WCC 20.89.052(1)).

WCC 20.89.051(4) states "In cooperation with Whatcom County, cities may designate additional TDR receiving areas within their jurisdictional boundaries for the purposes of receiving transferred densities pursuant to this chapter." The City of Bellingham has designated TDR receiving areas to accommodate development rights from the Lake Whatcom Watershed (including unincorporated portions of the Watershed).

There are an estimated 1,631 development rights in the Lake Whatcom Watershed that could, potentially, be transferred to receiving areas. The receiving areas within the City of Bellingham have an estimated capacity to accommodate up to 6,801 development rights from Whatcom County's TDR program or up to 7,378 development rights from Bellingham's PDR program. Additionally, once annexed, the URMX zones in the Bellingham UGA could accommodate an estimated additional 2,565 development rights from TDRs and/or PDRs. The capacity estimates for both sending and receiving areas were generated by City of Bellingham Planning staff utilizing 2017 property ownership, zoning, and permit system data.





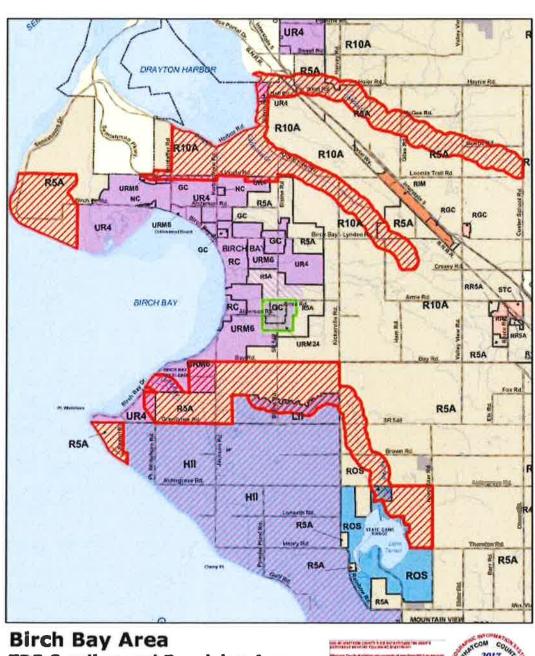
Small Cities

The cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas have not adopted TDR receiving areas.

Birch Bay

In 2005, the Official Whatcom County Zoning Map was amended to establish sending areas in the Birch Bay area (Ordinance 2005-002). Development rights from any sending area (Birch Bay or the Lake Whatcom Watershed) may be transferred to the receiving area within the Birch Bay UGA (WCC 20.89.052(2)).

There are approximately 703 potential development rights that could be transferred out of Birch Bay sending areas. The Birch Bay receiving area could theoretically accommodate 1,858 additional dwelling units if TDRs are utilized. However, the site would have to be developed at 24 dwellings/gross acre and critical areas exist on portions of the receiving area. Therefore, it may be unrealistic to expect that the Birch Bay receiving area will develop at the maximum density allowed by the zoning. In other words, this receiving area may not accommodate the full 1,858 additional dwellings allowed through the TDR program.



Birch Bay Area TDR Sending and Receiving Areas Legend





5. Barriers to Effective TDR and PDR Programs

Transfer of Development Rights Program

There are a number of barriers to an effective TDR program in Whatcom County. Identified barriers are set forth and discussed briefly below.

TDR Barrier # 1 - Lack of Market Demand for Higher Densities

The Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis (January 2009) was prepared by Property Counselors for the City of Bellingham. This report states:

- . . . new subdivisions are being developed at densities below the base densities under current zoning. Developers are forgoing development rights they are already entitled to; they are not likely to pay for additional rights. . . (p. 4).
- ... The demand for development at different densities determines the degree to which a TDR program will provide an incentive to developers. If higher densities create value, a developer will be willing to spend a portion of that value in return for the density. .. (p. 12).
- ... existing areas in the UGA are not being built out to their theoretical maximum densities, it does not seem that there will be any significant demand for TDRs in the annexation areas in the next decade ... (p. 14).

The Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis indicates that, as of 2009, builders were not building to the maximum density allowed by the zoning and, therefore, had no need to purchase development rights to achieve higher densities (pp. 4, 5, 12, 19, and 24). Between 1999 and 2008, the URMX zone in the Bellingham UGA built out at 43% of maximum capacity allowed by zoning (p. 13). Lack of demand is an important factor explaining why the TDR program isn't working well (pp. 4 and 19).

Since 2008, cities have generally increased allowed residential densities, which is in accordance with the Whatcom County Comprehensive Plan (e.g. Goal 2P and Policy 2N-5). At the current time, development is generally at or below maximum densities allowed by city zoning. Therefore, there is minimal demand to increase densities above the base densities allowed by existing zoning.

There is also a sense that, in some areas, the easy to develop land has already been built upon and that site conditions in remaining areas may not lend themselves to higher densities.

TDR Barrier # 2 - Lack of Relevant Incentives

The primary incentive for a developer to use the TDR program in the Whatcom County Zoning Code is the assumed ability to meet market demand, and thereby earn additional returns, through increased residential density. However, in order to meet market demand, land is often developed at densities at or below those allowed by zoning. Therefore, increasing residential densities has not provided a large incentive to entice developers to utilize the TDR program.

There are other incentives for using TDRs in the Whatcom County Zoning Code:

- Fee reductions (WCC 20.89.072);
- Landscaping requirement reductions (WCC 20.89.073);
- Increased lot coverage (WCC 20.89.073); and
- Lot size, lot width, setback, and parking modifications in subdivisions (WCC 20.89.090).

The County Zoning Code does not allow for increased building height or increased floor/area ratios for commercial buildings as an incentive for using TDRs at the current time.

Neither increased residential densities nor the other existing incentives have provided developers with sufficient opportunities to derive adequate profits to undertake the added risks associated with using the TDR program. Therefore, additional new incentives should be considered.

TDR Barrier # 3 – Limited County TDR Receiving Areas

The following TDR receiving areas have been designated in unincorporated Whatcom County:

- Receiving areas in the Bellingham UGA (outside city limits); and
- A receiving area in the Birch Bay UGA.

Bellingham UGA - The URMX receiving areas in the Bellingham UGA, outside city limits, can only be developed with urban residential densities if public water and sewer are available. City of Bellingham Municipal Code 15.36.010 generally prohibits extension of water and sewer outside city limits (see Ordinance 2011-05-025). Therefore, the Bellingham UGA does not provide effective TDR receiving areas at the current time.

Birch Bay UGA – The Birch Bay UGA has a URM-24 zone that is designated as a receiving area. Birch Bay generally has public water and sewer and this zoning district can accommodate both single family and multi-family dwellings. The URM-24 zone requires a minimum density of 10 dwelling units/net acre, which is above achieved densities for subdivisions in the Birch Bay UGA (2004-2013). Additionally, this receiving area would have to be developed at 24 dwellings/gross acre to accommodate the entire 1,858 dwelling units potentially available through the TDR

program. In light of recent achieved densities and critical area constraints, it may be unlikely that such a density would be developed.

TDR Barrier # 4 - City Participation

At the current time, the City of Bellingham has designated receiving areas for TDRs from the Lake Whatcom Watershed sending area. The City of Bellingham, with a 2018 population of 88,500, has a significant incentive to participate in this program because Lake Whatcom is the City's drinking water source. There are also several water districts that receive water from the City and/or draw water from the Lake.

The receiving areas within the City of Bellingham can accommodate an estimated 6,801 development rights from the Lake Whatcom Watershed TDR sending area and/or the City's PDR Program. Once annexed, the URMX zones in the Bellingham UGA could accommodate an additional 2,565 development rights. However, the receiving areas generally develop at densities allowed by the underlying zoning without the need for TDRs.

The six small cities have not designated receiving areas for TDRs from County sending areas. While preservation of agricultural lands, creek corridors, and rural areas may be desirable from a city perspective, stronger incentives may be needed to attract city participation in a TDR program. King County has provided "amenity funds" to cities participating in the TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from rural areas. However, in Whatcom County, no such amenity funds have been identified to encourage cities to participate in the TDR program.

TDR Barrier # 5 - Uncertainty / Complexity for Developers

The Whatcom County Zoning Code has a discretionary permitting process for increasing density at receiving areas through TDRs (WCC 20.89.065(2)). This means that a developer has to design a project, pay fees, and submit the application for County approval before finding out whether they can actually increase density through the TDR program.

The Bellingham Annexation Areas Transfer of Development Rights Program Feasibility Analysis (2009) indicates that:

- ... Most developers are skeptical about the value of TDRs primarily because of uncertainty about exactly how it would work and whether higher density projects could ultimately be approved. . . (p. 4).
- . . . Several individuals representing the development community stated the TDR program had limited appeal due primarily to uncertainty associated with the program. Such uncertainty is manifested in a scenario whereby a developer purchases TDRs to obtain higher density, then encounters neighborhood opposition when they attempt to proceed with their proposed

project. In essence, they felt that TDRs had no value today due to such uncertainty, and this is evident by the program's lack of use. . . (p. 18).

The administrative requirements of the program may discourage its use, ... (p. 19).

TDR Barrier # 6 - Lack of In Lieu Fee

The Whatcom County Zoning Code allows "in lieu payments" if a development rights bank has been established. Specifically, WCC 20.89.034 states:

Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. In lieu payments shall be utilized by the development rights bank for purchase, sale or transfer of development rights. The development rights bank oversight committee shall establish procedures for the acceptance and utilization of in lieu payments.

At the current time, Whatcom County does not have a development rights bank. Therefore, in lieu payments are not authorized.

TDR Barrier # 7 - Additional Costs Act as Disincentive

Cities create a vision for their communities through the comprehensive planning process and enact zoning to fulfill that vision. Increasing density via TDRs may not be consistent with a city's vision or may change the character of the area. Additionally, TDR programs may create a disincentive for higher densities and affordable housing by increasing development costs when compared to simply rezoning property for higher densities.

The main goal of the County's existing TDR program is to extinguish development rights in the Lake Whatcom Watershed and other areas (rather than to achieve higher densities). At the current time, if cities want to encourage higher densities they simply modify the zoning to allow increased development. They do not have to provide benefits (i.e., extinguishment of development rights) in the unincorporated portion of the County to allow higher densities in cities.

Requiring TDRs for city upzones would provide a benefit in unincorporated areas of the County, but may also create a disincentive for higher densities and affordable housing projects inside the cities than would otherwise be the case. In some instances, reduced density in unincorporated areas may provide a significant benefit to city residents (such as Lake Whatcom water quality protection, which is advantageous to Bellingham residents who drink the water). However, in other cases the benefit of reduced densities in unincorporated areas may not be readily apparent to city residents.

TDR Barrier # 8 - State Law (RCW 82.02.020)

In 2016, the cities of Blaine and Ferndale submitted letters to the County Council regarding Policy 2A-14. These cities indicated that requiring TDRs for UGA expansions would essentially be a tax. Staff asked the Prosecuting Attorney's Office to review this issue.

Royce Buckingham, Civil Deputy with the Whatcom County Prosecuting Attorney's Office, discussed RCW 82.02.020 (state preempts certain tax fields) with the Work Group on June 7, 2017. RCW 82.02.020 states:

. . . no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. . .

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. . .

The Civil Deputy stated that requiring TDRs for UGA expansions would constitute a fee or charge on a re-classification of land. Therefore, under the statute, a jurisdiction can't require TDRs for UGA expansions.

The Civil Deputy indicated that there is an exception for "voluntary agreements." However, land re-classifications such as UGA expansions are not covered by the exception and such re-classifications do not create a direct, identifiable impact. The direct impact would occur later, if and when the land is developed.

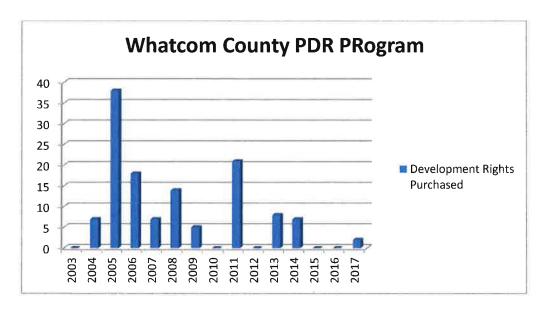
In summary, it's the opinion of the Civil Deputy from the Whatcom County Prosecuting Attorney's Office that the County can't require TDRs for UGA expansions under RCW 82.02.020. This opinion relates to a mandatory TDR program (a government requirement to purchase TDRs when expanding a UGA). However, there are no legal issues associated with a voluntary TDR program where developers may choose to purchase TDRs in order to acquire increased density or other incentives offered by the program.

Purchase of Development Rights Program

The Whatcom County PDR program has been more successful than the TDR program. The PDR program's local funding source is the Conservation Futures tax. The program has also received matching funds over the years. In the first 16 years of the PDR program (from the time it came into existence in September 2002 to September 2018), approximately \$6.1 million (over \$3.2 million of local funds and \$2.9 million of matching funds) has been expended to retire 130 development rights on 919 acres. The annual average figures shown below:

Development Rights Retired:	8.13	per year
Acres Preserved	57.44	per year
County Funds Expended	\$201,587	per year
Matching Funds Expended	\$181,881	per year
Total Funds Expended	\$383,469	per year

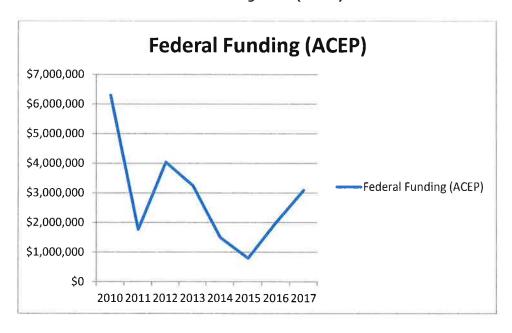
While the PDR program has enjoyed a measure of success, progress in purchasing agricultural development rights has slowed over the years as shown in the chart below.



There are several issues or barriers that may be hindering progress of the program, which are set forth and discussed briefly below.

PDR Barrier # 1 - Uncertainty / Variability in Federal Matching Funds

United States Department of Agriculture monies have accounted for over 91% of the matching funds received by the County (the remaining match has been received from the state and a local non-profit organization). Since 2010, federal funding allocated to Washington State has varied from a high of \$6.3 million in 2010 to a low of \$800,000 in 2015. The amount allocated to the state in 2017 is \$3.1 million (not including monies specifically earmarked for a certain area in eastern Washington). Federal monies, allocated to Washington State through the "Agricultural Conservation Easement Program" (ACEP) are shown below.



Federal funding available to the PDR program has been highly variable in the past and remains uncertain for the future. The County should continue to monitor this situation and explore alternative matching fund sources.

PDR Barrier # 2 - Uncertainty / Variability in Local Funds

The Conservation Futures tax provides the local funding source for the PDR program. The County Code, originally adopted in 1992, states that ". . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation. . . ." (WCC 3.25.010) but it currently is collected at a rate of about four cents per \$1,000 assessed valuation. Additionally, between 2002 and 2017, the PDR program has received about 25% of the Conservation Futures revenue, with the remainder going to parks and other conservation projects.

PDR Barrier # 3 - Federal Staffing

At times, it takes the federal government long periods to review local applications for match funding. The United States Department of Agriculture staff in Washington State assigned to reviewing local government applications for federal funding has been reduced in the last few years. It is also unclear to what extent federal government bureaucratic procedures slow down the processing of match funding applications submitted by local governments. In any event, the federal review process can make it difficult on PDR applicants waiting to hear if the County will, in fact, purchase their agricultural development rights.

6. Opportunities/Alternatives to a Workable TDR Program

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying opportunities and solutions for creating a workable TDR program. Potential opportunities, solutions, and alternatives include:

- Density Credit Program: General Information and Price
- Density Credit Program: Incentives
- Density Credit Program: Density Bonus Areas in Cities
- Density Credit Program: Density Bonus Areas in UGAs
- Density Credit Program: Accessory Dwelling Units (ADU)
- Density Credit Program: Rural Areas
- Simplifying the TDR Program
- Establishing a TDR Bank

Opportunity # 1 - Density Credit Program: General Information and Price

The Draft EIS Whatcom County Comprehensive Plan and Development Regulations Update and Urban Growth Area Review (March 2015) states:

A TDR program relocates development potential from one property to another . . .

A Density Transfer Credit program uses the same principle, but allows the developer to obtain density through a purchase of density credits as opposed to actual development rights. The money generated through density credits can be used for the Purchase of Development Rights (PDR) program (p. 2-21).

The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs by Nelson, Pruetz, and Woodruff (2012) defines density transfer charges (DTCs – also known as density transfer credits) as a program in which ". . . developers gain bonus development potential at receiving sites using a cash payment instead of TDRs. The jurisdiction uses the revenue from these payments to preserve land . . ." (p. 45). A related concept is in lieu fees, where the developer can either pay cash or utilize TDRs. The TDR Handbook lists advantages of DTCs, which are summarized as follows:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);

- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios (pp. 45 and 47).

The TDR Handbook states ". . . DTCs can accomplish many of the same objectives as TDR programs but with far fewer complications. . ." (p. 45). The TDR Handbook provides a case study for Berthoud, Colorado, which charged DTC fees of \$3,000 for a single family residence and \$1,500 per multi-family dwelling unit from 2000-2009. Berthoud's DTC fees were discontinued in 2009 because of the recession (pp. 46-47). The Whatcom County PDR Oversight Committee looked at this issue on August 25, 2017, and recommended that the County consider a density credit charge of \$4,000. The City of Bellingham has a voluntary PDR program that charges \$5,000 for each bonus unit in the city. The money raised from the city's program goes towards Lake Whatcom Watershed preservation. Bellingham had their first significant private use of this program in 2017 for a development on Telegraph Rd. The TDR-PDR Work Group recommends the following density credit prices for each bonus dwelling unit acquired:

- Birch Bay UGA: \$4,000
- Rural Areas: Grand total average development right cost over the most recent five year period (this figure for 2013-2017 was \$58,945)

The Whatcom County Council adopted a new chapter in the Zoning Code entitled "Density Credits" (WCC 20.91) on November 21, 2017 (Ordinance 2017-062). The purposes of the new chapter are to incentivize increased land use intensity in urban growth areas and decrease residential density in agricultural and rural areas by authorizing density credits. The density credit program allows increased density in exchange for a voluntary contribution towards preserving agricultural lands and open space. This would be accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a density bonus as set forth in the Whatcom County Zoning Code. At the current time, the density bonus provisions allow higher density single family residential development in the Resort Commercial zone in the Birch Bay UGA. The County Council also adopted a \$4,000 density credit fee on December 5, 2017 (Ordinance 2017-072).

A density credit program is an attractive alternative to a traditional TDR program, as it would simplify the process and avoid several of the pitfalls associated with TDR programs. Therefore, the County and cities should give serious consideration to joint density credit programs. Additionally, the County should consider expanding

its existing density credit program to a variety of zoning districts. New or expanded programs could include utilizing density credits as an alternative to traditional upzones in areas deemed appropriate by the local jurisdiction. Additionally, the County and cities should primarily focus on the density credit model in the future and new incentives should be tied to a density credit program rather than the TDR program.

Opportunity # 2 - Density Credit Program: Incentives

The TDR Handbook indicates that there must be value in using TDRs in receiving areas – otherwise "the market has no incentive to acquire those rights" (p. 39). Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that if a developer can profit from the incentives offered by the TDR program, they will use the program. If they can't profit from the TDR program, they simply will not use it.

At the current time, the Whatcom County density credit program provides the following incentive for developers using the program: Increased single family residential densities in the Birch Bay Resort Commercial zone (WCC 20.85.108(4) and WCC 20.91.020).

A report entitled *Regional Transfer of Development Rights in Puget Sound* by the State Department of Commerce, Puget Sound Regional Council, and Forterra (2013) states:

In most TDR programs that seek to protect open space or natural resource land in sending areas, the sending-area development right available for sale is the right to build a residential unit. In some TDR programs, however, the development right for sale from the sending area can be converted into another type of commodity in the receiving area. For example, a TDR created by extinguishing the right to build a residential unit in a residential area could be converted into the right to build additional commercial floor area or additional building height in the receiving area (p. 5).

The Regional Transfer of Development Rights in Puget Sound report indicates that, in addition to increased residential densities, other incentives offered by a TDR program that may be more attractive to developers and the community include but are not limited to:

- Increased commercial floor area;
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- Reduced open space requirements; and
- Reduced setbacks (p. 5).

Whatcom County should incorporate such additional incentives into the Zoning Code to provide a wide array of options for developers utilizing the density credit program. In addition to the above incentives, the County and cities may want to consider the following methods or other methods appropriate to the jurisdiction:

- Allowing developers to reduce minimum urban densities in cities (should not allow suburban densities though);
- Providing city water and/or sewer outside city limits; and
- Reducing critical area buffers.

Reducing minimum urban densities and providing city water and sewer would require agreement by the cities.

The Work Group recommends that the County establish a technical group to explore a density credit proposal that may allow a land owner to impact lower quality wetlands if they contribute funds to the Purchase of Development Rights Program used to protect higher quality wetlands. The Work Group recommends that the technical group consider the following, when developing this proposal:

- The geographic area where the program would apply, including whether cities could participate.
- The categories of wetlands and associated buffers that could be impacted under this program.
- Whether the program should only address wetland buffer impacts or should also address direct wetland alterations. State Department of Ecology is involved when the wetland is filled or altered. Ecology is not involved when wetland buffer encroachments are proposed.
- The categories of wetlands that would be preserved through this program.
- The method of protecting wetlands under this program. It is recommended
 that the developer contribute funds to the County's Purchase of
 Development Rights Program. The PDR Administrator would use these funds
 to retire development rights and/or acquire easements on properties that
 contain wetlands designated for preservation under the program consistent
 with the Critical Areas Ordinance's "Wetland Mitigation" regulations (WCC
 16.16.680).
- The density credit fees that should be charged for wetland buffer impacts and/or direct wetland alterations.
- Any code changes necessary to implement the proposal.

Opportunity # 3 - Density Credit Program: Density Bonus Areas in Cities

If the cities and County partner together on a density credit program, it would be necessary to designate density bonus areas (where development incentives can be utilized) within City limits where public water and sewer infrastructure can be provided to serve urban development. As previously mentioned, the City of Bellingham has designated TDR receiving areas to accommodate TDRs from unincorporated Whatcom County (the Lake Whatcom Watershed). Bellingham also has designated areas that can utilize the city's PDR program to increase density. None of the small cities have designated bonus density areas for a density credit program at this time. There are several issues associated with small city participation:

- How would the city benefit?
- What city incentives would attract developers to use the density credit program?

Cities have raised the issue that a density credit program should be meaningful to city residents and decision makers. For example, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

However, cities have also expressed concern that extinguishing development rights adjacent to a city or UGA would limit future options for expansion. In any event, if there is no clear benefit to the city (i.e. development rights are purchased on the other side of the County), then the concept of providing "amenity funds" to cities should be explored.

King County has provided "amenity funds" to cities participating in their TDR program, in recognition of the fact that it may be more costly for cities to provide urban infrastructure for increased densities transferred from unincorporated areas. Michael Murphy, King County TDR Program Manager, gave a presentation to the TDR/PDR Work Group via conference call on June 7, 2017. Mr. Murphy stated that King County provides amenity funds to cities in several forms. For example:

 Lump Sum – King County provided Bellevue with a lump sum up front, when they signed the interlocal agreement to participate in the TDR program.
 They used the money to purchase open space, but it could be used for street lights, sidewalks, parks, etc.

- Portion of TDR Sale Money King County provides Sammamish with a percentage of the revenue from TDR sales by the TDR bank.
- Tax Revenue Sharing King County shares property tax money with Seattle through the Landscape Conservation and Local Infrastructure Program (LCLIP), which is applicable to King, Pierce, and Snohomish Counties.

Identifying a benefit to city residents (or providing amenity funds) would be an important component of partnering with cities to develop a density credit program. In a density credit program, revenue generated from purchases of development incentives could be shared by the County and city, providing a simple method for cities to also benefit from the program.

If the cities were to participate in the density credit program, they would have to formulate incentives to make it attractive for developers to utilize the program. Cities have indicated that residential development is generally occurring at or below current zoned densities, so other incentives may be needed to entice developers to use a density credit program. City zoning code changes would be needed to implement such a program.

Opportunity # 4 - Density Credit Program: Density Bonus Areas in UGAs

As previously discussed, Whatcom County has designated TDR receiving areas in the Bellingham UGA and the Birch Bay UGA. The Bellingham UGA essentially does not function as a TDR receiving area because the City generally does not extend public water and sewer to the UGA anymore. Therefore, urban development does not occur until annexation. The Birch Bay UGA has one TDR receiving area, but no development rights have been transferred to this area yet.

The TDR/PDR Work Group recommends focusing on a density credit program, rather than on a traditional TDR program. This simplified approach would provide additional developer incentives for areas in the UGA when density credits are purchased. In November 2017, the County Council adopted a density credit program for the Resort Commercial zone in the Birch Bay UGA and should consider expanding this program to other areas in the UGA. Specifically, the lower density Urban Residential four dwellings/acre (and possibly Urban Residential Medium Density six dwellings/acre) zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program.

The Columbia Valley UGA, in the eastern part of the County, could also be designated as a receiving area. In fact, the Foothills Subarea Plan contains an implementation task to:

Revise the Official Whatcom County Zoning Ordinance to designate Rural and Rural Forestry areas in the Foothills Subarea as transfer of development rights (TDR) sending areas and the Columbia Valley UGA or other urban growth areas as TDR receiving areas in order to preserve open space in rural and forestry areas (p. 15-7).

However, increasing densities in the Columbia Valley UGA should be carefully considered in light of the long drive to major employment centers, medical facilities, social services, and shopping areas.

Opportunity # 5 - Density Credit Program: Accessory Dwelling Units (ADU)

King County allows TDRs from sending areas to rural receiving areas to increase the size of accessory dwelling units from 1,000 to 1,500 square feet (King County Code 21A.08.030).

The King County TDR Program Manager indicated that they have had some TDR transfers to rural areas, but that the majority of transfers have been into urban areas such as Seattle.

The Whatcom County Zoning Code currently allows accessory dwelling units, subject to a variety of conditions, in the following zones:

- Urban Residential (WCC 20.20.132);
- Urban Residential Medium Density (WCC 20.22.132);
- Urban Residential Mixed (WCC 20.24.133);
- Residential Rural (WCC 20.32.132);
- Rural Residential Island, which is applicable to Lummi Island (WCC 20.34.132);
- Rural (WCC 20.36.132);
- Point Roberts Transitional District (WCC 20.37.132);
- Small Town Commercial (WCC 20.61.153); and
- Resort Commercial (WCC 20.64.132).

ADU Incentive 1 - Accessory dwelling units are currently limited to 1,248 square feet in these zoning districts. The TDR/PDR Work Group recommends increasing the size limit by 500 square feet to a maximum of 1,748 square feet if density credits are purchased. It is recommended that the price should be \$8/square foot up to the 500 square foot maximum. The Work Group recommends that this rural incentive should be available anywhere that accessory dwelling units are allowed in the County.

ADU Incentive 2 - Additionally, the TDR/PDR Work Group recommends allowing an investor to pay to retire one full development right in a rural or agricultural area in exchange for eliminating the following requirement, which is normally imposed on accessory dwelling units:

The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot.

This would allow an investor (who retires one full development right) to rent out both the main house and the accessory dwelling unit on the property, as the owner would not have to live on the site.

ADU Incentive 2 can be utilized, anywhere accessory dwelling units are allowed, in the areas shown below:

Rural Areas - In rural areas (outside UGAs) the parcel would have to be:

- a. Outside of Rural Study Areas (areas zoned R5A and R10A that are valuable for agriculture);
- b. Covered by less than 50% Agriculture Protection Overlay Soils;
- c. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- d. Outside the 100 year floodplain;
- e. Outside shoreline jurisdiction;
- f. Outside an alluvial fan;
- g. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- h. More than 1 mile from the runway of the Bellingham International Airport;
- Outside UGA Reserves;
- j. More than 1 mile from the boundary of a city;
- k. More than 1 mile from the boundary of a UGA;
- I. Within a Group A or Group B Public Water System Service Area, excluding:
 - o Group A Systems currently exceeding Water Right Limits;
 - Group A Systems projected to exceed water right limits at full buildout; and
 - o Group A Systems with no data on system water rights or use.

UGA - In UGAs, the parcel would have to be:

- a. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- b. Outside the 100 year floodplain;
- c. Outside shoreline jurisdiction;

- d. Outside an alluvial fan;
- e. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- f. More than 1 mile from the runway of the Bellingham International Airport;
- g. Within a Group A or Group B Public Water System Service Area, excluding:
 - Group A Systems currently exceeding Water Right Limits;
 - Group A Systems projected to exceed water right limits at full buildout; and
 - o Group A Systems with no data on system water rights or use.

The Work Group recommends that more than one incentive may be used per parcel.

Opportunity # 6 - Density Credit Program: Rural Areas

King County allows TDRs from sending areas to rural receiving areas to increase the density in the "RA-2.5" zone from 0.2 dwellings/acre to 0.4 dwellings/acre (King County Code 21A.12.030). This is equivalent to going from one dwelling/five acres to one dwelling/2.5 acres.

Rural Incentive 1 - The TDR/PDR Work Group recommends allowing a density of one dwelling/2.5 acres in the Rural one dwelling/five acre (R5A) zone if the proposed density credit program is used. This proposal targets density bonus areas, which could be developed at a density of one dwelling/2.5 acres, that have access to an existing public water system. In return for the extra density, cash would be contributed to the County's PDR program through the purchase of density credits. One development right would have to be retired in a rural or agriculture area for every new lot allowed so that there would be no net increase in development potential. Additionally, this concept should be considered with a degree of caution, as it may come as a surprise to rural land owners who purchased property in the R5A zone expecting surrounding land uses to develop at a maximum density of one dwelling/five acres. Critical area regulations could also make development at a density of one dwelling/2.5 acres more challenging in some areas. To utilize Rural Incentive 1, the parcel would have to be in the R5A zone and meet the same criteria as ADU Incentive 2 for Rural areas (be outside of Rural Study Areas, covered by less than 50% Agriculture Protection Overlay Soils, etc.).

Opportunity # 7 - Simplifying the TDR Program

The existing TDR program is cumbersome and not used very often. Additionally, the density credit model provides an attractive alternative to a traditional TDR program. Therefore, the existing TDR program should be refined, but the County should not put major effort into reforming the program.

The existing TDR provisions (WCC 20.89 and other sections of the County Zoning Code) contain language that could be simplified or clarified. Examples are provided below:

 Definition of Development Rights – WCC 20.89.021 provides the following definition:

"Development rights" means the residential building rights permitted to a lot, parcel or area of land based on the gross density, established pursuant to the official Whatcom County zoning map and this title, and measured in maximum dwelling units per developable acre. Where land is impacted by critical areas, as defined in WCC Title 16, development potential shall be demonstrated by the owner with consideration given to opportunities for cluster development.

The first part of the definition indicates that development rights are based upon gross density (as defined in WCC 20.97.170). Gross density is computed based upon the total area of the parcel. For example, the R5A zone allows a gross density of one dwelling/five acres. On a 20 acre parcel, four homes would be allowed. This is a straightforward concept. However, the definition goes on to state that development rights are measured in maximum units per "developable acre" and that development potential must be demonstrated by the owner on lands impacted by critical areas. Developable land is land available after deductions for wetlands, roads, stormwater management facilities, etc. It adds a degree of complexity to require a rural sending property owner to "demonstrate" development potential when critical areas are present. Does this mean that the rural property owner must hire a consultant to perform a wetland delineation or other critical areas analysis? A less complex method would simply base development rights upon the gross density allowed on the sending area parcel.

- In Lieu Payments WCC 20.89.025 defines in lieu payments as "... payment of funds to the development rights bank in lieu of the transfer of development rights from a sending area. .." Additionally, WCC 20.89.034 states "Payments may be accepted by the development rights bank in lieu of the transfer of development rights from a sending area. .." Because the County adopted a density credit program (which is a similar concept), the in lieu payment language in WCC 20.89 could be deleted. This would eliminate the possibility for overlap/confusion between in lieu fees and the density credit program. Additionally, the density credit program can be accomplished without a development rights bank.
- Incentives WCC 20.89.090 provides various incentives for long plats (such as modifying minimum lot size, lot width, setbacks, and building coverage) when TDRs are used. These incentives could be simplified and/or clarified. For example, WCC 20.89.090(1) allows the modification of lot width if TDRs are used. However, WCC 20.89.090(4) imposes additional criteria for

reducing lot width. These provisions should be harmonized so there is no confusion about the qualifications for using the incentives.

Opportunity # 8 - Establishing a TDR Bank (Development Rights Bank)

WCC 20.89.081 states:

Whatcom County may create a development rights (DR) bank to facilitate the exchange of development rights. Establishment of a DR bank does not preclude private party transactions.

- (1) The DR bank may purchase or sell development rights.
- (2) The DR bank may hold TDRs for any length of time.
- (3) The DR bank may accept in lieu payments for transfer of development rights.
- (4) The DR bank may accept donations of development rights.

The TDR Handbook – Designing and Implementing Transfer of Development Rights Programs (2012) outlines some of the advantages of a TDR bank:

- The sending site owners are assured of having a buyer whenever they want to sell.
- The price of development rights is more likely to stabilize when institutions operate in the market. Conversely, TDR prices can be more volatile and unpredictable when private parties make all sales and purchases.
- Developers have some assurance that they will be able to buy TDRs when needed, without having to negotiate individually with numerous sending site property owners.
- With the right procedures, TDR transactions can become fast, certain, and easy, comparable to banking transactions (p. 121).

Nick Bratton of Forterra spoke to the TDR/PDR Work Group on May 3, 2017. He indicated that a TDR bank is an entity that buys and sells development rights. TDR banks have several advantages. There is greater convenience for developers. For example, a developer can get a number of TDRs from a single bank – they don't need to search for multiple land owners to put together enough TDRs. Additionally, TDR banks have discretion to spend the proceeds on higher priority conservation properties (as opposed to a developer potentially purchasing TDRs from lower priority conservation areas). However, when a bank is a public entity (like a county), an appraisal is needed because they cannot pay more than fair market value for development rights. Appraisals may cost \$3,000 to \$7,000. There needs to be enough transactions to justify a TDR bank. Nick did not recommend forming a TDR bank for an emerging TDR program, as it may be an inefficient use of public resources.

A TDR bank would provide a method to simply the TDR process for people who sell or buy TDRs. However, a bank would require staffing, financial expertise, appraisals, an oversight committee, and funding to start the program. Additionally, it may not be needed at all because the County is transitioning to a "density credit" system, where developers simply contribute monies to the County PDR program in order to acquire higher densities or other incentives.

7. PDR Fund to Protect Agricultural and Rural Lands

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands."

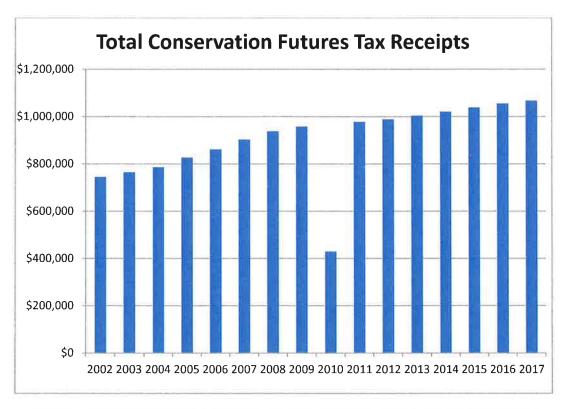
The Whatcom County 2017-2018 Budget states that the Conservation Futures fund is used for:

"Activities related to acquisition of parks land and development rights with the goal of conserving property for public use and enjoyment. Funded by a property tax collected in accordance with RCW 84.34.230" (Volume 2 – Page 65).

The Conservations Futures tax is the primary source of local funding for the Purchase of Development Rights Program. However, Conservation Futures funds are also used for parks and other conservation projects. The County also receives federal and state matching funds and seeks donations from other funding partners. The County Council determines allocation of Conservation Futures revenues.

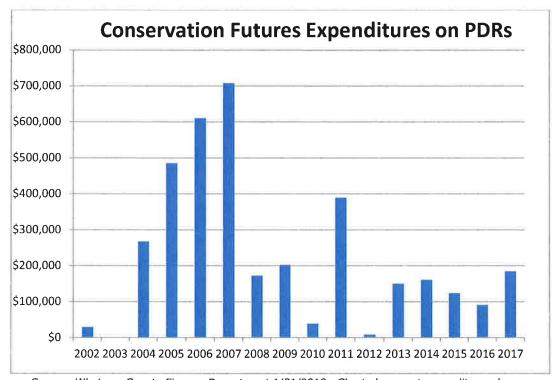
The following charts are shown below:

- Total Conservation Futures Tax Receipts Shows the total Conservation Futures tax revenue collected each year.
- Conservation Futures Expenditures on PDRs Shows the total spent on PDRs each year.
- % of Total Receipts Expended on PDRs Shows the percentage of Conservation Futures tax revenue collected each year that is spent on the PDR program that same year.
- Conservation Futures Year-End Fund Balance Shows the total amount in the Conservation Futures Fund at the end of each year.

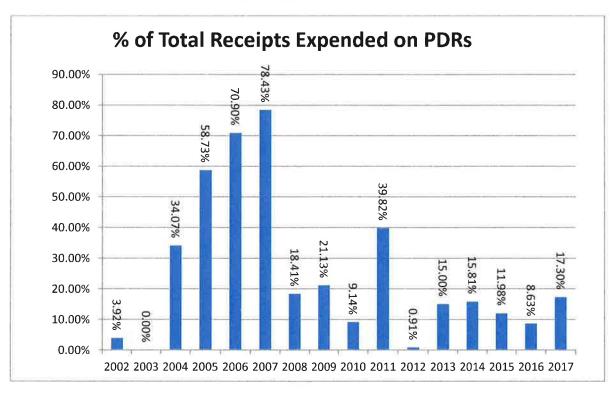


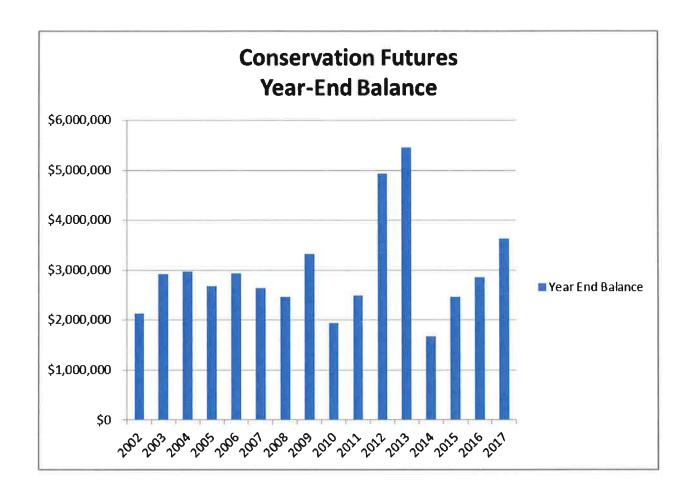
Source: Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).

NOTE: Whatcom County Ordinance 2009-080, which was adopted in the economic downturn, states ". . . the County Council has determined it is necessary to decrease the Conservation Futures tax levy by \$543,000 for 2010 and increase the General Fund property tax levy by an offsetting \$543,000 for 2010 to fund essential county services. . ."



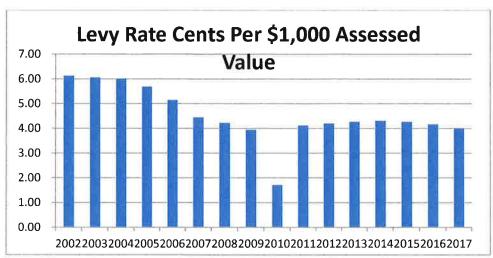
Source: Whatcom County Finance Department 1/31/2018. Chart shows net expenditures, because some expenditures were reimbursed by federal grants or other sources.





As previously mentioned, the County established the Conservation Futures Property Tax Levy and Fund in 1992. The County Code states ". . . The levy shall be applied at a rate of six and one-quarter cents per \$1,000 of assessed valuation" (WCC 3.25.010). As of 2017, the Conservation Futures tax rate is approximately four cents per \$1,000 assessed.

The levy rate has declined over the last 15 years as assessed valuations of existing properties have increased, new construction has added assessed valuation to the tax rolls, and the County has chosen not to increase the amount of Conservation Futures tax collected (except for the increased property tax levy that is the result of new construction). It should be noted that the increase in taxes collected is limited by state law to a maximum of 1% per year or the rate of inflation, whichever is lower. The County has banked unused capacity and retains the ability to increase the taxes levied at a future date.



Source: Statement of Assessed Valuations, Tax Rates, and Taxes Levied Within the Various Taxing Districts of Whatcom County (Whatcom County Assessor).

The Conservation Futures tax is an existing local funding source and the County Council could modify the levy rate to collect additional revenue. The County has secured limited funding for the PDR program from the Whatcom Community Foundation. The Whatcom County Council adopted a new "Density Credit" Chapter in the Zoning Code (WCC 20.91) in November 2017 that could potentially raise revenue through developer incentives. While revenue from the Community Foundation and/or density credits may provide supplemental funding to the PDR program, it is not anticipated that they will provide funding at the level generated by the Conservation Futures tax.

At the current time, the County collects a real estate excise tax, which is a tax upon sales of real estate, under WCC 3.20.024 and 3.20.025. The tax on real estate sales is currently ½ of 1% of the selling price. An additional real estate excise tax is authorized for conservation areas by state law (RCW 82.46.070). The Municipal Research and Services Center (MRSC) website describes this option as follows:

A county legislative authority may submit a ballot proposition to the voters for an additional real estate excise tax on each sale of real property in the county at a rate not to exceed 1% of the selling price. The revenue from this tax is restricted to the acquisition and maintenance of conservation areas. Conservation areas are defined in RCW 36.32.570 as:

land and water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value for existing and future generations, and includes, but is not limited to, open spaces, wetlands, marshes, aquifer recharge areas, shoreline areas, naturals areas, and other lands and waters that are important to preserve flora and fauna.

The property buyer, rather than the seller, pays this tax as outlined in RCW 82.46.070. Only San Juan County has levied this tax to date.

The County could also issue bonds for the PDR Program and repay the bondholders with future tax revenues.

The Whatcom County Budget (2017-2018) discusses the "Whatcom County Fund Structure." The County has six different fund types: General Fund, Special Revenue Funds, Debt Service Funds, Capital Projects Funds, Enterprise Funds, and Internal Service Funds. The County Budget describes the Conservation Futures Fund, which is under the Special Revenue Funds category, as:

A fund created to collect a real property tax levy applied to all taxable real property within Whatcom County. This fund may be used to acquire rights and interests in open space land, farm and agriculture land, and timberland with the goal of conserving property for public use or enjoyment" (Volume 1 – Page 23).

Planning & Development Services Department staff met with the County's Finance Manager and Senior Budget Analyst on August 16, 2017 to discuss the possibility of creating a new PDR fund. They indicated that the County Council could adopt an ordinance establishing a new PDR fund. However, the existing Conservation Futures fund, which can be used to hold other dedicated monies allocated to the PDR program, is functioning adequately at present. Additionally, there are administrative and reporting tasks associated with creating a new fund. Therefore, they recommended establishing a new fund only if significant new monetary resources become available that would be placed in the fund.

8. Proposed Sending and Receiving Areas

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with identifying:

- Proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas; and
- Proposed receiving areas.

Density Credit Model Preferred Over Traditional TDR Model

The Work Group finds that the density credit model, where a developer pays to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could allow increased development potential in cities, UGAs, and other appropriate areas while also providing supplemental funding for reducing development in agricultural and rural areas and, potentially for city amenities. Therefore, the Work Group recommends that the County and cities should primarily focus on the density credit model in the future and that new incentives should be tied to a density credit program (rather than the TDR program). The existing TDR program should be refined, but the County should not put major effort into reforming the program.

This shift in emphasis means that the County may direct PDR investments that utilize density credit funds to areas that also benefit the cities (rather than focusing on additional TDR sending areas). Additionally, areas may be designated in cities and UGAs for bonus densities under the density credit system (rather than focusing on additional TDR receiving areas).

Density Credit Program: Directed PDR Investments

It is anticipated that the majority of funding for the County's PDR program will continue to come from the Conservation Futures tax and funds from the federal government. The regular PDR site selection process will continue to apply to the development rights purchased with these funds.

However, if cities create density credit programs, and some of the money from these programs goes to the County's PDR program, investment of these funds may be directed to properties that benefit both the County and the applicable city. As previously mentioned, funds from density credits for increased land use intensity in a city could go towards a variety of public benefits, including but not limited to:

- Regional trail corridors that connect urban areas;
- Publically accessible open space;
- Watershed protection;
- Habitat and environmental resources;
- Agricultural lands; and
- Scenic view sheds.

Comprehensive Plan Policy 2A-14 indicates that areas that are candidates for future sending areas are critical areas, the Agriculture zone, and Rural Study Areas. The PDR Oversight Committee recommended an update to the PDR Program Guidelines on January 26, 2018. This update includes identification of priority areas in three distinct categories: Agricultural, forestry, and ecological areas. It is anticipated that the PDR Program Guidelines will be presented to County Council for consideration and approval in fall 2018.

If city density credit programs are enacted, the County and the applicable city would need to work together to select PDR priority areas, identified in the PDR Program Guidelines, where funds from the city's density credit program would be invested.

Density Credit Program: Bonus Density Areas

The cities and County should designate areas that can accommodate increased land use intensity utilizing a density credit program.

The areas with the greatest potential for high intensity urban development are in the cities. While Whatcom County may negotiate with cities on density credit program provisions, it does not have direct control over land use regulations inside city limits. The City of Bellingham has already designated TDR receiving areas and has a PDR program intended to reduce development potential in the Lake Whatcom watershed. It is recommended that the six small cities designate areas within their respective cities and UGAs that could be developed at increased urban intensities in association with a density credit program. The cities would have to develop incentives that developers want to utilize (i.e. purchase density credits to obtain), such as:

- Increased residential densities;
- · Reduced minimum lot sizes;
- Increased heights;
- Increased floor area ratios:
- Increased lot coverage; and/or
- Increased size of accessory dwelling units.

Additionally, cities would have to consider where the development incentives should be offered, such as:

- In specific zoning districts;
- In specified portions of a zoning district;
- In a specified section of the city; and/or
- In UGAs, outside of current city limits, once the area has been annexed.

Any funds acquired through such a program could be divided between the County and City (or used by the County to purchase development rights that benefit both the County and the city).

Whatcom County has direct control over land use regulation, including densities, in unincorporated areas such as the Birch Bay UGA and rural lands. The County should consider expanding the density credit program in the Birch Bay UGA and, in limited circumstances, utilizing the density credit program in rural areas (See Section 6 Opportunities/Alternatives to a Workable TDR Program).

TDR Program: Sending and Receiving Areas

As mentioned, the Work Group recommends focusing on the density credit model, rather than traditional TDR sending and receiving areas. However, using the traditional TDR program, an opportunity may exist to allow the owners of separate non-contiguous parcels to transfer density from one parcel to the other. This would encourage protection of higher quality agricultural soils and critical areas without an overall increase in the number of dwellings allowed in the rural area.

For example, if a land owner has two separate 20 acre parcels both zoned R5A, the owners would typically be allowed to divide the land and build four homes on each parcel under standard zoning rules. Under this approach, the density could be transferred from one of the parcels (e.g. that has development constraints or high quality agricultural soils) to the other parcel (which does not have as many constraints). The end result would be zero development capacity on one of the 20 acre parcels and eight dwellings on the other 20 acre parcel.

This concept could be utilized to transfer density from one part of the rural area to another part of the rural area. The receiving parcel would be developed as a cluster subdivision.

This concept should not be allowed to increase density in any of the following:

- Lake Whatcom Watershed;
- UGAs and UGA Reserves:
- Lummi Island;
- Agriculture zone;
- Rural Forestry zone;
- Commercial Forestry zone;
- Mineral Resource Lands Overlay.

The Work Group is not formally recommending that this concept be implemented, but has included it in the report to allow the concept to receive further consideration prior to a formal proposal. Any such proposal in rural areas would have to be carefully reviewed under the Growth Management Act and Whatcom County Comprehensive Plan to ensure that rural character is preserved in these areas.

9. Other Factors and/or Growth Management Tools

Whatcom County Comprehensive Plan Policy 2A-14 tasks the TDR/PDR Work Group with "Identifying other factors and/or growth management tools" relating to UGA expansions and mitigating impacts of residential development in rural lands, agricultural areas, and sensitive watersheds.

Other Factors

The Whatcom County Code contains criteria for approving Comprehensive Plan amendments, which include UGA expansions. Additionally, the Whatcom County Comprehensive Plan includes the following policies:

- Policy 2GG-3 Criteria for rezoning land in the Rural one dwelling/ten acre (R10A) district. In summary, these criteria address residential density in the area, not allowing rezones in UGA Reserves (which may be considered for inclusion in the UGA at a later date), and not allowing rezones in Rural Study Areas (that are valuable for agriculture).
- Policy 8A-3 Criteria for de-designating lands from the Agriculture designation. In summary, these criteria address whether the land is already characterized by urban growth, whether the land is used or capable of being used for agricultural production, and whether the land has long term commercial significance for agriculture. The criteria are based upon the Growth Management Act (GMA), Washington Administrative Code, and applicable court cases.
- Policy 2N-5 -"Protect resource lands by controlling or buffering adjacent uses and encouraging increased densities within existing city boundaries before expanding into county resource lands." Resource lands include the Agriculture designation.
- Policy 10J-14 "Existing Urban Growth Areas shall not be designated or expanded nor new Urban Growth Areas designated within the Lake Whatcom Watershed, and rezones that allow greater residential densities will not be allowed."
- Policy 2K-3 "Prohibit expansion of urban growth areas into floodplains, except where allowed under the GMA, and consider danger to individuals related to flooding when designating land use in other areas."
- Goal 2P Encourages cities to approve new residential developments within a range of urban densities. Policy 2P-1 states "Encourage cities to adopt and implement policies and development regulations that promote urban densities."

The County has a process for evaluating UGA amendments. Additionally, existing policies require consideration of Agricultural lands and protection of the Lake Whatcom Watershed when UGA expansions are proposed.

In accordance with the GMA, Whatcom County completed the eight-year update of the Comprehensive Plan in August 2016 (Ordinance 2016-034). This update was conducted in close coordination with the cities, as required by the GMA. Finding 62 of the Ordinance states:

The County's population is projected to grow by 33.8% over the 23-year planning period. Prior to the 2016 UGA review, there were a total 51,684 acres in UGAs (including within cities). A total of 345 acres are added to UGAs in the 2016 UGA review. This constitutes a 0.7% increase in the land in UGAs on a county-wide basis. . .

The County worked together with the cities to judiciously size UGAs in the 2016 Comprehensive Plan update. Maintaining a high level of County/city coordination will help achieve the common goals of facilitating urban densities in cities, conserving Agricultural lands, and protecting sensitive watersheds.

Whatcom County Comprehensive Plan Policy 2A-14 was adopted in the 2016 update. This policy states:

. . Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.

However, RCW 82.02.020 (relating to state preemption of certain tax fields) indicates:

. . . no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. . .

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. . .

The Civil Deputy from the Whatcom County Prosecuting Attorney's Office has expressed the opinion that requiring TDRs for UGA expansions or rezones would constitute a tax, fee, or charge on a re-classification of land, would not qualify for the "voluntary agreement" exception, and is not allowed under RCW 82.02.020. Therefore, TDRs should not be required in "exchange for UGA expansions and other

upzones" as suggested by existing Whatcom County Comprehensive Plan Policy 2A-14.

Additionally, WCC 20.89.051 (2) and (3) state that certain rezone requests and UGA expansions are required to transfer development rights from a designated TDR sending area. The County should also consider deleting this language from the Zoning Code.

Growth Management Tools

The County and Cities' Planners Group issued a "Growth Management Tools Report" (March 2015). This report addresses both non-urban tools and urban tools designed to ensure that the majority of countywide growth takes place in UGAs, as planned. The tools identified in the report are:

Non-Urban Tools

- Decreased Non-Urban Densities
- Rural Lot Consolidation
- Transfer of Development Rights/Density Transfer Credits
- Purchase of Development Rights
- Rezone of Rural Land Study Areas to Agricultural Lands
- Require Agriculture as a Primary Use and Limited Accessory Uses
- Agricultural Mitigation
- Tools to Reduce Impacts on Agricultural and Rural Lands But Not Reduce Overall Density
- Permit Metering
- Water Well Limitations
- Impact Fees

Urban Tools

- Increased Urban Densities
- Minimum Urban Densities
- Urban Mixed Use
- Utility Extension Policy
- Annexation Policy
- Mix of Single- and Multi-family Capacity
- Lot Size Averaging
- Land Value Taxation
- Fee Reduction Incentives

The Work Group recognizes this report and refers the reader to it for further information on these potential tools.

10. Economic Value of Development Rights

Whatcom County Comprehensive Plan Policy 2A-14 includes examining "Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value."

As previously mentioned, the TDR/PDR Work Group recommends a shift in emphasis from a traditional TDR program to density credit programs. In this context, primary questions relating to economic value include:

- Are the incentives offered by the density credit programs desirable to developers?
- Does the price tag associated with the incentives provide developers the opportunity to increase profit?

If the answer to either of these questions is "no," then developers will not utilize the density credit programs.

Other jurisdictions in Western Washington have commissioned TDR market studies, with the average cost in the \$40,000 range. Whatcom County could hire a consultant to conduct a market study to recommend incentives that would be attractive to developers in the current economic environment along with associated price tags.

Alternatively, the cities and County could adopt incentives and adjust those incentives over time to provide developers with the opportunity to profit from increased land use intensities. Additionally, with the density transfer credit system, the local government could modify the density credit price in response to changing economic conditions. This approach is recommended as the lower cost alternative.

Density credit programs may be used to essentially transfer residential density from rural and agricultural areas to urban areas, where growth is targeted. However, as previously mentioned, there are also other incentives that may be employed in a density credit program. For example, if a developer voluntarily contributes to reduce development in rural or agricultural areas, a variety of urban incentives could be offered including but not limited to:

- Increased commercial floor area:
- Increased building height;
- Reduced parking requirements;
- Increased impervious surface;
- · Reduced open space requirements; and
- Reduced setbacks (p. 5).

A variety of incentives should be explored that align with city and County goals and may be attractive to developers. The corresponding cost to developers to access these incentives will need to be developed and adjusted over time to meet market demands.

11. <u>Interlocal Agreements</u>

Comprehensive Plan Policy 2A-14 addresses interlocal agreements that "grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas."

Whatcom County has an interlocal agreement with each city concerning "Planning, Annexation and Development" within the UGA. These interlocal agreements, which were approved in 2012, address a number of topics including TDRs. The existing interlocal agreements include the following language:

Bellingham Interlocal - The City agrees to participate in a County initiated effort to further develop a TDR/PDR program for the Lake Whatcom Watershed (Section 11.B).

Blaine Interlocal - The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from the rural areas within the Drayton Harbor Watershed to the City and/or annexation areas (Section 11).

The Everson, Ferndale, Lynden, Nooksack, and Sumas interlocal agreements with the County each state:

The City and County will work to develop a mechanism and procedure to transfer development rights, which may include the purchase of development rights and/or in lieu fees, from designated Agricultural resource lands or rural areas to the City and/or annexation areas (Section 11.B of each interlocal).

In order to facilitate cooperative efforts between the cities and County, it is recommended that new interlocal agreements be developed or that existing interlocal agreements be revised to address a density credit program. These interlocal agreements should generally include the following:

- Framework for inter-jurisdictional density credit program;
- Generalized statement of incentives that could be offered by the city;
- Generalized statement of where the development incentives could be offered within the City (and/or in the UGA following annexation);
- How any density credit fees collected by the City would be divided between the City and the County;
- Generalized statement of how the City would utilize any funds from developer participation in the City's density credit program; and
- Agreement on how the County PDR Program would utilize any funds from developer participation in the City's density credit program.

It is acknowledged that the City of Bellingham has an existing Lake Whatcom Watershed PDR program.

12. Recommended Policy and Regulatory Changes

TDR/PDR Work Group recommendations are shown below:

A. Voluntary Density Credit Program

The Work Group finds that the density credit model, where a developer pays cash to receive development incentives instead of purchasing TDRs, is a simple and efficient tool that could potentially provide supplemental funding to reduce development in agricultural and rural areas through the County's existing PDR program. Therefore, the Work Group recommends that the County and cities primarily focus on the density credit model in the future and that new incentives should generally be tied to a density credit program (rather than existing TDR programs).

The City of Bellingham has an existing Purchase of Development Rights program aimed at reducing development in the Lake Whatcom Watershed. Whatcom County adopted a density credit program in 2017, but it only applies to Resort Commercial zones in the Birch Bay UGA at the current time. These existing programs allow developers to increase land use intensity by making a payment that would be utilized to purchase and retire development rights in the Lake Whatcom Watershed or the County's agricultural areas.

Expanding the density credit program is the highest priority change that has been identified. This is because it would help preserve agricultural and rural lands while providing a simple procedure for developers who want to access the incentives offered by the program. The density credit program should be expanded for the following, as discussed earlier in this report:

- Small cities;
- Additional areas in the Birch Bay UGA;
- Certain rural areas; and
- Accessory dwelling units.

B. Whatcom County Comprehensive Plan Amendments

The Work Group recommends amendments to the Whatcom County Comprehensive Plan as shown in Appendix A. These amendments reflect the proposed shift from a traditional TDR program to the new density credit model.

C. Voluntary TDR Program

The existing TDR program is cumbersome and not used very often. However, there are 247 certified TDRs in the County (some of which have been transferred). Therefore, the Work Group recommends keeping the existing TDR program. The existing TDR program should be refined, but the County should not put major effort into reforming the program. Specifically, the

existing TDR program should be simplified as much as possible. However, new incentives should generally be reserved for the density credit program.

D. Mandatory TDR Program

A Civil Deputy from the County Prosecuting Attorney's Office stated that, in his opinion, the County cannot require TDRs for UGA expansions or rezones under RCW 82.02.020.

The TDR/PDR Work Group recommends that the County consider deleting WCC 20.89.051 (2) and (3), which state that certain rezone requests and UGA expansions are required to transfer development rights from designated TDR sending areas.

E. TDR Bank

Establishing a TDR bank is not recommended at the current time. Staffing, financial expertise, appraisals, an oversight committee, and funding would be needed to start the bank (for a TDR program that has not been widely used in the past).

F. New PDR Fund

The TDR/PDR Work Group recommends that the County create a PDR fund, in consultation with the Whatcom County Finance Department, if significant new funding sources become available. The Conservation Futures fund is adequate at the existing time to serve the needs of the PDR program. If a separate County PDR fund is not created, the County Finance Department should track funds that are raised through the density credit program to ensure that these funds are used for their intended purpose.

Appendix A - Comprehensive Plan Amendments

Chapter 2 (Land Use)

Policy 2A-14:

Maintain a density credit program to incentivize increased land use intensity in designated areas and decrease residential density in agricultural and rural areas by authorizing density credits. Density credits allow development incentives, such as increased density, in exchange for a voluntary contribution towards preserving agricultural lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Agricultural Purchase of Development Rights Program (WCC 3.25A) in order to allow a higher density as specifically set forth in the Whatcom County Zoning Code.

Strive to establish by December 2017 a clear, predictable, and fair process for allowing expansion of urban growth areas that considers reasonable measures to mitigate the impacts of residential development in rural lands, agricultural areas (broadly defined), and sensitive watersheds. This process should include:

- 1. Consultation with a focus group of potential TDR/PDR users in the building industry.
- 2. Convening a multi-stakeholder work group, including the Cities, tasked with:
 - Reviewing the current TDR and PDR programs.
 - Identifying political, financial, and regulatory barriers to effective TDR and PDR programs.
 - Identifying opportunities and solutions for creating a workable TDR program.
 - Identifying mechanisms to create a PDR fund that could be used to protect important agricultural and rural lands.
 - Recommending policy and regulatory amendments necessary to implement the above policy.
 - Identifying proposed sending areas in critical areas, the Agricultural Zone, and the Rural Study Areas.
 - Identifying receiving areas.

- Identifying other factors and/or growth management tools.
- Exchangeable development rights that have economic value, with the potential for multiple methods of assigning and converting value.
- Interlocal agreements that grant economic value to exchangeable development rights and that insure development rights can be used in receiving areas.
- Based upon the findings of the multi-stakeholder work group, consider strategies that could require purchase, transfer or otherwise incentivize removal of potential development rights from rural or resource lands in exchange for UGA expansions and other upzones.

Rationale: In November 2017, the Whatcom County Council adopted a density credit program applicable to portions of the Birch Bay UGA (Ordinance 2017-062). The proposed Comprehensive Plan amendments would shift the emphasis in County Policy from a traditional TDR program, which has not worked well over the years, to the density credit program. Advantages of a density credit program, compared to a traditional TDR program, include:

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities (rather than the developer choosing where to buy TDRs within the sending area);
- The cash can be utilized in an existing PDR program (and the cash may be part of local matching funds used to leverage additional federal funding);
- Simplifies administration of the program. Reduces the time and resources needed to administer the program;
- Provides similar benefits as a traditional TDR program; and
- Jurisdictions don't need to determine sending/receiving area ratios.

Summarized from *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* by Nelson, Pruetz, and Woodruff, 2012, pp. 45 and 47).

Additionally, the TDR/PDR Multi-Stakeholder Work Group will issue recommendations in 2018. It is anticipated that the County Council will make a final decision on these Comprehensive Plan amendments in 2019, after the Work Group completes its work.

Policy 2F-4: Review and adopt, where appropriate, incentive programs such as cluster density bonuses in urban growth areas in association with the density credit program, purchase of development rights, transfer of development rights, and tax deferrals.

Rationale: This change incorporates a reference to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2H-2: Establish incentive programs such as cluster density bonuses in urban growth areas in association with the density credit program, and purchase of development rights, and voluntary, workable transfer of development rights, where appropriate, to compensate property owners if rights are unduly infringed.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2N-3: Consider <u>development incentives</u>, <u>such as density bonuses</u>, in <u>cities and UGAs in association with the density credit program.as receiving areas for development rights transferred from sending areas. Encourage cities to consider development incentives in association with a cooperative City-County density credit program.</u>

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to a density credit program. It also encourages cities to establish density credit programs in conjunction with the County.

Policy 2U-5: Review and update the interlocal agreement with Bellingham, prior to expiration of the current interlocal agreement, to provide for:

- Coordinated growth management and capital facility planning;
- timing and provision of utility services and other urban services;
- timing and procedures to be used for review of adequate land supply;
- timing of annexations;
- revenue sharing formulas prior to and after annexation;
- development standards and regulations;

- joint City/County review of development proposals in the UGA;
- affordable housing; and
- <u>a density credit program and/or</u> transfer of development rights within the City of Bellingham.

Rationale: The existing interlocal agreement between Whatcom County and the City of Bellingham is valid through the year 2022. When the interlocal is updated in 2022, it should reference a density credit program. The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been utilized/extinguished.

Policy 2U-7: Whatcom County and Bellingham should designate areas that can accommodate density bonuses in association with a density credit program and/or receiving areas within the City of Bellingham and its UGA for Transfer of Development Rights from the Lake Whatcom Watershed.

Rationale: The City of Bellingham already has a fee in lieu program (City Resolution 2009-024), which is essentially the same as a density credit program. This policy also recognizes that TDRs from the Lake Whatcom Watershed have been certified in the past. Therefore, the reference to TDRs should be maintained until all of these development rights have been extinguished.

Policy 2DD-10: Adopt and maintain incentive programs, such as purchase of development rights, the density credit program, transfer of development rights, and tax deferrals, to achieve desired land use policies in rural areas and in areas where there are compelling reasons to do so.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 2UU-4: Support the retention of open space and open space corridors through the use of education and incentives, such as purchase or transfer—of development rights, density bonuses within UGAs_in_association with the density credit program, cluster development, and acquisition of easements.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. New density bonus provisions in UGAs, if priced appropriately, can provide a win-win situation where a developer has the potential for increased profit while simultaneously contributing to the removal of development rights in rural or agricultural areas through the County's PDR program.

Policy 2UU-6: Improve public access to shorelines and other lands using such mechanisms as purchase or transfer of development rights, density bonuses within UGAs in association with the density credit program, and open space tax status.

Rationale: Same as rationale for Policy 2UU-4 above.

Chapter 3 (Housing)

Policy 3F-1: Include incentives in land use regulations, in UGAs and in Planned Unit Developments (PUDs), to offset the reduced profit inherent in more affordable types of housing. Incentives might include transfer of development rights, density bonuses, fee waivers, expedited permit review, and/or infrastructure concessions to protect developers wherever special needs populations are specifically served.

Rationale: This change reflects the shift away from a traditional TDR.

Chapter 8 (Resource Lands)

Policy 8A-2: Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base should include:

- Maintenance of 100,000 acres of agricultural land to support a healthy agricultural industry.
- A density credit program where development incentives are offered in cities and/or UGAs if density credits are purchased by the developer. Funds from the density credit program would supplement the existing Purchase of Development Rights (PDR) program funding, workable transfer of development rights program (TDR) in which the development potential of a site could be transferred to another location where development is more favorable.
- The workable TDR program shall give priority to the creation of economically viable receiving areas.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It recognizes that monies taken in through the density credit program would go towards reducing development potential in areas suitable for agriculture.

- Developing a marketplace approach to strengthening agricultural practices while enhancing larger-scale watershed processes and functions by identifying feasible opportunities on agricultural land to improve both watershed health and agricultural viability and developing incentives and tools to compensate farmers for actions that exceed minimum regulatory standards.
- Maintaining a Purchase of Development Rights (PDR) program that facilitates
 the removal of development rights from productive farmland and provides
 permanent protection of those agricultural lands through the use of
 conservation easements or other legal mechanisms.
- Incentives and cooperation between landowners and public agencies such as the use of the current use tax assessment provisions.
- Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.
- Discouraging conversion of designated agricultural lands to non-agricultural uses.
- Track acres lost due to conversion, development, or policy implementation such as critical areas ordinance, so mitigation strategies can be implemented to offset the acres lost.
- Education and marketing of programs that emphasize recognition of the local and regional significance of agricultural land as a natural resource and the economic, social and ecological benefits it provides.
- Working cooperatively with local farmers and coordinating with local and state agencies to address water quality impacts of agricultural activities on local streams and groundwater.
- Securing an adequate, sustainable, and legal supply of irrigation water sufficient to support the long-term viability of the local agricultural industry.
- Identify and evaluate any new or changed zoning or comprehensive plan agricultural lands of long term commercial significance designations as needed or warranted for the Rural Study Areas.
- Economic development assistance to agricultural-related enterprises.
- Recognize regulatory impacts and encourage farm friendly regulations.

Chapter 10 (Environment)

Policy 10C-3: Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase/voluntary, workable transfer of development rights, the density credit program, and other mechanisms that assist affected property owners.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program.

Policy 10E-6: Maintain a comprehensive program of regulatory and non-regulatory mechanisms to achieve Natural Hazard goals and policies. This program should include such mechanisms as education, tax incentives, zoning, land use regulations, conservation easements, purchase of development rights, transfer of development rights, and public acquisition.

Rationale: This change reflects the shift away from a traditional TDR. It does not reference the density credit program, because funds from density credits will go towards preserving rural and agricultural lands and are not specifically targeted towards naturally hazardous areas.

Policy 10L-16: Consider establishing important habitat areas (as set forth in best available science and Wildlife Advisory Committee recommendations) in the Purchase of Development Rights Program Guidelines site evaluation criteria. as sending areas after creating a voluntary, workable transfer of development rights (TDR) program.

Rationale: This change reflects the shift away from a traditional TDR. It also recognizes that the existing PDR Program Guidelines "site evaluation" criteria include conservation values such as wildlife habitat.

Policy 10P-17: Consider establishing the Drayton Harbor Watershed as an area for directed PDR investments and encourage the cities of Blaine and Ferndale to establish density credit programs that provide funding to the County PDR program.sending area when considering a transfer of development rights (TDR) program.

Rationale: This change reflects the proposed shift in emphasis from the traditional TDR program to the density credit program. It also encourages a cooperative effort between the County and cities that would provide developer incentives in the cities while reducing development potential in the rural and/or agricultural areas of the Drayton Harbor Watershed.

Whatcom County Code
Chapter 22.10
LEGISLATIVE ACTION PROCEDURES
Sections:
22.10.010 Purpose and applicability.
22.10.020 The docket.
22.10.030 Processing of docketed amendments.
22.10.040 Concurrent review of comprehensive plan amendments.
22.10.050 Notice of public hearing.
22.10.060 Approval criteria.

22.10.010 Purpose and applicability.

This chapter establishes the procedures for legislative actions amending the Whatcom County comprehensive plan and the development regulations that implement that plan. Amendments to the comprehensive plan include changes to the plan's text and maps, and amendments to the development regulations include changes to the official zoning map and the text in WCC Titles 16, 20, 21, and 23. For purposes of this chapter, comprehensive plan amendments include amendments to subarea plans. (Ord. 2018-032 § 1 (Exh. A)).

22.10.020 The docket.

- (1) The department of planning and development services ("department") shall maintain a proposed docket of comprehensive plan and development regulation amendment applications and shall present it to the county council for review once a year on or about March 1st. The county council may, by resolution, approve a docket listing all applications that may be processed per the provisions of this chapter.
- (2) The department, the executive, the planning commission, or the county council by majority vote, may place a proposed amendment on the docket at any time.
- (3) A party other than the county council, executive, the planning commission or the department may suggest an amendment to the comprehensive plan or development regulations by making application on forms provided by the department and submitting any required docketing fee.
 - (a) Applications for suggested amendments must be submitted by December 31st in order to be included on the proposed docket presented to the county council at its next annual docket review. The department shall review the application for completeness and may request additional information to ensure the application is complete before scheduling it for the annual docket review.
 - (b) If the county council dockets a suggested amendment, all required amendment application fees are due within 30 calendar days after it is docketed. If all fees are not paid within 30 calendar days after being docketed, the department shall close the application and remove it from the docket. When docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.
- (4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:
 - (a) The amendment was proposed by a party other than the county council or the department per subsection (3) of this section, and
 - (b) The applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year's docket. (Ord. 2018-032 § 1 (Exh. A)).

22.10.030 Processing of docketed amendments.

- (1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below:
 - (a) For suggested amendment applications filed per WCC <u>22.10.020(3)</u>, the department shall evaluate the applications for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing. Where a development regulation amendment requires a comprehensive plan amendment, the two amendments shall be processed at the same time.
 - (b) The department shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each docketed amendment. Both the report and the result of the environmental review shall be forwarded to the planning commission, and to the applicable city staff if the proposed amendment applies to land within a city's urban growth area.
 - (c) The staff report shall evaluate the proposed amendment(s) in relationship to the approval criteria of WCC $\underline{22.10.060}$, and consider any environmental impacts or mitigation measures identified by the Whatcom County SEPA official. If the proposed amendment includes land within a city's urban growth area, the staff report shall also address any comments from the city regarding consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.
- (2) Docketed comprehensive plan and development regulation amendment applications shall receive a public hearing by the planning commission subject to the notice requirements of WCC $\underline{22.10.050}$. Following the public hearing, the planning commission shall vote to adopt findings of fact and recommended actions, which the department shall transmit to the county council. In addition to the public hearing, the planning commission may hold public work sessions to discuss a proposed amendment.
- (3) The county council may hold a public hearing on the docketed amendment in addition to the planning commission's public hearing. If the county council decides the public interest is better served by considering a final action that differs from the planning commission recommendation, the county council shall hold a public hearing. The county council, by majority vote, may adopt the amendment by ordinance, reject the amendment, or remand the proposed amendment to the planning commission for further review.
- (4) Actions that are quasi-judicial as defined in RCW 42.36.010 (including but not limited to a zoning map amendment for a single lot) are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. For a proposed amendment that is a quasi-judicial action, the planning commission and county council shall process the application in accordance with Chapter 42.36 RCW in addition to the requirements of this section. (Ord. 2018-032 § 1 (Exh. A)).

22.10.040 Concurrent review of comprehensive plan amendments.

- (1) While public hearings and other public discussion of proposed comprehensive plan amendments may take place at any time of the year, the county council's final review and adoption of those amendments shall take place concurrently, no more frequently than once per calendar year, in accordance with RCW 36.70A.130(2)(a). Final adoption should occur on or about February 1st.
- (2) The following comprehensive plan amendments are excluded from the requirement of annual concurrent review and may be adopted at any time:
 - (a) The initial adoption of a subarea plan;
 - (b) Adoption or amendment of the shoreline master program under procedures set forth in Chapter 90.58 RCW;
 - (c) The amendment of the capital facilities element concurrent with adoption or amendment of the county budget;

- (d) Amendments needed to resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board or the court; or
- (e) Amendments necessary in cases where the county council finds an emergency exists. (Ord. 2018-032 § 1 (Exh. A)).

22.10.050 Notice of public hearing.

- (1) The county shall publish notice of the public hearing at least once in the official county newspaper and on the Whatcom County website no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing. (2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030(4), the county shall provide the following notice in addition to the requirements of subsection (1) of this section:
 - (a) The county shall mail notice to property owners as follows:
 - (i) For zoning map amendments within existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (ii) For zoning map amendments outside existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iii) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iv) For zoning map amendments that involve rezoning property to a mineral resource land designation: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (b) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 calendar days prior to the hearing.
 - (c) The county shall send notice to the appropriate city, when the proposed amendment is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed amendment at least 10 calendar days prior to the hearing.
 - (d) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven Sea Plane Base: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.
 - (e) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.
 - (f) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be

invited to submit written comments and attend the hearing to provide oral comments. (Ord. $2018-032 \S 1$ (Exh. A)).

22.10.060 Approval criteria.

- (1) In order to approve a comprehensive plan amendment, the planning commission and the county council shall find all of the following:
 - (a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - (b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
 - (c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - (i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - (ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - (iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - (d) The amendment does not include or facilitate spot zoning.
- (2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan. (Ord. 2018-032 § 1 (Exh. A)).

RCW 36.70A.130

Comprehensive plans—Review procedures and schedules—Amendments.

- (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.
- (b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.
- (c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under

RCW <u>36.70A.040</u>, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

- (d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.
- (2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:
- (i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter **43.21C** RCW;
- (ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;
- (iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter **90.58** RCW;
- (iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or
- (v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW <u>43.21C.440</u>, provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.
- (b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.
- (3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsections (4) and (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.
- (b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW **36.70A.215**.
- (4) Except as otherwise provided in subsections (6) and (8) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and

development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

- (a) On or before June 30, 2015, for King, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2016, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2017, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2018, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.
- (5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:
- (a) On or before June 30, 2024, and every eight years thereafter, for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2025, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2026, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2027, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.
- (6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.
- (b) A county that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (c) A city that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.
- (7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW <u>36.70A.040(1)</u>. Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter <u>43.155</u> or <u>70A.135</u> RCW:
 - (i) Complying with the deadlines in this section; or

- (ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.
- (b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW **43.17.250**.
- (8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.
- (b) A county that has made the election under RCW <u>36.70A.710</u>(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:
- (i) A work plan has been approved for that watershed in accordance with RCW **36.70A.725**;
- (ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;
- (iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;
- (iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or
 - (v) Three or more years have elapsed since the receipt of funding.
- (c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW **36.70A.710**(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW **36.70A.720**(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.

[2020 c 113 § 1; 2020 c 20 § 1026; 2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

NOTES:

Reviser's note: This section was amended by 2020 c 20 § 1026 and by 2020 c 113 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW $\underline{\textbf{1.12.025}}$ (2). For rule of construction, see RCW $\underline{\textbf{1.12.025}}$ (1).

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but

with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW <u>36.70A.250</u>.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW <u>36.70A.010</u>. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW <u>36.70A.130</u>, while ensuring coordination and consistency with the plans of neighboring cities and counties." [<u>2006 c 285 § 1</u>.]

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [**2005 c 294 § 3**.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW <u>36.70A.3201</u>.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW <u>36.70A.130(2)</u> does not apply to master planned locations in industrial land banks: RCW <u>36.70A.367(2)(c)</u>.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-381

File ID: AB2021-381 Version: 1 Status: Forwarded for

Concurrent Review

File Created: 06/21/2021 Entered by: DBrown@co.whatcom.wa.us

Department: Council Office File Type: Ordinance

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Ordinance adopting Whatcom County Comprehensive Plan amendments concerning the Lummi Island Ferry, modifying Policy 6A-1 relating to ferry level of service and deleting Policy 6C-9 relating to a ferry feasibility study

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance would amend the Whatcom County Comprehensive Plan concerning the Lummi Island Ferry. The proposal would modify Policy 6A-1 relating to ferry level of service and delete Policy 6C-9 relating to a ferry feasibility study.

This proposal was forwarded by Council on May 7, 2019, to be considered with other proposed Comprehensive Plan amendments (see AB2019-223). Per Whatcom County Code 2.02.115, because the ordinance was not adopted within 120 days of its original introduction date, it must be reintroduced, notice of introduction republished, and at least 13 days elapsed before the ordinance can come up for final consideration by the Council.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
11/07/2018	Council	FORWARDED FOR CONCURRENT REVIEW	Council
06/29/2021	Council	INTRODUCED	

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax



Mark Personius
Director

Memorandum

April 8, 2019

TO:

The Honorable Jack Louws, Whatcom County Executive

The Honorable Whatcom County Council

FROM:

Matt Aamot, Senior Planner

THROUGH:

Mark Personius, Director MP

RE:

Lummi Island Ferry - Comp Plan Amendments (PLN2019-00004)

The subject proposal is to modify the Whatcom County Comprehensive Plan as follows:

- Amending Policy 6A-1 relating to Lummi Island ferry level of service.
- Deleting Policy 6C-9 relating to a ferry feasibility study.

The Lummi Island Ferry Advisory Committee was established by WCC 2.145 (adopted in 2012). This Advisory Committee proposed modifications to Comprehensive Plan Policy 6A-1 relating to ferry level of service. Additionally, the Lummi Island Ferry System Level of Service Alternatives Analysis Final Report was issued on July 5, 2018. Therefore, Comprehensive Plan Policy 6C-9, relating to a ferry feasibility study, should be deleted because the study is complete. The Whatcom County Council endorsed the Lummi Island Ferry Advisory Committee recommendations by approval of Resolution 2018-026 on July 24, 2018.

The Whatcom County Planning Commission held a public hearing and recommended approval of these Comprehensive Plan amendments on January 24, 2019.

We are now requesting Council review of the amendments and anticipate that the County Council would make a final decision when all comprehensive plan amendments are reviewed concurrently.

Thank you for your consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: <u>Planning & Development Services</u> INTRODUCTION DATE: <u>April 23, 2019</u>

0	RD	IN	٩N	CE	NO	•			

ADOPTING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN RELATING TO THE LUMMI ISLAND FERRY

WHEREAS, The Lummi Island Ferry Advisory Committee proposed modifications to the Whatcom County Comprehensive Plan relating to the Lummi Island ferry; and

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered the Lummi Island Ferry Advisory Committee and Planning Commission recommendations; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

Background Information

- 1. The subject amendments to the Whatcom County Comprehensive Plan (Chapter 6, Transportation) are summarized as follows:
 - a. Amending Policy 6A-1 relating to Lummi Island ferry level of service.
 - b. Deleting Policy 6C-9 relating to a ferry feasibility study.
- 2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on December 12, 2018.
- 3. Notice of the Planning Commission hearing was sent to citizen, media, and other groups on the County's e-mail list on January 9, 2019.
- 4. Notice of the Planning Commission hearing was posted on the County website on January 10, 2019.
- 5. Notice of the Planning Commission hearing was published in the Bellingham Herald on January 11, 2019.

- 6. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 11, 2019.
- 7. The Planning Commission held a public hearing on the subject amendments on January 24, 2019.
- 8. Pursuant to WCC 22.10.060(1), in order to approve comprehensive plan amendments the County must find all of the following:
 - a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
 - c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.

Growth Management Act

- 9. The Growth Management Act (GMA) establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plan amendments.
- 10. GMA Planning goal # 3 is to "Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans" (RCW 36.70A.020(3)).

- 11. GMA planning goal # 12 is to "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards" (RCW 36.70A.020(12)).
- 12. The GMA, at RCW 36.70A.070(3), requires that a comprehensive plan must include, among other things, a forecast of the future needs for such capital facilities. The level of service provides a basis to project future needs.

County-Wide Planning Policies

13. County-Wide Planning Policy A-2 states that the County ". . . shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees. . ."

Interlocal Agreements

14. There are no interlocal agreements that would prevent the subject amendments.

Further Studies/Changed Conditions

- 15. The Lummi Island Ferry Advisory Committee was established by WCC 2.145 (adopted in 2012) to advise the County on a number of issues:
 - a. Review and provide recommendations on proposed changes to ferry operations and fares; and
 - b. Review at least annually ferry revenue and expenditures, ferry fund balance, and actual versus targeted fare return; and
 - Assist the county in collecting information from ferry riders on actual and desired ferry services, concerns, and ideas for improved service; and
 - d. Analyze and develop recommendations to continue and improve the cost effective operation of ferry service to Lummi Island; and
 - e. Research, review, and make recommendations regarding ferry replacement, long-term planning, parking, transportation to and from ferry docks, alternative docking locations, alternative funding sources, and other major capital and operational issues regarding ferry service to Lummi Island.
- 16. The Lummi Island Ferry Advisory Committee proposed modifications to Comprehensive Plan Policy 6A-1 relating to ferry level of service.

- 17. The Lummi Island Ferry System Level of Service Alternatives Analysis Final Report (July 5, 2018) was prepared by KPFF Consulting Engineers, Steer Davies Gleave, Elliott Bay Design Group, and Progressions. Therefore, Comprehensive Plan Policy 6C-9, relating to a ferry feasibility study, will be deleted because the study is complete.
- 18. The Whatcom County Council endorsed the Lummi Island Ferry Advisory Committee recommendations by approval of Resolution 2018-026 on July 24, 2018.

Public Interest

- 19. The subject Comprehensive Plan amendments relating to level of service standards are intended to facilitate ferry service that meets future community needs. These amendments were developed with the advice of the Lummi Island Ferry Advisory Committee, which considered public input at meetings and through surveys.
- 20. The subject Comprehensive Plan amendments address the provision of adequate ferry service in the future. Planning for such service is in the public interest.

Spot Zoning

21. The subject proposal does not involve rezoning property.

CONCLUSION

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

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

Section 1. The Whatcom County Comprehensive Plan (Chapter 6, Transportation) is hereby amended as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this	day of	, 2019.	
WHATCOM COUNTY COU WHATCOM COUNTY, WA			
ATTEST:			
Dana Brown-Davis, Cour	ncil Clerk	Rud Browne, C	Chairperson
APPROVED as to form:		() Approved	() Denied
Civil Deputy Prosecutor		Jack Louws, Ex	xecutive
		Date:	

Exhibit A

Whatcom County Comprehensive Plan Amendments

Chapter 6 (Transportation)

Ferry service to Lummi Island does not comprise an arterial or transit route; therefore it is not subject to concurrency under GMA. It is, however, the only point of access for Lummi Island. For the purposes of future infrastructure planning, a LOS standard for the Lummi Island ferry based on an estimate of the available passenger trips per capita Lummi Island population is established in Policy 6A-12. (See Lummi Island Ferry LOS methodology in Appendix J).

Policy 6A-1:

Establish the following levels of service (LOS) for purposes of maintaining transportation concurrency:

- The Level of Service (LOS) standard for county arterials and major collectors located outside of urban growth areas during weekday p.m.-peak hours is C or better, except for specified primary routes as shown on Map 6-3, which shall have a LOS of D or better.
- The LOS standard for county arterials and major collectors within urban growth areas not associated with cities during weekday p.m. peak hours is D or better, which may be reduced for concurrency evaluation purposes in accordance with Policy 6A-4.
- The LOS standard for county arterials and major collectors within city urban growth areas weekday during p.m. peak hours is D or better, which may be reduced for concurrency evaluation purposes in accordance with Policy 6A-4.
- Coordinate with Whatcom Transportation Authority to ensure adequate transit service, in accordance with the level of service standards established in its current strategic plan.
- Public Works shall establish a performance metric to monitor service performance of the Lummi Island ferry system. This will include a week long count at least every quarter in both sailing directions. This count will include percent capacity, on-time performance, and the number of vehicles left in the queue. The count shall be compared to the desired level of service of no more than two sailing waits during average weekday peak periods.

The Lummi Island Ferry Advisory Committee (LIFAC) is cooperating with Public Works to develop an updated LOS standard. LIFAC will present a revision to this section when

that work is complete. The interim LOS is calculated using the scheduled trips, the estimated car unit of the ferry, and the Small Area Estimates Program (SAEP) population figure. The interim standard is established at 439. (LOS = (Scheduled one way trips X estimated car units for the boat) X 2 / SAEP population figure from OFM for Lummi Island.)

Policy 6C-9: Conduct a ferry feasibility study to inform the next annual Comprehensive Plan update so that sufficient planning, engineering, design and cost detail is available to use in competing for grants and other sources of funding for a replacement ferry. LIFAC should provide input on the scope of work and any consultants or vendors retained, as well as reviewing and providing input on key milestones.

NOTE: Re-number existing Policy 6C-10 to 6C-9

WHATCOM COUNTY PLANNING COMMISISON

Lummi Island Ferry Comprehensive Plan Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

- 1. The subject amendments to the Whatcom County Comprehensive Plan (Chapter 6, Transportation) are summarized as follows:
 - a. Amending Policy 6A-1 relating to Lummi Island ferry level of service.
 - b. Deleting Policy 6C-9 relating to a ferry feasibility study.
- 2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on December 12, 2018.
- 3. Notice of the Planning Commission hearing was sent to citizen, media, and other groups on the County's e-mail list on January 9, 2019.
- 4. Notice of the Planning Commission hearing was posted on the County website on January 10, 2019.
- 5. Notice of the Planning Commission hearing was published in the Bellingham Herald on January 11, 2019.
- 6. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on January 11, 2019.
- 7. The Planning Commission held a public hearing on the subject amendments on January 24, 2019.
- 8. Pursuant to WCC 22.10.060(1), in order to approve comprehensive plan amendments the County must find all of the following:
 - a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

- b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
- c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
- d. The amendment does not include or facilitate spot zoning.

Growth Management Act

- 9. The Growth Management Act (GMA) establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plan amendments.
- 10. GMA Planning goal # 3 is to "Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans" (RCW 36.70A.020(3)).
- 11. GMA planning goal # 12 is to "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards" (RCW 36.70A.020(12)).
- 12. The GMA, at RCW 36.70A.070(3), requires that a comprehensive plan must include, among other things, a forecast of the future needs for such capital facilities. The level of service provides a basis to project future needs.

County-Wide Planning Policies

13. County-Wide Planning Policy A-2 states that the County "... shall provide opportunities for citizens to become involved in the growth management planning process through various mechanisms, such as surveys, public workshops, meetings, hearings, and advisory committees..."

Interlocal Agreements

14. There are no interlocal agreements that would prevent the subject amendments.

Further Studies/Changed Conditions

- 15. The Lummi Island Ferry Advisory Committee was established by WCC 2.145 (adopted in 2012) to advise the County on a number of issues:
 - a. Review and provide recommendations on proposed changes to ferry operations and fares; and
 - b. Review at least annually ferry revenue and expenditures, ferry fund balance, and actual versus targeted fare return; and
 - c. Assist the county in collecting information from ferry riders on actual and desired ferry services, concerns, and ideas for improved service; and
 - d. Analyze and develop recommendations to continue and improve the cost effective operation of ferry service to Lummi Island; and
 - e. Research, review, and make recommendations regarding ferry replacement, long-term planning, parking, transportation to and from ferry docks, alternative docking locations, alternative funding sources, and other major capital and operational issues regarding ferry service to Lummi Island.
- 16. The Lummi Island Ferry Advisory Committee proposed modifications to Comprehensive Plan Policy 6A-1 relating to ferry level of service.
- 17. The Lummi Island Ferry System Level of Service Alternatives Analysis Final Report (July 5, 2018) was prepared by KPFF Consulting Engineers, Steer Davies Gleave, Elliott Bay Design Group, and Progressions. Therefore, Comprehensive Plan Policy 6C-9, relating to a ferry feasibility study, will be deleted because the study is complete.
- 18. The Whatcom County Council endorsed the Lummi Island Ferry Advisory Committee recommendations by approval of Resolution 2018-026 on July 24, 2018.

Public Interest

19. The subject Comprehensive Plan amendments relating to level of service standards are intended to facilitate ferry service that meets future community needs. These amendments were developed with the advice of the Lummi Island Ferry Advisory Committee, which considered public input at meetings and through surveys.

20. The subject Comprehensive Plan amendments address the provision of adequate ferry service in the future. Planning for such service is in the public interest.

Spot Zoning

21. The subject proposal does not involve rezoning property.

CONCLUSIONS

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

RECOMMENDATION

Based upon the above findings and conclusions, the Planning Commission recommends:

1. Approval of Exhibit A, Whatcom County Comprehensive Plan amendments (Chapter 6, Transportation).

WHATCOM COUNTY PLANNING COMMISSION

Nicole Oliver, Chair

Ashley Ubill Secretary

Data

Date

Commissioners present at the January 24, 2019 meeting when the vote was taken: Kelvin Barton, Atul Deshmane, Gary Honcoop, Stephen Jackson, Kimberly Lund, Natalie McClendon, Dominic Moceri, and Nicole Oliver.

Vote: Ayes: 8, Nays: 0, Abstain: 0, Absent: 1. Motion carried to adopt the above amendments.

Planning Commission Exhibit A is attached to the proposed Ordinance.

Whatcom County Code
Chapter 22.10
LEGISLATIVE ACTION PROCEDURES
Sections:
22.10.010 Purpose and applicability.
22.10.020 The docket.
22.10.030 Processing of docketed amendments.
22.10.040 Concurrent review of comprehensive plan amendments.
22.10.050 Notice of public hearing.

22.10.010 Purpose and applicability.

22.10.060 Approval criteria.

This chapter establishes the procedures for legislative actions amending the Whatcom County comprehensive plan and the development regulations that implement that plan. Amendments to the comprehensive plan include changes to the plan's text and maps, and amendments to the development regulations include changes to the official zoning map and the text in WCC Titles 16, 20, 21, and 23. For purposes of this chapter, comprehensive plan amendments include amendments to subarea plans. (Ord. 2018-032 § 1 (Exh. A)).

22.10.020 The docket.

- (1) The department of planning and development services ("department") shall maintain a proposed docket of comprehensive plan and development regulation amendment applications and shall present it to the county council for review once a year on or about March 1st. The county council may, by resolution, approve a docket listing all applications that may be processed per the provisions of this chapter.
- (2) The department, the executive, the planning commission, or the county council by majority vote, may place a proposed amendment on the docket at any time.
- (3) A party other than the county council, executive, the planning commission or the department may suggest an amendment to the comprehensive plan or development regulations by making application on forms provided by the department and submitting any required docketing fee.
 - (a) Applications for suggested amendments must be submitted by December 31st in order to be included on the proposed docket presented to the county council at its next annual docket review. The department shall review the application for completeness and may request additional information to ensure the application is complete before scheduling it for the annual docket review.
 - (b) If the county council dockets a suggested amendment, all required amendment application fees are due within 30 calendar days after it is docketed. If all fees are not paid within 30 calendar days after being docketed, the department shall close the application and remove it from the docket. When docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.
- (4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:
 - (a) The amendment was proposed by a party other than the county council or the department per subsection (3) of this section, and
 - (b) The applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year's docket. (Ord. 2018-032 § 1 (Exh. A)).

22.10.030 Processing of docketed amendments.

- (1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below:
 - (a) For suggested amendment applications filed per WCC <u>22.10.020(3)</u>, the department shall evaluate the applications for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing. Where a development regulation amendment requires a comprehensive plan amendment, the two amendments shall be processed at the same time.
 - (b) The department shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each docketed amendment. Both the report and the result of the environmental review shall be forwarded to the planning commission, and to the applicable city staff if the proposed amendment applies to land within a city's urban growth area.
 - (c) The staff report shall evaluate the proposed amendment(s) in relationship to the approval criteria of WCC $\underline{22.10.060}$, and consider any environmental impacts or mitigation measures identified by the Whatcom County SEPA official. If the proposed amendment includes land within a city's urban growth area, the staff report shall also address any comments from the city regarding consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.
- (2) Docketed comprehensive plan and development regulation amendment applications shall receive a public hearing by the planning commission subject to the notice requirements of WCC $\underline{22.10.050}$. Following the public hearing, the planning commission shall vote to adopt findings of fact and recommended actions, which the department shall transmit to the county council. In addition to the public hearing, the planning commission may hold public work sessions to discuss a proposed amendment.
- (3) The county council may hold a public hearing on the docketed amendment in addition to the planning commission's public hearing. If the county council decides the public interest is better served by considering a final action that differs from the planning commission recommendation, the county council shall hold a public hearing. The county council, by majority vote, may adopt the amendment by ordinance, reject the amendment, or remand the proposed amendment to the planning commission for further review.
- (4) Actions that are quasi-judicial as defined in RCW 42.36.010 (including but not limited to a zoning map amendment for a single lot) are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. For a proposed amendment that is a quasi-judicial action, the planning commission and county council shall process the application in accordance with Chapter 42.36 RCW in addition to the requirements of this section. (Ord. 2018-032 § 1 (Exh. A)).

22.10.040 Concurrent review of comprehensive plan amendments.

- (1) While public hearings and other public discussion of proposed comprehensive plan amendments may take place at any time of the year, the county council's final review and adoption of those amendments shall take place concurrently, no more frequently than once per calendar year, in accordance with RCW 36.70A.130(2)(a). Final adoption should occur on or about February 1st.
- (2) The following comprehensive plan amendments are excluded from the requirement of annual concurrent review and may be adopted at any time:
 - (a) The initial adoption of a subarea plan;
 - (b) Adoption or amendment of the shoreline master program under procedures set forth in Chapter 90.58 RCW;
 - (c) The amendment of the capital facilities element concurrent with adoption or amendment of the county budget;

- (d) Amendments needed to resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board or the court; or
- (e) Amendments necessary in cases where the county council finds an emergency exists. (Ord. 2018-032 § 1 (Exh. A)).

22.10.050 Notice of public hearing.

- (1) The county shall publish notice of the public hearing at least once in the official county newspaper and on the Whatcom County website no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing.

 (2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030(4), the county shall provide the following notice in addition to the requirements of subsection (1) of this section:
 - (a) The county shall mail notice to property owners as follows:
 - (i) For zoning map amendments within existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (ii) For zoning map amendments outside existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iii) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iv) For zoning map amendments that involve rezoning property to a mineral resource land designation: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (b) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 calendar days prior to the hearing.
 - (c) The county shall send notice to the appropriate city, when the proposed amendment is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed amendment at least 10 calendar days prior to the hearing.
 - (d) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven Sea Plane Base: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.
 - (e) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.
 - (f) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be

invited to submit written comments and attend the hearing to provide oral comments. (Ord. $2018-032 \S 1$ (Exh. A)).

22.10.060 Approval criteria.

- (1) In order to approve a comprehensive plan amendment, the planning commission and the county council shall find all of the following:
 - (a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - (b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
 - (c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - (i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - (ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - (iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - (d) The amendment does not include or facilitate spot zoning.
- (2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan. (Ord. 2018-032 § 1 (Exh. A)).

RCW 36.70A.130

Comprehensive plans—Review procedures and schedules— Amendments.

- (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.
- (b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.
- (c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under

RCW <u>36.70A.040</u>, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

- (d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.
- (2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:
- (i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter **43.21C** RCW;
- (ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;
- (iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter **90.58** RCW;
- (iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or
- (v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW <u>43.21C.440</u>, provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.
- (b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.
- (3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsections (4) and (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.
- (b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW **36.70A.215**.
- (4) Except as otherwise provided in subsections (6) and (8) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and

development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

- (a) On or before June 30, 2015, for King, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2016, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2017, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2018, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.
- (5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:
- (a) On or before June 30, 2024, and every eight years thereafter, for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2025, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2026, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2027, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.
- (6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.
- (b) A county that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (c) A city that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.
- (7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW <u>36.70A.040(1)</u>. Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter <u>43.155</u> or <u>70A.135</u> RCW:
 - (i) Complying with the deadlines in this section; or

- (ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.
- (b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW **43.17.250**.
- (8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.
- (b) A county that has made the election under RCW <u>36.70A.710</u>(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:
- (i) A work plan has been approved for that watershed in accordance with RCW **36.70A.725**;
- (ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;
- (iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;
- (iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or
 - (v) Three or more years have elapsed since the receipt of funding.
- (c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW **36.70A.710**(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW **36.70A.720**(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.

[2020 c 113 § 1; 2020 c 20 § 1026; 2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

NOTES:

Reviser's note: This section was amended by 2020 c 20 § 1026 and by 2020 c 113 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW $\underline{\textbf{1.12.025}}$ (2). For rule of construction, see RCW $\underline{\textbf{1.12.025}}$ (1).

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but

with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW <u>36.70A.250</u>.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW <u>36.70A.010</u>. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW <u>36.70A.130</u>, while ensuring coordination and consistency with the plans of neighboring cities and counties." [<u>2006 c 285 § 1</u>.]

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [**2005 c 294 § 3**.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW <u>36.70A.130(2)</u> does not apply to master planned locations in industrial land banks: RCW <u>36.70A.367(2)(c)</u>.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-363

AB2021-363 Adopted File ID: Version: Status:

06/15/2021 JFleisch@co.whatcom.wa.us File Created: Entered by:

Department: File Type: Ordinance Requiring a Public Hearing Planning and

Development Services

Department

Council Final Action: 07/13/2021 Assigned to:

Enactment #: ORD 2021-040 Agenda Date: 07/13/2021

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

TITLE FOR AGENDA ITEM:

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

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:		Action:	Sent To:
06/29/2021	Council	Aye: 7	INTRODUCED FOR PUBLIC HEARING Browne, Buchanan, Byrd, Donovan, Elen	

Nay: 0 Absent: 0

07/13/2021 Council **ADOPTED** Aye: 6 Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0 Absent: 0

Abstain: 1 Byrd

Attachments: Staff Memo, Proposed Ordinance, Proposed Ordinance with Exhibit A, Staff Report

PROPOSED BY: Planning and

Development Services

INTRODUCTION DATE: 6/29/2021

ORDINANCE NO. 2021- 040

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/13th/ day of July	, 2021
STOOM TOOM	WHATCOM COUNTY COUNCIL
ATTEST	WHATCOM COUNTY, WASHINGTON
ATTESTS OF COUNTY	Dun Al Dil
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Dana Brown-Davis, elerk of the Council	Barry Buchanan, Council Chair
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Thuman Market Control of the Control	WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:	WHATCOM COUNTY, WASHINGTON
/s/ Royce Buckingham, approved via email / JL	Sitpul Sidh
Royce Buckingham	Satpal Sidhu, County Executive
Civil Deputy Prosecutor	
	(X) Approved () Denied Date
	= + 71/2/21
	Signed: 7/19/2/

Exhibit A

Whatcom County Code Chapter 20.73 Mineral Resource Lands Special District (MRL)

20.81.030

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

20.73.150 Conditional uses.

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

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

Whatcom County Comprehensive Plan Chapter 8 - Resource Lands

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

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

Mark Personius, AICP Director

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax



Memorandum

TO: The Honorable Satpal Sidhu, Whatcom County Executive

The Honorable Whatcom County Council

FROM: Joshua Fleischmann, Planner

THROUGH: Mark Personius, Director

DATE: June 15, 2021

SUBJECT: PLN2019-00010 - Surface Mining Pipeline Buffer

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

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

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

BP's response was the most thorough, stating:

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

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

WCC 20.73.153(9)

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

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

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

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

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

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

Policy 8L-9

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

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

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

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

PROPOSED BY: Planning and					
Development Services					
INTRODUCTION DATE:					

ORDINANCE NO. <u>2021-</u> 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.
- 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 thisday 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
/s/ Royce Buckingham, approved via email / JL	
Royce Buckingham Civil Deputy Prosecutor	Satpal Sidhu, County Executive
	() Approved () Denied Date
	Signed:

Exhibit A

Whatcom County Code Chapter 20.73 Mineral Resource Lands Special District (MRL)

20.81.030

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

20.73.150 Conditional uses.

- .153 Surface mining subject to Washington State's Surface Mining Act (Chapter 78.44 RCW); provided, that:
- (9) When mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline, a site specific geotechnical analysis of potential impacts to the pipeline is required. The analysis shall show that mining will not result in an increased likelihood of the pipeline becoming exposed or rupturing during an earthquake, and shall consider various seismic scenarios with a 2 percent probability of exceedance in 50 years on both proximal crustal faults and at the Cascadia Subduction Zone.

Whatcom County Comprehensive Plan Chapter 8 - Resource Lands

- **Goal 8L:** Ensure mineral extraction industries do not adversely affect the people and other properties in the vicinity, by establishing appropriate and beneficial designation and resource conservation policies, while recognizing the rights of all property owners.
- Policy 8L-9: Through a site specific geotechnical analysis of potential impacts,
 ensure mineral extraction within 500 feet of gas or petroleum
 transmission pipelines will not result in an increased likelihood of the
 pipeline becoming exposed or rupturing during an earthquake.

WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES STAFF REPORT

I. OVERVIEW

File # PLN2019-00010

File Name: Surface Mining Pipeline Buffer

Applicant: Whatcom County Council

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

Location: Countywide

Staff Recommendation: Approval

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

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

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

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

II. ZONING CODE EVALUATION

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

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

Natural Gas and Hazardous Liquid Transmission Pipelines

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

<u>Staff Comment</u>: 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

<u>Staff Comment</u>: 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.

<u>Staff Comment</u>: 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.

<u>Staff Comment</u>: 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.

<u>Staff Comment</u>: 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.

<u>Staff Comment</u>: 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.

<u>Staff Comment</u>: 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 aguifer.

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.

<u>Staff Comment</u>: 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)).

<u>Staff Comment:</u> 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.

<u>Staff Comment:</u> 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))

<u>Staff Comment:</u> 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.

<u>Staff Comment</u>: 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

<u>Staff Comment</u>: 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.

<u>Staff Comment:</u> 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.

<u>Staff Comment:</u> 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.

<u>Staff Comment:</u> 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).

<u>Staff Comment</u>: 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 Code
Chapter 22.10
LEGISLATIVE ACTION PROCEDURES
Sections:
22.10.010 Purpose and applicability.
22.10.020 The docket.
22.10.030 Processing of docketed amendments.
22.10.040 Concurrent review of comprehensive plan amendments.
22.10.050 Notice of public hearing.

22.10.010 Purpose and applicability.

22.10.060 Approval criteria.

This chapter establishes the procedures for legislative actions amending the Whatcom County comprehensive plan and the development regulations that implement that plan. Amendments to the comprehensive plan include changes to the plan's text and maps, and amendments to the development regulations include changes to the official zoning map and the text in WCC Titles 16, 20, 21, and 23. For purposes of this chapter, comprehensive plan amendments include amendments to subarea plans. (Ord. 2018-032 § 1 (Exh. A)).

22.10.020 The docket.

- (1) The department of planning and development services ("department") shall maintain a proposed docket of comprehensive plan and development regulation amendment applications and shall present it to the county council for review once a year on or about March 1st. The county council may, by resolution, approve a docket listing all applications that may be processed per the provisions of this chapter.
- (2) The department, the executive, the planning commission, or the county council by majority vote, may place a proposed amendment on the docket at any time.
- (3) A party other than the county council, executive, the planning commission or the department may suggest an amendment to the comprehensive plan or development regulations by making application on forms provided by the department and submitting any required docketing fee.
 - (a) Applications for suggested amendments must be submitted by December 31st in order to be included on the proposed docket presented to the county council at its next annual docket review. The department shall review the application for completeness and may request additional information to ensure the application is complete before scheduling it for the annual docket review.
 - (b) If the county council dockets a suggested amendment, all required amendment application fees are due within 30 calendar days after it is docketed. If all fees are not paid within 30 calendar days after being docketed, the department shall close the application and remove it from the docket. When docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.
- (4) The county council, by majority vote, may remove a proposed amendment from the approved docket by motion, unless:
 - (a) The amendment was proposed by a party other than the county council or the department per subsection (3) of this section, and
 - (b) The applicant has provided all information required by the planning and development services department. The department shall notify the applicant not less than 30 calendar days prior to consideration of removal from the docket. If the county council has not acted upon a docketed proposed amendment during the year for which it has been docketed, the county council may place the amendment on the following year's docket. (Ord. 2018-032 § 1 (Exh. A)).

22.10.030 Processing of docketed amendments.

- (1) The department shall review docketed comprehensive plan and development regulation amendment applications as provided below:
 - (a) For suggested amendment applications filed per WCC <u>22.10.020(3)</u>, the department shall evaluate the applications for completeness and may request additional information of the applicant prior to requesting the appropriate hearing body to schedule a public hearing. Where a development regulation amendment requires a comprehensive plan amendment, the two amendments shall be processed at the same time.
 - (b) The department shall conduct environmental review under SEPA and prepare a staff report including recommendations and/or options for each docketed amendment. Both the report and the result of the environmental review shall be forwarded to the planning commission, and to the applicable city staff if the proposed amendment applies to land within a city's urban growth area.
 - (c) The staff report shall evaluate the proposed amendment(s) in relationship to the approval criteria of WCC $\underline{22.10.060}$, and consider any environmental impacts or mitigation measures identified by the Whatcom County SEPA official. If the proposed amendment includes land within a city's urban growth area, the staff report shall also address any comments from the city regarding consistency with the applicable city comprehensive plan and the ability of the city to provide needed utility services.
- (2) Docketed comprehensive plan and development regulation amendment applications shall receive a public hearing by the planning commission subject to the notice requirements of WCC $\underline{22.10.050}$. Following the public hearing, the planning commission shall vote to adopt findings of fact and recommended actions, which the department shall transmit to the county council. In addition to the public hearing, the planning commission may hold public work sessions to discuss a proposed amendment.
- (3) The county council may hold a public hearing on the docketed amendment in addition to the planning commission's public hearing. If the county council decides the public interest is better served by considering a final action that differs from the planning commission recommendation, the county council shall hold a public hearing. The county council, by majority vote, may adopt the amendment by ordinance, reject the amendment, or remand the proposed amendment to the planning commission for further review.
- (4) Actions that are quasi-judicial as defined in RCW 42.36.010 (including but not limited to a zoning map amendment for a single lot) are subject to the appearance of fairness doctrine, Chapter 42.36 RCW. For a proposed amendment that is a quasi-judicial action, the planning commission and county council shall process the application in accordance with Chapter 42.36 RCW in addition to the requirements of this section. (Ord. 2018-032 § 1 (Exh. A)).

22.10.040 Concurrent review of comprehensive plan amendments.

- (1) While public hearings and other public discussion of proposed comprehensive plan amendments may take place at any time of the year, the county council's final review and adoption of those amendments shall take place concurrently, no more frequently than once per calendar year, in accordance with RCW 36.70A.130(2)(a). Final adoption should occur on or about February 1st.
- (2) The following comprehensive plan amendments are excluded from the requirement of annual concurrent review and may be adopted at any time:
 - (a) The initial adoption of a subarea plan;
 - (b) Adoption or amendment of the shoreline master program under procedures set forth in Chapter 90.58 RCW;
 - (c) The amendment of the capital facilities element concurrent with adoption or amendment of the county budget;

- (d) Amendments needed to resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board or the court; or
- (e) Amendments necessary in cases where the county council finds an emergency exists. (Ord. 2018-032 § 1 (Exh. A)).

22.10.050 Notice of public hearing.

- (1) The county shall publish notice of the public hearing at least once in the official county newspaper and on the Whatcom County website no fewer than 10 calendar days prior to the hearing. The notice shall include the date, time, place, and subject of the hearing. (2) For public hearings involving a quasi-judicial zoning map amendment application, per WCC 22.10.030(4), the county shall provide the following notice in addition to the requirements of subsection (1) of this section:
 - (a) The county shall mail notice to property owners as follows:
 - (i) For zoning map amendments within existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 300 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (ii) For zoning map amendments outside existing urban growth areas: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iii) For zoning map amendments that involve rezoning property to an Airport Operations District: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (iv) For zoning map amendments that involve rezoning property to a mineral resource land designation: At least 10 calendar days prior to the scheduled hearing date, hearing notice shall be mailed to all property owners within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor. The applicant shall submit mailing labels with a typed address for each of the above-referenced property owners.
 - (b) The county shall prepare and the applicant shall post signs giving notice of the hearing in conspicuous locations on the property at least 10 calendar days prior to the hearing.
 - (c) The county shall send notice to the appropriate city, when the proposed amendment is within or would expand the urban growth area, and to agencies, school districts, and tribes that will potentially be affected by the proposed amendment at least 10 calendar days prior to the hearing.
 - (d) For sites within 4,500 feet of the runway of Lynden Airport or Floathaven Sea Plane Base: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the city manager (if applicable), airport board or commission (if applicable), and an official representative of the airport.
 - (e) For sites within 10,000 feet of the runway of Bellingham International Airport: At least 10 calendar days prior to the scheduled hearing date, application notice shall be sent to the Port of Bellingham.
 - (f) All notices shall specify the date, time, location, and purpose of the hearing and provide a description and the location of the proposed rezone. The public shall be

invited to submit written comments and attend the hearing to provide oral comments. (Ord. $2018-032 \S 1$ (Exh. A)).

22.10.060 Approval criteria.

- (1) In order to approve a comprehensive plan amendment, the planning commission and the county council shall find all of the following:
 - (a) The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - (b) Further studies made or accepted by the department of planning and development services indicate changed conditions that show need for the amendment.
 - (c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - (i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - (ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - (iii) Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - (d) The amendment does not include or facilitate spot zoning.
- (2) In order to approve an amendment to the development regulations, the planning commission and county council shall find that the amendment is consistent with the comprehensive plan. (Ord. 2018-032 § 1 (Exh. A)).

RCW 36.70A.130

Comprehensive plans—Review procedures and schedules— Amendments.

- (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.
- (b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.
- (c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under

RCW <u>36.70A.040</u>, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

- (d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.
- (2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:
- (i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter **43.21C** RCW;
- (ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;
- (iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter **90.58** RCW;
- (iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or
- (v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW **43.21C.440**, provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.
- (b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.
- (3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsections (4) and (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.
- (b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW **36.70A.215**.
- (4) Except as otherwise provided in subsections (6) and (8) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and

development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

- (a) On or before June 30, 2015, for King, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2016, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2017, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2018, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.
- (5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:
- (a) On or before June 30, 2024, and every eight years thereafter, for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;
- (b) On or before June 30, 2025, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- (c) On or before June 30, 2026, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and
- (d) On or before June 30, 2027, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.
- (6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.
- (b) A county that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (c) A city that is subject to a deadline established in subsection (5)(a)(ii) through (iv) [(b) through (d)] of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.
- (d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.
- (7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW <u>36.70A.040(1)</u>. Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter <u>43.155</u> or <u>70A.135</u> RCW:
 - (i) Complying with the deadlines in this section; or

- (ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.
- (b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW **43.17.250**.
- (8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.
- (b) A county that has made the election under RCW <u>36.70A.710</u>(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:
- (i) A work plan has been approved for that watershed in accordance with RCW **36.70A.725**;
- (ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;
- (iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;
- (iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or
 - (v) Three or more years have elapsed since the receipt of funding.
- (c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW **36.70A.710**(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW **36.70A.720**(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.

[2020 c 113 § 1; 2020 c 20 § 1026; 2012 c 191 § 1. Prior: 2011 c 360 § 16; 2011 c 353 § 2; prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

NOTES:

Reviser's note: This section was amended by 2020 c 20 § 1026 and by 2020 c 113 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW $\underline{\textbf{1.12.025}}$ (2). For rule of construction, see RCW $\underline{\textbf{1.12.025}}$ (1).

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but

with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW <u>36.70A.250</u>.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [**2005 c 294 § 3**.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW <u>36.70A.3201</u>.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW <u>36.70A.130(2)</u> does not apply to master planned locations in industrial land banks: RCW <u>36.70A.367(2)(c)</u>.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-412

File ID: AB2021-412 Version: 1 Status: Agenda Ready

File Created: 07/13/2021 Entered by: MCaldwel@co.whatcom.wa.us

Department: Finance Division File Type: Ordinance

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 12, in the amount of \$1,506,763

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #12 requests funding from the General Fund:

- 1. To appropriate \$97,486 in Sheriff to fund less lethal device replacements as a result of recent legislation.
- 2. To appropriate \$43,277 in Non Departmental to fund What-Comm E911 operations from pass-through grant proceeds.

From the Countywide Emergency Medical Services Fund:

3. To appropriate \$591,000 to partially fund 5th medic unit implementation.

From the Auditor's O&M Fund:

- 4. To appropriate \$25,000 to fund commissioner proceedings scanning and digitizing project. From the Public Utilities Improvement Fund:
- 5. To reappropriate 2019 funding of \$750,000 for Port of Bellingham rural broadband project.

HISTORY OF LEGISLATIVE FILE							
Date:	Acting Body:	Action:	Sent To:				

PROPOSED BY: <u>Executive</u> INTRODUCTION DATE: <u>07/27/21</u>

ORDINANCE NO. AMENDMENT NO. 12 OF THE 2021 BUDGET

WHEREAS, the 2021-2022 budget was adopted November 24, 2020; and,
WHEREAS, changing circumstances require modifications to the approved 2021-2

WHEREAS, changing circumstances require modifications to the approved 2021-2022 budget; and.

WHEREAS, the modifications to the budget have been assembled here for deliberation by the Whatcom County Council,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2021-2022 Whatcom County Budget Ordinance #2020-068 is hereby amended by adding the following additional amounts to the 2021 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
Sheriff	97,486	-	97,486
Non Departmental	43,277	(43,277)	
Total General Fund	140,763	(43,277)	97,486
Countywide Emergency Medical Services Fund	591,000	-	591,000
Auditor's O&M Fund	25,000	-	25,000
Public Utilities Improvement Fund	750,000		750,000
Total Supplemental	1,506,763	(43,277)	1,463,486

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 B	udget Ordinance No. 12			
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Sheriff	To fund less lethal device replacements as a result of recent legislation.	97,486	-	97,486
Non Departmental	To fund What-Comm E911 operations from pass-through grant proceeds.	43,277	(43,277)	
Total General Fund		140,763	(43,277)	97,486
Countywide Emergency Medical Services Fund	To partially fund 5th medic unit implementation.	591,000	-	591,000
Auditor's O&M Fund	To fund commissioner proceedings scanning and digitizing project.	25,000	-	25,000
Public Utilities Improvement Fund	To reappropriate 2019 funding for Port of Bellingham rural broadband project.	750,000	-	750,000
Total Supplemental		1,506,763	(43,277)	1,463,486

Office & Op Supplies

Sheriff		Operations				
Supp'l ID # 3:	275 Fund 1	Cost Center 29	20 O r	riginator: J. Gum	/D. Pierce	
Expenditure	Type: One-Time	Year 1 2021	Add'I FTE	Add'l Space	Priority	1
Name of R	equest: Less Leth	al Devices				
X Departm	BM Eq.	re (Required on H	ard Copy Subn	nission)	Date	ou Merrilo
Costs:		bject Description			Requested	

1a. Description of request:

6320

Request Total

The recent changes in Washington State law made less lethal devices utilized by the Whatcom County sheriff's Office (WCSO) illegal to use as of July 25, 2021. This includes our current less lethal bean bag rounds deployed through a 12-gauge shotgun and the 40 mm soft nose sponge rounds deployed through a hand-held launcher.

The WCSO uses less lethal launchers to provide a safer way to gain control over persons involved in potentially lethal encounters. Without the less lethal projectile deputies have to move into close proximity to armed individuals if they want to gain control over the individual. This close proximity is often a causal factor in the use of lethal force.

1b. Primary customers:

All commissioned deputies of the WCSO.

2. Problem to be solved:

The recent changes in Washington State law made less lethal devices utilized by theWhatcom County sheriff's Office (WCSO) illegal to use as of July 25, 2021. This includes our current less lethal bean bag rounds deployed through a 12-gauge shotgun and the 40 mm soft nose sponge rounds deployed through a hand-held launcher.

The WCSO uses less lethal launchers to provide a safer way to gain control over persons involved in potentially lethal encounters. Without the less lethal projectile deputies have to move into close proximity to armed individuals if they want to gain control over the individual. This close proximity is often a causal factor in the use of lethal force

3a. Options / Advantages:

The requested FN303 utilizes compress air to deploy a plastic impact projectile. The deployment of the FN303 produces very little sound, reduces on-scene stress and noise disruption, and is not confused with a lethal weapon such as a less lethal shotgun round.

3b. Cost savings:

The cost savings are not easily measured. The cost and effect of a lethal police encounter within a community is immense. The ability to disarm or contain an armed person without utilizing lethal force would save hundreds of thousands of dollars as a minimum estimation.

4a Outcomes

Upon receiving the FN303 and providing the required training, the WCSO will equip our deputies with a less lethal device designed to save lives.

4b. Measures:

When the first successful deployment of the FN303 occurs, the positive outcome will be measurable.

Status: Pending

\$97,486

\$97,486

Status: Pending Sheriff Operations Fund 1 Supp'l ID # 3275 Cost Center 2920 Originator: J. Gum / D. Pierce

5a. Other Departments/Agencies:

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

6. Funding Source:

General Fund

Executive	9		
Supp'l ID# 3	273 Fund 1	Cost Center 4297	Originator: Suzanne Mildner
Expenditure	e Type: One-Ti	me Year 1 2021 Add	I'l FTE Add'l Space Priority 1
Name of R	equest: What-	Comm E911 Ops 2021-22	
X Departm	ent Head Sig	nature (Required on Hard C	copy Submission) 7/9/21 Date
Costs:	Object	Object Description	Amount Requested
	4334.0182	State Enhanced 911 Funds	(\$43,277)
	7220	Intergov Subsidies	\$43,277

1a. Description of request:

Request Total

This request is for an annual state-funded pass-through grant from the Washington State Military Department to reimburse the What-Comm Communications Center for eligible operating expenditures under WAC 118-66-050 (professionjal development and other operational expenses)

1b. Primary customers:

City of Bellingham, What-Comm Communications Center

2. Problem to be solved:

What-Comm is able to access this State Military Department grant by way of pass-through from the local county government. A subrecipient agreement will be signed with the City of Bellingham who will be responsible for grant oversight.

3a. Options / Advantages:

The intergovernmental grant agreement is a vehicle for accessing this fund source. The acceptance of these funds ultimately reduces the cost to the community for 911 services.

3b. Cost savings:

N/A

4a. Outcomes:

911 service cost reductions for our community due to state subsidies

4b. Measures:

N/A

5a. Other Departments/Agencies:

City of Bellingham, What-Comm Communications

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

Greg Erickson, E911 Deputy Director of Operations

6. Funding Source:

Washington State Military Department

Status: Pending

\$0

Non-Departm	ental						
Supp'l ID # 3272	Fund 130	Cos	t Center	130120	Originator:	Tawni Helms	
		Year 1	2021	Add'l FT	E	Priority	1
Name of Reque	est: 5th Medic (Unit Imple	mentatio	n			
X Ly Department I	Fox				Submission)	7/13/2	

US	ts.	

Object	Object Description	Amount Requested
7210.006	Intergov Prof Svcs	\$170,000
7210	Intergov Prof Svcs	\$421,000
Request To	tal	\$591,000

1a. Description of request:

Through a very deliberative and data driven process, Whatcom County EMS has established the need, location and urgency of implementing a 5th Medic Unit in Lynden to be staffed by Bellingham paramedics. In addition, the current units will be relocated to facilitate optimum coverage and response times. The impacted station chiefs and EMS Administration developed a staffing and start up cost plan within a phased approach. The costs to be incurred in 2021 include the acquisition of a new ambulance by Bellingham Fire (\$240,000), alterations for Bellingham Fire Stations 3 & 6 (\$50,000), reimbursement to Lynden for Station 75 renovations to house the 5th medic unit personnel (\$150,000), \$20,000 for preliminary design of a Station 12 remodel (Britton Rd station), as well as hiring and outfitting 10 new BFD firefighters to replace the 10 paramedic FTEs currently assigned to the City of Bellingham General Fund. Complete implementation will take place over the next few years and will include items delineated in the attached spreadsheet and proposal adopted by the EMS Oversight Board.

1b. Primary customers:

Whatcom County residents

2. Problem to be solved:

Whatcom County is in dire need of a 5th medic unit. Statistics generated by dispatch software verify that 3 of the 4 units are over the 2500 per year call target capacity and 2 of those 3 are well over 3000 calls per unit. Reserve capacity is also tapped out.

3a. Options / Advantages:

Options employed over the past several years have included shifting BLS responsibilities to the fire districts/departments and refining how calls are dispatched so that ALS units are not being dispatched to BLS calls. The option of adding the 5th medic unit was envisioned in the 2016-2022 levy plan and is the plan agreed to by the citizens, elected officials and EMS community.

Whatcom County EMS has studied the need for a 5th Medic Advance Life Support (ALS) Unit for a number of years. To identify the need for additional Advance Life Support (ALS) units WCEMS contracted with a GIS/ARC company to review a multitude of information that is now available through the electronic records management system; Image Trend. The final analysis provided a data supported recommendation for a fifth ALS Unit.

3b. Cost savings:

There are no specific cost savings other than the current system will no longer be overtaxed.

4a. Outcomes:

An additional ALS unit will be implemented to meet the needs of a growing population. Outcomes will be delivered in a phased approach. The 10 paramedics currently paid out of Bellingham's General Fund will

Monday, July 12, 2021

Rpt: Rpt Suppl Regular

Status: Pending

Non-Departmental

Supp'l ID # 3272 **Fund 130**

Cost Center 130120

Originator: Tawni Helms

Status: Pending

continue to provide backfill for the Countywide EMS Fund units and BFD fire apparatus, and will also staff an additional medic unit as capacity allows, while being reimbursed by Countywide EMS. Once replacement firefighters are hired and trained, General Fund paramedics and newly graduated paramedics will be phased into the rotation to fully staff the new 24/7 Fifth Unit.

4b. Measures:

Success will be measured when the Fifth Medic Unit is fully up and running 24/7 and all station remodels are completed.

5a. Other Departments/Agencies:

City of Bellingham, Fire Department Lynden Fire Department

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

Chief Bill Hewett, Bellingham Fire Department

6. Funding Source:

Countywide Emergency Medical Services Fund

To: Emergency Medical Services Oversight Board

From: Mike Hilley

CC: Technical Advisory Board

Date: June 16, 2021 Re: Fifth ALS Unit



A 5th Whatcom County ALS unit is planned to begin activation January 2022 in Lynden and be in service as a full time unit by the end of 2022. \$2,087,500 is requested to initiate this 5th unit:

Station Renovations	220,000
Rig and Equipment	320,500
COB 10 New Hire Startup Costs	131,000
COB 10 Paramedic FTEs	1,416,000
Total Budget Request	\$2,087,500

The EMS Finance Sub-Committee has reviewed the attached budget.

WCEMS will reimburse capital costs (station renovations and equipment) up to \$540,500 as renovations and equipment are acquired.

Bellingham Fire will need to hire 10 new firefighters as paramedics are transferred to the new unit. Onboarding and initial equipment outfitting for these new firefighters will cost \$131,000.

Up to \$1,416,000 is requested to pay 10 FTE paramedics currently paid in the City's General Fund. These paramedics will staff an additional unit as capacity allows. The agreement with COB will be memorialized with an amendment to the current Inter-Local Agreement where monthly cost reimbursement is represented by the reporting of actual costs incurred along with a schedule of actual unit deployments each month.

Costs for a 2022 paramedic school will be presented to the EOB in a few months after school details and expenses are finalized.

	m County E			
Summary: 5th ALS U		elocation Co	osts	
At Ju	ne 14, 2021			
				2021-2023
	2021	2022	2023	Total
2022 & 2023 Station Remodels				
Lynden Medic Qtrs Buildout (See Note 1 below)	150,000			150,000
BFD Station 3 & 6 remodels (see Note 2. below)	50,000			50,00
FD 7 Station remodels			20,000	20,000
Station 12 Preliminary Design	20,000			20,000
Station 12 Remodel			1,000,000	1,000,00
Total Station Remodels	220,000		1,020,000	1,240,000
New Rig & Equipment				
Rig (includes make ready & tax)	240,000			240,000
IT Equipment		13,000		13,00
Durable Medical Equip		18,000		18,00
PPE		27,000		27,00
Medical Kits		7,500		7,50
Miscellaneous		15,000		15,00
Total Equipment	240,000	80,500		320,50
COB Cost to hire 10 replacement firefighters				
Recruiting/Hiring	30,000			30,000
Physicals	17,000			17,00
PPE - 2 sets bunker gear per firefighter	60,000			60,00
Uniforms & misc personal equip.	24,000			24,00
Total New Hire StartUp Costs	131,000			131,00
Phase in 5th Unit Operations (see Note 3 below)	-	1,416,000		1,416,00
Cost to activate 5th unit	591,000	1,496,500	1,020,000	3,107,50
This Budget Supplement Summary:				
2021 (all 2021 costs shown above)	\$ 591,000			
2022 Phase in 5th Unit	\$ 1,496,500			
Total this Budget Supplement	\$ 2,087,500			
NOTES:				
1. Lynden estimate for 2 1/2 bedrooms added to Sta	tion 75 at \$60	000 per bedrooi	m.	
2. \$25,000 per station for upgraded altering system				
3. \$118,000 per month for 10 Paramedic FTEs		<u> </u>		
The 2016 EMS Funding Work Group Recommendation				

Auditor					
Supp'l ID # 3271	Fund 166	Cost Center 16	6600 O I	r iginator: Stacy H	lenthorn
Expenditure Ty	rpe:One-Time	Year 1 2021	Add'I FTE	Add'l Space	Priority 1
Name of Requ	est: Commissi	oner Proceedings			
x	Haya-	tutho		4/1	8/2021
Department	Head Signatu	ıre (Required on I	Hard Copy Sub	mission)	Date

Costs:	Object	Object Description	Amount Requested
	6630	Professional Services	\$25,000
	Request Total		\$25,000

1a. Description of request:

Scan and digitize original volumes of 60 Commissioner Proceedings, 7 draft Commissioner minutes, and 6 indexes to Commissioner Proceedings for easy access and historical preservation.

1b. Primary customers:

County Council, staff, and the public.

2. Problem to be solved:

The Commissioner Proceedings volumes hold historical County information and are the only copy. Digitizing the volumes will not only provide access but provides a back-up to this important historical information. Currently, the County Council office has 9 volumes in their office and the rest of the 64 volumes are located at the Northwest Regional Archives in Bellingham. The Commissioner Proceedings are large and heavy varying in size up to 13.25 X 18.5. Some of the pages are fragile having been torn or brittle requiring special processing.

3a. Options / Advantages:

None.

3b. Cost savings:

N/A

4a. Outcomes:

The Commissioner Proceedings will be scanned at the Northwest Regional Archives and at the county courthouse. The images will then be cropped, sized, masked, and despeckled by vendor. After the process is completed, the digital images will be imported into Laserfiche by volume number in sequential page order.

4b. Measures:

The Commissioner Proceedings will be viewable by volume and date in page order. The 9 volumes of Commissioner Proceedings in the Council office will be transferred to the Northwest Regional Archives for preservation freeing up office space.

5a. Other Departments/Agencies:

The IT division will import the Commissioner Proceedings into Laserfiche and maintain the digital images.

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

Perry Rice will be coordinating with Kristi Felbinger the import of the digital images into Laserfische.

6. Funding Source:

Auditor O&M fund.

Status: Pending

Non-Departmental								
Supp'l ID # 3270 Fund 332	Cost Center 332248	Originator: Tawni Helms						
Expenditure Type: One-Time	Year 1 2021 Add	I FTE Add'I Space Priority	1					
Name of Request: Re-appropriate 2019 EDI grant POB Rural Broadband								
X Department Head Signatu	re (Required on Hard Co	7/1Z/:	2./					
	iect Description	Amount Requested						

Object	Object Description	Amount Requested
7220	Intergov Subsidies	\$750,000
Request Total		\$750,000

1a. Description of request:

This request is for EDI Program funding to support the Port of Bellingham's Rural Broadband construction project and re-appropriates the funding approved in 2019. With no activity against the Port of Bellingham contract for this grant award the funding was not re-appropriated in 2021.

1b. Primary customers:

Unincorporated Whatcom County, as well as the townships of Kendall, Mt. Baker, Deming and Glacier.

2. Problem to be solved:

In May, 2019 the County Council approved an EDI Board recommendation to provide grant funding in the amount of \$750,000 to the Port of Bellingham in support of the rural broadband construction project. This project consists of engineering and construction of an open access dark fiber network; this will provide broadband to our local businesses and community members who currently are unserved and underserved by the current fiber infrastructure. This grant was not expended in 2019 or 2020 and was not reappropriated through the budget process. This supplemental re-allocates that original grant award.

Additionally, the grant award was successful in leveraging a state CERB grant.

3a. Options / Advantages:

Funding was previously approved through budget ordinance #2019-070. Contractually obligated to award grant when funds are to be expended.

3b. Cost savings:

n/a

4a. Outcomes:

The introdution of rural broadband will make our rural communities more marketable to new businesses and will encourage growth of more home-based businesses. The project includes four routes throughout the county totaling 113.2 miles.

4b. Measures:

Final project report and budget summary.

5a. Other Departments/Agencies:

Project development and success involves many partners such as PUD#1 of Whatcom County, tribes, small cities

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

Port of Bellingham, Gina Stark

6. Funding Source:

Public Utilities Improvement Fund

Status: Pending



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-420

File ID: AB2021-420 Version: 1 Status: Agenda Ready

File Created: 07/14/2021 Entered by: JFleisch@co.whatcom.wa.us

Department: Planning and File Type: Ordinance Requiring a Public Hearing

Development Services

Department

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Ordinance amending the Whatcom County Comprehensive Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A Comprehensive Plan Map amendment and zoning code amendment for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest. The proposed map amendment will amend the Mineral Resource Lands Comprehensive Plan Designation to Rural Forestry, to match the zoning district. The zoning code amendment will include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone. The proposal affects approximately 66 acres of privately held lands on/near Wells Creek Road, off of State Route 542 - Mt. Baker Hwy, Assessor's Parcel Numbers 400831580150, 400831450200, 390806550550.

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Staff Memo, Staff Report, Proposed Ordinance

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: July 14, 2021

SUBJECT: PLN2020-00004 - Rural Forestry Designation and Text Amendment -

Nooksack Falls

This memo is intended to provide background on a docketed amendment for a Comprehensive Plan Map amendment and zoning code amendment for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest.

The subject properties totaling approximately 66 acres exist as privately held lands surrounded by the Mount Baker -Snoqualmie National Forest. These lands were part of an Interim Zoning Ordinance from 1972 which was extended repeatedly until Ordinance 99-013 established Comprehensive Plan Designations and Title 20 Zoning for these (and other) fee lands within the National Forest, Wilderness and Recreation areas. The subject exclave received a Comprehensive Plan Designation of Mineral Resource Lands (MRL) and the Rural Forestry zoning designation.

In the early 1900's, mining related activities and hydroelectric power were the primary uses of the subject property. However, mining activities in this area ceased over 50 years ago and there is no mining on or near the property, as the applicant states that mining is no longer feasible at the site due to economic, environmental, topographic and other factors. Meanwhile, Nooksack Falls has attracted increasing numbers of visitors given its proximity to other recreational destinations. The proposed Comprehensive Plan Map and zoning code text amendments are in response to these changed circumstances.

The Planning Commission held a public hearing on the proposal on July 8th. Upon conclusion of the public hearing, the Planning Commission moved to recommend this amendment to the County Council for approval along with the findings of fact. The motion carried by a vote of 7-0-1.

Final approval of Comprehensive Plan Map amendment 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.

WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES STAFF REPORT

<u>I.</u> <u>OVERVIEW</u>

File # PLN2020-00004

File Name: RF - Nooksack Falls.

Applicant: Ali Taysi/ AVT Consulting

Owner: Excelsior Properties LLC & Excelsior Properties II LLC

Summary of Request: Remove the Nooksack Falls Area Exclave properties (3 tax parcels) from their current Mineral Resource Land (MRL) Comprehensive Plan designation, retaining the underlying Rural Forestry (RF) zoning designation. Add language to WCC 20.42.155 (RF conditional uses) to include the Nooksack Falls Area Exclave

Location: The site is located on Wells Creek Road, off Mt Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. Assessor's Parcel #'s 400831580150, 400831450200, 390806550550

Use of Subject Site: Presently used for recreation activities, including visiting Nooksack Falls, hiking, picnicking, wildlife viewing, etc. The property is also developed with a power generation facility, associated outbuildings and infrastructure, and a single-family residence.

Use of Surrounding Properties: Rural Forestry and Mount Baker-Snoqualmie National Forest

II. BACKGROUND

The subject property exists as an exclave within the M. Baker-Snoqualmie National Forest. Pursuant to the Planning Enabling Act (RCW 36.70.790) Whatcom County adopted an Interim Zoning Ordinance in July 1972 which included this exclave, as well as other fee lands within the National Forest, Wilderness and Recreation areas. The Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established Comprehensive Plan Designations and Title 20 Zoning for these fee lands within the Mt. Baker Snoqualmie National Forest. The subject exclave received a Comprehensive Plan Designation of Mineral Resource Lands (MRL) and an underlying Rural Forestry (RF) zoning designation.

In the early 1900's, mining and hydroelectric power were the primary uses of the subject property. However, mining activities in this area ceased over 50 years ago and there is no mining on or near the property, as the applicant states that mining is no longer feasible at the site due to economic, environmental, topographic and other factors. Meanwhile, Nooksack Falls has attracted increasing numbers of visitors given its proximity to other recreational destinations. The proposed Comprehensive Plan and Zoning Code text amendments are in response to these changed circumstances.

III. ANALYSIS OF THE PROPOSED COMPREHENSIVE PLAN AMENDMENT

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that all of the following criteria are satisfied in order to approve the proposed Comprehensive Plan amendments.

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.

Growth Management Act

The Growth Management Act (GMA) includes a planning goal to "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses" (RCW 36.70A.020(8)). Additionally, the GMA required counties to designate mineral resource lands that have long-term significance for extraction of minerals and adopt regulations to assure conservation of these mineral resource lands (RCW 36.70A.170 and 36.70A.060).

<u>Staff Comment:</u> Consistent with WAC 365-190-070, Mineral Resource Land designation criteria were adopted as part of the Whatcom County Comprehensive Plan. As detailed below through review for consistency with the Whatcom County Comprehensive Plan, the subject site does not meet the designation criteria necessary for designation as mineral resource lands of long-term commercial significance.

Furthermore, WAC 365-190-040(5)(e) states: "Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development, and to minimize the costs of production and transport. It is expected that Mineral Resource Lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is complete." Mining on the site has not occurred within the past 50 years, as it is not economically feasible. Consistent with WAC 365-190-040(5)(e), a change of designation from Mineral Resource Lands to Rural Forestry is appropriate.

Whatcom County Comprehensive Plan

The Comprehensive Plan contains twenty specific criteria for designating MRLs (17 applicable to non-metallic mineral deposits and 3 applicable to metallic and industrial mineral deposits). These designation criteria, along with other applicable goals and policies, are set forth in italics and addressed below.

This application is a request to de-designate Mineral Resource Lands. While Whatcom County has designation criteria, there are not de-designation criteria. Without de-designation criteria, the County took the position that just as a proposal must meet all the criteria for designation as mineral resource lands of long-term commercial significance, if the proposal does not meet all the criteria, it is appropriate for de-designation.

- 1. Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation.
 - Staff Comment: It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material. The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt, Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that ~ 15 acres (over multiple mining areas) might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of ~40-45 feet with shear vertical walls in order to meet this volume threshold. Staff does not believe this designation criteria could feasibly be met given the known and unknown constraints.
- 2. Minimum MRL Designation size is twenty acres.
 - <u>Staff Comment:</u> The present MRL is greater than 20 acres. Therefore, staff finds that this designation criterion has been met.
- 3. Expansion of an existing MRL does not need to meet criteria 1 or 2.
 - <u>Staff Comment:</u> The proposal is not for expansion of an existing MRL. This criterion is not applicable.
- 4. MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.
 - <u>Staff Comment:</u> The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
- 5. All pre-existing legal permitted sites meeting the above criteria will be designated.

<u>Staff Comment:</u> The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

- 6. The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot).

<u>Staff Comment:</u> The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

7. *MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.*

<u>Staff Comment:</u> The subject site is zoned Rural Forestry and is surrounded by Mt. Baker-Snoqualmie Nation Forest. Therefore, staff finds that this designation criterion has been met.

8. MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for *Group A systems, and by the Whatcom County Health Department for Group B systems,* in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.

Staff Comment: The subject site is not located within a designated wellhead protection area

of any public water system. Therefore, staff finds that this designation criterion has been met.

9. *MRL Designation should not enclose by more than 50% non-designated parcels.*

<u>Staff Comment:</u> There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

10. Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.

<u>Staff Comment:</u> Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.

11. MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan.

<u>Staff Comment:</u> Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.

12. Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations.

<u>Staff Comment:</u> The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.

13. Criterion 13 is specific to designated urban and rural areas, and therefore not applicable.

The Comprehensive Plan contains an additional criterion for designated forestry areas.

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

<u>Staff Comment:</u> It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

- 15 Criterion 15 is specific to designated agricultural areas, and therefore does not apply.
- 16 Criterion 16 is specific to river and stream gravel, and therefore does not apply.
- 17 Criterion 17 is specific to river and stream gravel, and therefore does not apply.
- 18. For metallic and rare minerals, mineral designation status extends to all patented mining claims.
 - <u>Staff Comment:</u> The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.
- 19. Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance.
 - <u>Staff Comment:</u> The site does not contain industrial minerals. This criterion is not applicable.
- 20. All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 15, as applicable.
 - <u>Staff Comment:</u> The site was designated MRL as a result of patented mining claims. This criterion is not applicable.

In addition to the designation criteria, there are Comprehensive Plan policies and goals within Chapter 8 – Natural Resources that apply to the subject application:

Policy 8G-2: Provide appropriate land use regulation for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

<u>Staff Report:</u> Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the Comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

Policy 8R-6: Consider removal of land from Mineral Resource Designation after mining and subsequent reclamation is completed.

<u>Staff Comment:</u> Mining has not occurred on the site in more than 50 years, as it is no longer feasible due to economic, environmental, topographic and other factors. Mining predates adoption of the Washington State Surface Mining Act, therefore reclamation of the site is not

required and is likely infeasible to require beyond what may have been required through the Federal regulatory process. Consideration of removal of the MRL designation appears to be supported by this policy.

County-Wide Planning Policies

<u>Staff Comment:</u> Staff did not identify County-Wide Planning Policies that would be applicable to a change in Comprehensive Plan Designation from MRL to RF.

Interlocal Agreement

Staff Comment: Staff is not aware of any interlocal agreements affecting the subject site.

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.

The subject site was identified for designation as Mineral Resource Lands through a 1972 Interim Zoning Ordinance due to historic mining operations. This Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established the Comprehensive Plan Designations and Title 20 Zoning of the site. Today, mining is no longer feasible within the designated Nooksack Falls Mineral Resource Land Exclave due to economic, environmental, topographic and other factors. This proposed amendment is in response to these changed conditions.

- 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.

<u>Staff Comment:</u> If approved, there would be no effect upon the rate or distribution of population growth beyond what is presently allowed. If approved, the zoning code would provide the opportunity for future uses such as an educational center, cafe, lodging structures, and other improvements related to access and safety to Nooksack Falls

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.

<u>Staff Comment:</u> The subject site is an exclave within the Mt. Baker-Snoqualmie National Forest. There is no anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water purveyors, sewer purveyors. fire districts, and

others as applicable, to provide adequate services and public facilities including transportation facilities.

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

<u>Staff Comment:</u> There is no anticipated impact upon designated forestlands or mineral resource lands as a result of the change in designation from MRL to RF. The site is presently, and would continue to be, regulated through the Rural Forestry section of the Whatcom County Zoning Code. The site is presently designated as Mineral Resource Lands of long-term commercial significance, however due to site constraints, the site does not appear to have proven and extractable mineral resources of long-term commercial significance.

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).

In 1997, the Washington Supreme Court, in the case of *Citizens for Mount Vernon v. The City of Mount Vernon* (133 Wn.2d 861) indicated ". . . Spot zoning is 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 . . ."

<u>Staff Comment:</u> The proposal does not appear to include nor facilitate illegal spot zoning. Rather than singling out a smaller area from a larger area for designation that is different from, and inconsistent with, the classification of surrounding land, the proposal appears to correct a previous designation that was inconsistent with surrounding land uses. The result of the proposal would be a Rural Forestry designation that is surrounded by the Mount Baker Snoqualmie National Forest (MBSNF), rather than the present Mineral Resource Land designation surrounded by the MBSNF.

IV. ANALYSIS OF THE PROPOSED ZONING CODE AMENDMENT

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that the amendment is consistent with the Comprehensive Plan in order to approve the proposed amendment to the development regulations

Policy 8G-8: Review Title 20.42 (Rural Forestry) and 20.43 (Commercial Forestry) for

opportunities to provide compatible non-forest uses that encourage forest landowners to keep their land in productive forest uses.

<u>Staff Comment:</u> The proposed amendment to Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone.

<u>Policy 2L-4:</u> Support the rural economic base by permitting natural resource based industries, cottage industries, forestry, fishing and agriculture in rural areas, as well as commercial and industrial activity contained within designated Rural Communities.

<u>Staff Comment:</u> The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone. These facilities would add to the economic base of eastern Whatcom County, through initial development and ongoing operations.

<u>Policy 2FF-4:</u> Allow home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

<u>Staff Comment:</u> The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for an educational center, cafe, lodging structures and other improvement related to access and safety of a popular tourist attraction.

V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

- 1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
- 3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
- 4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
- 5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.

- 6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
- 7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
- 8. On May 25, 2011 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 Whatcom County Comprehensive Plan does not contain specific criteria for dedesignating Mineral Resource Lands.
- 10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
- 11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
- 12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been demonstrated that this designation criterion has been met.
- 13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
- 14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
- 15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
- 16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites

meeting the above criteria (criteria 1-4) will be designated." The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

- 17. Mineral resource designation criterion #6 states "The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."

The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

- 18. Mineral resource designation criterion #7 states "MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities." The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.
- 19. Mineral resource designation criterion #8 states "MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor." The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.
- 20. Mineral resource designation criterion #9 states "MRL Designation should not enclose by more than 50% non-designated parcels." There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

- 21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
- 22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
- 23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
- 24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
- 25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
 - soil conditions
 - quality of mineral resource
 - sustainable productivity of forest resource

It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

- 26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
- 27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
- 28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
- 29. Mineral resource designation criterion #18 states "For metallic and rare minerals, mineral designation status extends to all patented mining claims." The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion

has been met.

- 30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
- 31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
- 32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
- 33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

VI. PROPOSED CONCLUSION

The subject amendment is consistent with the approval criteria of WCC 22.10.060.

VII. RECOMMENDATION

Staff recommends approval of the proposed comprehensive plan map amendment and zoning text amendment.

ATTACHMENTS:

- Draft Ordinance
- Exhibit A Proposed Comprehensive Plan Map Amendment
- Exhibit B Proposed Zoning Code Amendment
- Exhibit C Determination of Non-Significance (DNS) issued April 23, 2021 and Distribution List

SPONSORE	:D BY:
1	PROPOSED BY:
	INTRODUCTION DATE:
ORDINANCE #	

AN AMENDMENT TO THE OFFICIAL COMPREHENSIVE PLAN MAP FOR THE APPROXIMATELY 66-ACRE NOOKSACK FALLS EXCLAVE WITHIN THE MOUNT BAKER SNOQUALMIE NATIONAL FOREST, AND AMENDMENT TO THE RURAL FORESTRY ZONING CODE TO INCLUDE THE NOOKSACK FALLS EXCLAVE AS AN AREA WHERE CERTAIN CONDITIONAL USE PERMIT APPLICATIONS MAY BE SUBMITTED.

WHEREAS, an application has been submitted by AVT Consulting to amend the Comprehensive Plan Map to change the Mineral Resource Land (MRL) designation to Rural Forestry for the approximately 66-acre Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest, and to amend the Rural Forestry zoning code to include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone.

WHEREAS, the site is located on Wells Creek Road, off Mt. Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. The proposal is situated within portions of Section 31, T40N, R8E and Section 6, T39N R8E W.M. Assessor's Parcel #'s 400831580150, 400831450200, and 390806550550; and

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

WHEREAS, the proposed amendment meets the approval criteria for comprehensive plan amendments, as required by Whatcom County Code (WCC) 22.10.060; and

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

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

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

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

WHEREAS, the County Council has adopted the following findings of fact and conclusions:

FINDINGS

- 1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
- 3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
- 4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
- 5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.
- 6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
- 7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
- 8. On May 25, 2011 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 Whatcom County Comprehensive Plan does not contain specific criteria for de-designating Mineral Resource Lands.
- 10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
- 11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
- 12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been

demonstrated that this designation criterion has been met.

- 13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
- 14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
- 15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
- 16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites meeting the above criteria (criteria 1-4) will be designated." The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.
- 17. Mineral resource designation criterion #6 states "The site shall have a proven resource that meets the following criteria:
 - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
 - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."

The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

- 18. Mineral resource designation criterion #7 states "MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities." The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.
- 19. Mineral resource designation criterion #8 states "MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is

prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor." The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.

- 20. Mineral resource designation criterion #9 states "MRL Designation should not enclose by more than 50% non-designated parcels." There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.
- 21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
- 22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
- 23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
- 24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
- 25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
 - soil conditions
 - quality of mineral resource
 - sustainable productivity of forest resource

It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available

- through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.
- 26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
- 27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
- 28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
- 29. Mineral resource designation criterion #18 states "For metallic and rare minerals, mineral designation status extends to all patented mining claims."

 The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.
- 30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
- 31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
- 32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
- 33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

CONCLUSIONS

1. The proposed amendment is consistent with the approval criteria of WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Whatcom County Comprehensive Plan map is hereby amended from Mineral

Resource Lands (MRL) to Rural Forestry as shown in Exhibit A.

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

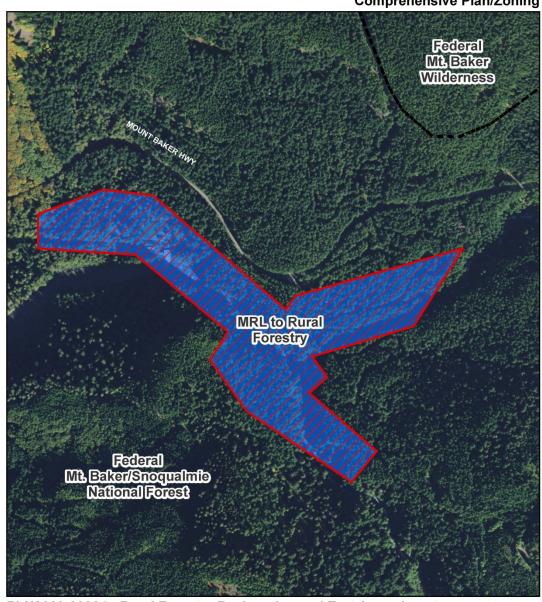
BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed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

ADOPTED this	day of	, 2021	
ATTEST:		WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON	
Dana Brown-Davis, Clerl	c of the Council	Barry Buchanan, Council Chair	
APPROVED AS TO FORM	:	WHATCOM COUNTY EXECUTIVE WHATCOM COUNTY, WASHINGTON	
Royce Buckingham Executive Civil Deputy P	rosecutor	Satpal Sidhu, County	
Executive Civil Deputy 1	rosecutor	() Approved () Denied	
		Date Signed:	

Exhibit A

Comprehensive Plan Map Amendment

Comprehensive Plan/Zoning



PLN2020-00004 - Rural Forestry Designation and Text Amendment Comprehensive Plan Designation - Mineral Resource Lands (MRL) to Rural Forestry for approximately 66 acres in the Nooksack Falls exclave





Exhibit B

Title 20 Zoning Amendments

Chapter 20.42 RURAL FORESTRY (RF) DISTRICT

20.42.150 Conditional Uses

.155 The operation of facilities intended to provide education related to forestry, natural resource and wildlife and the purpose of this district, including but not limited to demonstration forests and conservation laboratories, educational meeting facilities and related uses including rental cabins or other lodging structures, cooking and dining facilities, retail sales or meeting supplies and gifts, in the Foothills Subarea, South Fork Valley, the Newhalem Exclave, and the Baker Lake Exclave, and the Nooksack Falls Exclave, provided the following standards are met:

- (1) Density shall not exceed one sleeping unit per one gross acre or a maximum for 50 beds for the entire development.
- (2) Each cabin shall have a maximum of three sleeping units.
- (3) Must be located with vehicular access fronting on paved county roads or private roads improved to county standards.
- (4) Front yard setback shall be 75 feet, with 100-foot side and rear yard setbacks to adjacent properties.
- (5)Lot coverage for all facilities, including the rental cabins, shall not exceed 20 percent, clustered on no more than 50 percent of the property.

Exhibit C

SEPA Threshold Determination SEPA Distribution List

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax



SEPA Determination of Nonsignificance (DNS)

File: SEP2021-00038

Project Description: Amend Whatcom County Comprehensive Plan Map designation from Mineral Resource Land to Rural Forestry, to match the zoning district. Amend Whatcom County Code WCC 20.42.155 to include the Nooksack Falls Area Exclave.

Proponent: Excelsior Properties LLC & Excelsior Properties II LLC

Address and Parcel #: 12251 Mt Baker Highway / 400831580150, 400831450200 &

390806550550

Lead Agency: Whatcom County Planning & Development Services

Zoning: RF **Comp Plan:** MRL **Shoreline Jurisdiction:** Conservation

The lead agency for this proposal has determined that no significant adverse environmental impacts are likely. This proposal will also be reviewed for compliance with all applicable Whatcom County Codes (WCC) which regulates development activities, including but not limited to: WCC 15 – Buildings and Construction, WCC 16.16 – Critical Areas, WCC 17 – Flood Damage Prevention, WCC 20 – Zoning, WCC 21 - Land Division Regulations, WCC 23 – Shoreline Management Program, the Whatcom County Development Standards and/or the Washington State Stormwater Manual. Mitigation may be a requirement of Whatcom County Code. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

<u>X</u> Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by 4:00 p.m. on <u>May 7, 2021</u> and should be sent to: Josh Fleischmann via email at JFleisch@co.whatcom.wa.us

Responsible Official: Mark Personius, mpersoni@co.whatcom.wa.us

Title: Director

Telephone: 360-778-5937

Address: 5280 Northwest Drive

Bellingham, WA 98226

Date of Issuance: April 23, 2021 Signature:

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding May 17, 2021.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax



SEPA Distribution List SEP2021-00038 Date of Issuance: April 23, 2021

Please review this determination. If you have further comments or questions, phone the responsible official at (360) 778-5900. Please submit your response by the comment date noted on the attached notice of determination.

WA State Department of Archaeology and Historic Preservation via email Stephanie Jolivette, stephanie.jolivette@dahp.wa.gov
SEPA@dahp.wa.gov

SEPA Unit, WA State Department of Ecology, Olympia via email sepaunit@ecy.wa.gov

WA State Department of Fish and Wildlife
Wendy D. Cole via email wendy.cole@dfw.wa.gov

WA State Department of Natural Resources via email Rochelle Goss, sepacenter@dnr.wa.gov
Brenda Werden, Brenda.werden@dnr.wa.gov

SEPA Unit, WA State Department of Transportation, Burlington via email Roland Storme, stormer@wsdot.wa.gov
Judy Johnson, JohnsJu@wsdot.wa.gov

Lummi Nation Natural Resources

Merle Jefferson, Sr. via email - <u>merlej@lummi-nsn.gov</u> Tamela Smart - <u>tamelas@lummi-nsn.gov</u>

Nooksack Indian Tribe

George Swanaset, JR via email - <u>george.swanasetjr@nooksack-nsn.gov</u> Trevor Delgado via email - <u>tdelgado@nooksack-nsn.gov</u>

Skagit River System Cooperative

Nora Kammer via email - nkammer@skagitcoop.org

WCFD #19 - Glacier

Fire Chief Ben Thompson via email - ben@morewoohoo.org

Applicant

Ali Taysi via email - <u>ali@avtplanning.com</u> Arch@westford.co

Other and/or Parties of Record

National Forest Service, Mt. Baker Snoqualmie National Forest c/o Greta Smith via email - gretchen.v.smith@usda.gov



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-422

File ID:	AB2021-422	Version:	1 Status:	Agenda Ready
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File Created: 07/14/2021 Entered by: RMcconne@co.whatcom.wa.us

Department: Public Works **File Type:** Ordinance Requiring a Public Hearing

Department

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Ordinance for reestablishing a speed limit for a portion of Bay Road

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memo

HISTORY OF LEGISLATIVE FILE Date: Acting Body: Action: Sent To:

Attachments: Staff Memo, Proposed Ordinance

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director



James P. Karcher, P. E.

County Engineer 322 N. Commercial Street, Ste 301 Bellingham, WA 98225-4042

Phone: (360) 778-6210 Fax: (360) 778-6211

Memorandum

To:

The Honorable Satpal Singh Sidhu, Whatcom County Executive and The

Honorable Members of the Whatcom County Council

Through:

Jon Hutchings, Director-

From:

James P. Karcher, P.E., County Engineer GPK

Date:

July 14, 2021

Re:

Ordinance for Re-establishing a Speed Limit for a Portion of Bay Road

Requested Action

Public Works respectfully requests that the County Council adopt the proposed ordinance to reestablish a speed limit of 35 MPH on Bay Road from 500 feet east of Jackson Road to Halibut Drive.

Background and Purpose

Residents of the Bay Crest North development, through the Birch Bay Chamber of Commerce have requested that the speed limit on this portion of Bay Road be returned to 35 MPH. The 25 MPH speed limit in this area was originally established on Bay Road in order to facilitate its use as part of the Birch Bay Golf Cart Zone. Residents of Bay Crest North have rightly pointed out that if they want to access the Golf Cart Zone they can use the local access roads within the development to get to Jackson Road and ultimately Birch Bay Drive, thus making the 25 MPH speed limit on this section of Bay Road unnecessary.

Information

This ordinance will allow for the installation of speed limit signs and is necessary to comply with RCW 46.61.415 to establish speed limits on certain County roads.

Please contact Douglas Ranney II, P.E., Engineering Services Manager at extension 6255 with any questions regarding this ordinance.

1 2 3 4		e County Engineer is hereby directed to install the neriff and State Patrol be notified by a copy of this
5 6	ADOPTED this day of	, 2021.
7 8	ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
9 l0 l1		
L2 L3	Dana Brown-Davis, Clerk of the Council	Barry Buchanan, Council Chair
L4 L5 L6	APPROVED AS TO FORM:	WHATCOM COUNTY EXECUTIVE WHATCOM COUNTY, WASHINGTON
L7 L8	Approved Via Email CQ/RM 7/15/21	
19 20	Sr. Deputy Prosecuting Attorney, Civil Division	Satpal Singh Sidhu, Executive
21	2 23.0	() Approved () Denied
22 23		Date:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-424

File ID: AB2021-424 Version: 1 Status: Agenda Ready

File Created: 07/15/2021 Entered by: CStrong@co.whatcom.wa.us

Department: Planning and File Type: Ordinance Requiring a Public Hearing

Development Services

Department

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Whatcom County Code Title 20, Zoning to allow and regulate Battery Energy Storage Systems

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed amendments to WCC Title 20 (Zoning) amendments to the Whatcom County Code Title 20 (Zoning) to allow and regulate Battery Energy Storage Systems in Whatcom County

HISTORY OF LEGISLATIVE FILE

Date: Acting Body: Action: Sent To:

Attachments: Staff Memo, Draft Ordinance, Exhibit A, Application

Whatcom County Planning & Development Services Staff Report

Battery Energy Storage Systems Zoning Amendment

I. FILE INFORMATION

File #: PLN2021-00001

File Name: Title 20 Zoning Code Amendments – Battery Energy Storage Systems

Applicants: NextEra Resources Development, LLC, attn: Keleigh Wright

Summary of Request: Amend Whatcom County Code (WCC) Title 20 to allow Battery Energy Storage

Systems (BESS).

Location: Countywide.

II. BACKGROUND

Battery energy storage systems (BESS) are rechargeable battery systems that store energy from the electrical grid and then sell energy back to the energy provider when needed or provide energy directly to a home or business. Excess energy from the grid is stored in the BESS during times of low usage and is discharged from the system at times of high usage. BESS can also increase the resiliency of the energy grid in the nearby communities by providing backup power during outages. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.

As this is a new technology not anticipated when our code was written, Battery Energy Storage Systems are not a specified use in Title 20. Since the WCC is structured such that any use not identified as permissible is prohibited¹, a code amendment is necessary in order to allow the use in Whatcom County.

III. CODE AMENDMENTS

NextEra Resources Development, LLC, requests that WCC Title 20 (Zoning) be amended to allow Battery Energy Storage Systems (BESS) as a conditional use in the Rural zone (see Attachment C).

However, after consideration, and in order to accommodate future anticipated BESS facilities, PDS has expanded on NextEra's request and proposes to allow BESS in several zoning districts, along with adding some standards so as to minimize impacts on surrounding residences and other adjacent uses. Because BESS is a new technology that staff believes will become more and more prevalent, we propose that:

• BESS of any storage capacity be a permitted use in the Light Impact Industrial (LII) and Heavy Impact Industrial (HII) districts.

¹ Each district has a "Prohibited Uses" section reading "All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited" (e.g., WCC 20.36.200).

- BESS of less than 5 MWs of storage capacity be allowed with an Administrative Approval Use Permit in the Residential Rural (RR), Residential Rural Island (RRI), and Rural (R) zoning districts, with setback, screening, lighting, and noise standards.
- BESS of 5 MW or more of storage capacity and within one (1) mile of an existing electrical substation be allowed in the Rural (R) district as a Conditional Use, with setback, screening, lighting, and noise standards. Proposed BESS of 5 MW or more storage capacity that are more than one (1) mile of an existing electrical substation will be prohibited.
- A definition of BESS be added in WCC 20.97 to clarify the use.

Please note that any project that requires an administrative use permit approval is required to send a notice of application to surrounding property owners within 300 (if within a UGA) or 1,000 feet (outside of a UGA) so that they may comment on the project. Similarly, any project that requires a conditional use permit is required to send notice to surrounding property owners within the same distances, and must also have a public hearing before the Hearing Examiner. Such projects must also meet the approval criteria for Conditional Use Permits found in WCC 22.05.026(3). Under either process an application could be approved subject to conditions or denied.

Also note that the lot coverage limit in the Rural zone (WCC 20.36.450) is 5,000 square feet or 20% of the total lot area, whichever is greater, not to exceed 25,000 square feet (unless specified otherwise). Staff proposes that the maximum lot coverage for BESS with more than 5 MW of storage capacity be up to 40% of the total lot area, with no limit on structure (or combination of structures) size. Amending the lot coverage limit in the Rural zone for BESS will allow larger facilities near existing substations in the Rural zone with conditional use permit approval. BESS of 5 MW or less of storage capacity are smaller in size and should not exceed the existing lot coverage limit in any of the zones where it would be allowed with administrative use permit approval.

NextEra has reviewed staff's expanded proposal and is in agreement with this approach.

Realize that approval of this code amendment does not permit NextEra (or any other BESS developer) to install their BESS project; it only allows them to submit a permit to do so. Such permits would be processed and evaluated for consistency with this and all other relevant codes before approval.

IV. COMPREHENSIVE PLAN EVALUATION

The Comprehensive Plan contains four policies that support the development and use of new utility and information technologies.

- Policy 5B-1: Facilitate the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.
- Policy 5B-2: Support development and use of new technologies.
- Policy 5F-1: Periodically review existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.

Policy 7C-3: Work with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

Staff found no policies with which the proposed amendments would be inconsistent.

V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

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

- NextEra Resources Development, LLC, has submitted an application for amendments to WCC
 Title 20 Zoning to allow Battery Energy Storage Systems.
- 2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2021.
- 3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 2, 2021, for their 60-day review.
- 4. The Planning Commission held a public hearing on the proposed amendments on July 8, 2021, notice of which was published in the Bellingham Herald on June 25, 2021.
- 5. The County Council held a duly noticed public hearing on the proposed amendments on August 10, 2021.
- 6. The amendments are consistent with Comprehensive Plan Policy 5B-1, which supports the facilitation of the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result
- 7. The amendments are consistent with Comprehensive Plan Policy 5B-2, which supports development and use of new technologies
- 8. The amendments are consistent with Comprehensive Plan Policy 5F-1, which supports periodically reviewing existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.
- 9. The amendments are consistent with Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

VI. PROPOSED CONCLUSIONS

- 1. The amendments to the zoning code are in the public interest.
- 2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VII. RECOMMENDATION

Planning and Development Services recommends that the County Council approve the proposed amendments as shown in Exhibit A, based on the Findings of Fact and Conclusions provided in this staff report.

ATTACHMENTS

- A. Draft Code Amendments
- B. Draft Ordinance
- C. Code Amendment Application

	PROPOSED BY:	
	INTRODUCTION DATE:	
ORDINANCE NO		

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING TO ALLOW AND REGULATE BATTERY ENERGY STORAGE SYSTEMS

WHEREAS, NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems (BESS).

WHEREAS, as BESS is a new technology not anticipated when our code was written, BESS are not a specified use in Title 20 and thus prohibited and a code amendment is necessary to allow such use; and,

WHEREAS, The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and,

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

- 1. NextEra Resources Development, LLC, has submitted an application for amendments to WCC Title 20 Zoning to allow Battery Energy Storage Systems as a conditional use in the Rural district.
- 2. After consideration of the application, and in order to accommodate future anticipated BESS facilities, PDS, has expanded on NextEra's request and proposes to allow BESS in several zoning districts, along with adding some standards so as to minimize impacts on surrounding residences and other adjacent uses, to which the applicant agrees.
- 3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2021.
- 4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 02, 2021, for their 60-day review.
- 5. The Planning Commission held a public hearing on the proposed amendments on July 8, 2021, notice of which was published in the Bellingham Herald on June 25, 2021.
- 6. The County Council held a duly noticed public hearing on the proposed amendments on August 10, 2021.
- 7. The amendments are consistent with Comprehensive Plan Policy 5B-1, which supports the facilitation of the use of new technologies by allowing flexibility in regulations and policies affecting utility facilities when it can be shown that a net benefit to the public is likely to result.
- 8. The amendments are consistent with Comprehensive Plan Policy 5B-2, which supports development and use of new technologies
- 9. The amendments are consistent with Comprehensive Plan Policy 5F-1, which supports periodically reviewing existing regulations to identify and eliminate unintended or unreasonable constraints on the provision of necessary utilities as defined in this section.

10. The amendments are consistent with Comprehensive Plan Policy 7C-3, which supports working with service providers for a dependable electric power supply, alternative energy sources, communications, and evolving technology to support existing and future business development.

CONCLUSIONS

- 1. The amendments to the zoning code are the public interest.
- 2. The amendments are consistent with the Whatcom County Comprehensive Plan.

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

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

ADOPTED this ______ day of _______, 2021.

WHATCOM COUNTY COUNCIL

WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON	
ATTEST:	
Dana Brown-Davis, Council Clerk	Barry Buchanan, Council Chair
	,
APPROVED as to form:	() Approved () Denied
Civil Deputy Prosecutor	Satpal Sidhu, Executive

EXHIBIT A

Proposed Battery Energy Storage Systems (BESS) Amendments to the Whatcom County Code

WCC Title 20 Zoning

Chapter 20.32
RESIDENTIAL RURAL (RR) DISTRICT

.

20.32.130 Administrative approval uses.

.

.136 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and the public roads.
- (4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

. . . .

Chapter 20.34 RESIDENTIAL RURAL-ISLAND (RRI) DISTRICT

. . .

20.34.130 Administrative approval uses.

• • • • •

.135 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and public roads.

(4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

. . . .

Chapter 20.36 RURAL (R) DISTRICT

. . . .

20.36.130 Administrative approval uses.

• • • •

.139 Battery energy storage systems with up to 5 MW of storage capacity, provided:

- (1) The facility shall be no closer than 25 feet from any property line.
- (2) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and public roads.
- (4) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

. . . .

20.36.150 Conditional Uses.

.

.198 Battery energy storage systems with more than 5 MW of storage capacity, provided:

- (1) The facility is located within one mile of an existing electrical substation.
- (2) The facility shall be no closer than 25 feet from any property line.
- (3) The proposed use shall be compatible with the general appearance and character of the surrounding area. Landscape screening shall be required pursuant to the requirements of WCC 20.80.345.
- (4) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining properties and the public roads.
- (5) The facility shall comply with state noise level standards under Chapter 173-60 WAC, as amended. The applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

.

20.36.450 Lot coverage (Adopted by reference in WCCP Chapter 2.)

Except as follows, nNo structure or combination of structures shall occupy or cover more than 5,000 square feet or 20% of the total lot area, whichever is greater, of the total lot area, not to exceed 25,000 square feet, except as follows:

- 1. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35% of a lot, with no limitation on structure (or combination of structures) size.
- Battery energy storage systems with more than 5 MW of storage capacity approved pursuant to <u>WCC 20.36.198 shall occupy or cover no more than 40% of the total lot area, with no limitation on structure (or combination of structures) size.</u>
- <u>1.3.</u> Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

. . . .

Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

• • • • •

20.66.050 Permitted uses.

. . . .

.095 Battery energy storage systems of any storage capacity.

. . . .

Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

• • • • •

20.68.050 Permitted uses.

. . . .

.109 Battery energy storage systems of any storage capacity.

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Chapter 20.82 PUBLIC UTILITIES

20.82.040 Other applicable regulations

- (1) Solid waste facilities and large scale electrical generating plants are not conditional uses under the name "public utilities" but are restricted to where they have been named as uses.
- (2) The provisions of this chapter shall not apply to wireless communications services and facilities which are regulated under Chapter 20.13 WCC.
- (3) The provisions of this chapter shall not apply to Battery Energy Storage Systems (BESS), which are regulated under the applicable zoning district.

Chapter 20.97 DEFINITIONS

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20.97.026 Battery Energy Storage System (BESS).

"Battery energy storage system" (BESS) means an energy storage system that can store and deploy generated energy, typically a group of batteries that charge (i.e., collect energy) and store electrical energy from the grid or energy generation facility and then discharge that energy at a later time to provide electricity or other grid services when needed. BESS generally consist of batteries, battery storage containers, on-site switchyard, inverters, associated interconnection transmission line, and supervisory control and data acquisition system.



Our Energy Storage Business







A **Promising Future** For Energy Storage

Technology offers flexibility, value in today's energy market

Meeting today's energy challenges is complicated. The power infrastructure must be able to balance supply and demand instantaneously while taking into account the impacts of intermittent renewable energy. Consumers are also looking for energy services and products that provide flexibility and value in the areas of renewable energy, grid reliability and peaking power.

NextEra Energy Resources is helping meet these needs through battery energy storage technology, which is providing a promising way to store electrical energy so it can be available to meet demand whenever needed. While there are many energy storage technologies, NextEra Energy Resources has focused on the use of batteries as costs have declined, but is continuing to evaluate other storage technologies.

"(Our) company expects to invest more than \$1 billion in storage in 2021, which would be the largest-ever annual battery storage investment by any power company in history."

Jim Robo, Chairman and CEO, NextEra Energy, April 22, 2020

Energy storage delivers advantages to the power grid and our customers

What makes energy storage attractive is that it allows energy to be delivered instantly, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, integrating renewable resources and helping investment decisions.

- » Grid enhancement. Energy storage can balance load on the power system grid by moving energy when demands are low to times when demands are high. The technology also allows for a seamless switch between power sources and protects equipment by controlling voltage and frequency.
- » Renewable resources. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.
- » Electrical system investments. By reducing the load on congested transmission and distribution systems, energy storage may defer expensive upgrades. In some cases, storage may also reduce new investment in conventional resources, such as adding generating plants to meet systemwide peak load.



In 2018, NextEra Energy Resources' 20-megawatt (MW) Pinal Central Solar Energy Center in Arizona became the company's first project to pair solar energy with an on-site, state-of-the-art 10-MW battery storage system (shown in cover photo, lower right, February 2020). More than 50% of the company's new solar projects in 2019 also included a storage component. Renewable energy projects, coupled with battery storage, provide power to customers long after the sun goes down and demand for electricity goes up.



NextEra Energy Resources employees at the 16.2-MW Casco Bay Energy Storage Facility in Maine (April 2017). The company is developing additional energy storage facilities across North America.

Projects require little land, provide many benefits

Energy storage projects do not require a large area for development, are scalable in size and can be located in many places. NextEra Energy Resources generally seeks to site a project as close as possible to existing electrical transmission or distribution infrastructure and often, close to an existing renewable project.

Other benefits of energy storage include no greenhouse gases or other air pollutants, no use of water to generate electricity, and a renewable supply of energy.

Interest in energy storage is growing

The growing interest in energy storage is being driven by a number of factors, including:

- » Reductions in technology costs.
- » The rapid development of intermittent renewable energy resources.
- » The evaluation of new policy initiatives by states.
- » Regulatory changes.

For example, the Federal Energy Regulatory Commission has mandated policy changes in the frequency regulation market that have helped spur the use of energy storage for this purpose. Certain markets are now encouraging utilities to use energy storage to manage the intermittent energy that flows into the grid and to supply the grid with energy during times of peak use.

Costs are expected to decline

While emerging technology costs tend to be higher and therefore less competitive during the early evolution phase, technological efficiencies, improved manufacturing productivity and economies of scale help lower cost over time. As batteries gain wider industry adoption, prices are expected to decrease further.

Energy storage is safe, reliable

Safety is always a top priority in NextEra Energy Resources' operations, and energy storage systems are no exception.

Our energy storage systems are safe and reliable. Overall, energy storage has been a part of the U.S. electric system since the 1930s. Today, it makes up approximately 2% of the nation's generation capacity, according to the Energy Storage Association. The safety record of the industry is similar to or better than other forms of power generation or distribution.

NextEra Energy Resources is experienced in energy storage

Our team of specialists has spent years researching energy storage technologies, applications and use cases, leading to two demonstration projects in 2012 and 2013.

Today, NextEra Energy Resources has more than 145 MW of operational energy storage, including the Lee DeKalb Energy Storage Facility in Illinois and the Blue Summit Energy Storage Facility in Texas. These facilities are being used for frequency regulation. Traditionally, fossil and hydroelectric power plants have been used for frequency regulation. Now, batteries can also accomplish this task more efficiently.

In addition to the growth of operational facilities, the company has a robust pipeline of development projects across the U.S. and Canada.



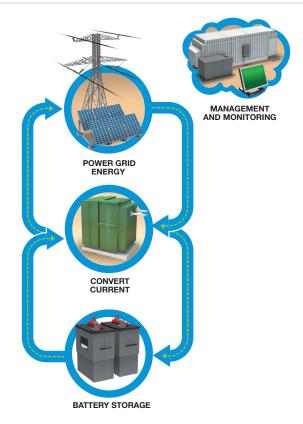
Batteries are placed into removable racks similar to a computer server. There are also monitoring, control and power conversion systems, as well as cooling and fire suppression systems.



NextEra Energy Resources' Minuteman Energy Storage Facility in Massachusetts went into service in 2019. It provides 5 MW of energy storage.

How energy storage systems work

- » A battery management system monitors the individual cells and controls the voltage, temperature and current for safe, reliable transfer of energy. The system automatically shuts off if the batteries are operating outside of predefined parameters.
- » A computerized monitoring system provides up-to-date weather forecasts, power prices, historical electrical use, the amount of charge remaining in the batteries and when to use the energy storage system.
- » Energy from the power grid or from renewable energy sources is delivered via a bidirectional inverter, which converts the energy from alternating current (AC) into direct current (DC). Today's batteries can only store DC. This energy goes into an array of batteries that is typically housed within a battery container or a building structure.
- » When the energy is needed on the power system, the inverters are then used again, but this time to convert the DC from the batteries into AC. Once the power has been transformed, it is stepped up in voltage and subsequently sent to an on-site substation or directly to a distribution or transmission line.
- » The electricity is then distributed to homes, schools, businesses and other consumers.



NextEra Energy Resources has a proven reputation for excellence

As the world's largest generator of renewable energy from the wind and the sun, NextEra Energy Resources has earned a reputation for excellence. Our scale, size and scope of services allow us to offer innovative energy solutions to customers, and energy storage is a natural extension of our development business.

By working with NextEra Energy Resources, customers can realize the monetary benefits of energy storage while mitigating technology complexity and vendor risk. With our significant purchasing power, we can buy energy storage equipment at the lowest possible costs. With our best-in-class development skills, we can also build customized storage solutions to meet customers' unique requirements.

Energy storage has the potential to be a game changer for the energy industry, and NextEra Energy Resources is a leader in the market.

NextEraEnergyResources.com

NextEra Energy Resources, LLC | 700 Universe Boulevard | Juno Beach, Florida 33408



922

December 28, 2020

Mr. Mark Personius Director, Planning and Development Services Whatcom County 5280 Northwest Drive Bellingham, WA 98226

Subject: NextEra Resources Development, LLC

Development Regulation Amendment Application

Battery Energy Storage Systems

Mr. Personius:

On behalf of NextEra Resources Development, LLC, we respectfully submit the attached Development Regulation Amendment Application to request the County consider text amendments to the Whatcom County Code Title 20 (Zoning) including the Rural Zoning District WCC Chapter 20.36 for the creation of a land use permitting pathway for battery energy storage systems. The proposed text amendments are described in the attached materials, along with a demonstration of compliance with the Countywide Planning Policies and Comprehensive Plan.

We look forward to working with you and the Whatcom County Planning and Development Services on this text amendment request. If you have any initial questions, please do not hesitate to contact me at 503.200.0005 or Paul.Seilo@Jacobs.com.

Sincerely,

Paul Seilo, AICP

Paul T. Seilo

Senior Project Manager

Cc: Chris Powers/NextEra

Keleigh Wright/NextEra Tim McMahan/NextEra David Lawlor/NextEra Erika Sawyer/Jacobs

WHATCOM COUNTY

Planning & Development Services 5280 Northwest Drive Bellingham, WA 98226-9097 360-778-5900, TTY 800-833-6384 360-778-5901 Fax PDS@whatcomcounty.us



Mark Personius, AICP Director

REVISED

Comprehensive Plan and/or Development Regulation Amendment Application

Date Received:	12/29/2020	File #:_	PLN2021-00001	01/20/202
	or more of the follow	ing amendme	nt types:	
□ Comprehe	nsive Plan Map			
□ Comprehe	nsive Plan Text			
□ Developme	ent Regulation Map			
□ Developme	ent Regulation Text			
developme Title Title Title Title	should be used for ent regulations in the No. 16 - Environment, e 20 - Zoning, e 21 - Land Division Re e 23 - Shoreline Manag	Whatcom Cou egulations, an	nty Code:	e following
Topic of Proposed	d Amendment:			

A. General Information – All applicants must complete this section. Applicant Name_____ Mailing Address: _____City_____ State____Zip Code_____Phone # ()_____ Agent/Contact Name: Mailing Address: City State____Zip Code____Phone # ()____ Email Please complete the questions below. Attach additional pages as needed **B. For Map Amendments Parcel Information** Tax Parcel Number(s) (APN) Total Acreage - Gross ______ Net:_____ Site Address _____ Township: _____ Range: ____ Section: _____ ¼ Section: _____ Owner Name_____ Mailing Address: ______City_____ State_____Phone # ()_____ Email 1. Existing Comprehensive Plan Designation: ______ 2. Existing Zoning Designation: ______ 3. Proposed Comprehensive Plan Designation: ______ 4. Proposed Zoning Designation: _____

5. The Present Use of the Property is:

925

6.	The Intended Future Use of the Property is:
7.	Surrounding Land Use:
8.	Services: Please provide the following information regarding the availability of services:
	The site is currently served by: Sewer Septic
	If sewer the purveyor is:
	The site is currently served by: Public Water System Well
	If public water the purveyor is:
	The site is located on a: Public Road Private Road
	Name of Road:
	Fire District #: Name:
	School District #: Name:
9.	Transfer of Development Rights (TDRs):
	Are TDRs required under section 20.89.050 of the Whatcom County Code? Yes No
	If so, please explain how your proposal complies with the TDR requirements and/or how you qualify for modification/exceptions from the TDR requirements

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C.	For	ıext	Amen	ıame	ents:

Identify the sections of the Comprehensive Plan and/or development regulation that you are proposing to change and provide the proposed wording.					
D. For All Amendments:					
1. Why is the amendment needed and being proposed?					
How does the proposed amendment conform to the requirements of the Growth Management Act?					
3. How is the proposed amendment consistent with the County-Wide Planning					
Policies for Whatcom County?					

4.	How is the proposed amendment consistent with the Whatcom County Comprehensive Plan?
5.	If within an Urban Growth Area, how is the proposed amendment consistent with interlocal agreements between the County and the City?
6.	What changed conditions or further studies indicate a need for the amendment?
7.	How will the public interest be served by the amendment? Please address the factors identified below.
	• The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.
	 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.

		 Anticipated impact upon designated agricultural, forest and mineral resource lands.
	8.	Does the amendment include or facilitate illegal spot zoning? \square Yes \square No Please explain.
Ε.	Su	pporting Information – Attach the Following:
	A.	A vicinity map showing property lines, roads, existing and proposed Comprehensive Plan and Zoning designations. (This information is required for map amendments only).
	В.	Mailing labels with names and mailing addresses of the owners of all property included within the area proposed for re-designation and:

For a map amendment within an existing urban growth area, mailing labels with the typed address of each property owner within 300 feet of the external boundaries of the subject property as shown by the records

• For a map amendment outside existing urban growth areas, mailing

of the county assessor.

labels with the typed address of each property owner within 1,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.

- For map amendments that involve rezoning property to an Airport Operations District, mailing labels with the typed address of each property owner within 1,500 feet of the external boundaries of the subject property as shown by the records of the county assessor.
- For map amendments that involve rezoning property to a Mineral Resource Land (MRL) designation, mailing labels with the typed address of each property owner within 2,000 feet of the external boundaries of the subject property as shown by the records of the county assessor.
- C. State Environmental Policy Act (SEPA) Checklist
- D. For Comprehensive Plan map amendments that propose to re-designate property to a MRL designation, a Comprehensive Plan MRL Application Supplement form is required.

F. Fees

Applicants pay a docketing fee when submitting an application and additional amendment application fees if the County Council decides to docket the application. The Whatcom County Code 22.10.020(3)(b) states that, when docketing an application, the county council may waive the application fees if it finds the proposed amendment would clearly benefit the community as a whole.

A.	Are		questing t es		ounty Cour	ncil waive the	applica	tion fees?	?
	•	•	describe a whole.	the	proposed	amendment	clearly	benefits	the

E. Authorization:		
Signature of Applicant(s) or Agent:		
Keleigh Wright	Date: _	January 21, 2021
	Date: _	

_Date: _____

Attachment 1. Whatcom County Development Regulation Amendment Application Battery Energy Storage System

Parts A, E, F and G of the application are included on the preceding Whatcom County Development Regulation Amendment Application form. Part B does not apply as it is only applicable when a Map Amendment is proposed. This document includes information for Parts C and D of the application.

Part C. For Text Amendments:

Identify the sections of the Comprehensive Plan and/or development regulation that you are proposing to change and provide the proposed wording.

The proposal seeks to amend the Whatcom County Code (WCC) Definitions Chapter 20.97 by adding a definition for Battery Energy Storage System (BESS) and modifying the existing definition of a Public Utility; to amend the Rural (R) District zoning district (WCC Chapter 20.36) to add BESS as a conditional use and to increase the lot coverage allowance in the R district for BESS; and to add BESS as a conditional use in WCC Chapter 20.82 Public Utilities.

The <u>underlined</u> statements below indicate a proposed amendment to the WCC section to include this verbiage.

Chapter 20.97 Definitions

20.97.025 Battery Energy Storage System (BESS)

"Battery energy storage system" (BESS) means an energy storage system that can store and deploy generated energy, typically a group of batteries that charge (i.e., collect energy) and store electrical energy from the grid or energy generation facility and then discharge that energy at a later time to provide electricity or other grid services when needed. BESS generally consist of batteries, battery storage containers, on-site switchyard, inverters, associated interconnection transmission line, and supervisory control and data acquisition system.

20.97.329.1 Public utility.

"Public utility" means a use owned or operated by a public or publicly licensed or franchised agency <u>including energy uses proposed by an independent energy facility developer</u> which provides vital public services such as telephone exchanges, electric <u>generation and storage</u>.

<u>energy</u> substations, radio and television stations, wireless communications services, gas and water regulation stations and other facilities of this nature. (Ord. 2004-014 \S 2, 2004; Ord. 2000-006 \S 2, 2000).

Chapter 20.36 Rural (R) District

20.36.150 Conditional uses.

.166 Battery energy storage systems.

20.36.450 Lot coverage (Adopted by reference in WCCP Chapter 2.)

Except as follows, no structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total lot area, not to exceed 25,000 square feet. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35 percent of a lot, with no limitation on structure (or combination of structures) size. Battery energy storage system shall occupy or cover no more than 40 percent of a lot, with no limitation on structure (or combination of structures) size. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement. (Ord. 2019-033 Exh. A, 2019; Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 88-29, 1988).

Chapter 20.82 Public Utilities

20.82.030 Conditional uses.

(11) Battery energy storage systems operating at voltages greater than 55 kV (55,000 volts).

Part D. For All Amendments

1. Why is the amendment needed and being proposed?

Response: The text amendments are proposed to:

- (1) To promote the siting of battery energy storage systems (BESS) in a manner that is compatible with existing zoning districts, land uses, character of the surrounding area, and where BESS can be located adjacent to existing energy and utility infrastructure;
- (2) To increase the resiliency of the energy grid in the nearby communities of Bellingham, Ferndale, and the greater Whatcom County area; and
- (3) To provide alternatives to store and deploy energy in an efficient manner.

A Promising Future For Battery Energy Storage Systems

Technology offers flexibility and value in today's energy market. Meeting today's energy challenges is complicated. Energy infrastructure must be able to balance supply and demand instantaneously while taking into account the impacts of intermittent renewable energy. Consumers are also looking for energy services and products that provide flexibility and value in the areas of renewable energy, grid reliability and peaking power. Battery energy storage system technology is providing a promising way to store electrical energy so it can be available to meet demand whenever needed.

Energy storage delivers advantages to the power grid. What makes energy storage attractive is that it allows energy to be delivered instantly, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, integrating renewable resources and helping investment decisions.

- Grid enhancement. Energy storage can balance load on the power system grid by moving energy when demands are low to times when demands are high. The technology also allows for a seamless switch between power sources and protects equipment by controlling voltage and frequency.
- Renewable resources. Energy storage fills in the gaps resulting from intermittent resources like wind and solar generation. That means operators can more easily bring on and off renewable energy, reducing the need for load balancing services and rapid generation ramping.

 Electrical system investments. By reducing the load on congested transmission and distribution systems, energy storage may defer expensive upgrades. In some cases, storage may also reduce new investment in conventional resources, such as adding generating plants to meet systemwide peak load.

Projects require little land, provide many benefits. Energy storage projects do not require a large area for development, are scalable in size and can be located in many places. The optimum BESS siting is as close as possible to existing electrical transmission or distribution infrastructure and often, close to an existing renewable project. Other benefits of energy storage include no greenhouse gases or other air pollutants, no use of water to generate electricity, and a renewable supply of energy.

Interest in energy storage is growing. The growing interest in energy storage is being driven by a number of factors, including:

- Reductions in technology costs.
- The rapid development of intermittent renewable energy resources.
- The evaluation of new policy initiatives by states.
- Regulatory changes.

For example, the Federal Energy Regulatory Commission has mandated policy changes in the frequency regulation market that have helped spur the use of energy storage for this purpose. Certain markets are now encouraging utilities to use energy storage to manage the intermittent energy that flows into the grid and to supply the grid with energy during times of peak use.

Costs are expected to decline. While emerging technology costs tend to be higher and therefore less competitive during the early evolution phase, technological efficiencies, improved manufacturing productivity and economies of scale help lower cost over time. As batteries gain wider industry adoption, prices are expected to decrease further.

Energy storage is safe, reliable. Overall, energy storage has been a part of the U.S. electric system since the 1930s. Today, it makes up approximately 2% of the nation's generation capacity, according to the Energy Storage Association. The safety record of the industry is similar to or better than other forms of power generation or distribution.

2. How does the proposed amendment conform to the requirements of the Growth Management Act?

The proposed text amendments will help Whatcom County comply with Goal 12 of the Growth Management Act which is as follows under Revised Code of Washington (RCW) 36.70A.020: (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Response: Battery energy storage systems allow energy to be delivered instantly to the grid, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, so it remains adequate to support development. Battery energy storage systems balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high. Battery storage also reduces the load on congested transmission and distribution systems, and energy storage may defer expensive upgrades.

3. How is the proposed amendment consistent with the County-Wide Planning Policies for Whatcom County?

<u>Response</u>: The proposed text amendments to provide a land use permitting pathway for battery energy storage systems are consistent with the following Whatcom County Countywide Planning Policies (Whatcom County, 2016):

B. Urban Versus Rural Distinctions

3. Whatcom County shall promote appropriate land uses and allow for infill within rural settlements characterized by existing commercial, industrial and intensive residential development greater than a rural development density. These areas should be clearly delineated, and not expanded beyond logical outer boundaries in accordance with RCW 36.70.070(5). Impacts on rural character, critical areas and other economic considerations as well as the availability of capital facilities and rural levels of service must be considered before allowing infill in these areas.

<u>Response:</u> The proposed text amendments are consistent with the Countywide Planning Policy B.3 for Urban Versus Rural Distinctions as infill battery energy storage systems in the rural zoning district may allow for the clustering of public utilities in manner that enhances energy efficiency and electrical grid stability, while still maintaining a rural character in surrounding areas.

I. Economic Development and Employment

- 8. 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.

Response: The proposed text amendments are consistent with several of these economic development-related policies [8(a)(b) and (f)]. Battery energy storage systems provide energy efficiency and electrical grid stability on a relatively small footprint. Furthermore, battery energy storage systems do not generate greenhouse gases or other air pollutants, nor use water to generate electricity. The proposed amendments are consistent with the community values, to support electric energy supply for future economic growth within the County that is resilient to the impacts of climate change. Battery energy storage systems are a new technology for the County to store energy in a safe and reliable method that increases the resiliency of the energy grid. The emergence of battery energy storage systems supports the County's efforts to increase its energy options which supports current businesses and could be considered important for locational decisions by industries seeking to relocate or expand in the County.

11. Whatcom County encourages siting of industrial uses in proximity to and to further utilization of our access to deep water and port facilities for shipping, rail, airports, roadways, utility corridors and the international border.

<u>Response:</u> The text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The clustering of energy generation facilities creates an orderly use of the land, establishes the infrastructure needed to support similar uses, and minimizes the potential for development in greenfield or environmentally sensitive areas that may be suitable for the preservation of land or other uses.

K. Siting of Public Facilities

1. As part of the comprehensive planning process, the county and the cities shall identify appropriate land for public facilities which meets the needs of the community, such as schools, recreation, transportation and utility corridors, human service facilities, and airport and other port facilities. In order to reduce land use conflicts, policies related to a design component shall be incorporated in the comprehensive plans.

Response: The Comprehensive Plan supports the identification of suitable lands within zoning designations that may support public facilities and utilities. The text amendments will allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. This is an efficient use of land as these clusters may create more orderly development and minimize environmental impacts by not clustering these uses. Energy efficiency and reliability are important considerations for locational decisions by industries seeking to relocate or expand in the County, thus supporting future growth and employment opportunities for the County.

5. Sharing of corridors for major utilities, trails and other transportation rights-of-way is encouraged when not in conflict with goals to protect wildlife, public health and safety.

Response: The text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The sharing of corridors for public utilities leads to uniform development and decreases the potential for land use conflicts. The text amendments allow for flexibility in siting battery energy storage systems in a manner that avoids and may preserve critical areas and protects wildlife. Battery energy storage systems have minimal conflict with public health as the technology does not release greenhouse gases or other air pollutants, and no water is required.

4. How is the proposed amendment consistent with the Whatcom County Comprehensive Plan?

<u>Response</u>: The proposed text amendments are consistent with the following Whatcom County Comprehensive Plan provisions:

Comprehensive Plan, Chapter Five. Utilities

Goal 5B: Support the Development and use of new utility and information technologies.

<u>Response</u>: Battery energy storage systems are consistent with this policy as the new and evolving technology fills in the energy generation gaps resulting from intermittent resources like wind and solar generation and can balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high.

Goal 5F: Identify and remove impediments to effective siting of necessary utility facilities.

<u>Response</u>: The proposed text amendments provide a land use permitting pathway for siting battery energy storage systems. The proposed text amendments provide a definition for this type of use and establish a process under which it can be approved as a conditional use. The proposed text amendments will provide for the orderly, safe and efficient siting of battery energy storage systems in Whatcom County.

Comprehensive Plan, Chapter Seven. Economics

Goal 7C: Ensure adequate infrastructure to support existing and future business development and evolving technology.

Response: Adequate infrastructure is a basic necessity for the reliable operation and expansion of existing and future businesses and the movement of goods and services. The emergence of battery energy storage systems supports the County's efforts to increase its energy options, and the use of battery storage technology will increase the resiliency of the local grid. This enhancement and reliability of the County's infrastructure is considered important for locational decisions by industries seeking to relocate or expand in the County, thereby supporting both existing and future business development.

5. If within an Urban Growth Area, how is the proposed amendment consistent with interlocal agreements between the County and the City?

Response: No specific project location is proposed.

6. What changed conditions or further studies indicate a need for the amendment?

Response: None.

- 7. How will the public interest be served by the amendment? Please address the factors identified below.
- The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

Response: The proposed text amendments will not have a direct impact on population growth, although battery energy storage systems may indirectly lead to population, employment, and economic growth by enhancing the electrical grid, a basic necessity for the reliable operation and expansion of existing and future businesses. The emergence of battery energy storage systems supports the County's efforts to increase its energy options, and the use of battery storage technology will increase the resiliency of the local grid. The proposed text amendments allow for siting battery energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. The sharing of corridors for public utilities leads to uniform development and decreases the potential for land use conflicts. The text amendments allow for flexibility in siting battery energy storage systems in a manner that avoids and may preserve critical areas and protects wildlife.

• 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.

Response: The proposed text amendments will not affect the ability of service providers to provide adequate services and public facilities. Battery energy storage systems will actually enhance local energy efficiency and electrical grid. Battery energy storage systems allow energy to be delivered instantly to the grid, in the required amount. By doing this, energy storage provides many advantages, such as improving the operation of the electrical grid, so it remains adequate to support development. Battery energy storage systems balance load on the power system grid by storing energy when demands are low and then moving it to the grid when demands are high. Battery storage also reduces the load on congested transmission and distribution systems, and energy storage may defer expensive upgrades.

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

<u>Response:</u> The proposed text amendments will have minimal direct impacts on designated agricultural, forest or mineral resource lands. The text amendments will allow for siting battery

energy storage systems near existing energy generation facilities, electrical substations, and transmission line corridors. This is an efficient use of land as these clusters may create more orderly development and minimize environmental impacts by not clustering these uses.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-433

File ID:	AB2021-433	Version:	1 Status:	Agenda Ready
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File Created: 07/19/2021 Entered by: THelms@co.whatcom.wa.us

Department: County Executive's **File Type:** Resolution Requiring a Public Hearing

Office

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Resolution declaring Whatcom County real property as surplus

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution declaring Whatcom County real property as surplus

Date: Acting Body: Action: Sent To:

Attachments: Memo, Resolution



MEMORANDUM

TO: Whatcom County Council

FROM: Tyler Schroeder, Deputy Executive

DATE: July 16, 2021

SUBJECT: Resolution Declaring Whatcom County Real Property Surplus

Attached is a resolution requesting to declare Whatcom County real property surplus.

Requested Action

The County Executive respectfully requests that the Whatcom County Council hold a public hearing and act on the proposed resolution to declare Whatcom County real property surplus.

Background and Purpose

Whatcom County has received letters of interest to purchase Whatcom County real property known as 1661 Baker Creek Place, tax parcel number 3803171904530000. The property was obtained in 2006 for use as an animal control and shelter facility. In 2013, the County's contracted provider of animal control and shelter services relocated to a new facility. Since that time, the Baker Creek property has been utilized to house the county's surplus furniture and equipment.

The Property Management Committee (PMC) reviewed the property information and determined it is no longer needed for county purposes by any department and recommends that the property be considered surplus property. Facilities Management has also determined the property to be of no use to the county unless it went through a costly retrofit.

We are requesting approval to declare the property surplus as allowed through Whatcom County Code (WCC) Chapter 1.10.

Please contact me at <u>tschroed@co.whatcom.wa.us</u> if you have any questions regarding the proposed surplus of this property.

PROPOSED BY: Executive

INTRODUCTION DATE: July 27, 2021

RESOLUTION NO.	
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DECLARING WHATCOM COUNTY REAL PROPERTY AS SURPLUS

WHEREAS, RCW 36.34.005 authorizes counties to establish comprehensive procedures for the procedures for the management of county property, including the sale of surplus real estate where it is found to be in the best interest of a county to sell same; and

WHEREAS, in Whatcom county code (WCC), Chapter 1.10, Whatcom County has established those procedures; and

WHEREAS, the Whatcom County Property Management Committee has recommended the real property known as 1661 Baker Creek Place, tax parcel number 3803171904530000 be declared surplus for purposes of a sale that will benefit the public interest; and

WHEREAS, Whatcom County held a public hearing on this date to determine if it is in the best interest of the County to surplus the below described property for purposes of sale to a nonprofit organization; and

WHEREAS, following the public hearing the Council dose conclude that it is in the best interests of the County to declare this property surplus so that it may be sold to Lake Whatcom Treatment Center, a local nonprofit organization;

WHEREAS, the Council further finds that the sale of this surplus property to Lake Whatcom Treatment Center is in the public's interest;

NOW, THEREFORE, BE IT RESOLVED that it is in the best interest of the County to declare 1661 Baker Creek Place, tax parcel number 3803171904530000, and further described by its abbreviated legal description as: Parcel P-13 Iron Gate Park specific binding site Plan No 3 as Rec book 1 binding site plans PG 63-EXC PTN to City of Bellingham for Street Desc AF 1980600800, for purposes of sale to Lake Whatcom Treatment Center pursuant to Whatcom County Code 1.10.340(B).

APPROVED this	_ day of	, 2021.
ATTEST:		WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
Dana Brown-Davis, Council Cle	erk	Barry Buchanan, Council Chair
APPROVED as to form:		
Civil Deputy Prosecutor		



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-434

File ID:	AB2021-434	Version:	1 Status:	Agenda Ready
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File Created: 07/19/2021 Entered by: THelms@co.whatcom.wa.us

Department: County Executive's **File Type:** Resolution Requiring a Public Hearing

Office

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Resolution authorizing the sale of Whatcom County surplus property

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution authorizing the sale of Whatcom County surplus property

Date: Acting Body: Action: Sent To:

Attachments: Memo, Resolution



MEMORANDUM

TO: Whatcom County Council

FROM: Tyler Schroeder, Deputy Executive

DATE: July 16, 2021

SUBJECT: Resolution Authorizing the sale of Whatcom County Surplus Property

Attached is a resolution requesting authorization to sell Whatcom County surplus property.

Requested Action

The County Executive respectfully requests authorization of the sale of Whatcom County surplus property.

Background and Purpose

Whatcom County has received letters of interest to purchase Whatcom County real property known as 1661 Baker Creek Place, tax parcel number 3803171904530000.

The Property Management Committee (PMC) reviewed the property information and determined it is no longer needed for county purposes by any department and recommends that the property be considered surplus property and the said property be sold. Facilities Management has also determined the property to be of no use to the county unless it went through a costly retrofit.

Following a public hearing on this date the Whatcom County Council determined it is in the public's interest to sell this surplus real property known as 1661 Baker Creek Place, tax parcel number 3803171904530000 be sold to Lake Whatcom Treatment Center, a non-profit agency, pursuant to the provisions and requirement s of Whatcom County Code, Chapter 1.10.

We are requesting authorization to sell the surplus property to Lake Whatcom Treatment Center for public interest purposes as allowed through WCC 1.10.340 Sale of county real property; B. Sold to a nonprofit agency when determined to be in the public interest.

Please contact me at tschroed@co.whatcom.wa.us if you have any questions regarding the proposed surplus of this property.

PROPOSED BY: <u>Executive</u> INTRODUCTION DATE: <u>July 27, 2021</u>

RESOLUTION N	10						
A RESOLUTION AUTHORIZING THE SALE OF WHATCOM COUNTY SURPLUS PROPERTY PURSUANT TO WCC 1.10							
WHEREAS , RCW 36.34.005 authorizes counties to establish comprehensive procedures for the procedures for the management of county property, including the sale of surplus real estate where it is found to be in the best interest of a county to sell same; and							
WHEREAS , in Whatcom county coe established those procedures; and	de (WCC), Chapter 1.10, Whatcom County has						
	ing the Whatcom County Council declared real e, tax parcel number 3803171904530000 to be						
determined it is in the public's interest to	ing on this date the Whatcom County Council sell this surplus real property known as 1661 3171904530000 to Lake Whatcom Treatment rough WCC 1.10.340; and						
1661 Baker Creek Place, tax parcel number	LVED that the surplus real property known as er 3803171904530000 be sold to Lake Whatcom ursuant to the provisions and requirements of						
APPROVED this day of	, 2021.						
ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON						
Dana Brown-Davis, Council Clerk APPROVED as to form:	Barry Buchanan, Council Chair						

Civil Deputy Prosecutor



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-413

File ID: AB2021-413 Version: 1 Status: Agenda Ready

File Created: 07/13/2021 Entered by: DPierce@co.whatcom.wa.us

Department: Sheriff's Office **File Type:** Agreement Requiring a Public Hearing

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for FY2021 Byrne Justice Assistance Grant (JAG) Program Award, in the amount of \$14,001

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE					
Date:	Acting Body:	Action:	Sent To:		

Attachments: Staff Memo, Contract

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 Bu Ey

DATE:

July 13, 2021

RE:

Interlocal Agreement Between the City of Bellingham, and County of Whatcom

FY2021 Byrne Justice Assistance Grant (JAG) Program Award

Enclosed for review and signature are two (2) originals of the Interlocal Agreement between the City of Bellingham and Whatcom County for Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY2020.

Total Whatcom County Jurisdiction allocation is \$38,736 (with \$24,735 for the City of Bellingham and \$14,001 for Whatcom County). The City of Bellingham will administer the grant and provide \$14,001 to the Whatcom County Sheriff's Office to purchase ballistic resistant vests.

Please contact Undersheriff Chadwick at extension 6618 with any questions or concerns.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

	35 Sheriff's Office
Originating Department:	
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations / 352020 Patrol and OT
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	City of Bellingham
	r Renewal to an Existing Contract? Yes O No • per WCC 3.08.100 (a)) Original Contract #:
Does contract require Council Approval? Yes No Already approved? Council Approved Date:	If No, include WCC: (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)
Is this a grant agreement? Yes No If yes, grantor agency con Is this contract grant funded?	
Yes No No If yes, Whatcom County g	grant contract number(s):
Is this contract the result of a RFP or Bid process? Yes O No O If yes, RFP and Bid number(s):	Contract Cost Center: 1003521003
Is this agreement excluded from E-Verify? No • Y	es O If no, include Attachment D Contractor Declaration form.
Contract work is for less than \$100,000. Contract work is for less than 120 days. Interlocal Agreement (between Governments). Contract Amount:(sum of original contract amount and any prior amendments): \$\frac{14,001.00}{2}\$ than \$10 \\ This Amendment Amount: \$\frac{14,001.00}{2}\$ Total Amended Amount: \$\frac{14,001.00}{2}\$ Summary of Scope:	ed professional. Goods and services provided due to an emergency Contract for Commercial off the shelf items (COTS). Work related subcontract less than \$25,000. Public Works - Local Agency/Federally Funded FHWA. approval required for; all property leases, contracts or bid awards exceeding, and professional service contract amendments that have an increase greater 0,000 or 10% of contract amount, whichever is greater, except when: ercising an option contained in a contract previously approved by the council. Intract is for design, construction, r-o-w acquisition, prof. services, or other ital costs approved by council in a capital budget appropriation ordinance. It or award is for supplies. Lipment is included in Exhibit "B" of the Budget Ordinance. Intract is for manufacturer's technical support and hardware maintenance of coronic systems and/or technical support and software maintenance from the reloper of proprietary software currently used by Whatcom County. Intract contract amount software maintenance from the reloper of proprietary software currently used by Whatcom County.
Memorial Justice Assistance Grant (JAG) Program FY202 \$24,735 for the City of Bellingham and \$14,001 for Whato provide \$14,001 to the Whatcom County Sheriff's Office t	21. The Whatcom County jurisdiction allocation is \$38,736 (with com County). The City of Bellingham will administre the grant and o purchase ballistic vests.
Term of Contract: upon execution	Expiration Date: 12/31/2022
 3. AS Finance reviewed: APPROVE 4. IT reviewed (if IT related): 5. Contractor signed: 6. Submitted to Exec.: 7. Council approved (if necessary): 8. Executive signed: 	Date: 07/13/21 Date: 07/13/21 Date: 07/13/21 Date: 07/15/21 Date: Date: Date: Date: Date: Date: Date: Date: Date: Date: Date:
Original to Council:	Date:

Last edited 07/06/20

CITY SECRETARY
CONTRACT NO

THE STATE OF WASHINGTON COUNTY OF WHATCOM

INTERLOCAL AGREEMENT BETWEEN THE CITY OF BELLINGHAM, AND COUNTY OF WHATCOM 2021 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this The COUNTY of Whatcom, acting by and through referred to as COUNTY, and the CITY of Bellingha Council, hereinafter referred to as CITY, both of Williams	m, acting by and th	the County Council, hereinafter rough its governing body, the City
MUEDEAS, each governing hady in performing	a governmental fun	otions or in paying for the

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, per the grant, Whatcom County Jurisdiction is allocated \$38,736 in grant funding, \$24,735 for the City and \$14,001 for Whatcom County: and

WHEREAS, the CITY agrees to provide the COUNTY \$14,001 from the JAG award for the purchase of body armor (ballistic resistant vests): and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and CITY agree as follows:

CITY agrees to pay COUNTY a total of \$14,001 of JAG funds.

Section 2.

COUNTY agrees to use \$14,001 for the purchase of ballistic vests until 2022.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against the "CITY" or "COUNTY"

Section 4.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Page 1 of 2

Section 5.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 6.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory

CITY OF Bellingham, WA	COUNTY OF Whatcom, WA
Seth Fleetwood, Mayor	By Egy Sheriff
Setti Fleetwood, Mayor	Siletili
ATTEST:	APPROVED AS TO FORM:
Brian Henshaw, Finance Department	Prosecuting Attorney
APPROVED AS TO FORM:	
City Attorney	Satpal Sidhu, Whatcom County Executive
Chief of Police	

Whatcom County Sheriff's Office 2021 Edward Byrne Memorial JAG Program FY 2021 Local Solicitation

Applicant Disclosure of Pending Applications

The Whatcom County Sheriff's Office does have a pending application within the last 12 months for federal funding to cover some costs of the proposed program under this solicitation.

The Whatcom County Sheriff's Office has applied for the 2020 DOJ Bulletproof Vest Partnership grant.

Federal Funding Agency	Solicitation Name	Name/Phone/Email for Point of Contact
USDOJ	Bulletproof Vest Partnership	1-877-758-3787/owner-bvp-list@ojp.usdoj.gov

Whatcom County Sheriff's Office Program Abstract

Abstract

Enhanced officer safety and ballistic protection for first responders — In response to continued violent critical incidents at schools and public venues, the Whatcom County Sheriff's Office has developed enhanced training for Active Shooter scenarios. In an effort to prepare for and provide an enhanced response to critical violent incidents, the Whatcom County Sheriff's Office conducts ongoing training to deal with these threats and unusual situations that require an expedited response in order to save lives.

In addition to training, law enforcement must be prepared and equipped to deal with armed suspects in order to effectively mitigate the threat posed to the public. It is essential that all members of the Sheriff's Office have sufficient ballistic resistant vests to protect them from gunfire. The Sheriff's Office objective is to utilize allocated funds to purchase and replace current ballistic vests and improve officer safety.

Project identifiers – Equipment – Tactical, Body Armor – Ballistic Resistant, Counter Terrorism and Officer Safety.

Whatcom County Sheriff's Office 2021 Byrne JAG grant Program Narrative

Narrative

The continued trend of violent attacks nationwide and abroad has reaffirmed why it is imperative that responders be trained and prepared to respond to incidents of active violence in a safe, efficient, and effective manner. The Sheriff's Office is uniquely positioned on the international border between the US and Canada, and is subject to both domestic and international threats. This includes not only schools and public venues, but multiple federal facilities and critical infrastructure that may be the targets of violent attacks and/or terrorism. The Sheriff's Office continues to train all deputies to deal with critical incidents, to include terrorist attacks, active shooter scenarios, and high-risk operations.

In addition to training, law enforcement officers must be provided necessary equipment that enhances their officer safety and increases the likelihood that they will be able to carry out their duties without serious injury or loss of life. In order to provide enhanced ballistic protection and increase officer safety, the Whatcom County Sheriff's Office intends to purchase ballistic vests. Ballistic vests are essential personal protective equipment that utilized by members of the Whatcom County Sheriff's Office. The use by deputies allows them to carry out their duties while protecting them from sudden violent attacks from gunfire.

The Sheriff's Office intends to utilize JAG funding to purchase ballistic vests, to improve officer safety/wellness and operational performance.

Whatcom County Sheriff's Office 2021 Edward Byrne Memorial JAG Program FY 2021 Local Solicitation

Review Narrative

The Whatcom County Sheriff's Office intends to make its Fiscal Year 2021 JAG application available to the Whatcom County Council for its review and comment on July 27, 2021.

The application has not yet been made available for public review and comment. The Whatcom County Sheriff's Office will make its Fiscal Year 2021 JAG application available to citizens for comment at the Whatcom County Council meeting on August 10, 2021.

Whatcom County Sheriff's Office

2021 Byrne JAG program

Budget and Narrative

BUDGET

E. Supplies

Ballistic resistant vests \$14,001

Total \$14,001

Total project costs \$14,001

BUDGET NARRATIVE

EQUIPMENT: In order to provide enhanced ballistic protection and increase officer safety, the Whatcom County Sheriff's Office intends to purchase ballistic vests. Ballistic vests are essential personal protective equipment utilized by members of the Whatcom County Sheriff's Office. The use by deputies allows them to carry out their duties while protecting them from sudden violent attacks from gunfire.

Ballistic Vests- The intent is to equip deputies with NIJ certified ballistic vests that are rated to stop handgun rounds, as well as some shotgun rounds. The Whatcom County Sheriff's Office intends to purchase vests which are made in America. These vests are worn by all deputies when responding to incidents where weapons are known to be present or the use of firearms is suspected. The use of ballistic vests by all deputies allows them to respond quickly to an active shooter incident, while providing ballistic protection and improving officer safety. The recent mass shootings throughout the United States highlights the use and role ballistic vests play in protecting those who protect others. The use of ballistic vests serves to increase the likelihood that they can carry out their duties and save lives, while improving the chances that they go home at the end of the day.

Item	Computation					
List and describe each item of equipment that will be purchased	Compute the cost (e.g., the number of each item to be purchased X the cost per item)					
	# of Items	Total Cost	Non-Federal Contribution	Federal Request		
			\$0		\$0	
		Total(s)	\$0	\$0	\$0	
arrative						
. Supplies Supply Items Provide a list of the types of items to be purchased with grant funds.	Describe the item and the c	Computation ompute the costs. Computation: The number of eac	ch item to be purc	chased X the cost pe	er item.	
Supply Items	Describe the item and the c		ch item to be pure	chased X the cost pe Non-Federal Contribution	Federa	
Supply Items	T	ompute the costs. Computation: The number of eac		Non-Federal	Federal Reques	
Supply Items Provide a list of the types of items to be purchased with grant funds.	# of Items	ompute the costs. Computation: The number of eac	Total Cost	Non-Federal	Federal Reques \$14,151	

958

U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS

Justice Assistance Grant (JAG) Program

Body Armor Mandatory Wear Policy Certification

On behalf of the applicant entity named below, I certify the following to the Office of Justice Programs, U.S. Department of Justice:

I have personally read and reviewed the section entitled "Body Armor Certification" in the program announcement for the grant program identified above. I certify that our agency currently has a written "mandatory wear" policy in effect.

I acknowledge that a false statement in this certification may be subject to criminal prosecution, including under 18 U.S.C. § 1001. I also acknowledge that Office of Justice Program grants, including certifications provided in connection with such grants, are subject to review by the Office of Justice Programs, and/or by the Department of Justice's Office of the Inspector General.

I have authority to make this certification on behalf of the applicant entity (that is, the entity applying directly to the Office of Justice Programs).

Signature of Certifying Official

Jason Gum

Printed Name of Certifying Official

Chief Criminal Deputy

Title of Certifying Official

Whatcom County Sheriff's Office

Full Name of Applicant Entity

Fiscal Year of JAG Award: 2021

June 8, 2021



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-417

File ID: AB2021-417 Version: 1 Status: Agenda Ready

File Created: 07/14/2021 Entered by: AHester@co.whatcom.wa.us

Department: Public Works **File Type:** Resolution (FCZDBS) Requiring a Public Hearing

Department

Assigned to: Council Final Action:

Agenda Date: 07/27/2021 Enactment #:

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

TITLE FOR AGENDA ITEM:

Resolution transferring a Whatcom County Flood Control Zone District property to the Lummi Nation (Council acting as the Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This resolution is for the transfer of Whatcom County Flood Control Zone District real property to the Lummi Nation in exchange for wetland mitigation credits in the amount of \$17,000 pursuant to WCC 1.10.340 (A) and WCC 1.10.370

HISTORY OF LEGISLATIVE FILE					
Date:	Acting Body:	Action:	Sent To:		
		_	_		

Staff Memo, Proposed Resolution, Bargain and Sale Deed, Conservation Easement, Aerial Map

Attachments:

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

JON HUTCHINGS DIRECTOR



CIVIC CENTER
322 N. Commercial Street, Suite 210
Bellingham, WA 98225-4042
Telephone: (360) 778-6200
FAX: (360) 778-6201
www.whatcomcounty.us

MEMORANDUM

To:

The Honorable Satpal Singh Sidhu, County Executive,

Honorable Members of the County Council

Through:

Jon Hutchings, Director

From:

Andrew Hester, Real Estate Coordinator

Date:

July 14, 2021

Re:

Interlocal Agreement and Resolution Transferring Whatcom County Flood

Control Zone District Property to the Lummi Nation

Enclosed is an interlocal agreement and resolution requesting the approval of a transfer of Whatcom County Flood Control Zone District property to the Lummi Nation.

Requested Action

Public Works respectfully requests that the Whatcom County Council hold a public hearing and take action on the proposed property transfer.

Background and Purpose

The Whatcom County Flood Control Zone District purchased a property located on Ferndale Road in 2008. A portion of the property was used for mitigation purposes for a Public Works road project. The property has been subject to trespassing and dumping. The Lummi Nation would like to acquire the property and has offered wetland mitigation credits in the amount of \$17,000 in exchange for the property. Whatcom County Public Works recommends the transfer of this property subject to a conservation easement protecting the mitigation area and deed restrictions preventing the future development of the property.

Funding Amount and Source

No County funds are being expended on this agreement.

Please contact me at extension 6216 if you have any questions or concerns regarding this resolution.

Encl.

	SPONSORED BY:	
	PROPOSED BY:	Public Works
	INTRODUCTION I	DATE:
RESOLUTION NO.		

TRANSFERRING A WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT PROPERTY TO THE LUMMI NATION

WHEREAS, Whatcom County Flood Control Zone District (FCZD) owns property on Ferndale Road designated as Whatcom County tax parcel number 380208 042156 0000; and

WHEREAS, FCZD acquired property to prevent development in a frequently flooded area; and

WHEREAS, a portion of the property was used for stream buffer mitigation for a Whatcom County Public Works project; and

WHEREAS, the property has been subject to trespassing and dumping; and

WHEREAS, the Lummi Nation requested the property be transferred for fishing access; and

WHEREAS, FCZD is agreeable to the transfer of the property to the Lummi Nation if the mitigation area is protected and property is not developed in the future; and

WHEREAS, FCZD and Lummi Nation have negotiated that consideration for the property will be in the amount of \$17,000 to be applied towards a future wetland mitigation credit transaction; and

WHEREAS, this matter has been reviewed by the Property Management Committee with a recommendation to present to the County Council for approval; and

WHEREAS, after due consideration by the Whatcom County Council acting as the FCZD Board of Supervisors, it appears to the Council that it will be in the best interest of the FCZD to convey to the Lummi Nation a bargain and sale deed subject to deed restrictions and a conservation easement.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council acting as the FCZD Board of Supervisors, that the Executive is authorized to execute a bargain and sale deed transferring Whatcom County tax parcel number 380208 042156 0000 as described in Exhibit A to the Lummi Nation subject to a conservation easement and deed restrictions as set forth in Exhibit B and subject to the transfer of \$17,000 to the FCZD to be applied towards a future wetland mitigation credit transaction.

APPROVED this day of	, 2021
ATTEST:	WHATCOM COUNTY COUNCIL WHATCOM COUNTY, WASHINGTON
Dana Brown-Davis, County Clerk	Barry Buchanan, Council Chair
APPROVED AS TO FORM:	
Christopher Quinn	
Civil Deputy Prosecutor	
(approved electronically 7/7/2021)	

EXHIBIT A

Legal Description of property to be quitclaimed

The North 100 feet of the South 300 feet of that portion of the Northwest Quarter of the Northwest Quarter of Section 8, Township 38 North, Range 2 East of W.M., lying westerly of the present channel of the Nooksack River, and south of the slough, except right-of-way commonly referred to as Ferndale Road, lying along the Westerly line of said premises, and less River Wash.

Situate in Whatcom County, Washington.

EXHIBIT B

Deed Restrictions

- A. Compatible uses. The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: outdoor recreational activities, restoration; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; unpaved access roads; and buffer zones.
- B. No permanent structures or improvements shall be erected on the property. Temporary structures associated with outdoor recreational activities shall be allowed subject to the approval of Grantor. Any improvements on the property shall be in accordance with proper floodplain management policies and practices.
- C. Any grading activities required to construct approved improvements or access roads on the property shall restore the grades to pre-project conditions so as to not affect the conveyance of floodwaters. Proposed grading activities must be approved by the Grantor prior to ground disturbance.
- D. The Grantee is responsible for obtaining all applicable permits for any proposed improvements or grading on the property.

After recording return document to:

Lummi Nation 2665 Kwina Road Bellingham, WA 98226

Document Title: Bargain and Sale Deed

Reference Number of Related Documents: NA

Grantor: Whatcom County Flood Control Zone District

Grantee: Lummi Nation

Legal Description: A Ptn of the NW ¼ SW ¼, S8, T38N. R2E, W.M.

Assessor's Tax Parcel Number: 380208 042156 0000

BARGAIN AND SALE DEED

The Grantor, WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT, A QUASI-MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, for and in consideration of TEN AND NO/100 Dollars and other valuable consideration, in hand paid, bargains, sells, and conveys to **LUMMI NATION**, the following described real estate, situated in Whatcom County, in the State of Washington:

The North 100 feet of the South 300 feet of that portion of the Northwest Quarter of the Northwest Quarter of Section 8, Township 38 North, Range 2 East of W.M., lying westerly of the present channel of the Nooksack River, and south of the slough, except right-of-way commonly referred to as Ferndale Road, lying along the Westerly line of said premises, and less River Wash.

Situate in Whatcom County, Washington.

Subject to deed restrictions described in Exhibit A.

Page 1 of 5 Pages

BARGAIN AND S	ALE DEED					
	day of CONTROL ZONE				rantor, WI	НАТСОМ
	, County Executive f the FCZD Board of	 f Supervisors				
Approved as to for Prosecuting Attorn						
Christopher Quinn Civil Deputy Prose (approved electron		<u></u>				
Accepted thisNATION, by:	day of		_, 2021	for	Grantee,	LUMMI
Lawrence Solomor Lummi Indian Bus						
Approved as to for	m:					
Office of the Reser	vation Attorney	 -				
	Pa	ge 2 of 5 Page	es			
PLEA	ASE MAKE NO MARK IN THE MARC	GIN SPACE - RESERVED	FOR COUNTY A	UDITOR'S U	SE ONLY.	

BARGAIN AND SALE DEED		
STATE OF WASHINGTON)		
: ss COUNTY OF WHATCOM)		
On this		
the day and year first above written.		
Notary Public in and for the State of Washington Residing at My commission expires		
Page 3 of 5 Pages		
PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.		

BARGAIN AND SALE DEED			
STATE OF WASHINGTON) : ss		
COUNTY OF WHATCOM			
On this day of	, 2021, before me personally appeared, to me known to be the <u>Lawrence Solomon</u> of the		
<u>Lummi Nation</u> , that executed said instrument to be the free uses and purposes herein men	the within and foregoing instrument, and acknowledged and voluntary act and deed of the Lummi Nation, for the tioned, and on oath stated that Lawrence Solomon was trument on behalf of the Lummi Nation.		
IN WITNESS WHEREOUTH the day and year first above w	OF, I have hereunto set my hand and affixed my official seal ritten.		
	Notary Public in and for the State of Washington		
	Residing at My commission expires		
Page 4 of 5 Pages			
PLEASE MAKE NO MAF	RK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.		

BARGAIN AND SALE DEED

Exhibit A

Deed Restrictions

- A. Compatible uses. The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: outdoor recreational activities, restoration; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; unpaved access roads; and buffer zones.
- B. No permanent structures or improvements shall be erected on the property. Temporary structures associated with outdoor recreational activities shall be allowed subject to the approval of Grantor. Any improvements on the property shall be in accordance with proper floodplain management policies and practices.
- C. Any grading activities required to construct approved improvements or access roads on the property shall restore the grades to pre-project conditions so as to not affect the conveyance of floodwaters. Proposed grading activities must be approved by the Grantor prior to ground disturbance.
- D. The Grantee is responsible for obtaining all applicable permits for any proposed improvements or grading on the property.

Page 5 of 5 Pages

PLEASE MAKE NO MARK IN THE MARGIN SPACE - RESERVED FOR COUNTY AUDITOR'S USE ONLY.

After recording return to: Whatcom County Planning and Development Services 5280 Northwest Drive Bellingham, WA 98226

GRANTOR:

GRANTEE: WHATCOM COUNTY

GRANTEE (Trustee): N/A

LEGAL DESCRIPTION: TAX PARCEL I.D. #: REFERENCE #'s:

CONSERVATION EASEMENT

This grant of a conservation easement is made by and between________, referred to hereafter as "Grantors," and Whatcom County, referred to hereafter as "Grantee." The Grantors own real property in Whatcom County, the legal description of which is attached hereto as Exhibit A (hereinafter the "Property"). The intent of Grantors and Grantee, through this conservation easement, is to preserve, protect, maintain and limit use of a portion of Grantors' undeveloped Property containing an identified critical area(s) and/or its associated buffer area(s), defined pursuant to WCC 16.16 – Whatcom County Critical Areas Ordinance, for the purpose of protecting the ecological functions and values provided by said critical area(s).

Grantors hereby convey to Grantee, its successors, heirs, and assigns, an easement for conservation purposes in reference to wetlands and/or Habitat Conservation Areas and/or associated buffers as defined pursuant to WCC 16.16. The conservation easement is depicted as "Conservation Easement" on Exhibit B attached hereto (hereinafter the "Conservation Easement").

It is the intent of this easement that the grant of protection not exceed the purpose, boundaries, or duration of critical area protection required by law under the Whatcom County Critical Areas Ordinance. Should the size, shape, or character of the identified critical area be altered by natural processes and/or operation of law in favor of the grantor, this easement shall be subject to amendment to conform to those changes, as determined by the administrator or a court of competent jurisdiction.

This conservation easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below.

1. **Rights**, **Obligations** and **Reservations**. All rights, obligations and reservations shall operate as covenants running with the land.

- 2. **Permitted Uses and Rights Reserved by Grantors**. Grantor reserves the following rights:
 - a. To use the property as allowed by applicable Whatcom County Ordinances after disclosing the proposed use to Whatcom County.
 - b. To include the acreage of the conservation easement within any development permit application or any project proposal that may be located on the Property for the purposes of calculating residential density or designating required open space.
 - c. To maintain fish and wildlife habitat.
 - d. Only upon written consent of Grantee, or by an approved farm plan or an approved addendum by the Technical Administrator:
 - (1) to enhance or restore degraded fish or wildlife habitat, wetlands, or wildland forest characteristics, on an ecologically managed basis; or
 - (2) to allow construction of unpaved foot trails; or
 - (3) to allow for ongoing agriculture activities outside of approved mitigation areas; or
 - (4) install utilities as approved by the Technical Administrator.
- 3. **Restrictions on Use**. Except as provided above, and as may be necessary to carry out those rights reserved, and after review by Technical Administrator, the Grantors shall not conduct the following activities within the Conservation Easement area:
 - a. Remove trees or native vegetation.
 - b. Permit grazing of domestic animals.
 - c. Excavate, dredge, fill, dike or otherwise alter the landscape or topography.
 - d. Store derelict vehicles, hazardous substances, or waste of any kind.
 - e. Explore for or extract minerals, hydrocarbons, soils, gravel or other materials.
 - f. Construct, erect or place any buildings, structures, or improvements, either of a temporary or permanent nature.
 - g. Grant or allow road or utility construction and easements.

h. Alter the surface or subsurface hydrology entering or exiting the conservation easement area.

Otherwise use the conservation easement area in a manner that is inconsistent with the reservation of rights and the purposes of this Conservation Easement.

4. Rights and Responsibilities of Grantee.

- a. Any forbearance by Grantee to exercise any rights under this agreement, in the event of a breach, shall not be deemed to be a waiver of Grantee's rights under this Conservation Easement.
- b. To access, with permission from Grantor, or with an administrative search warrant, to grantee, agents, successor and assigns for the limited purpose of monitoring this easement.

5. General Conditions.

- a. This conservation easement does not grant or permit public access to any portion of the conservation easement.
- b. Grantee may assign its interest in this conservation easement upon written consent of grantor.
- c. This conservation easement shall run with the property and shall be binding on successors, assigns, heirs of Grantor and Grantee.
- d. In the event that any of the provisions contained in this conservation easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in affect.

Dated this day of	
Grantor	Grantor
Grantor/Print Name	Grantor/Print Name
STATE OF WASHINGTON)	
)ss. COUNTY OF WHATCOM)	
,	actory ovidence that
this instrument, on oath stated	before me, and said person acknowledge that he signed that he was authorized to execute the instrument and not voluntary act of such party for the uses and purposes
Dated:	
	NOTARY PUBLIC, in and for the State of Washington,
	residing at:
	Printed Name:
	My Commission expires:
STATE OF WASHINGTON)	
COUNTY OF WHATCOM)	
this instrument, on oath stated	actory evidence that
Dated:	
	NOTARY PUBLIC, in and for the State of Washington,
	residing at:
	Printed Name:
	My Commission expires:
Reviewed and approved by:	
Whatcom County Natural Resource	es Division Date

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

Jon Hutchings
Director



James P. Karcher, P. E.

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

EXHIBIT "A"

A CONSERVATION EASEMENT LYING OVER, UNDER AND ACROSS A PORTION OF THE FOLLOWING DESCRIBED PARCEL:

(PER STATUTORY WARRANTY DEED AF. NO. 2080903242)

THE NORTH 100 FEET OF THE SOUTH 300 FEET OF THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 2 EAST W.M., LYING WESTERLY OF THE PRESENT CHANNEL OF THE NOOKSACK RIVER, AND SOUTH OF THE SLOUGH, EXCEPT RIGHT-OF-WAY COMMONLY REFERRED TO AS FERNDALE ROAD, LYING ALONG THE WESTERLY LINE OF SAID PREMISES, AND LESS RIVER WASH.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

CONSERVATION EASEMENT DESCRIPTION

THAT PORTION OF THE ABOVE DESCRIBED PARCEL LYING EAST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A REBAR AND CAP MARKING THE NORTHWEST CORNER OF SAID PARCEL AS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 2141000660, SAID POINT ALSO BEING ON THE EASTERLY RIGHT OF WAY MARGIN OF FERNDALE ROAD (CO. RD. NO. 558); THENCE ALONG THE NORTH LINE OF SAID PARCEL SOUTH 88°52'24" EAST 324.58 FEET TO THE **POINT OF BEGINNING**; THENCE DEPARTING SAID NORTH LINE SOUTH 03°30'17" EAST 100.32 FEET MORE OR LESS TO THE SOUTH LINE OF SAID PARCEL AND THE **TERMINUS** OF SAID LINE.

SITUATE IN WHATCOM COUNTY, WASHINGTON.



