

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

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



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

WHATCOM COUNTY COUNCIL

**COMBINED
AGENDA PACKET FOR
SEPTEMBER 14, 2021**

**INCLUDES INFORMATION
FOR THE FOLLOWING MEETINGS:**

**9 A.M. – NATURAL RESOURCES COMMITTEE
(ENDS BY 9:40 A.M.)**

9:45 A.M. – PUBLIC WORKS AND HEALTH COMMITTEE (ENDS BY 10:15 A.M.)

**10:20 A.M. – FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
(ENDS BY NOON)**

**1 P.M. – PLANNING AND DEVELOPMENT COMMITTEE
(ENDS BY 1:55 P.M.)**

**2 P.M. - COMMITTEE OF THE WHOLE
(ENDS BY 4:45 P.M./MAY BEGIN EARLY)**

6 P.M. - COUNCIL

PARTICIPATE IN VIRTUAL COUNCIL MEETINGS

THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY

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

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

COMMITTEE AGENDAS

COUNCIL NATURAL RESOURCES COMMITTEE

9: 00 A.M. TUESDAY, September 14, 2021 (ENDS NO LATER THAN 9:40 A.M.)

Virtual Meeting

Call To Order

Roll Call

Announcements

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

Committee Discussion and Recommendation to Council

1. AB2021-359 Presentation/discussion of Wildlife Advisory Committee recommendation regarding Nomination of Species of Local Importance and request for Council motion to designate four wildlife species as "Species of Local Importance"
Pages 1 - 29

Items Added by Revision

Other Business

Adjournment

COUNCIL PUBLIC WORKS & HEALTH COMMITTEE

9:45 A.M. TUESDAY, September 14, 2021 (ENDS NO LATER THAN 10:15 A.M.)

Virtual Meeting

Call To Order

Roll Call

Announcements

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

Special Presentation

1. AB2021-504 Report from the Public Works Department
Page 30

Items Added by Revision

Other Business

Adjournment

COUNCIL FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
10:20 A.M. TUESDAY, September 14, 2021 (ENDS NO LATER THAN 12:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Announcements

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

Special Presentation

1. AB2021-505 Report from the Finance Division
Page 31
2. AB2021-524 Presentation from RMC Architects regarding the Northwest Annex Campus update
Pages 32 – 34

Committee Discussion and Recommendation to Council

1. AB2021-501 Request authorization for the County Executive to enter into an agreement between Whatcom County and Compass Health to lease a portion of the Whatcom Response Center, in the amount of \$20,000 annually
Pages 35 – 47
2. AB2021-493 Request authorization for the County Executive to enter into an Agreement between Whatcom County and Administrative Office of Courts (AOC) for reimbursement of Uniform Guardianship Act (UGA) services, in the amount of \$153,110
Pages 48 – 55
3. AB2021-497 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Workforce Council to provide reimbursement of wages and benefits for eligible temporary employees working in various COVID-related positions, in the estimated amount of \$110,000 for a total estimated contract amount of \$330,000
Pages 56 – 60
4. AB2021-492 Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Department of Commerce to furnish goods and services necessary to accomplish activities under the SFY 2022 Victim/Witness Assistance Grant during the grant period, in the amount of \$60,368.00
Pages 61 – 118
5. AB2021-523 Request authorization for the County Executive to enter into Local Agency Agreement Supplement No. 5 between Whatcom County and the Washington State Department of Transportation for the Birch Bay Drive and Pedestrian Facility Project in the amount of \$300,000
Pages 119 – 125
6. AB2021-450 Resolution amending the Flood Control Zone District 2021 budget, request no. 2, in the amount of \$1,142,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 126 – 129

7. AB2021-451 Ordinance amending the 2021 Whatcom County Budget, request no. 13, in the amount of \$1,615,450
Pages 130 – 156
8. AB2021-498 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology to provide Pollution Prevention Assistance Specialists, in the amount of \$293,568
Pages 157 – 182
9. AB2021-509 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for the development of a housing communications strategy, in the amount of \$19,050
Pages 183 – 190
10. AB2021-489 Resolution approving the 2022 recommended Convention Center (Lodging Tax) allocations for tourism-related facilities and activities as defined through RCW 67.28.1816 in the amount of \$1,469,575
Pages 191 – 195
11. AB2021-506 Request authorization for the County Executive to enter into a contract agreement between Whatcom County and West Publishing for online access to proprietary law publications in the amount of \$143,007
Pages 196 – 202

Council "Consent Agenda" Items

1. AB2021-487 Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services
Pages 203 – 210
2. AB2021-502 Resolution in the matter of the sale of surplus personal property and setting a date for public hearing, pursuant to WCC 1.10
Pages 211 – 214
3. AB2021-518 Resolution to amend Resolution 2020-046 for unrepresented Whatcom County employees
Pages 215 – 218

Items Added by Revision

Other Business

Adjournment

COUNCIL PLANNING AND DEVELOPMENT COMMITTEE

1:00 P.M. TUESDAY, September 14, 2021 (ENDS NO LATER THAN 1:55 P.M.)

Virtual Meeting

Call To Order

Roll Call

Announcements

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

Committee Discussion

1. AB2021-453 Discussion of proposed Zoning amendments relating to density credits in the UR4 zone in the Birch Bay UGA, density credits for accessory dwelling units, and modifying the minimum lot size, width, depth and other requirements in the Urban Residential zone
Pages 219 – 259
2. AB2021-499 Discussion of a draft ordinance to amend the zoning code by adding a new chapter, WCC 20.17 - Temporary Homeless Facilities, and adding definitions for Temporary Homeless Facility and related terms (WCC 20.97)
Pages 260 – 280

Items Added by Revision

Other Business

Adjournment

COUNCIL COMMITTEE OF THE WHOLE

2:00 P.M. TUESDAY, September 14, 2021 (ENDS NO LATER THAN 4:45 P.M.)

Virtual Meeting

Call To Order

Roll Call

Announcements

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

Committee Discussion

1. AB2021-415 Discussion of an ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County
Pages 281 – 301
2. AB2021-395 Discussion and periodic update of the Shoreline Management Program
Pages 302 – 561

3. AB2021-525 Discussion regarding request for proposals (RFP) for independent review of the response to the COVID-19 pandemic
 Pages 562 – 571
4. 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 572 – 588

COUNCIL TO DISCUSS NEXT STEPS FOR THIS ORDINANCE

5. AB2021-482 Presentation/discussion regarding Whatcom County’s proposed American Rescue Plan Act funding priorities
 Pages 589 – 620

Items Added by Revision

Other Business

Adjournment

COUNCIL AGENDA

REGULAR COUNCIL MEETING

6:00 P.M. TUESDAY, September 14, 2021

Virtual Meeting

CALL TO ORDER

ROLL CALL

FLAG SALUTE

ANNOUNCEMENTS

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

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

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

COUNTY EXECUTIVE'S REPORT

MINUTES CONSENT

1. MIN2021-065 Special Council for August 5, 2021
Pages 620 – 625
2. MIN2021-067 Committee of the Whole Executive Session for August 10, 2021
Pages 626 – 629
3. MIN2021-068 Committee of the Whole for August 10, 2021
Pages 630 – 635
4. MIN2021-069 Regular County Council for August 10, 2021
Pages 636 – 656
5. MIN2021-070 Special Council for August 16, 2021
Pages 657 – 660

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. AB2021-408 Ordinance adopting amendments to Whatcom County Code Title 17 Flood Damage Prevention
Pages 661 – 716
2. AB2021-434 Resolution authorizing the sale of Whatcom County surplus property
Pages 717 – 719

OPEN SESSION (20 MINUTES)

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

CONSENT AGENDA

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

(From Council Finance and Administrative Services Committee)

1. AB2021-487 Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services
Pages 203 – 210
2. AB2021-502 Resolution in the matter of the sale of surplus personal property and setting a date for public hearing, pursuant to WCC 1.10
Pages 211 – 214
3. AB2021-518 Resolution to amend Resolution 2020-046 for unrepresented Whatcom County employees
Pages 215 – 218

OTHER ITEMS

(From Council Natural Resources Committee)

1. AB2021-359 Presentation/discussion of Wildlife Advisory Committee recommendation regarding Nomination of Species of Local Importance and request for Council motion to designate four wildlife species as "Species of Local Importance"
Pages 1 – 29

(From Council Finance and Administrative Services Committee)

2. AB2021-501 Request authorization for the County Executive to enter into an agreement between Whatcom County and Compass Health to lease a portion of the Whatcom Response Center, in the amount of \$20,000 annually
Pages 35 – 47

3. AB2021-493 Request authorization for the County Executive to enter into an Agreement between Whatcom County and Administrative Office of Courts (AOC) for reimbursement of Uniform Guardianship Act (UGA) services, in the amount of \$153,110
Pages 48 – 55
4. AB2021-497 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Workforce Council to provide reimbursement of wages and benefits for eligible temporary employees working in various COVID-related positions, in the estimated amount of \$110,000 for a total estimated contract amount of \$330,000
Pages 56 – 60
5. AB2021-492 Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Department of Commerce to furnish goods and services necessary to accomplish activities under the SFY 2022 Victim/Witness Assistance Grant during the grant period, in the amount of \$60,368.00
Pages 61 – 118
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Pages 119 – 125
7. AB2021-450 Resolution amending the Flood Control Zone District 2021 budget, request no. 2, in the amount of \$1,142,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 126 – 129
8. AB2021-451 Ordinance amending the 2021 Whatcom County Budget, request no. 13, in the amount of \$1,615,450
Pages 130 – 156
9. AB2021-498 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology to provide Pollution Prevention Assistance Specialists, in the amount of \$293,568
Pages 157 – 182
10. AB2021-509 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham for the development of a housing communications strategy, in the amount of \$19,050
Pages 183 – 190
11. AB2021-489 Resolution approving the 2022 recommended Convention Center (Lodging Tax) allocations for tourism-related facilities and activities as defined through RCW 67.28.1816 in the amount of \$1,469,575
Pages 191 – 195
12. AB2021-506 Request authorization for the County Executive to enter into a contract agreement between Whatcom County and West Publishing for online access to proprietary law publications in the amount of \$143,007
Pages 196 – 202

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2021-510 Request Council appointment of one councilmember to attend the Whatcom Transportation Authority (WTA) Board Composition Review, as required by law
Pages 720 – 722

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

Per Whatcom County Code 2.03.070(B), the council must confirm or reject executive appointments within 30 days of submission to the council. County code deems the appointee confirmed if council does not take action within this time.

1. AB2021-507 Request confirmation of the Executive's reappointment of Wendy Miller and Mark Challenger to the Americans with Disabilities Act (ADA) Compliance Committee
Pages 723 – 727

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. AB2021-500 Ordinance adopting amendments to the Whatcom County Zoning Code Relating to Temporary Homeless Facility Regulations
Pages 728 – 748
2. AB2021-512 Ordinance amending the 2021 Whatcom County Budget, request no. 14, in the amount of \$315,947
Pages 749 – 755
3. AB2021-414 Ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County
Pages 756 – 776
4. AB2021-508 Ordinance for Installation of a Stop Sign on Northshore Road
Pages 777 – 785
5. AB2021-503 Resolution authorizing the sale of surplus personal property pursuant to WCC 1.10
Pages 786 – 789
6. AB2021-515 Resolution in the matter of the Whatcom County Six-Year Transportation Improvement Program (STIP) for the years 2022 through 2027
Pages 790 – 924
7. AB2021-522 Resolution amending the Flood Control Zone District 2021 budget, request no. 3, in the amount of \$175,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 925 – 928
8. AB2021-516 Resolution adopting the Whatcom County Flood Control Zone District Six-Year Water Resources Improvement Program for the years 2022 through 2027 (Council acting as the Flood Control Zone District Board of Supervisors)
Pages 929 – 969

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: AB2021-359

File ID:	AB2021-359	Version:	1	Status:	Agenda Ready
File Created:	06/15/2021	Entered by:	TAXlund@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Request for Motion		
Assigned to:	Council Natural Resources Committee			Final Action:	
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Presentation/discussion of Wildlife Advisory Committee recommendation regarding Nomination of Species of Local Importance and request for Council motion to designate four wildlife species as "Species of Local Importance"

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The Wildlife Advisory Committee would like to provide recommendations to County Council for consideration for designation of four species as "Species of Local Importance."

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Memo, Nomination Report



Members

Barry Wenger, chair
Vikki Jackson, vice-chair
Frank Bob
Joel Ingram
Greg Green
Stephen Nyman
Robert Waddell
Shannon Crossen
Trevor Delgado
Chris Kazimer

Memorandum

DATE: July 23, 2021
TO: County Council
FROM: Barry A. Wenger, Wildlife Advisory Committee Chair
SUBJECT: Nomination of Species of Local Importance

Pursuant to WCC 16.16.710(D) the Wildlife Advisory Committee (WAC) respectfully requests that the Council consider designating the following four wildlife species as “Species of Local Importance.”

- Western Toad (also known as boreal toad) (*Anaxyrus* [formerly *Bufo*] *boreas*)
- Coastal Tailed Frog (*Ascaphus truei*)
- Townsend’s Big-Eared Bat (*Coryrhinus townsendii*)
- Elk (*Cervus elaphus*)

WCC 16.16.710(C)(12)(b) currently names two specific habitats as “Habitats of Local Importance”: i) the marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone and ii) the Chuckanut wildlife corridor; however, no specific species are named. One of the tasks on the WAC’s work plan is to review whether any species should be designated a “Species of Local Importance,” and to nominate them if so. Supported by Planning and Development Services (PDS) staff, the WAC has worked over the past several years to develop this initial list.

The background data to support these nominations is provided in the attached report, “Species and Habitats of Local Importance May 2021 Nominations.”

Please note that comprehensive, detailed habitat maps are not available for all species. Predominant, large species such as elk that are well documented over many years, and the habitat and annual migrations they use are well-known, so maps are available and provided. Other species, such as the coastal tailed frog and western toad are found only in extremely limited locations and have much less spatial documentation. For these vulnerable species, it is not in the public interest for their habitat locations to be made publicly known through detailed maps. This approach is similar to the way that, for their security, bald eagle nest locations are protected from unrestricted public access. Wildlife resource managers will need to work with the public and scientists to implement this effort over time.

It should also be noted that there are other species that may warrant being included on this list, but unfortunately are poorly documented, and more information is needed to evaluate their status in Whatcom County. Although these other species are not recommended as Species/Habitats of Local Importance at this time, the WAC proposes creation of a “Watch List” to encourage research, monitoring, and documentation.

We urge the Council to schedule a public hearing on this matter (a requirement of WCC 16.16.710(D)(3)) and move to designate these species as “Species of Local Importance.” Thank you for your time and consideration.

Attachments:

- (1) WAC Recommendations for Species and Habitats of Local Importance
- (2) Summary Table of Species of Local Importance
- (3) Regulatory review
- (4) Species Technical Reviews



Species & Habitats of Local Importance

2021 Nominations

Wildlife Advisory Committee
July 2021

Whatcom County Wildlife Advisory Committee

Barry A. Wenger, Chair – Environmental Planner Department of Ecology, Retired

Vikki Jackson, Vice-Chair – Ecologist, Retired

Frank Bob – Lummi Tribe

Joel Ingram – WDFW Habitat Biologist

Greg Green – Ecologist, WWU

Stephen Nyman – Ecologist, HDR

Robert Waddell – WDFW Habitat Biologist

Shannon Crossen – Biologist, ICF

Trevor Delgado – Nooksack Tribe

Chris Kazimer – Public Citizen

Special thanks to the following for compiling the information on:

- Amphibians and Reptiles – Stephen Nyman
- Bats – Greg Green
- Carnivores and Ungulates – Robert Waddell
- Fish – Joel Ingram

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1.0 Introduction

Pursuant to WCC 16.16.710(D) the Wildlife Advisory Committee (WAC) respectfully requests that the County Council designates the four below-named wildlife species as “Species of Local Importance.”

The Whatcom County Wildlife Advisory Committee (WAC) was created by Ordinance 2015-031 on July 7, 2015. The function of this committee is to “provide recommendations on integrating wildlife management and protection issues relative to fulfilling goal nine (9) of the Washington State Growth Management Act (GMA)^{1, 2}; namely: 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.”

WCC 16.16.710(C)(12)(b) currently names two specific habitats as “Habitats of Local Importance”: i) the marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone and ii) the Chuckanut wildlife corridor); however, no specific species are named. One of the tasks on our work plan is to review whether any species should be designated a “Species of Local Importance,” and to nominate them if so. Supported by Planning and Development Services (PDS) staff, the WAC has worked to develop an initial list of nominations. After a nearly yearlong review, the WAC initially nominates the following four wildlife species to be named “Species of Local Importance.”

- Western Toad (also known as boreal toad) (*Anaxyrus* [formerly *Bufo*] *boreas*)
- Coastal Tailed Frog (*Ascaphus truei*)
- Townsend’s Big-Eared Bat (*Coryrhinus townsendii*)
- Elk (*Cervus elaphus*)

While only four species are initially being nominated, the WAC considered others as well but feels they do not meet the listing criteria at this time. Nonetheless, these species do require closer attention and we have placed them on our watchlist with the goal of gathering information on presence/absence, population data, distribution; and to conduct suitable habitat surveys and other associated work in order to gather the required information needed to add these species to the list, if warranted.

¹ Fish and wildlife habitat conservation areas that must be considered for classification and designation include: Habitats and species of local importance, as determined locally (WAC 365-190-130(2)(b))

² Habitats and species areas of local importance. Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington State Department of Natural Resources' Natural Heritage Program can provide a list of high quality ecological communities and systems and rare plants. (WAC 365-190-130(4)(b))

2.0 Nomination Process

The process for adding recommendations to the Species of Local Importance list³ is outlined in WCC 16.16.710(D) (see Appendix A: Regulatory Summary). In order to nominate an area, species, or corridor to the category of “locally important,” an individual or organization must:

- Demonstrate a need for special consideration based on:
 - Identified species of declining population;
 - Documented species sensitive to habitat manipulation and cumulative loss;
 - Commercial, recreational, cultural, biological, or other special value; or
 - Maintenance of connectivity between habitat areas.

Additionally, the WAC considered the following factors (additional factors italicized):

- Is the species/habitat considered in decline *or at risk State-wide or regionally?*
- Is the species/habitat particularly sensitive to habitat changes *that could be ameliorated with management?*
- Is the species/habitat recreationally, culturally, or economically important to citizens of Whatcom County?
- *Is the species/habitat known to occur or likely to occur in areas of western Whatcom County under County jurisdiction and subject to private property development or other projects that would be reviewed by the County?*

The nominating individual or organization must also:

- Propose relevant management strategies considered effective and within the scope of this chapter;
- Identify effects on property ownership and use; and
- Provide a map showing the species or habitat location(s).

Once this information is developed, submitted proposals are to be reviewed by the County staff and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. The proposal is reviewed by County staff for accuracy and consistency with the purposes and intent of WCC Chapter 16.16 and the various goals and objectives of the Whatcom County Comprehensive Plan and the Growth Management Act. If the proposal is found to be complete, the County Council must hold a public hearing to solicit public comment. Approved nominations can be passed by motion by Council and will become designated locally important habitats, species, or corridors. These designations will be subject to the provisions of WCC Chapter 16.16.

³ Pursuant to WCC 16.16.710(C)(12), this list is to be maintained by Planning and Development Services; thus there is no need for an amendment to WCC Ch. 16.16.

3.0 Nominated Species of Local Importance

The following analyses and recommendations are the result of extensive time and effort by Whatcom County Wildlife Advisory Committee using the best available information to identify Species of Local Importance candidates for Whatcom County under WCC 16.16.710(C)(12). Documentation of proposed species status, life history, threats, management recommendations, and justification for listing has been included.

Review of proposed species would occur as part of the existing system of project permitting for Habitat Conservation Areas (HCA). The existing system of review for permitting proposed projects includes desktop analysis of potential species and field inspection for habitat presence of Federal and State Threatened and Endangered Species. If potential habitat or species are likely to occur on a parcel, Natural Resource Professionals are hired by the applicant to document regulated species and habitat within the proposed project area. They provide site specific documentation and analysis of impacts for projects. Washington Department of Fish and Wildlife is typically consulted and has habitat information publically available for proposed species. This type of information is included in the standard HCA documentation reporting procedures. Listing of habitat and/or species is not anticipated to substantially increase cost to applicant or time for County Staff since it can be included with the standard review, analysis, and site investigation procedures. Additional time and cost could be incurred by both the applicant and/or County Staff if atypical circumstances are present in the proposed project area, such as a land use violations or change in natural conditions (flooding events) for example. Listing species is expected to have little to no affect for existing commercial, single family or agricultural developments since these co-exist with the proposed species. Future development may have minimal conditions of approval for proposed projects that could include measures such as phased timing or fencing.

Western Toad (a.k.a Boreal Toad) (*Anaxyrus* [formerly *Bufo*] *boreas*)

Criteria for Listing

- Identified species of declining population; and
- Documented species sensitive to habitat manipulation and cumulative loss.

Habitat Requirements

Western toads breed in shallow water (usually no more than 6-12 inches deep) in marshes, small lakes, ponds, and off-channel riverine habitat, usually where permanent water occurs (although some breeding sites may dry seasonally). Egg laying is often concentrated in one location used each year. Tadpoles also frequent areas of warm, shallow water and may move in schools that stir-up sediments. Although unusual, tadpoles of this species have been observed in fast flowing water in some areas. Adults are largely terrestrial and may travel long distances from breeding sites and use a variety of habitats, including upland forests and shrub thickets. They often reside in small mammal burrows or in shallow burrows the toads construct in loose soil; under logs; in rotted stumps; or within rock crevices. Winter hibernacula occur in stream banks, deep burrows, and under downed wood. Older sources consider them as adaptable to human-modified habitats, including agricultural and suburban areas, provided that breeding habitats and migration corridors are



maintained. More information can be found at <https://whatfrogs.wordpress.com/western-toad-anaxyrus-boreas/> and <https://wdfw.wa.gov/species-habitats/species/anaxyrus-boreas#desc-range>.

Status

The western toad is currently designated as a Candidate for possible listing by WDFW, a “Species of Greatest Conservation Need” (SGCN) in the State Wildlife Action Plan (WDFW 2015), and was considered a “focal species” in the development of Priority Amphibian and Reptile Conservation Areas (PARCA) in the State of Washington (August 8, 2017 workshop sponsored by Partners in Amphibian and Reptile Conservation). NatureServe assigns western toads in Washington to the Northwestern Population (or Northwest Major Clade, population 5), which is ranked as globally ‘apparently secure’ and ‘not assessed/under review’ at the state level. WDFW (2015) notes: “Western toad was once common in the lowland Puget Sound but now is relatively rare and has declined in the lower Columbia Gorge” and “Of about 107 historical sites in those areas, only about 19 are thought to still remain. Elsewhere in the state, toads are locally common in many areas.” Figure 1 shows known distribution as of 2016 as described in the Washington Herp Atlas. The final PARCA report (April 10, 2018) notes: “Western Toad is a focal species throughout its range in the state due to concerns about its range wide rapid decline.”



Figure 1. Known Distribution of the Western Toad in Whatcom County, Washington Herp Atlas
<https://wdfw.wa.gov/sites/default/files/publications/02135/wdfw02135.pdf>

Threats

Reasons for the decline of this species are uncertain, particularly at lowland sites, but may relate to a combination of factors associated with increased development. Threats may include loss or alteration of breeding habitats, fragmentation of terrestrial habitats, chemical contamination from pesticides or herbicides, trampling of post-metamorphic young-of-the-year, and mortality from road traffic. Disease (specifically chytridiomycosis caused by the pathogenic chytrid fungus, *Batrachochytrium dendrobatidis*) is a major contributor to decline of western toad populations in the Southern Rocky Mountains but is not verified as a threat elsewhere. High levels of embryonic mortality from water mold (*Saprolegnia*) infections have also been reported in high elevation sites in Oregon and elsewhere, likely correlated to other stressors, including high levels of UV-B. Western toads coexist with fish, likely because they are toxic or distasteful to at least some predators, but in some areas populations appear to be reduced by introduced, non-native fish. In general, vulnerabilities of western toad populations may be associated with inflexible use of traditional breeding locations and life stage concentrations (e.g., communal egg-laying, tadpole schooling, and aggregative behavior and mass emigration by young-of-year after metamorphosis).

Protection and Management Recommendations

Management recommendations for western toad include:

- identifying and mapping breeding locations;
- educational signage, buffers, or seasonal use restrictions on County-owned public lands with vulnerable life stage concentrations;
- establish wetland buffers at breeding sites using a Category I Wetland Rating;
- retention of potential hiding cover (e.g., down wood and rocks) in terrestrial habitats;
- minimize soil disturbance and prevent pollution of runoff to breeding sites; and
- consideration of road crossing improvements in the design of culvert replacements on roads adjacent to western toad breeding sites.

Because western toads often breed later than other amphibians at the same sites and eggs may be concentrated in a small area, special effort may be required to document breeding sites.

The effects of listing on property ownership and use are likely minimal. Western Toad is a mobile species and could co-exist with many human impacts on the landscape. Management of this species would occur as part of the existing system of HCA project permitting reporting requirements.

Comments

Although western toad is a Candidate species, designation as a Species of Local Importance is warranted because WDFW has not developed specific management recommendations for this species and existing PHS data are inadequate to identify extant breeding occurrences in Whatcom County.

Coastal Tailed Frog (*Ascaphus truei*)

Criteria for Listing

- Documented species sensitive to habitat manipulation and cumulative loss.

Habitat Requirements

All life stages of the Cascade tailed frog are closely associated with moderate to high-gradient, clear, rocky, permanent streams, ranging from fish-free headwater streams to higher order streams with native fish. Streams that are seasonally dry at the surface, but maintain sub-surface (hyporheic) flow, may also be used. All life stages exhibit intolerance for higher temperatures. Coastal tailed frog is regarded as a “small stream associate;” occurrences are “almost always associated with hilly or mountainous terrain in either cool, wet zones or in zones adjacent to higher cool, wet zones” (Dvornich, *et al* 1997). In westernmost Whatcom County, potential and occupied habitat is patchily distributed. Although suitable habitats may occur more frequently in streams within mature forests, populations also occur in managed forests. Tadpoles feed on diatoms on rocky substrates and are sensitive to excess siltation that covers rock surfaces and proliferation of unsuitable forms of algae (e.g., blooms of filamentous green algae). At most sites, tadpoles do not metamorphose in the first year and may require as much as four years at high elevations. Adults have been found up to about 40 meters (131.2 feet) from streams and may venture longer distances where suitable moist conditions occur. Recently metamorphosed juveniles may



disperse 100 meters (328 feet) or more. More information can be found at <https://whatfrogs.wordpress.com/coastal-tailed-frog-ascaphus-truei/>.

Status

Coastal tailed frog is not listed by WDFW and was not considered a focal species by the PARCA Workshop. NatureServe ranks coastal tailed frog as globally and in Washington as “apparently secure.” In Canada, where coastal tailed frog occurs in southwestern British Columbia, the species is designated as a species of special concern because of a patchy distribution and high vulnerability to human-induced loss, degradation of required specialized habitats, and sensitivity to climate change. Figure 2 shows known distribution as of 2016 as described in the Washington Herp Atlas. Coastal tailed frog is one of only two species in its family, both of which are endemic to the Pacific Northwest, and part of an ancient lineage dating to at least the late Cretaceous. The two tailed frog species and similar frogs native to New Zealand share certain primitive traits as well as unique specializations for life in fast-flowing water.

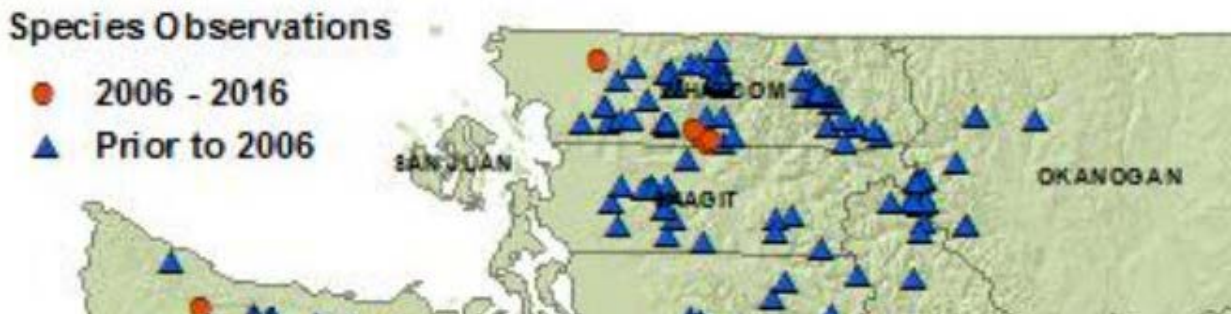


Figure 2. Known Distribution of the Coastal Tailed Frog in Whatcom County, Washington Herp Atlas
<https://wdfw.wa.gov/sites/default/files/publications/02135/wdfw02135.pdf>

Threats

Coastal tailed frog is sensitive to loss of riparian forest cover (which can increase green algae, unsuitable for tailed frog tadpoles, and elevate water temperatures to lethal levels) and increased siltation from runoff, bank erosion, or other sources. Other threats include alteration of stream flows, frequent channel disruption, improperly designed road culverts (e.g., perched or altering stream flow), and climate change. Chemical contamination from pesticides, herbicides, and fertilizer from run-off may cause mortality or sub-lethal effects. In addition to narrow, specialized habitat requirements, vulnerabilities include a low reproductive potential associated with slow growth and development (e.g., adults may not breed until 6-8 years after metamorphosis) and small clutch size (44-75 eggs). In some areas, post-metamorphic populations are apparently small.

Protection and Management Recommendations

Management recommendations for coastal tailed frog include:

- identifying and mapping occurrences in westernmost Whatcom County, where the species may be most vulnerable because of patchy distribution of suitable habitat and resulting isolated populations;
- maintain ample buffers of occupied streams, particularly fish-free streams that may not otherwise be adequately protected;
- maintain slash-free conditions in occupied headwater streams;

- ensure adequate erosion-control measures and management of silt-generating activities;
- prevent pollution of runoff; and
- design adequate culverts associated with occupied streams (suggested minimum of 6-foot diameter, preferably open-bottomed with natural substrates).

The effects of listing on property ownership and use are likely minimal. Cascade Tailed Frog is a mobile species and could co-exist with many human impacts on the landscape. Management of this species would occur as part of the existing system of HCA project permitting reporting requirements.

Townsend's Big-Eared Bat (*Corynorhinus townsendii*)

Criteria for Listing:

- Identified species of declining population; and
- Documented species sensitive to habitat manipulation and cumulative loss.

Habitat Requirements

Townsend's big-eared bats forage in a variety of habitats but are most known as "cave" bats for their propensity to roost in caves, abandoned mines, and abandoned or little used buildings like barns. Other than buildings, there is very little mine or cave habitat on lands under County jurisdiction. One exception is a small number of these bats that have been recorded hibernating in a series of caves within Chuckanut Mountain County Park in the past (Hughes 1968, Adler 1977, Perkins 1985). Senger (in Ellison 2008) banded small numbers of these bats at Chuckanut Mountain during a western Washington bat banding project conducted between 1968 and 1975. (Senger also banded bats at Oyster Dome and Bat Caves on Blanchard Mountain just south of the Whatcom County line.) There have been no recent surveys of these locations and current use is unknown. More information can be found at <https://wdfw.wa.gov/species-habitats/species/corynorhinus-townsendii>.



Status

Townsend's Big-eared Bat is currently designated as a Candidate for possible listing by WDFW and a SGCN in the State Wildlife Action Plan (WDFW 2015). There are few known locations in Whatcom County. British Columbia has historical maps for known locations, some of which are adjacent to Whatcom County (Figure 3).

Threats

The State Wildlife Action Plan identified disturbance of roosts (e.g., cavers and vandals) and closure or reuse of abandoned mines as the primary threats to this species in Washington. Townsend's big-eared bats have been found roosting under bridges in the Olympic National Forest, and thus bridge maintenance or retrofit activities are also considered a potential disturbance threat. (Fursman and Aluzas, 2005)

Protection and Management Recommendations:

Management recommendations for Townsend's big-eared bat include:

- conducting a winter survey to determine whether these bats continue to hibernate within the cave complex found on Chuckanut Mountain;
- provide educational signage, buffers, or seasonal use restrictions on the caves if the recommended survey has established winter presence; and
- conduct surveys for bats prior to maintenance or retrofit activities at bridges (and consider rescheduling maintenance to seasons when these bats have moved to hibernacula).

The effects of listing on property ownership and use are likely minimal. Townsend's Big-Eared Bat is a mobile species and could co-exist with many human impacts on the landscape. Management of this species would occur as part of the existing system of HCA project permitting reporting requirements.

Comments

The Townsend's big-eared bat is certainly a species of conservation concern in Washington, and activities or lands under County jurisdiction may affect this species. A potential hibernaculum occurs at Chuckanut Mountain, and this species commonly day roosts under bridges and in abandoned buildings. Because species presence could overlap with County management, maintenance, or permitting activities, it is recommended as a Species of Local Importance.

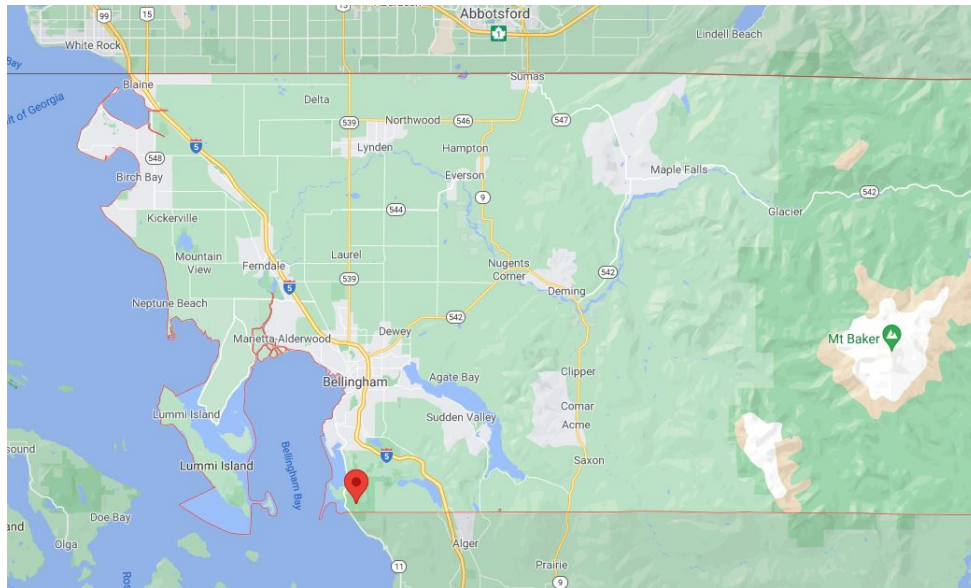


Figure 3. General known distribution of Townsend's Big-eared Bat (*Corynorhinus townsendii*) in Whatcom County.

Elk (*Cervus canadensis roosevelti*)

Criteria for Listing

- Recreationally important and a culturally significant species.

Habitat Requirements

The North Cascades elk herd (NCEH) is found in portions of Whatcom, Skagit, Snohomish, and King Counties. Most of the elk in this herd are found in the South Fork Nooksack River on



either side of the Skagit-Whatcom County line and the middle Skagit River Valley between Sedro Woolley and Concrete (Figure 4). Historically, Washington Department of Fish and Wildlife (WDFW) has referred to this as the “core area” because it has the highest elk density. Elk fitted with tracking collars have contributed to the current understanding of elk movements in the North Cascades herd area. While not comprehensive, these data revealed that most of the marked elk did not undertake long-distance migrations. Rather, with few exceptions, they tended to maintain relatively small home ranges, which were generally closely associated with river/ riparian habitats throughout the year. However, some did show seasonal migratory patterns, exploiting higher elevation habitats during the snow-free summer months. During the winter, their movements contracted to lower elevations. Their upper limit elevation distribution, about 600 m (2,000 feet), corresponds with the lowest elevation of the snowpack during years with normal winter conditions. In most years, snowpack constricts elk to lower elevation habitats from November through April.

The NCEH predominantly occupies forested landscapes. The lower elevation forest-agriculture interface tends to be fragmented elk habitat. It is here that elk groups regularly use agricultural and rural residential areas, particularly during the winter months. Most elk observed during annual, early spring population surveys (essentially winter conditions) are below 300 meters (1,000 feet). Alternatively, during the summer months, elk venture to higher elevation habitats including creek drainages and headwaters within the Baker River watershed and on the south and west facing slopes of Mount Baker.

Status

Elk are an important game species in Washington and considered of high cultural value to the Point Elliott Treaty Tribes (Tribes), with management shared by WDFW and the Tribes. In 2020, the herd was estimated to be around 1,500 animals with approximately 22 bulls/100 cows and 37 calves/100 cows. All indications are that this herd is increasing, with good calf recruitment.

Threats

Elk are preyed upon by black bears, cougars, bobcats, coyotes, wolves, and occasionally domestic dogs. Treponema-associated hoof disease (TAHD) was confirmed in the North Cascades elk herd in 2015, though at a much lower prevalence than elk herds in southwestern Washington where documented cases are highest. It is unknown to what degree TAHD contributes to mortality in this herd.

Human-caused mortality is associated with hunting by State and Tribal hunters, poaching, damage permit removals, and elk-vehicle collisions. Elk harvest and damage-related removals are likely conservative, based on routine estimates of population size and herd demographics. The impact of poaching on the NCEH is unknown. Most elk-vehicle collisions occur along State Route 20 in Skagit County. Though elk-vehicle collisions in Whatcom County are uncommon, this issue may increase as the herd expands further into the county.

Habitat loss, degradation, and fragmentation are ever-present threats. The core elk area is largely comprised of private industrial forests, which are intensively managed for commercial wood products, and state and federally owned forests. Federally owned forests have been less intensively managed for timber production for many years, with retention of old growth forest and late successional reserves a management objective. Late successional and old growth forests generally provide low quality elk habitat. On private industrial tree farms, heavy restocking of stands and use of herbicides to control understory vegetation soon after timber harvest may drastically reduce the quality and quantity of

valuable understory elk forage, as well as the length of time these early seral stage plants are available to elk.

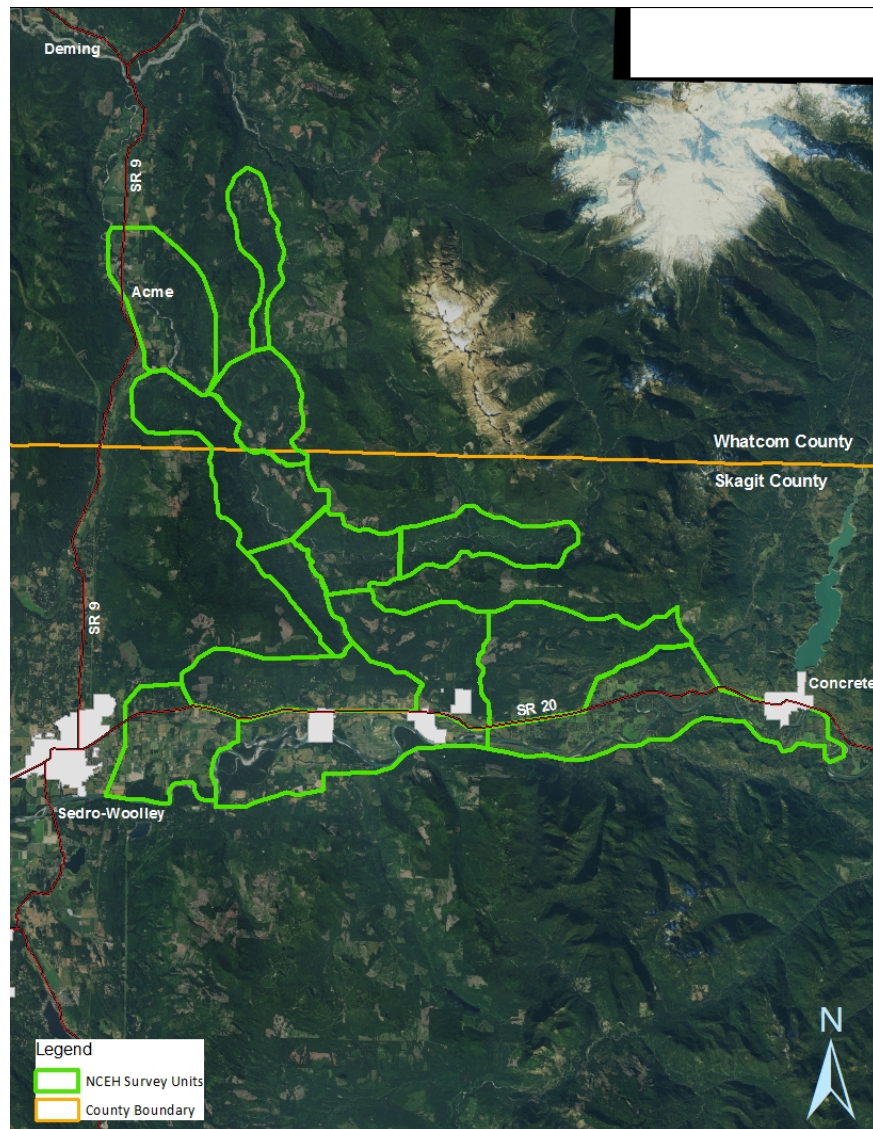


Figure 4. The survey unit areas used by the Washington Department of Fish and Wildlife (WDFW) and Tribal co-managers and the core area for the North Cascades elk herd. The WDFW and co-managers agree that likely an additional 200-300 elk may reside outside this core area.

Protection and Management Recommendations:

Protection of forested habitats in Whatcom County is important to the continued success and expansion of this herd. Where elk currently are established or in areas where unoccupied but high-quality elk habitat exists:

- Keep large, connected patches of undeveloped native vegetation intact to maintain high-quality elk habitat and facilitate elk movements.
- Encourage and maintain low zoning densities (ideally no more than 1 dwelling unit/2.5 acres) within and immediately surrounding high-value habitat areas and encourage maintenance of

native vegetation. Whatcom County may reach out to WDFW for information on elk herd numbers, location of the core elk area, and current information on the likelihood of elk on a given property.

- Manage road systems to minimize the number of new roads and the potential for elk-vehicle collisions in areas likely used by elk.
- Where possible, plan open space to maintain and/or incorporate high-value habitat and corridors for elk movement.
- Zone for higher densities within urban and developed landscapes in Whatcom County to avoid sprawl that could impact high quality elk habitat.

The effects of listing on property ownership and use are likely minimal. Elk are a mobile species and could co-exist with many human impacts on the landscape. Management of this species would occur as part of the existing system of HCA project permitting reporting requirements.

4.0 Watch List Recommendations

Northern Rubber Boa (a.k.a. “Rubber Boa”) (*Charina bottae*)

Habitat Requirements

The northern rubber boa is found in diverse habitats, including forests, forest clearings, meadows, grassy savannas, areas of rock outcrops, and talus, typically where there is ample hiding cover such as rotted stumps, large down wood, bark slabs, rocks, and crevices; and usually not far from water. Principal prey include shrews, young mice, and in some populations, lizards. Small birds, snakes, and salamanders are also reportedly eaten. Over-wintering areas (i.e., hibernacula) may be associated with rock outcrops and talus slopes. In the Puget Sound area rubber boas are known to occur in cut-over areas with ample large woody material, beach-side habitats, and areas with populations of fence lizards. Dvornich et al. (1997) regarded riparian areas, hardwood, hardwood/conifer, and conifer forests as good habitat, but excluded early seral⁴ stage forests of all types. Most sources note that information on habitat use and distribution of this species is deficient because surface activity is mostly nocturnal or crepuscular.

Status

The northern rubber boa is not listed by WDFW but was considered a focal species by the PARCA Workshop. NatureServe ranks northern rubber boa as “globally secure” and “apparently secure” in Washington. The species is widespread, occurring in eight western states and British Columbia, and can be locally common, although patchily distributed and poorly documented in many areas. Populations may be localized around areas with suitable over-wintering sites. In Canada, the northern rubber boa is designated as a species of special concern. This species is relatively unique, being one of only three boa species to occur in the United States.

⁴ An intermediate stage found in ecological succession in an ecosystem advancing towards its climax community. In many cases more than one seral stage evolves until climax conditions are attained.

Threats

The northern rubber boa is potentially sensitive to loss of critical habitats (e.g., hibernacula) or clearly of hiding cover. Busy roads likely represent barriers to dispersal. Domestic cats are predators of northern rubber boas. Vulnerabilities include low reproductive rate and delayed age at maturity.

Protection and Management Recommendations

Recommendations for northern rubber boa include:

- identifying and mapping occurrences in westernmost Whatcom County, where the species may be most vulnerable because of patchy distribution of suitable habitat and resulting isolated populations;
- identify and protect known and potential hibernacula; and
- encourage voluntary stewardship including retention of hiding cover, especially rock features and large woody material, and keeping cats indoors in occupied habitats.

Western Spotted Skunk (*Spilogale gracilis*)

Biology

The Western Spotted Skunk is a small to mid-sized member of the skunk family (Mephitidae) and the smallest of the four North American skunks (1 to 4 pounds). This species is active nocturnally. The bulk of the diet is made up of small mammals and insects, but this omnivore will also eat carrion, berries, fruit, birds, bird eggs, reptiles, and amphibians.

Habitat requirements

Western Spotted Skunks are associated with habitats that have dense ground cover, dense understory vegetation, burrows of other species, rocky outcrops, and woody structures (e.g., logs, snags, stumps, and log and brush piles). These features are important as resting, denning, and foraging sites and are found in a variety of land cover types including conifer forests, riparian areas, thickets and brushy habitats, and farmlands. Western Spotted Skunks generally occur from sea level to 1,970 feet in elevation in the Olympics and occasionally up to 2,950 feet of elevation in the Cascades. In southeastern Washington, this species uses rocky outcrops, brushy habitats, and riparian areas up to 1,970 feet in elevation.

Status

There is inadequate information on the current status and distribution of this species in much of its range in western and southeastern Washington, including Whatcom County. The population size of this species is unknown and likely declining in the Puget Trough.

Threats

The increased occurrence of opossums and loss and fragmentation of forest habitats due to urban and agricultural development may explain the apparent substantial decline of verified occurrences in the Puget Trough since the 1970s. Great horned owls, bobcats, and domestic dogs and cats are documented predators of Western Spotted Skunks. Anthropogenic causes (i.e., vehicle collisions, trapping, and pest control) may be the prevalent sources of mortality in many populations.

Protection and Management Recommendations

Basic information on the distribution and abundance of this species and important threats to its continued survival in Whatcom County and elsewhere in the Puget Trough are lacking and needed.

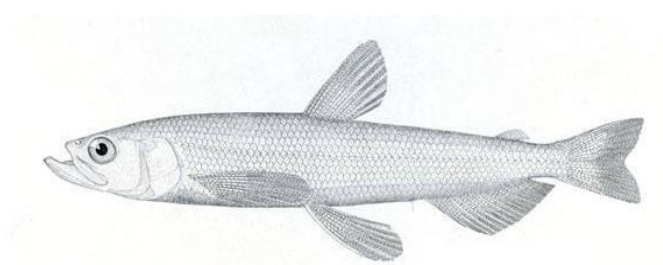
- Maintain forest cover where possible, since spotted skunks are less tolerant of human activity than striped skunks.
- Maintain areas of dense ground cover, including thick vegetation, brush, rock piles, and downed logs, to provide resting, denning, and foraging sites.

Longfin Smelt (*Spirinchus thaleichthys*)

(Locally known as “Hooligan”)

Biology / Life History

The Longfin Smelt is a marine/anadromous spawning forage fish species. It is considered a bony fish that grows up to 14cm in length. They live in the marine waters of Bellingham Bay and nearby Puget Sound waters for the bulk of their 2-year life cycle. This species has been sampled at depths of up to 150m deep in open water areas, but in low densities, suggesting a relatively solo adult phase until spawning trigger occur. They return to the freshwater of the Nooksack River, the only river that has an identified and well-documented run in the Puget Sound basin. Spawning runs occur beginning in mid to late October and extend through November. Fish are usually observed in the middle or bottom portions of the water column as they move upstream to spawning areas. Females deposit adhesive eggs, clutch size ranging between 5,000-2,4000, on sandy-gravelly substrate, rocks, and aquatic vegetation around the upper limits of tidal influence (in the vicinity of City of Ferndale/I-5 bridge crossing). Eggs hatch in about 40 days. After hatching, larvae enter surface waters and are swept downstream into brackish-water nursery areas in the river estuary and tidal delta. Samples of Longfin Smelt collected along the shorelines in the Strait of Juan de Fuca revealed they consume a variety of surface and deeper occurring prey items including calanoid copepods, mysids and amphipods. Near the Nooksack River mouth, samples of prey included juvenile mud-shrimp.



Status

The only well-documented marine/anadromous spawning population of longfin smelt in the Puget Sound Basin occurs in the Nooksack River and the adjacent marine waters of Bellingham Bay and neighboring Skagit and San Juan counties. Longfin smelt may have the most geographically restricted and vulnerable spawning habitat of any marine/ anadromous forage fish species in the Puget Sound Basin. Apart from the south Whatcom/west Skagit/ San Juan County region, they have been only rarely encountered elsewhere in Puget Sound. No biological data, stock assessment, or spawning habitat survey data exist for locally known marine population of longfin smelt. The Northwest Indian College has conducted creel surveys and was granted a National Science Foundation Grant to assess population size and structure of the longfin smelt in the Nooksack River and has an ongoing investigation that spans several years, but to date has been unwilling to share data.

Threats

Longfin Smelt have been observed to be in decline in other portions of their broader range outside of the Puget Sound Basin due to a variety of threats. Low streamflows and water diversions have been a leading concern that affects access to preferential spawning habitat. Low flows result in upstream movement of the productive freshwater-saltwater mixing zone, reducing the available size of favorable

spawning habitat. Water diversions and pumping structures reduce the overall available instream flow and can entrain adults if not appropriately screened. The degree to which current diversion screening regulations effectively protect larvae from entrainment is unknown. Low flows can fail to disperse larvae downstream into productive nursery areas. Other potential threats include pesticide runoff from agricultural areas and invasions by exotic species, both plant and animal, that may displace or predate on adult or larval Longfin Smelt. Sedimentation due to human activities that wash through the watershed may also influence spawning substrate quality. Due to a two-year life cycle, relatively brief periods of reproductive failure could lead to extirpations.

Cultural Significance

Longfin Smelt is a tradition food source for local tribes. The species is high in oil and fat. The Longfin smelt were caught annually using dip nets and the fish were smoked, fried, dried, or were rendered down for oil to be used later. The oil and preserved fish were highly sought after by other tribes that did not have access to similar fish oils and this allowed for trade and bartering with inland tribes. Longfin Smelt fishing remains a culturally significant subsistence activity practiced by members of Lummi and Nooksack Tribes.

Nooksack Dace (*Rhinichthys* sp.)

(Recently diverged from longnose dace
(*Rhinichthys cataractae*))

Evolutionary History

Nooksack Dace recently diverged from a common and widespread species, the longnose dace (*Rhinichthys cataractae*).

As the range of its parental species

contracted with the onset of glaciation, the fish of the Chehalis Valley were left as peripherally isolated populations (McPhail and Taylor 1996). The valley remained ice-free through all four major glaciations of the Pleistocene. Recent genetic work indicates that the Nooksack Dace have been reproductively isolated since well before the most recent glacial episode and perhaps since before the Pleistocene. There are other species that fall within this general classification of developing independently of a parent species in this geographically distinct area and are commonly referred to as Chehalis Fauna. Nooksack Dace were likely among the very first species to recolonize the post-glacial streams.



Biology and Life History

The Nooksack Dace is a small (<15 cm) stream dwelling cyprinid (minnow). The body is streamlined, with large pectoral fins and a snout that overhangs the mouth. Body coloration is grey-green above a dull, brassy lateral stripe and dirty white below. There is often a distinct black stripe on the head in front of the eyes. In juveniles, the stripe continues down the flanks to the tail. They are small-bodied fish that mature at an age class of 2 years with a maximum lifespan of 5 years. The Nooksack Dace have an extended spawning period that is based off stream water temperature but typically begins mid-April and extends through mid-July. Documentation suggests that some larger mature females may spawn more than once each year. Clutch size ranges from 200 to 2,000 eggs depending on female body size. Nooksack Dace spawn at night during the spring and usually at the upstream end of riffles. The nest site is a 10 cm diameter depression in the gravel cleaned and formed by probing with the snout by males

prior to courtship and by both sexes during courtship. Males continue to guard and protect redd until young are hatched. Nooksack Dace are stream riffle specialists that primarily reside in coarse gravel and cobble substrate areas of fast flowing streams and rivers. Gut contents examined indicate that adult dace feed primarily on riffle-dwelling insects, including caddisfly and mayfly nymphs, dytiscid beetle larvae, and adult riffle beetles, while juveniles feed mainly in drifting zooplankton.

Status

Distribution of Nooksack Dace has been identified in approximately 20 different Western Washington stream systems and a handful of stream systems in the Southern British Columbia. In Washington, the species has been identified mainly in west slope drainages of the Cascades in stream and river systems that drain into Puget Sound. They are also found in the Chehalis River system and some west slope drainages of the Olympic Peninsula. Their presence in east slope drainages of the Olympic Peninsula—drainages that enter Hood Canal—have not been detected. They are also absent from drainages that feed into the Straits of Juan De Fuca to the north of the Olympic Peninsula. Population data is not currently available for the broader species distribution or at the local stream level, however, it is generally accepted that the species is in decline due to manipulations of habitat and low instream flows. Nooksack Dace is listed on the Canadian Species at Risk Act (Schedule 1) as Endangered.

Threats

Nooksack Dace rely on riffles sections of stream channels. These areas are among the shallowest of stream all aquatic habitats and consequently are among the first to shrink as flows decline. When riffle habitats lack sufficient water, Nooksack Dace find refuge in pool habitats where both abundance and growth rate decline have been documented as being reduced. Being a small fish that is forced into pool and scour holes puts them at risk of predation by other piscivorous fish that typically occupy these habitat units. Riparian habitat is important to the Nooksack Dace. Benthic insectivores and riverine specialists like Nooksack Dace are among the most sensitive fish species to the loss of wooded riparian areas. Observed Nooksack Dace are linked with healthy riparian areas and believed to be linked with the reduced sediment inputs, reduced stream temperature and healthier macroinvertebrate community structure typical of these areas.

Salish Sucker (*Catostomus* sp.)

(Recently diverged from long-nosed sucker (*Catostomus catostomus*))

Evolutionary History

Similar to the Nooksack Dace, the Salish Sucker is considered part of the Chehalis Fauna. An evolutionarily distinct population the developed in a geographically protected and ice free area in central Washington during the Pleistocene Period. The Salish Sucker diverged from the Longnose Sucker in western Washington and western British Columbia during the last four major glaciations and became reproductively isolated. Populations of *Catostomus catostomus* east and west of the Cascade Mountains are referred to as Longnose Sucker and Salish Sucker, respectively, and they differ morphologically, i.e., snout size and lateral line scale counts. Salish Sucker is common referred to as a dwarf form of the Longnose Sucker.

Biology and Life History

Salish Sucker is a relatively small fish with most measuring 15-20cm in overall length but have been observed up to 30cm. Females are generally larger than males. Adult Salish suckers use a variety of habitat types. They are found in small headwater streams and associated slow water habitats including

ponds and beaver impounded areas. In Washington several lake populations also exist. They are caught in a variety of water velocities and depths, but are most often found in slow currents over sand or silt substrate in areas with in-stream vegetation and over-stream cover. Winter habitat remains unknown, but it seems likely that stream populations would migrate to protected edge areas and off channel refuge locations to escape from the frequent high flows associated with winter rains. Salish Suckers spawn in riffles over fine gravel in the spring when water temperatures reach warm to 7–8°C, typically beginning in March or April. The period is very protracted and individuals in spawning condition have been captured throughout the summer, even in late July at water temperatures in excess of 20°C. Salish suckers prefer broadcast spawning where adhesive eggs are spread on gravel and rock substrate and any other vegetation or detritus within the spawning area.

Status

Salish suckers are known from six river systems of the Puget Sound Lowlands and the lower Fraser Valley. These are: the lower Fraser (Salmon and Salween rivers, and Semiault Creek); the Little Campbell River; the Nooksack system (Bertrand, Cave, Pepin, and Fishtrap creeks) and Whatcom Lake; the Stillaguamish drainage (Twin Lakes); the Green River; and Lake Cushman of the Skokomish system (McPhail and Taylor 1996). Salish Sucker has been identified and classified as Endangered in Canada. At the state level, the Washington Department of Fish and Wildlife (WDFW) list the Salish Sucker as a “monitored species,” a designation for species that are not considered endangered, threatened or sensitive. These listings may reflect the fact that Salish Sucker populations are more stable in Washington and declining rapidly in British Columbia (Spinelli and Garrett, 2017)

Threats

Loss of habitat through the channelization of waterways for agricultural drainage, draining of wetlands and ponded areas, and the removal of beaver and impoundments is the main threat associated with the species. Hypoxia or low dissolved oxygen is also identified as a leading cause of potential decline. Invasive non-native vegetation that chokes out shallow and slow moving aquatic habitats is linked to a decrease in available dissolved oxygen. Locally this is mainly attributed to the annual grow up and die off in Reed Canary Grass-choked channels.

Maternal Bat Colonies (all species)

Issue

Most species of bats form maternal colonies composed of several females and nursing pups. For myotis species, colony numbers can reach into the hundreds, representing a significant portion of the local bat population and annual recruitment. These colonies can also be mixed (multiple species). One of the largest colonies in Washington is found in attic of the Hovander House at the Hovander Homestead Park, a Whatcom County park near Ferndale.

Status

Most of the species of bats that form large maternal colonies in Whatcom County (e.g., little brown bat, Yuma myotis, California myotis, big brown bat) have no official Federal or State species status. For these species, the maternal colony, not the individual bat, is the feature of concern.

Threats

Large colonies in western Washington mostly occur in abandoned buildings or under bridges. Removal or natural decay of old building structures, as well as maintenance and retrofit of bridges, can threaten existing maternal colonies.

Protection and Management Recommendations

Recommendations for protecting bat roosts can be found in Hayes and Wiles (2013) and include specific conservation measures and survey priorities. One the conservation strategies is to conduct inventory and monitoring of bat roosts to determine baseline data and monitor trends and use. However, the major limiting factor in conducting this strategy in Whatcom County is a lack of understanding of where colonies are located. Only one colony (Hovander House) is regularly monitored in the county. Hence, conducting a survey for the presence of a maternal colony is warranted prior to any county management or permitting activity involving abandoned buildings or bridges.

Comment

Because large maternal colonies are known to occur (e.g., Hovander House) or potentially occur (e.g., county bridges) at locations under county jurisdiction, when identified, the specific habitats these colonies occupy are recommended as being watched as a potential Habitat of Local Importance.

Findings

Data on the distribution and status of maternal bat colonies are inconclusive at this time. Continued monitoring of this habitat is warranted, but insufficient data are available at this time to recommend listing as a specific Habitat of Local Importance under WCC 16.16.710(C)(12).

Dead and Dying Trees

Wildlife Value

At least eight species of bats inhabiting Whatcom County use large dead and dying trees as day roosts, with Douglas fir snags of mean heights greater than 15 m and average diameters greater than 40 cm are preferred in western Washington, although trees greater than 60 cm are considered more suitable for maternal use (Hayes and Wiles 2013). Bats roost under loose bark and within cavities produced by limb breaks, broken tops, or woodpeckers (Hayes and Wiles 2013). Silver-haired bats in particular form maternal colonies of 5-25 females under loose bark or within cavities of snags. Isolated snags receiving direct solar radiation are selected as solar heat promotes reproduction in bats (especially growth of pups). Males and non-reproductive females will also roost within snags during summer residency (they generally roost within foliage during migration). Western long-eared bat and silver-haired bats display similar roosting behavior, forming maternal colonies under loose bark or within tree cavities. Loose bark appears to be a universally used habitat feature by all sexes of this species.

Status

While many species of bats use dead and dying trees as roosting habitat, four species (long-legged myotis, fringed myotis, western long-eared myotis, and silver-haired bat) have been designated as SGCN specifically because of their propensity of using snags and decadent trees for roosting and reproduction.

Threats

Large dead and dying trees are often viewed as safety hazards (falling or lightning strike fire hazard) or a source of firewood. Dead and dying trees near roadways are often removed to prevent the tree from

falling into traffic, and wherever accessible, snags are harvested for firewood, often leaving a wide void area along backcountry roads.

Protection and Management Recommendations

Snags posing safety hazards have precedent over wildlife values. However, not all snags pose a safety hazard and threats are often more perceived than actual. When assessing tree safety hazards along county roadways or within county parks, only dead and dying trees within their tree-height of a roadway or human concentration area (picnic areas, trails, etc.) should be removed. In some cases, the tree could be topped, rather than moved completely, retaining some value for wildlife while removing only the portion of the tree that would reach the area of concern in a fall. Maintenance crews could also “create” a replacement snag by girdling or topping a suitable tree outside a hazard area. County maintenance crews should be educated on the value of dead and dying trees to wildlife to prevent over-management and a loss of significant wildlife value. The County should also consider providing education material on snag value to landowners during the permitting process. Bats are a secondary cavity-nester, meaning they use cavities excavated by other species, especially woodpeckers. The pileated woodpecker is the most important of the woodpeckers not only because of the size and number of cavities it produces, but its selection of large size-class trees. Management and/or retention of stands of older, larger size trees (which provide future snag recruitment) not only provide suitable habitat for large woodpeckers, but the many species that are dependent on their excavations, including roosting bats.

Bridges

Wildlife Value

Bridges are often used by bats as day roosts or maternal colonies, including in Whatcom County (Perkins 1988). All species of bats, except hoary bats, have been recorded using bridges as roosts. Within Washington, particularly large maternal colonies have been documented for big brown bats, little brown bats, and Yuma myotis, while large colonies of long-legged myotis have been recorded at Oregon bridges (Perlmeter 1996). Large concrete bridges with expansion joints are the most often used. Concrete bridges are more thermally stable than wooden bridges and wooden bridges are often coated in creosote. Concrete expansion joints serve as surrogates to tree crevices providing bats with protection from wind and predators. Fursman and Aluzas (2005), for example, found bat roosting at 19 of 83 bridges in the Olympic National Forest, many of which were used by Townsend’s big-eared bats. Keely and Tuttle (1999) documented the characteristics of bridges that are most often used with emphasis on full sun exposure, vertical crevices, concrete construction, and prevention of rainwater seepage into the roost.

Threats

Maintenance and seismic retrofitting of county bridges could disturb active bat roosts.

Protection and Management Recommendations

Bat roosting, especially maternal roosting, is seasonal. Bridge maintenance or retrofit activities could minimize disturbance of colonies by conducting roosting surveys prior to management and schedule maintenance to periods when bats are not present in numbers. County managers could also consider bridge construction or retrofit design that actively promotes bat roosting, especially maternal roosting. The California Department of Transportation, for example, adds bat roost features to new and retrofit

bridges at little expense (Hayes and Wiles 2013). A survey of all county bridges for bat use is likely warranted.

5.0 Other Species Considered (but not recommended at this time)

Cascades frog (*Rana cascadae*)

Initially considered, the Cascades frog is not nominated because: 1) there is no evidence of Statewide or regional decline (except in California, at the southern limit of the species' range); and 2) the species occurs almost entirely in high elevation areas, which are predominately on Federal lands.

Oregon spotted frog (*Rana pretiosa*)

Because Oregon spotted frog is both State and Federally protected, additional listing as a Species of Local Importance is only warranted if existing protective rules and regulations, including management recommendations, can be shown to be inadequate. Listing should not be a symbolic gesture or statement. On this basis, Oregon spotted frog is not included.

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Appendix A: Regulatory Summary for Fish and Wildlife Habitat Conservation Areas

Adapted from a February 17, 2021, handout from the Department of Commerce's Critical Areas Adaptive Management Webinar Series

Keith Folkerts, WDFW (keith.folkerts@dfw.wa.gov); Joe Rocchio, DNR (joe.rocchio@dnr.wa.gov)

Requirements and Definitions

GMA (RCW 36.70A) Requirements

- **060(2)** Each county and city shall adopt development regulations that protect critical areas...
- **172(1)** In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

FWHCA Protection Standard: No Net Loss WAC 365-196-830

- (4) "Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas."
- (8) "Local governments may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and non-regulatory programs. (a) When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science."

FWHCA Protection Standard: Viable Populations WAC 365-190-130

- (1) "'Fish and wildlife habitat conservation' means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term."

FWHCA Minimum Protection Guidelines WAC 360-190-130

How to protect: (1) ... "Designating [fish and wildlife habitat conservation] areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs."

What to protect:

1. Primary Association Areas: (2) "[FWHCAs] that must be considered for classification and designation include (a) Areas where endangered, threatened, and sensitive species have a primary association...(4)(a)... Counties and cities should identify and classify seasonal range and habitat elements where federal and state listed endangered, threatened and sensitive species

have a primary association and which, if altered, may reduce the likelihood that the species will persist over the long term. Counties and cities should consult [WDFW's] current [PHS] information... Additional information is also available from [DNR NHP and Aquatics]..."

2. Habitats of Local Importance: (2) "[FWHCAs] that must be considered for classification and designation include...(b) Habitats and species of local importance, as determined locally...(4)(b)...Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult [WDFW's] current [PHS] information...While these priorities are those of [WDFW], they should be considered by counties and cities as they include the best available science. ...Similarly, the [DNR's NHP] can provide a list of high quality ecological communities and systems and rare plants."

Whatcom County Code Chapter 16.16 (Critical Areas), Article 7 (Habitat Conservation Areas)

16.16.700 Purpose.

The purposes of this article are to:

- A. Protect, restore, and maintain native fish and wildlife populations by protecting and conserving fish and wildlife habitat and protecting the ecological processes, functions and values, and biodiversity that sustain these resources.
- B. Protect marine shorelines, valuable terrestrial habitats, lakes, ponds, rivers, and streams and their associated riparian areas, and the ecosystem processes on which these areas depend.
- C. Regulate development so that isolated populations of species are not created and habitat degradation and fragmentation are minimized.
- D. Maintain the natural geographic distribution, connectivity, and quality of fish and wildlife habitat and ensure no net loss of such important habitats, including cumulative impacts.

16.16.710 Habitat conservation areas – Designation, mapping, and classification.

- A. Habitat conservation areas, as defined in Article 9 of this chapter, are those areas identified as being of critical importance to the maintenance of certain fish, wildlife, and/or plant species. These areas are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the county meeting these criteria are hereby designated critical areas and are subject to the provisions of this article.
- B. The approximate location and extent of identified fish, wildlife, and sensitive plant habitat areas are shown on the county's critical area maps as well as state and federal maps. However, these maps are to be used as a guide and do not provide a definitive critical area determination; each applicant is responsible for having a property-specific determination made pursuant to Article 2 of this chapter. The county shall update the maps as new habitat conservation areas are identified and/or more comprehensive information on function, condition, cover type, and resolution is developed.
- C. Habitat conservation areas shall include all of the following:

(...)

12. Species and Habitats of Local Importance. Locally important species and habitats that have recreational, cultural, and/or economic value to citizens of Whatcom County, including the following:
 - a. Species. The department of planning and development services shall maintain a current list of species of local importance as designated by the county council.
 - b. Habitats.
 - i. The marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone. These areas support productive eelgrass beds, marine algal turf, and kelp beds that provide habitat for numerous priority fish and wildlife species

including, but not limited to, forage fish, seabird and shorebird foraging and nesting sites, and harbor seal pupping and haulout sites. This designation applies to the area from the extreme low tide limit to the upper limits of the shoreline jurisdiction; provided, that reaches of the marine shoreline that were lawfully developed for commercial and industrial uses prior to the original adoption of this chapter may be excluded from this designation, but not otherwise exempt from this chapter.

- ii. The Chuckanut wildlife corridor, which extends east from Chuckanut Bay and adjacent marine waters, including Chuckanut Mountain, Lookout Mountain, the northern portions of Anderson Mountain, and Stewart Mountain continuing along the southern Whatcom County border to Mount Baker/Snoqualmie National Forest boundary. This area represents the last remaining place in the Puget Trough where the natural land cover of the Cascades continues to the shore of Puget Sound.
 - iii. The department of planning and development services shall maintain a current list and map of habitats of local importance, as designated by the county council.
- D. In addition to the species, habitats, and wildlife corridors identified in subsection (C)(12) of this section, the council may designate additional species, habitats of local importance, and/or wildlife corridors as follows:
1. In order to nominate an area, species, or corridor to the category of “locally important,” an individual or organization must:
 - a. Demonstrate a need for special consideration based on:
 - i. Identified species of declining population;
 - ii. Documented species sensitive to habitat manipulation and cumulative loss;
 - iii. Commercial, recreational, cultural, biological, or other special value; or
 - iv. Maintenance of connectivity between habitat areas;
 - b. Propose relevant management strategies considered effective and within the scope of this chapter;
 - c. Identify effects on property ownership and use; and
 - d. Provide a map showing the species or habitat location(s).
 2. Submitted proposals shall be reviewed by the county and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.
 3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter and the various goals and objectives of the Whatcom County comprehensive plan and the Growth Management Act, the county council will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats, species, or corridors and will be subject to the provisions of this chapter.
 4. The council may remove species, habitats, or corridors from this list if it can be shown that there is no longer a need to provide protection beyond that afforded by WDFW management strategies. Species and habitats of local importance that are not regulated elsewhere in this chapter may be removed if sufficient evidence has been provided by qualified professionals that demonstrates that the species no longer meets any provisions of subsection (D)(1)(a) of this section.

Table 1. Summary of Data for 2021 Nominated Species of Local Importance

Common Name	Scientific Name	Coastal & Marine	Aquatic & Riparian	Grass & Shrub Land	Forest & Wood Land	Developed & Agriculture	Detailed Habitat	Declining Population	Sensitive to Habitat manipulation	Commercial Value	Cultural Value	Biological Value	Special Value	Endemic/ Location Specific	Conclusion: Is this a Species of Local Importance?
Coastal Tailed Frog	<i>Ascaphus truei</i>		X		X		Moderate to high gradient, clear, rocky, permanent streams; Sensitive to excess siltation; tadpoles take more than 3 years to mature; adults and juveniles may venture up to 25 meters into adjacent forests.	Unknown-poorly studied	Maybe (limited data, but habitat is at risk).	No	Unknown	Forested headwater stream species; may have limited protection under DNR forest practice rules.	Indicator of headwater stream quality. Unique since only 2 tailed frog species in the world.	Limited to streams with good water quality and cool temperatures. Most successful in streams without fish and intact riparian zones.	Yes. In western part of the county may be at risk from impacts to riparian zones from development. Species occurs in headwater streams that have limited buffer requirements.
Elk	<i>Cervus elaphus</i>		X	X	X	X	Elk in Whatcom County are part of the North Cascades Elk Herd, the smallest managed herd in the state. Elk are native to Whatcom County, but reintroductions have occurred in the area to bolster the population.	No	No	Yes. Recreational importance, PHS Game.	Yes. Elk have high social and cultural value for Tribal and non-Tribal residents.	Unknown	Unknown	Unknown	Yes. Elk are an important cultural species for Tribal and non-Tribal residences.
Townsend's Big-Eared Bat	<i>Corynorhinus townsendii</i>	X	X	X	X	X	These bats forage in a variety of habitats but are most known as “cave” bats for roost in caves, abandoned mines, buildings, or barns. Although considered a “cave” bat, it has been reported to use hollow trees and bridges for day roosts. Only known hibernacula in Whatcom County is on County lands at Chuckanut Mountain.	Yes	Yes. Hibernation and maternity sites sensitive to disturbance	Unknown	Unknown	Insect control.	Unknown	Unknown	Yes. It is identified by WDFW as both a Priority Species and a Species of Greatest Conservation Need
Western Toad	<i>Anaxyrus boreas</i>		X	X	X		Breeds in marshes, small lakes, ponds, and off-channel riverine habitat, usually where permanent water occurs; adults are largely terrestrial and may travel long distances from breeding sites and use a variety of habitats, including upland forests and shrub thickets.	Yes	Appears to be declining (especially in lowlands). Population status in Whatcom Co. is not well documented. In other parts of its range, some declines due to chytrid fungus.	Unknown	Unknown	Unknown	Unknown	A once common species that has declined substantially in lowland populations. Mass migration of juveniles makes them vulnerable to large losses.	Yes. Especially in the populated lowlands.



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
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Agenda Bill Master Report

File Number: AB2021-504

File ID:	AB2021-504	Version:	1	Status:	Agenda Ready
File Created:	08/23/2021	Entered by:	AReynold@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		
Assigned to:	Council Public Works & Health Committee				Final Action:
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Report from the Public Works Department

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Public Works Department Quarterly Report to Council

HISTORY OF LEGISLATIVE FILE

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



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
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Agenda Bill Master Report

File Number: AB2021-505

File ID:	AB2021-505	Version:	1	Status:	Agenda Ready
File Created:	08/23/2021	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:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Report from the Finance Division

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Finance Division Quarterly report to Council

HISTORY OF LEGISLATIVE FILE

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



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2021-524

File ID:	AB2021-524	Version:	1	Status:	Agenda Ready
File Created:	09/02/2021	Entered by:	DEbergso@co.whatcom.wa.us		
Department:	Facilities Management Division	File Type:	Presentation		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Presentation from RMC Architects regarding the Northwest Annex Campus update

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Whatcom County Facilities Management contracted with RMC Architects, PLLC to provide a feasibility study for the Northwest Annex site located at the corner of Smith and Northwest Roads. RMC will provide an update on the feasibility study.

HISTORY OF LEGISLATIVE FILE

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

- Encourage staff to Master Plan for future. **Response:** Staff echoes this sentiment. Further, the County furthered this effort with the Purchase of the parcel adjacent to the Jail Work Center and the surplus of Animal Control (freeing up funds for future development efforts). Facilities will continue to monitor the market for additional opportunities.
- Explore or plan for a Café in this complex: **Response:** The Courthouse has a café/restaurant area on the second floor. This space has been hard to lease and be fruitful for vendors. We have many inquiries, but most folks shy away from the space for several reasons, specifically our limited hours and need for hours seven days a week operations to be profitable. Council Member Frazey approached staff with the idea of food trucks on the campus. Staff supports this idea for several reasons. One, we do not devote square footage to a space that may be vacant searching for a vendor that can pencil with limited hours; The food truck concept could also benefit the soccer and baseball field users; The cost to provide power and potable water to these users is minimal for the benefit that the services provide.
- Stormwater improvements should be an amenity not an eye sore. **Response:** Staff agrees and will implement.
- Provide a large gathering area for staff meetings. **Response:** Planning efforts include large courtyards as well as large conference rooms.
- Encourage staff to work with Department Heads on space planning: **Response:** This will be implemented in the planning effort.

▪ **Findings from Phase 2 analysis**

Staff and RMC have been advancing our work on the Northwest Annex Redevelopment Project. A majority of our efforts in this phase were to understand any critical path items and work through additional space needs:

- Understanding the utility needs and coordinating with Ferndale, who is the utility provider.
- Understanding our Cultural, Historical and Archeological needs and requirements for the site.
- A "Pre-application" meeting was held with Whatcom County staff to understand development parameters.
- Further tenant improvement effort. Building increased in size to accommodate The WSU Extension folks that may be seeking space with the potential Forest Street Annex/Opportunity Council partnership.

▪ **Next Step Options**

Option 1: As in any scenario, there is the do nothing option. However, it is believed that neither staff nor the Council desires this option.

Option 2: Fund the Architectural and Engineering Phase of the project. Staff has estimated this effort, which includes the entire consultant team, Facilities staff time to

manage the project, and permitting will cost \$5,100,000. This effort would be funded by excess of federal funds from the CARES Act reimbursement. This fund currently has \$6.4 million in un-restricted funds. With the infusion of American Rescue Plan Act dollars, the un-restricted CARES Act funds can be used for County priorities similar to this long-standing facility need. Should the Council direct staff to continue this effort, staff would return with a Project Based Budget creation and an initial funding. This phase of effort would take approximately nine months to complete and be ready for bid.

This project was originally considered an effort to create a shovel ready project. However, those "infrastructure" federal funds have not been released. It is unknown if the anticipated funding will be available for this effort. Staff believes the project still has merit and meets the direction the Council has given to continue to master plan our future.

Please contact Rob Ney at extension 5365, if you have any questions regarding this information.

Enclosures



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-501

File ID:	AB2021-501	Version:	1	Status:	Agenda Ready
File Created:	08/17/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Agreement		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an agreement between Whatcom County and Compass Health to lease a portion of the Whatcom Response Center, in the amount of \$20,000 annually

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
--------------	---------------------	----------------	-----------------

Attachments: Staff Memo, Proposed Agreement



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Compass Health – Whatcom Response Center Lease Agreement

DATE: August 17, 2021

Attached is a lease agreement between Whatcom County and Compass Health for your review and signature.

- **Background and Purpose**

This lease agreement is for the Whatcom Response Center, located in the northwest corner of the County-owned facility located at 2030 Division Street in Bellingham. Compass Health leases space in the building to provide behavioral health crisis response and support services.

- **Funding Amount and Source**

Compass Health pays a nominal rent of \$200/month and \$1,466.67/month for utilities at this facility, for a total of \$20,000 annually. This is a lease agreement and Council approval is required per WCC 3.08.100.

- **Differences between Previous Lease Agreements**

Compass Health has sub-leased this space from Pioneer Human Services since 2015. Pioneer Human Services has relocated to the new Crisis Stabilization Center, necessitating a new Lease Agreement between Compass Health and Whatcom County.

Please contact Perry Mowery, Human Services Supervisor at 360-778-6059 (PMowery@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us).



WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____		
Originating Department:			85 Health			
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855020 Mental Health			
Contract or Grant Administrator:			Perry Mowery			
Contractor's / Agency Name:			Compass Health			
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:				
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC:		
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)				
Is this a grant agreement?		If yes, grantor agency contract number(s):		CFDA#:		
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>					
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):				
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>					
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost Center:	124116	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>					
Is this agreement excluded from E-Verify?		No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	If no, include Attachment D Contractor Declaration form.		
If YES, indicate exclusion(s) below:						
<input type="checkbox"/> Professional services agreement for certified/licensed professional.						
<input checked="" type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).			
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.			
<input type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.			
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 				
\$	21,667					
This Amendment Amount:						
\$						
Total Amended Amount:						
\$						
Summary of Scope: The purpose of this agreement is to lease a portion of the Whatcom Response Center to Compass Health. The location of the center is the northwest corner of the County-owned facility located at 2030 Division Street in Bellingham.						
Term of Contract:		13 Months		Expiration Date:	09/30/2022	
Contract Routing:	1. Prepared by:		JT		Date:	08/06/2021
	2. Attorney signoff:		RB		Date:	08/17/2021
	3. AS Finance reviewed:		M Caldwell		Date:	8/17/21
	4. IT reviewed (if IT related):				Date:	
	5. Contractor signed:				Date:	
	6. Executive Contract Review:				Date:	
	7. Council approved (if necessary):		AB2021-501		Date:	
	8. Executive signed:				Date:	
	9. Original to Council:				Date:	

**LEASE AGREEMENT FOR WHATCOM RESPONSE CENTER
Compass Health**

Compass Health, hereinafter called **Lessee**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 6,
Exhibit A (Certificate of Insurance), p. 7.

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

The term of this Lease shall commence on the 1st day of August, 2021, and shall, unless terminated or renewed as elsewhere provided in this agreement, terminate on the 30th day of September, 2022.

The general purpose or objective of this Agreement is to **lease property at the northwest corner of the County-owned building located at 2030 Division Street in Bellingham, Washington**, as more fully and definitely described in General Conditions – Paragraph 0.2 for the operation of the Whatcom Response Center

In consideration for the lease of property specified above, Lessee agrees to pay \$200 per month (\$2,400 per year) for rent and \$1,466.67 per month (\$17,600 per year) for utilities.

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

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

LESSEE:

Compass Health
PO Box 3810
Everett, WA 98203

Each signatory below to this Lease Agreement warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into contract and bind the party thereto.

Tom Sebastian, President/CEO

WHATCOM COUNTY:
Recommended for Approval:

DEPARTMENT APPROVAL

Anne Deacon, Human Services Manager

Date

Erika Lautenbach, Director

Date

Approved as to form:

Royce Buckingham, Prosecuting Attorney

Approved:

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

LESSEE INFORMATION:

Compass Health
4526 Federal Avenue
Everett, WA 98203

GENERAL CONDITIONS

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

0.1 Nature of Lease

The purpose of the lease is to establish Whatcom County Behavioral Health Crisis Triage Center (Center). The Center will provide co-located mental health and substance abuse crisis services to people experiencing behavioral health crises 24 hours per day, 365 days per year.

0.2 Property Description:

County, in consideration of the covenants and conditions herein set forth to be performed by Lessee, does hereby demise and let unto Lessee, all of the following-described property: Northwest corner of the Whatcom County Jail Work & Triage Center located at 2030 Division Street, Bellingham, Washington consisting of 5,907 square feet of the 40,000 square foot building.

0.3 Condition of Property:

Lessee has inspected the above-described property and accepts the premises in the condition prevailing on the date of the execution of this Lease.

0.4 Use of Premises:

Lessee, in consideration of the granting of this lease by County for the benefit of the citizens of Whatcom County, hereby understands and agrees that the only type of use or activity to be conducted upon the leased premises by Lessee shall be those covered by the Lessee's Community Behavioral Health Agency license. Carrying on other uses or activities without first obtaining a lease modification with County's written approval, shall constitute cause for default under the terms of this lease.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

This lease shall commence on the 1st day of August, 2021 and end on the 30th day of September, 2022 unless sooner terminated according to this Agreement. Annual renewal of the lease on a yearly basis is available with both parties written agreement.

11.1 Termination for Default:

If the Lessee defaults by failing to perform any of the obligations of this lease or any other contract for services with County, 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 Lessee in the U.S. mail, first class postage prepaid, terminate the lease. Termination shall be effective as provided in section 11.4 below. 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 Lessee. The Lessee shall bear any extra expenses incurred by the County in terminating the lease, including all costs for any damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Convenience

It is mutually agreed that Lease can be canceled and terminated by either party provided that written notice of such cancellation and termination has been provided in the U.S. Mail, first class postage prepaid at least sixty (60) days prior to the effective date of termination.

11.4 Termination of Lease:

This lease shall terminate as follows:

- A. At the expiration of the term of this lease.
- B. Upon the failure of Lessee to correct violations of any condition of this lease after 90 days written notice from the County.
- C. Upon notification by one part to the other as outlined in Section 11.2.

Series 30-39: Provisions Related to Administration of Agreement

30.2 Sub-lease:

Lessee may sublet a portion of the leased facility to other organizations providing compatible services upon written approval of County.

33.1 Right to Review:

This lease 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 County shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after lease termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. County 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 County, then the County agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:

The Lessee 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 Lessee, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Lessee without regard to this Contract, whichever are greater.

1. Commercial General Liability

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insured. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Lessee's and Lessee's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Lessee and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Lessee 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 Lessee'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 Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, then Lessee 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 Lessee enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Lessee 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 Lessee 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 Lessee 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. Lessee 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 Lessee 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 Lessee under this Contract are expressly conditioned upon the Lessee's compliance with all insurance requirements. Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of contract. Payment to the Lessee may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Lessee 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 Lessee. Upon receipt of evidence of Lessee's compliance, payments not otherwise subject to withholding or set-off will be released to the Lessee.
- j. **Workers' Compensation.** The Lessee shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Lessees' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Lessee to take out and/or maintain required insurance shall not relieve the Lessee 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 Lessee 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 Lessee's insurance requirements under this Contract.
- l. **Availability of Lessee Limits.** If the Lessee 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 Lessee, irrespective of whether such limits maintained by the Lessee 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 Lessee.
- m. **Insurance for Subcontractors.** If the Lessee subcontracts (if permitted in the contract) any portion of this Contract, the Lessee 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 Lessee in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Lessee agrees Lessee's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 **Defense & Indemnity Agreement:** To the fullest extent permitted by law, the Lessee 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 Lessee, its employees, agents or volunteers or Lessee'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 Lessee's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Lessee 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 Lessee, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Lessee shall be valid and enforceable only to the extent of the negligence of the Lessee, its subcontractors, employees, and agents. This indemnification obligation of the Lessee 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 Lessee 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 Lessee's indemnity obligations under this Agreement.

In the event the Lessee enters into subcontracts to the extent allowed under this Contract, the Lessee's subcontractors shall indemnify the County on a basis equal to or exceeding Lessee's indemnity obligations to the County. The Lessee 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 Lessee agrees all Lessee's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Lessee are a material inducement to County to enter into this Agreement and are reflected in the Lessee's compensation.

By signing this contract, the Lessee 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 Lessee's own employees, arising from this contract.

35.1 Non-Discrimination in Employment:

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

Furthermore, in those cases in which the Lessee is governed by such laws, the Lessee shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Lessee 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 Lessee shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Lessee 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 Lessee 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 Lessee 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 Lease:

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 County hereby appoints, and the Lessee 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:

Perry Mowery, Human Services Supervisor
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
360-778-6059
PMowery@co.whatcom.wa.us

37.2 Laws, Permits, and Regulations:

Lessee agrees to comply with all applicable federal, state, county, or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals. Lessee agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with its use of said premises and the construction of improvements and operation of Lessee's business thereon and not to permit said premises to be used in violation of any lawful rule, code, law, regulation or other authority.

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.

40.3 Disposition of Improvements at End of Lease:

Lessee shall have the right to remove all equipment, personal property and improvements which may have been placed upon the premises during the period of this lease provided that the same are removed before the lease is terminated and while the lease is in good standing. Any improvements not removed from the premises at the conclusion of the lease shall revert to the County. Leased premises shall be restored by Lessee to conditions prevailing at the time of commencement of the lease, normal wear excepted.

40.4 Utilities:

The County acknowledges that Lessee is providing an improved public service with the relocation of their services to Leased premises. It is the intention of the County that the cost of the Lessee to provide services in the leased facility shall not increase over prior facility costs. Lessee shall annually contribute \$17,600 to be applied by County toward the cost of utility services for the facility. County shall review the contribution amount annually and may increase the contribution by an amount not to exceed 3%.

40.5 Janitorial Services:

Janitorial services will be provided by Lessee. Services shall comply with standards established by Whatcom County Facilities Management. Failure of Lessee to meet these standards will result in County performing services and billing the cost of such service to Lessee.

Lessee shall be responsible for routine cleaning and housekeeping three times per week in the Center and shall on a continuing basis maintain high standards for sanitation as specified by Whatcom County Facilities Management. Lessee shall be responsible for providing all cleaning supplies, light bulbs, paper products, and any other consumable supplies to be used inside the facility.

Inspections of the facility by County will occur as deemed necessary by County. Any deficiencies in housekeeping noted during such inspections or at any other time will be corrected by Lessee in a timely manner. Failure of Lessee to respond

in a timely manner will result in County performing services and billing the cost of such service to Lessee. For the purposes of this lease "timely manner" means 5 days or less unless a different duration is mutually agreed to.

Lessee shall be responsible for depositing all trash and garbage in the area marked for such purpose and providing for its removal on a regular basis. County shall provide janitorial services outside the facility. Lessee shall be responsible for the proper disposal of any bio-hazardous wastes in the Center.

40.6 Maintenance of Facilities:

A. County shall maintain the Center in good repair and tenantable condition during the term of this Lease, except in the case of damage caused by the Lessee, its clients, agents, or employees. For the purposes of so maintaining the Center, the County reserves the right at reasonable times to enter and inspect the Center and to make any necessary repairs to the building. Lessee agrees to reimburse County for damages caused by its employees, contractors, licensees, invitees, clients and agents. This paragraph shall not be construed as making Lessee responsible for the repair of normal wear and tear.

B. County shall perform preventive maintenance on facility throughout the year. Examples include but are not limited to air filter changes; heating unit checks, electrical and plumbing system checks.

C. Corrective maintenance is performed by County upon request by Lessee to restore facility components to operational condition. Lessee shall submit a work order to request corrective maintenance.

40.7 Access:

County reserves the right of access to the premises for the purpose of securing compliance with the terms of this lease.

40.8 Commit No Waste:

Lessee agrees not to allow conditions of waste and refuse to exist on the above-described premises and to keep the premises in a neat, clean and orderly condition and to be responsible for all damages caused to the leased premises by Lessee, its agents or any third party on the premises at the instance of Lessee.

40.9 Alterations:

No alterations may be made to the Center without written County authorization. County will perform or contract for any alterations, or Lessee may use a contractor approved by the County in advance of alterations. All improvements shall be made at the sole cost and expense of the Lessee.

40.10 Signs:

Lessee agrees that all signs will be designed and placed in accordance with County policy.

40.11 Hazardous Substances:

Lessee shall not keep on or about the premises, for use, disposal, treatment, generation, storage or sale any substances which are hazardous, toxic, harmful, or dangerous, and/or which are subject to regulation as hazardous or toxic, dangerous, or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance (collectively referred to herein as "hazardous substances"). Lessee shall be fully liable to County and shall indemnify, defend and save harmless the County and its officials and employees, with respect to any and all damages, costs, fees (including attorneys' fees and costs), civil and criminal penalties, or clean-up costs assessed against or imposed as a result of Lessee's use, disposal, generation, storage, or sale of hazardous substances or that of Lessee's employees, agents or invitees. Breach of this provision shall entitle County to terminate this Lease. This provision shall not apply to properly stored cleaning or office supplies.

41.1 Severability:

If any term or condition of this lease 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 lease are declared severable.

41.2 Waiver:

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

42.1 Disputes:

a. General:

Differences between the Lessee 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.

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 if utilized, 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, 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"
(INSURANCE)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-493

File ID:	AB2021-493	Version:	1	Status:	Agenda Ready
File Created:	08/05/2021	Entered by:	SLewis@co.whatcom.wa.us		
Department:	Superior Court	File Type:	Agreement		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an Agreement between Whatcom County and Administrative Office of Courts (AOC) for reimbursement of Uniform Guardianship Act (UGA) services, in the amount of \$153,110

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See staff memorandum

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Information Sheet, Staff Memo, 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: _____	
<p>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No</p> <p>Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval? Yes No If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement?</p> <p>Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded?</p> <p>Yes No If yes, Whatcom County grant contract number(s): _____</p> <p>Is this contract the result of a RFP or Bid process? Contract</p> <p>Yes No If yes, RFP and Bid number(s): _____ Cost Center: _____</p> <p>Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Interlocal Agreement (between Governments). </div> <div> <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. </div> </div>	
<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ _____</p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ _____</p>	<p>Council approval required for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:</p> <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: _____	
Term of Contract: _____	Expiration Date: _____

Contract Routing:	1. Prepared by: _____ 2. Attorney signoff: _____ 3. AS Finance reviewed: _____ 4. IT reviewed (if IT related): _____ 5. Contractor signed: _____ 6. Submitted to Exec.: _____ 7. Council approved (if necessary): _____ 8. Executive signed: _____ 9. Original to Council: _____	Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____
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MEMORANDUM

TO: Satpal Singh Sidhu, County Executive

FROM: David L. Reynolds, Director

RE: Agreement with AOC for Representation in Uniform Guardianship Act

DATE: August 2, 2021

Enclosed are two (2) originals of an Agreement between the Washington State Administrative Office of the Courts and Whatcom County Superior Court for your review and signature.

▪ **Background and Purpose**

The purpose of this agreement is to provide reimbursement to Whatcom County for representation of youth and parents in Minor Guardianships under the Uniform Guardianship Act which came into effect January 1, 2021.

▪ **Funding Amount and Source**

Funding is provided as reimbursement for services rendered between July 1, 2021 and June 30th 2022 and limited to \$153,110 per state fiscal year.

▪ **Differences from Previous Contract**

The previous agreement was limited to \$18,000 from January 1, 2021 to June 30th, 2021.

Please contact David Reynolds, at extension 5565, if you have any questions or concerns regarding the terms of this agreement. Upon signature of the, please return both copies to David Reynolds for final execution.

Encl.

INTERAGENCY AGREEMENT IAA22078
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
WHATCOM COUNTY SUPERIOR COURT

THIS AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and Whatcom County Superior Court, for the purpose of reimbursing the Whatcom County Superior Court (Court) for attorney appointments under RCW 11.130.200(5) and court visitor appointments under RCW 11.130.195(4).

1. DEFINITIONS

For purposes of this contract, the following definitions apply:

- a) "Attorney appointed for a parent" means an attorney appointed under RCW 11.130.200(5).
- b) "Court visitor" means a person appointed under RCW 11.130.195(4).
- c) "UGA appointment services" means attorneys appointed for a parent under RCW 11.130.200(5) and court visitors as appointed under RCW 11.130.195(4).

2. PURPOSE

The purpose of this Agreement is to partner with individual local courts in providing UGA appointment services.

3. DESCRIPTION OF SERVICES TO BE PROVIDED

- a) The Court will ensure that the funding under this contract is used only for reimbursement of costs paid to attorneys appointed for a parent or court visitors. Other costs are not eligible for reimbursement, including but not limited to: judicial officer time, administrative costs (overhead or indirect), court staff time, etc. No prepayment will be made under this Agreement.
- b) The Court agrees to provide a bimonthly report on UGA appointment services cost and usage data. At a minimum, this reporting will include:
 - 1) Case numbers.
 - 2) Purpose of appointment (attorney appointed for a parent or a court visitor), including to whom counsel was provided; and
 - 3) Amount billed per party.
- c) In addition, the Court agrees to report any expected surplus for revenue sharing to AOC by July 26, 2022, and to provide any request for revenue sharing by July 26, 2022 for prioritization by the SCJA.
- d) The Court may elect to pay for UGA appointment services that are not in accordance with the provisions of this agreement; however, such payments will not be reimbursed.

4. PERIOD OF PERFORMANCE

Performance under this Agreement begins **July 1, 2021**, regardless of the date of execution, and ends on **June 30, 2022**.

5. COMPENSATION

- a) The Court may be reimbursed a maximum of **\$153,110** for UGA appointment services costs incurred during the period of July 1, 2021 to June 30, 2022. No reimbursement will be made under this Agreement for UGA appointment services incurred after June 30, 2022, and any reimbursement beyond this amount will be denied.
- b) If this agreement is terminated, the Court will only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
- c) The Court will submit its A-19 invoices monthly or bimonthly to: ReimbursementProgram@courts.wa.gov. Forms A-19 submitted under this agreement must include:
 - 1) Billing reports from attorneys and visitors whose costs are being reimbursed, including hours billed and services provided; and
 - 2) Payment documents from the Court indicating case number; amount paid, and payee.
- d) Data required in 3b above must be submitted electronically to the AOC in conjunction with the bimonthly invoice.
- e) Payment to the Court for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed invoice and the completed data report.
- f) The Court must maintain sufficient backup documentation of expenses under this Agreement.
- g) The AOC, upon consultation with the SCJA and after May 1, 2022, may initiate revenue sharing and reallocate funding among courts as prioritized by the SCJA. If such adjustments are made, Court will be notified by letter and e-mail from AOC, and such a letter will be attached to this agreement as Addendum A.

6. TREATMENT OF ASSETS AND PROPERTY

The AOC is the owner of any and all fixed assets or personal property jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

7. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement are “works for hire” as defined by the U.S. Copyright Act of 1976 and are owned by the AOC. Data includes, but is not limited to: reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and video and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. In the event that any of the deliverables under this Agreement include material not included within the definition of “works for hire,” the Court hereby assigns such rights to the AOC as consideration for this Agreement.

Data which is delivered under this Agreement, but which does not originate therefrom, must be transferred to the AOC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license is limited to the extent which the Court has a right to grant such a license. The Court must advise the AOC, at the time of delivery of data furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The AOC must receive prompt written notice of each notice or claim of copyright infringement received by the Court with respect to any data delivered under this Agreement. The AOC reserves the right to modify or remove any restrictive markings placed upon the data by the Court.

8. INDEPENDENT CAPACITY

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

9. AGREEMENT ALTERATIONS AND AMENDMENTS

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

10. RECORDS, DOCUMENTS, AND REPORTS

The Court must maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records are subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or Agreement. The Court will retain all books, records, documents, and other material relevant to this Agreement for six years after settlement, and make them available for inspection by persons authorized under this provision.

11. RIGHT OF INSPECTION

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

12. DISPUTES

Disputes arising under this Agreement will be resolved by a panel consisting of one representative from the AOC, one representative from the Court, and a mutually agreed upon third party. The dispute panel will thereafter decide the dispute with the majority prevailing. Neither party has recourse to the courts unless there is a showing of noncompliance or waiver of this section.

13. TERMINATION

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

14. GOVERNANCE

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 must be construed to conform to those laws.

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

- a. Applicable state and federal statutes and rules;
- b. This Agreement; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

15. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising hereunder, 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 may not be unreasonably withheld.

16. WAIVER

A failure by either party to exercise its rights under this Agreement does not preclude that party from subsequent exercise of such rights and is not 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.

17. SEVERABILITY

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

18. AGREEMENT MANAGEMENT

The program managers noted below are responsible for and are the contact people for all communications and billings regarding the performance of this Agreement:

AOC Program Manager	Court Program Manager
Shelley Ireland Court Association Coordinator PO Box 41170 Olympia, WA 98504-1170 shelley.ireland@courts.wa.gov (360) 704-1924	Dave Reynolds Court Administrator 311 Grand Ave, Rm 301 Bellingham, WA 98225-4048 dreynold@co.whatcom.wa.us (360) 676-7688

19. ENTIRE AGREEMENT

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 are considered to exist or to bind any of the parties to this agreement unless otherwise stated in this Agreement.

AGREED:

Administrative Office of the Courts

Contractor

Signature

Date _____

Signature

Date _____

ChrisStanley

Name

Name

Director, MSD

Title

Title



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-497

File ID:	AB2021-497	Version:	1	Status:	Agenda Ready
File Created:	08/10/2021	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:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Workforce Council to provide reimbursement of wages and benefits for eligible temporary employees working in various COVID-related positions, in the estimated amount of \$110,000 for a total estimated contract amount of \$330,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Memo, Proposed Amendment

MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Northwest Workforce Council – Disaster Relief Employment Contract Amendment #3

DATE: August 10, 2021

Attached is a contract amendment between Whatcom County and Northwest Workforce Council for your review and signature.

- **Background and Purpose**

Northwest Workforce Council (NWC) provides disaster relief and humanitarian assistance employment to minimize the employment and economic impact of the COVID-19 pandemic. NWC certifies eligibility for services under the Workforce Innovation and Opportunity Act COVID-19 Disaster Recovery Subsidized Employment Program and the Health Department temporarily employs eligible participants for various COVID-related positions including Nurses, Case/Contact Investigators, and testing site support staff. NWC will reimburse Whatcom County for the total cost of wages and fringe benefits per participant, for up to eleven positions. This amendment increases the maximum reimbursement for all eleven positions from \$220,000 to \$330,00 and increases the overall funding per position from \$20,000 to \$30,000.

- **Funding Amount and Source**

NWC will reimburse Whatcom County for the total cost of wages and fringe benefits for up to eleven participants, at a rate of up to \$30,000 per participant, for a total contract amount not to exceed \$330,000. These funds are included in the 2021 budget. Council approval is required as additional funding exceeds 10% of the approved budget.

Please contact Cindy Hollinsworth, Communicable Disease & Epidemiology Manager at 360-778-6160 (CHollins@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us) if you have any questions regarding this agreement.

**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
202010119 – 3

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8560 Communicable Disease / 856010 Communicable Disease Admin	
Contract or Grant Administrator:		Cindy Hollinsworth	
Contractor's / Agency Name:		Northwest Workforce Council	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		202010119
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#:
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		
Yes <input type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	Contract Cost Center:		627500
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):		
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:	
Varies depending on number of participants. Not to exceed \$330,000.		<ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 	
Summary of Scope: This contract provides reimbursement for employment of eligible disaster relief and humanitarian assistance program participants certified by the Northwest Workforce Council.			
Term of Contract:	14 Months	Expiration Date:	12/31/2021
Contract Routing:	1. Prepared by:	JT	Date: 07/22/2021
	2. Health Budget Approval	KR	Date: 08/02/2021
	3. Attorney signoff:	RB	Date: 08/09/2021
	4. AS Finance reviewed:	M Caldwell	Date: 8/3/21
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Executive Contract Review:		Date:
	8. Council approved (if necessary):	AB2021-497	Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

WHATCOM COUNTY CONTRACT AMENDMENT

PARTIES:

Whatcom County
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225

AND CONTRACTOR:
Northwest Workforce Council
PO Box 2009
Bellingham, WA 98227

CONTRACT PERIODS:

Original: 10/28/2020 – 06/30/2021
Amendment #1: 10/28/2020 – 06/30/2021
Amendment #2: 10/28/2020 – 12/31/2021
Amendment #3: 07/22/2021 – 12/31/2021

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

DESCRIPTION OF AMENDMENT:

1. Revise Terms and Conditions – Reimbursement/Pay Schedule, as follows:
 - a. The NWC agrees to reimburse the Employer the total cost of each Participant's wage and fringe benefit during the contract performance period for up to eleven positions, in an amount not to exceed \$330,000.
 - b. The parties have agreed that the total compensation payable to the Employer, for satisfactorily accomplishing the work set forth in the related Whatcom County job descriptions, will not exceed \$30,000 per position.
2. Funding for the total contract period (10/28/2020 – 12/31/2021) is not to exceed \$330,000.
3. All other terms and conditions remain unchanged.
4. The effective start date of the amendment is 07/22/2021.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and bind the party thereto.

APPROVAL AS TO PROGRAM: _____
Cindy Hollinsworth, Communicable Disease & Epidemiology Manager Date

DEPARTMENT HEAD APPROVAL: _____
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: _____
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

Alex Kosmides, Deputy Director		
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
--------------------------------------	------

CONTRACTOR INFORMATION:

Northwest Workforce Council
Alex Kosmides, Deputy Director
360-676-3207
Akosmides@workforcenorthwest.org



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-492

File ID:	AB2021-492	Version:	1	Status:	Agenda Ready
File Created:	08/05/2021	Entered by:	ldevries@co.whatcom.wa.us		
Department:	Prosecuting Attorney's Office	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Department of Commerce to furnish goods and services necessary to accomplish activities under the SFY 2022 Victim/Witness Assistance Grant during the grant period, in the amount of \$60,368.00

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

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

Attachments: Staff Memo, Proposed Contract

WHATCOM COUNTY PROSECUTING ATTORNEY

CHIEF CRIMINAL DEPUTY

Erik Sigmar

ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

CRIMINAL DEPUTIES

David Graham
Kellen Kooistra
Benjamin Pratt
Gordon Jenkins
Kacie Emerick
Christina Garcia
Jesse Corkern
Evan Sterk
Nicole Meyer
Julia Monroe
Maggie Peach
Andrew Bogle
Kayleigh Mattoon

Eric Richey

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

CHIEF CIVIL DEPUTY

Karen Frakes

CIVIL DEPUTIES

Royce Buckingham
Christopher Quinn
George Roche
Brandon Waldron

CIVIL SUPPORT ENFORCEMENT DEPUTIES

Janelle Wilson/Lead
Dionne Clasen

APPELLATE DEPUTIES

Kimberly Thulin
Hilary Thomas

ADMINISTRATOR

Louise Trapp

MEMO TO: Satpal Sidhu, Executive

FROM: Vanessa Martin, Law Enforcement Assisted Diversion (LEAD) Administrator

DATE: Aug 5, 2021

RE: Victim/Witness Assistance Grant

District Court Prosecutor's handle a large share of serious domestic violence cases, and it is the only court at the county that facilitates supervision of domestic violence offenders on probation. The legislature requires prosecutors to keep victims informed and to provide emotional support for victims of violence and sex crimes, including having the advocate present at defense interviews and judicial proceedings (R.C.W. 7.69.030). Effective prosecution depends on cooperation from victims of crime. Staffing the position is absolutely necessary to ensure the health and well-being of the community and victims of domestic violence.

The office was awarded the grant from the Washington State Department of Commerce in the amount of \$60,368 to put towards the salary and benefits for a full-time position. The County agrees to pay for the remaining \$17,577.95 to cover a portion of the position's salary and benefits expenses.

Should you have any questions, please feel free to contact me.

Thank you kindly.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: (i.e. Dept. Division and Program)	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Washington State Department of Commerce
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, grantor agency contract number(s): <u>21-31101-534</u> CFDA#: <u>16.575</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: <u>14200</u>	
Is this agreement excluded from E-Verify? No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>60,368.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: _____	
Whatcom County Prosecutor's Office shall furnish goods and services necessary to accomplish the activities under the SFY 2022 Victim/Witness Assistance Grant during the grant period.	
Term of Contract: 1 Year	Expiration Date: June 30, 2022

Contract Routing:	1. Prepared by: <u>Leah DeVries</u>	Date: <u>08/05/21</u>
	2. Attorney signoff: _____	Date: _____
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____



Grant Agreement with

Whatcom County Prosecuting Attorney's Office

through

Office of Crime Victims Advocacy
Community Services and Housing Division

For

SFY 2022 Victim/Witness Assistance Grant

Start date: 07/01/2021

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Attachment A - Scope of Work

Attachment B - Budget

Attachment C - Equal Employment Opportunity Plan Certification

Attachment D - Victims of Crime Act (VOCA) Program Rule ([available here](#)).

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FACE SHEET

Grant Number: 22-31101-534

**Washington State Department of Commerce
Community Services and Housing Division
Office of Crime Victims Advocacy
SFY 2022 Victim/Witness Assistance Grant**

1. Grantee Whatcom County DBA WHATCOM COUNTY PROSECUTOR BELLINGHAM WA 98225		2. Grantee Doing Business As (optional) Whatcom County Prosecuting Attorney's Office	
3. Grantee Representative Vanessa Martin Administrative Manager vmartin@co.whatcom.wa.us (360) 778-5716		4. COMMERCE Representative Susanne Guinn Program Coordinator Phone: (360) 725-2894 Fax: (360) 586-7176 susanne.guinn@commerce.wa.gov	
5. Grant Amount \$60,368.00		6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	
7. Start Date 07/01/2021		8. End Date 06/30/2022	
9. Federal Funds (as applicable) \$20437.00		Federal Agency: Department of Justice, Office for Victims of Crime	
CFDA Number: 16.575		Indirect Rate (if applicable):	
10. SWV # SWV0002425-21		11. UBI # 602782481	
12. DUNS # 060044641			
13. Grant Purpose To provide funding that strengthens Victim/Witness Assistance program activities. COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment A – Scope of Work; Attachment B – Budget; Attachment C –Equal Employment Opportunity Plan Certification; Attachment D - Victims of Crime Act (VOCA) Program Rule; and Grantee's Application for funding.			
FOR GRANTEE _____ Signature Vanessa Martin _____ Name _____ Title _____ Date		FOR COMMERCE _____ Diane Klontz, Assistant Director _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
FEDERAL FUNDS**

1. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Date: 9/17/2020

Federal Award Period: 10/1/2019 – 9/30/2023

Federal Award Identification Number (FAIN): 2020-V2-GX-0022

Total Amount of the Federal Award: \$38,159,052

Awarding Official: Department of Justice, Office of Justice Programs, Office for Victims of Crime

Amount obligated by this action: \$20437.00

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

"This project was supported by Grant No. 2020-V2-GX-0022 awarded by Office for Victims of Crime, US Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Office for Victims of Crime, US Department of Justice. Grant funds are administered by the Office of Crime Victims Advocacy, Washington State Department of COMMERCE."

In the event a correction is required to the Acknowledgement of Federal Funding, an administrative change will be processed. A change to the Acknowledgement of Federal Funding will not affect your budget or scope of work and notice will be provided.

This subaward may not be used for research and development purposes.

2. ALL SUBAWARDS ("SUBGRANTS") MUST HAVE SPECIFIC FEDERAL AUTHORIZATION

As applicable. The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that - for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

3. APPLICABILITY OF PART 200 UNIFORM REQUIREMENTS

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2019 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2019 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2019 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF425), unless a different retention period applies -- and to which the

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
FEDERAL FUNDS**

recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE at least quarterly, but not more often than monthly.

The Grantee shall submit all requests for reimbursement via COMMERCE's online invoicing system. The invoice shall include the Invoice Documentation Form.

COMMERCE will pay Grantee upon acceptance of program activities provided and receipt of properly completed invoices.

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

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

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

Invoices and End of Fiscal Year

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

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

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

Duplication of Billed Costs

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

Disallowed Costs

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

5. COMPENSATION

COMMERCE shall pay an amount not to exceed (\$60,368.00) for the performance of all things necessary for or incidental to the performance of work as set forth in Attachment A - Scope of Work. Grantee's compensation for services rendered shall be based on the following rates or in accordance with Attachment B – Budget.

**SPECIAL TERMS AND CONDITIONS
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The Grantee shall provide a non-federal match for the Victims of Crime Act portion of this Grant. The total match to be provided shall be at least \$5,109.00. All funds designated as match are restricted to the same uses as VOCA federal funds. Match funds may be expended in a greater proportion to grant funds, however, all match funds must be expended prior to the close of this Grant. Expenditures of match funds must be identified on the invoice voucher form.

Transfer of funds between line item budget categories must be approved by the Office of Crime Victims Advocacy (OCVA) program staff. A cumulative amount of these transfers exceeding ten (10) percent of the total program budget shall be subject to justification and negotiation between the Grantee and OCVA, including approval from the Grantee's signature authority and the relevant OCVA Section Manager.

Payment will be on a reimbursement basis only.

Consultant fees may not exceed \$650 per day or \$81.25 per hour for the Victims of Crime Act portion of this Grant (excluding travel and subsistence costs).

Travel expenses incurred or paid by Grantee shall be reimbursed at a rate not to exceed the current state rate and in accordance with the State of Washington Office of Financial Management Travel Regulations. Current travel rates may be accessed at <https://ofm.wa.gov/sites/default/files/public/resources/travel/colormap.pdf>.

The Grantee agrees to comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs Financial Guide, which can be found at https://ojp.gov/financialguide/doj/pdfs/DOJ_FinancialGuide.pdf.

Funds payable under this Grant include federal Victims of Crime Act (VOCA) victim assistance grant funds (CFDA Number 16.575).

In performance of the services, requirements, and activities set forth herein, the Grantee shall comply with all applicable federal requirements of the Victims of Crime Act Rule <https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program>.

6. COMPLIANCE WITH 41 U.S.C. 4712 (INCLUDING PROHIBITIONS ON REPRISAL; NOTICE TO EMPLOYEES)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the Grantee shall contact COMMERCE; COMMERCE is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

7. COMPLIANCE WITH APPLICABLE RULES REGARDING APPROVAL, PLANNING, AND REPORTING OF CONFERENCES, MEETINGS, TRAININGS, AND OTHER EVENTS

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to

**SPECIAL TERMS AND CONDITIONS
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conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

8. COMPLIANCE WITH DOJ GRANTS FINANCIAL GUIDE

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

9. COMPLIANCE WITH DOJ REGULATIONS PERTAINING TO CIVIL RIGHTS AND NONDISCRIMINATION - 28 C.F.R. PART 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38, specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice.

Part 38 also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of the regulation, now entitled "Partnerships with Faith-Based and Other Neighborhood Organizations," is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

10. COMPLIANCE WITH DOJ REGULATIONS PERTAINING TO CIVIL RIGHTS AND NONDISCRIMINATION - 28 C.F.R. PART 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

11. COMPLIANCE WITH DOJ REGULATIONS PERTAINING TO CIVIL RIGHTS AND NONDISCRIMINATION - 28 C.F.R. PART 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

12. COMPLIANCE WITH GENERAL APPROPRIATIONS-LAW RESTRICTIONS ON THE USE OF FEDERAL FUNDS (FY 2020)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions may be set out in applicable appropriations acts are indicated at <http://ojp.gov/funding/Explore/FY20AppropriationsRestrictions.htm>, and are incorporated by reference here.

**SPECIAL TERMS AND CONDITIONS
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Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

13. COMPUTER NETWORKS

Grantee understands and agrees that it cannot use any federal funds to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

14. DETERMINATION OF SUITABILITY TO INTERACT WITH PARTICIPATING MINORS

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ) (or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

15. DISCRIMINATION FINDINGS

The recipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin, sex, or disability against a recipient of victim assistance formula funds under this award, the recipient will forward a copy of the findings to the Office for Civil Rights of OJP.

16. EFFECT OF FAILURE TO ADDRESS AUDIT ISSUES

The recipient understands and agrees that the DOJ awarding agency (OJP or OWW, as appropriate) and COMMERCE may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

17. EMPLOYMENT ELIGIBILITY VERIFICATION FOR HIRING UNDER THE AWARD

As applicable. The recipient (and any subrecipient at any tier) must—

1. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).
2. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--
 1. (1) this award requirement for verification of employment eligibility, and
 2. (2) the associated provisions in 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

**SPECIAL TERMS AND CONDITIONS
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3. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).
4. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.everify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

"United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to COMMERCE, before award acceptance.

18. ENCOURAGEMENT OF POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

19. EXAMINATION OF RECORDS

**SPECIAL TERMS AND CONDITIONS
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The Grantee authorizes Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFO), and its representatives, access to and the right to examine all records, books, paper or documents related to the VOCA grant.

The State will further ensure that all VOCA subgrantees will authorize representatives of OVC and OCFO access to and the right to examine all records, books, paper or documents related to the VOCA grant.

20. FFATA REPORTING: SUBAWARDS AND EXECUTIVE COMPENSATION

As applicable. The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$25,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

COMMERCE submits FFATA information on behalf of all Grantees.

21. GRANT MANAGEMENT

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

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

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

22. GRANT MODIFICATION

Notwithstanding any provision of this grant to the contrary, at any time during the grant period, COMMERCE may, by written notification to the Grantee and without notice to any known guarantor or surety, make changes within the general scope of the program activities to be performed under this Grant. All other modifications shall not be valid unless made in writing and signed by the parties. Any oral understandings and agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding.

Notwithstanding any provision of this grant to the contrary, at any time during the grant period, COMMERCE may analyze grant expenditures as a proportion of the grant budget. If COMMERCE determines, in its sole discretion, that the grant funding is underutilized, COMMERCE, in its sole discretion, may unilaterally modify the grant to reduce the balance of the grant budget. Funds de-obligated by COMMERCE as a result of a budget reduction may be made available to other grantees for the provision of eligible program activities.

23. INSURANCE

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subgrantee/subcontractor, or agents of either, while performing under the terms of this Grant. Failure to maintain the required insurance coverage may result in termination of this Grant.

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The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, if required or requested, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of subgrants/subcontracts.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee or its Subgrantee/subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

24. NATIONAL VOCA TRAINING

As applicable. The recipient agrees to ensure that at least one key grantee official attends the annual VOCA National Training Conference. Any recipient unable to attend must get prior approval by OVC in writing.

COMMERCE attends this training to meet this federal requirement; Grantees should not plan to attend the training event, attendance is not eligible.

25. OJP TRAINING GUIDING PRINCIPLES

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.

26. NON-SUPPLANTING CERTIFICATION

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No VOCA Grant funds will be used to supplant existing state, local, or other non-federal funding already in place to support current services. VOCA Grant funds will be used to increase the total amount of funds used for crime victim assistance. Violation of the non-supplanting requirement can result in a range of penalties, including suspension of future funds under this grant, recoupment of monies provided under this grant, and civil and/or criminal penalties.

27. POTENTIAL IMPOSITION OF ADDITIONAL REQUIREMENTS

As applicable. The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high risk" for purposes of the DOJ high-risk grantee list.

DOJ monitors and evaluates risk for COMMERCE, and COMMERCE monitors and evaluates risk for Grantees. Grantee agrees to comply with any additional requirements that may be imposed if COMMERCE has designated the Grantee as "high risk" via risk assessment and monitoring procedures.

28. PROVIDING SERVICES TO LIMITED ENGLISH PROFICIENCY (LEP) INDIVIDUALS

In accordance with DOJ guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). See U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (2002). For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please see the website <https://www.lep.gov>.

29. RECIPIENT INTEGRITY AND PERFORMANCE MATTERS: REQUIREMENT TO REPORT INFORMATION ON CERTAIN CIVIL, CRIMINAL, AND ADMINISTRATIVE PROCEEDINGS TO SAM AND FAPIIS

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of recipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <https://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

30. RECLASSIFICATION OF VARIOUS STATUTORY PROVISIONS TO A NEW TITLE 34 OF THE UNITED STATES CODE

As applicable. On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in

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award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

31. REPORTING

Grantees will submit quarterly reports on SFY 2022 Victim/Witness Assistance Grant activities via InfoNet. Grantees must collect and maintain data that measure the performance and effectiveness of work done under this grant.

If providing direct services or outreach, the Grantee shall submit data quarterly in the InfoNet data collection system, relative to the provision of SFY 2022 Victim/Witness Assistance Grant services. Report data will be due in InfoNet no later than the fifteenth day following the end of each quarter.

The Grantee shall submit non-personally identifying demographic, service and compliance data required by state funding sources in the InfoNet data collection system. The Grantee shall maintain documentation and records that support the data reported in InfoNet.

The Grantee shall establish and maintain written procedures for the security of InfoNet use at its site. Procedures shall include:

- Only authorized staff are provided access to the InfoNet data and files;
- Staff are informed of the need for security and confidentiality of data and files maintained in or available through the InfoNet system; and
- That the Grantee shall notify the Department Program Coordinator for this grant when an employee is no longer authorized to access the InfoNet system.

This information on the activities supported by the grant funding will assist in assessing the effects that the VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.

32. REPORTING POTENTIAL FRAUD, WASTE, AND ABUSE, AND SIMILAR MISCONDUCT

The recipient and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (2) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

33. REQUIREMENTS OF THE AWARD; REMEDIES FOR NON-COMPLIANCE OR FOR MATERIALLY FALSE STATEMENTS

The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or a certification or assurance related to conduct during the award period may result in the Office of Justice Programs ("OJP") taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award.

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The Department of Justice ("DOJ"), including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

34. REQUIREMENTS PERTAINING TO PROHIBITED CONDUCT RELATED TO TRAFFICKING IN PERSONS (INCLUDING REPORTING REQUIREMENTS AND OJP AUTHORITY TO TERMINATE AWARD)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

35. REQUIRED TRAINING FOR POINT OF CONTACT AND ALL FINANCIAL POINTS OF CONTACT

As applicable. The State Administering Agency (COMMERCE) fulfills the requirements in this section. Grantees should not anticipate completing the OJP financial management and grant administration training.

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2017, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2017, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

36. REQUIREMENTS RELATED TO "DE MINIMIS" INDIRECT COST RATE

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As applicable. A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

Recipient requirement to notify OJP is for COMMERCE. Grantees must work with their COMMERCE grant manager regarding requirements related to "de minimis" indirect cost rate.

37. REQUIREMENT FOR DATA ON PERFORMANCE AND EFFECTIVENESS UNDER THE AWARD

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award.

The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

Grantees report data to their COMMERCE grant manager at susanne.guinn@commerce.wa.gov. See "Reporting" Special Term and Condition. COMMERCE will report this data to OJP.

38. REQUIREMENTS RELATED TO SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

39. REQUIREMENT TO DISCLOSE WHETHER RECIPIENT IS DESIGNATED "HIGH RISK" BY A FEDERAL GRANT-MAKING AGENCY OUTSIDE OF DOJ

As applicable. If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

40. REQUIREMENT TO REPORT POTENTIALLY DUPLICATIVE FUNDING

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As applicable. If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly contact their COMMERCE grant manager at susanne.guinn@commerce.wa.gov.

COMMERCE must notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.

41. REQUIREMENT TO REPORT ACTUAL OR IMMINENT BREACH OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient)-- 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or 2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach. Grantees reports this information to COMMERCE, COMMERCE reports to OJP.

42. RESTRICTIONS ON "LOBBYING"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a Grantee (or Subgrantee) would or might fall within the scope of these prohibitions, the Grantee is to contact COMMERCE for guidance, and may not proceed without the express prior written approval of COMMERCE.

43. RESTRICTIONS AND CERTIFICATIONS REGARDING NON-DISCLOSURE AGREEMENTS AND RELATED MATTERS

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information),

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Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--
 - a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
 - b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.
2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both—
 - a. it represents that—
 - i. it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
 - ii. it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
 - b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

44. SPECIFIC POST-AWARD APPROVAL REQUIRED TO USE A NONCOMPETITIVE APPROACH IN ANY PROCUREMENT CONTRACT THAT WOULD EXCEED \$250,000

As applicable. The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

45. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by COMMERCE and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of

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Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

46. UNREASONABLE RESTRICTIONS ON COMPETITION UNDER THE AWARD; ASSOCIATION WITH FEDERAL GOVERNMENT

As applicable. SCOPE. This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award, whether by the recipient or by any subrecipient at any tier, and regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no recipient (or subrecipient, at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), grant recipient or -subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.

Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

47. VOCA FUNDS

As applicable. The Victims of Crime Act (VOCA) of 1984 states that VOCA funds are available during the federal fiscal year of the award, plus the following three fiscal years. At the end of this period, VOCA funds will be deobligated. OVC has no discretion to permit extensions beyond the statutory period. (E.g., VOCA funds awarded in FY 2017, are available until the end of FY 2020).

COMMERCE manages this funding period requirement, Grantees must adhere to the grant period on the Grant Face Sheet.

48. VOCA REQUIREMENTS

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As applicable. The recipient assures that the State and its subrecipients will comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 34 U.S.C. 20103(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required. Specifically, the State certifies that funds under this award will:

- a) be awarded only to eligible victim assistance organizations, 34 U.S.C. 20103(a)(2);
- b) not be used to supplant State and local public funds that would otherwise be available for crime victim assistance, 34 U.S.C. 20103(a)(2); and
- c) be allocated in accordance with program guidelines or regulations implementing 34 U.S.C. 20103(a)(2)(A) and 34 U.S.C. 20103(a)(2)(B) to, at a minimum, assist victims in the following categories: sexual assault, child abuse, domestic violence, and underserved victims of violent crimes as identified by the State.

49. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Equal Employment Opportunity Plan Certification
- Attachment D - Victims of Crime Act (VOCA) Program Rule
- SFY 2022 Victim/Witness Assistance Grant Application for Funding as submitted and approved by COMMERCE

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1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Modified Total Direct Costs (MTDC)" shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
- F. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- G. "State" shall mean the state of Washington.
- H. "Subgrantee/subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee/subcontractor" refers to any tier.
- I. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- J. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ACCESS TO DATA

In compliance with RCW 39.26.180, the Grantee shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Grantee's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

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

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4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

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

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

8. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

9. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 2. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

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3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 4. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- a) The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - b) Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
 2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The

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Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

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

12. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the program subject to this Agreement including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding and/or monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

In the event this grant is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Grantee as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this grant.

13. COPYRIGHT PROVISIONS

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

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

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

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

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

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

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

15. DUPLICATE PAYMENT

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

16. GOVERNING LAW AND VENUE

This Grant 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.

17. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, 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 the destruction of tangible property including loss of use resulting therefrom.

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The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

18. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

19. INDIRECT COSTS

The Grantee shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

20. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

21. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

22. LICENSING, ACCREDITATION AND REGISTRATION

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

23. LIMITATION OF AUTHORITY

Only the Authorized Representative or the Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent

24. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or

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refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

25. PAY EQUITY

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Contractor is not in compliance with this provision.

26. POLITICAL ACTIVITIES

Political activity of Grantee's employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

27. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Grantee's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.

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- B.** Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C.** Minimum procedural requirements, as follows:
- i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - iii. Positive efforts shall be made to use small and minority-owned businesses.
 - iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - v. Contracts shall be made only with reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
 - vii. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection.
 - 2) The basis for the cost or price.
 - 3) Justification for lack of competitive bids if offers are not obtained.
 - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
- D.** Contractor and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.
- Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

28. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

29. RECAPTURE

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

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

30. RECORDS MAINTENANCE

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

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

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

31. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

32. RIGHT OF INSPECTION

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

33. SAVINGS

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

34. SEVERABILITY

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

35. SITE SECURITY

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

36. SUBGRANTING/SUBCONTRACTING

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

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

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

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conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

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

37. SURVIVAL

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

38. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

39. TERMINATION FOR CAUSE

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

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

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

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

40. TERMINATION FOR CONVENIENCE

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

41. TERMINATION PROCEDURES

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

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection

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and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

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

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

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

42. TREATMENT OF ASSETS

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

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

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- D.** The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant

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

43. WAIVER

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

ATTACHMENT A

SCOPE OF WORK
SFY 2022 Victim/Witness Assistance Grant
07/01/2021 through 06/30/2022

Whatcom County Prosecuting Attorney's Office shall furnish goods and services necessary to accomplish the activities under the SFY 2022 Victim/Witness Assistance Grant grant funding during the grant period.

This Grant is not a benefit or entitlement to the Grantee. It is not to be used to acquire property or services for the federal government's direct benefit. The principle purpose of this Grant is to provide funding for Whatcom County Prosecuting Attorney's Office to accomplish a public purpose.

Funding from this Grant must be used to support the services outlined and approved in the SFY 2022 Victim/Witness Assistance Grant funding application.

DATA REQUIREMENTS

Grantees will submit quarterly reports on SFY 2022 Victim/Witness Assistance Grant activities to their grant manager.

Report data will be due in InfoNet no later than the fifteenth day following the end of each quarter.

DELIVERABLES

1. Reports – As described in Special Terms and Conditions
2. Audit – If required, audit must be received no later than nine (9) months after the end of the Grantee's fiscal year
3. Vouchers – Must be submitted at least quarterly

PERFORMANCE MEASURES

Provision of the deliverables listed above will be measured using the following performance measures:

1. 90% of required reports will be submitted on time
2. 100% of required audits will be completed on time

BUDGET

Budget	Total
Salaries	\$49,043.00
Benefits	\$11,325.00
Subcontracted Services	\$0.00
Goods and Services	\$0.00
Indirect	\$0.00
Total	\$60,368.00

Transfer of funds between line item budget categories must be approved by the Office of Crime Victims Advocacy (OCVA) program staff. A cumulative amount of these transfers exceeding ten (10) percent of the total program budget shall be subject to justification and negotiation between the Grantee and OCVA, including approval from the Grantee's signature authority and the relevant OCVA Section Manager.

Travel expenses incurred or paid by Grantee shall be reimbursed at a rate not to exceed the current state rate and in accordance with the State of Washington Office of Financial Management Travel Regulations. Current rates for travel may be accessed at <https://ofm.wa.gov/sites/default/files/public/resources/travel/colormap.pdf>.

Any purchase over \$5,000 must be pre-approved by COMMERCE.

CERTIFICATION FORM**Compliance with the Equal Employment Opportunity Plan (EEOP) Requirements**

Please read carefully the Instructions (see below) and then complete Section A or Section B or Section C, not all three.

Recipient's Name: Whatcom County

Address: DBA WHATCOM COUNTY PROSECUTOR 311 GRAND AVE STE 201 BELLINGHAM, WA 98225

Is **agency** a ☐ Direct or ☒ Sub recipient of OJP, OVW or COPS funding? Law Enforcement Agency? ☐ Yes ☒ No

DUNS Number: 060044641 **Vendor Number (only if direct recipient):** N/A

Name and Title of Contact Person: Vanessa Martin, Administrative Manager

Telephone Number: (360) 778-5716 **E-Mail Address:** vmartin@co.whatcom.wa.us

Section A—Declaration Claiming Complete Exemption from the EEOP Requirement

Please check all the following boxes that apply:

- ☐ Less than fifty employees. ☐ Indian tribe. ☐ Medical Institution.
☐ Nonprofit Organization. ☐ Educational Institution. ☐ Receiving an award less than \$25,000

I, _____ [responsible official], certify that [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R. § 42.302.

I further certify that _____ [recipient] will comply with all applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or Type Name and Title

Signature

Date

Section B—Declaration Claiming Exemption from EEOP Submission Requirement and Certifying That an EEOP Is on File for Review

If a recipient has fifty or more employees and is receiving a single award or, subaward of \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to the OCR for review as long as it certifies the following (42 C.F.R. § 42.305):

[responsible official],

certify that _____ [recipient]

Which has fifty or more employees and is receiving a single award for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR pt. 42, subpt E. I further certify that within the last twenty-four months, the proper authority has formulated and signed into effect the EEOP and, as required by applicable federal law, it is available for review by the public, employees, the appropriate state planning agency, and the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice. The EEOP is on file at the following office:

[organization],

[address].

Print or Type Name and Title

Signature

Date

Section C—Declaration Stating that an EEOP Short Form Has Been Submitted to the Office for Civil Rights for Review

If a recipient agency has fifty or more employees and is receiving a single award or subaward of \$500,000 or more, then the recipient agency must send an EEOP Short Form to the OCR for review.

[responsible official],

certify that _____ [recipient],

which has fifty or more employees and is receiving a single award of \$500,000 or more, has formulated an EEOP in accordance with 28 CFR pt. 42, subpt. E, and sent it for review on _____ [date] to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.

Print or Type Name and Title

Signature

Date

Certification of Federal Award Requirements

Funding for this grant is comprised of Federal Victims of Crime Act (VOCA) funds. Applicants must meet the following conditions in order to receive grant funding:

1. Data Universal Numbering System (DUNS)

In general, the Office of Management and Budget requires that all applicants (other than individuals) for federal funds include a DUNS number in their application for a new award or a supplement to an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and differentiating entities receiving federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Call Dun and Bradstreet at 866-705-5711 to obtain a DUNS number or apply online at www.dnb.com. A DUNS number is usually received within 1-2 business days.

Agency's federal DUNS Number:	060044641
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2. System for Award Management (SAM) Registration

The applicant organization must acquire or renew registration with the System for Award Management (SAM). SAM is the repository for standard information about federal financial assistance applicants, recipients, and subrecipients. OJP requires that all applicants (other than individuals) for federal financial assistance maintain current registrations in the SAM database. Applicants must update or renew their SAM registration annually to maintain an active status. Information about SAM registration procedures can be accessed at www.sam.gov.

Applicant is certifying registration in the System for Award Management (SAM) is complete and up to date.

3. Audit Requirements

Federal Grant Funds Subrecipients expending \$750,000 or more in federal grant funds annually are required to secure an audit pursuant to OMB Uniform Guidance 2 CFR Part 200, Subpart F and are allowed to utilize federal grant funds to budget for the audit costs. See Section 8000 of the Subrecipient Handbook for more detail.

Applicant is certifying it will comply with this audit requirement.

4. Executive Compensation Data

In certain circumstances recipients of federal funds must report the names and total compensation of their five most highly compensated executives. Answer the following questions to determine if you have to submit this information.

In the agency's preceding fiscal year, did the organization

- a) receive 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements:

Yes or No? Respond in text box below:

- b) **and** \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?:

Yes or No? Respond in text box below:

If you answered "yes" to both 4.a) and 4.b), please provide the names/compensation of five (5) most highly compensated executives of the recipient of award funds:

1.	
2.	
3.	
4.	
5.	

5. Internal Revenue Service (IRS) 501(c)(3) Determination Letter

VOCA funding requires that nonprofit organizations verify their nonprofit status by providing a copy of their Internal Revenue Service (IRS) 501(c)(3) determination letter. A nonprofit organization is as described in section 501 (c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of that Code. See 42 U.S.C § 13925(b)(16)(B).

Unless submitted previously, nonprofit organizations applying for funding must submit a copy of Internal Revenue Service to OCVA with this application.

6. Computer Networks

The applicant understands and agrees that it cannot use VOCA Grant funds to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

7. Non-Supplanting Certification

The applicant understands and agrees that no VOCA Grant funds will be used to supplant existing state, local, or other non-federal funding already in place to support current services. VOCA Grant funds will be used to increase the total amount of funds used for crime victim assistance. Violation of the non-supplanting requirement can result in a range of penalties, including suspension of future funds under this grant, recoupment of monies provided under this grant, and civil and/or criminal penalties.

8. ADA Requirement (FOR NON-TRIBAL GRANTEEES ONLY)

Does the location where services are primarily provided comply with ADA requirements for accessibility?

Yes or No? Respond in text box below. If no, provide information on how this is addressed:

By signing this document below, the applicant certifies that that agency is qualified to receive the funds. As the duly authorized representative of the applicant, I hereby acknowledge that the applicant will comply with the above requirements. This acknowledgement shall be treated as a material representation of fact upon which the Department of Commerce, Office of Crime Victims Advocacy will rely if a grant is issued.

Signature

Date

Vanessa Martin

Typed Name and Title of Authorized Representative

Civil Rights Certifications

The applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, requirements, and any conditions of the recipient's grant. If a grant is made, the grantee and subgrantees, if any, will be subject to statutory prohibitions on discrimination.

1. Discrimination on the Basis of National Origin – Limited English Proficient (LEP) Individuals

To ensure compliance with the Omnibus Crime control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, applicants must take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access to services and legal protections. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Assistance in understanding grant recipient's obligations under the law may be found in the Department of Justice's *Guidance to Federal Financial Assistance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons* (LEP Guidance), which can be found at 67 Fed. Reg. 41455 (June 18, 2002). Additional assistance regarding LEP obligations and information may be found at www.lep.gov.

2. Federal Non-Discrimination Requirements

The applicant will comply with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control Act and Safe Streets Act of 1968 (42 U.S.C. § 3789d);
- the Victims of Crime Act (42 U.S.C. § 10604(e));
- the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b));
- the Civil Rights Act of 1964 (42 U.S.C. § 2000(d));
- the Rehabilitation Act of 1973 (29 U.S.C. § 794);
- the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34);
- the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86);
- the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07);
- 28 C.F.R. Part 42 (U.S. Department of Justice Regulations – Nondiscrimination, Equal Employment Opportunity, Policies and Procedures);
- Executive Order 13279 (equal protection of the law for-faith based and community organizations); and
- 28 C.F.R. Part 38 ((U.S. Department of Justice Regulations – Equal Treatment for Faith Based Organizations).

The applicant shall further comply with federal law prohibiting grant recipients from retaliating against individuals taking action or participating in action to secure rights protected by federal law.

3. Civil Rights Provision - Prohibition of Discrimination for Recipients of Federal Funds

The applicant assures compliance of all applicable nondiscrimination requirements of the Victims of Crime Act. No person in any state shall, on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq. and Department of Justice regulations on disability

discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681-1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq.

4. Federal Civil Rights Training

Recipients of financial assistance from the Department of Justice, such as Victims of Crime Act (VOCA) funds, either awarded directly or through another recipient, must comply with the federal statutes and regulations that prohibit discrimination based on race, color, national origin, sex, religion, age, and disability in VOCA-funded programs or activities.

As part of its training efforts, the Office for Civil Rights at the Office of Justice Programs has developed an online civil rights training curriculum for recipients. This training, which consist of six segments and accompanying self-tests, is designed to provide recipients with an overview of applicable nondiscrimination laws and the general civil rights obligations that are tied to grants awarded by the Department of Justice. The OCR offers this online version of its training program to ensure that recipients who are unable to participate in an in-person training session can still receive valuable technical assistance.

All six Civil Rights training programs are available at <http://ojp.gov/about/ocr/ocr-training-videos/video-ocr-training.htm>

The recipient must view the online training at least once every two years. By signing this certification, the applicant acknowledges the viewing of OJP Civil Rights Non-Discrimination training.

5. Notification of Findings of Discrimination or Non-Compliance

In the event a state or federal court or a state or federal administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, age, disability, or sex against the Grantee or a program partner or participant receiving grant funds, the Grantee will forward a copy of the finding to the U.S. Department of Justice, Office of Justice Programs, Office of Civil Rights (OCR), and the Department of Commerce (COMMERCE).

The Grantee shall include a statement clearly stating whether or not the finding is related to any grant activity supported with a grant in which U.S. Department of Justice funds are involved, and identify all open grants utilizing U.S. Department of Justice funding by grant number and program title.

6. Equal Employment Opportunity Program (EEOP)

The Grantee will determine whether it is required to formulate an Equal Employment Opportunity Program (EEOP), in accordance with 28 C.F.R. 42.301 et. seq. If the Grantee is not required to formulate an EEOP, it will submit a certificate form to the Washington State Department of Commerce (COMMERCE) indicating that it is not required to develop an EEOP. If the Grantee is required to develop an EEOP but not required to submit the EEOP to the OCR, the Grantee will submit a certification to COMMERCE certifying that it has an EEOP on file which meets the applicable requirements. If the Grantee is awarded a grant of \$500,000 or more and has 50 or more employees, it will submit a copy of its EEOP to the OCR and COMMERCE. Non-profit organizations, federally recognized Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to COMMERCE to claim the exemption. Information about civil rights obligations of Grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.

7. Grantee Duty to Ensure Subcontractor Compliance

The Grantee is required to ensure compliance with these requirements by any program partner or participant receiving funding under this grant.

As the duly authorized representative of the grantee, I hereby certify that the Grantee will comply with the above Civil Rights requirements specified in this Certification

Signature of Authorized Official	Title of Authorized Official
Whatcom County Prosecuting Attorney's Office	
Name of Agency	Date

Name and Title of Person who completed OJP Civil Rights Non-Discrimination Training (see #4)
--

Most Recent Date Online Training was completed
Recipients must view the online training at a minimum of every two years for the duration VOCA funding is received.

Certification Regarding Debarment, Suspension, Ineligibility, And Voluntary Exclusion

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 67, Section 67.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Vanessa Martin

Name and Title of Authorized Representative

Signature

Date

Whatcom County Prosecuting Attorney's Office

Name of Organization

DBA WHATCOM COUNTY PROSECUTOR 311 GRAND AVE STE 201 BELLINGHAM WA 98225

Address of Organization

CERTIFICATION REGARDING DUNS AND COMPLIANCE IN REGISTERING
(Sub-Recipient)

I certify that Whatcom County Prosecuting Attorney's Office has DUNS# 060044641.

And I agree to comply with registration in the System for Award Management (SAM).

Vanessa Martin

Name and Title of Authorized Representative

Signature

Date

Whatcom County Prosecuting Attorney's Office

Name of Organization

DBA WHATCOM COUNTY PROSECUTOR 311 GRAND AVE STE 201 BELLINGHAM WA 98225

Address of Organization

Certification Regarding Lobbying

Each person shall file the most current edition of this certification and disclosure form, if applicable, with each submission that initiates agency consideration of such person for an award of a federal contract, grant, or cooperative agreement of \$100,000 or more; or Federal loan of \$150,000 or more.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that;

- A.** No 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 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 any Federal contract, grant, loan or cooperative agreement.
- B.** If any non-Federal 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 initial here _____ and complete and submit "Disclosure of Lobbying Activities", in accordance with its instructions. OCVA will provide this form, if needed.
- C.** The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify and disclose accordingly.

Vanessa Martin

Name and Title of Authorized Representative

Signature

Date

Whatcom County Prosecuting Attorney's Office

Name of Organization

DBA WHATCOM COUNTY PROSECUTOR 311 GRAND AVE STE 201 BELLINGHAM WA 98225

Address of Organization

Certification of Suitability to Interact with Participating Minors

To assist OCVA in monitoring new grant requirements for federal funds, please complete this form to certify that your organization has completed the required background checks for all covered individuals that interact with any minor in the course of activities under your grant (employees paid by the grant, volunteers used as match under the grant, and volunteers supporting grant-covered activities).

Grantees are required to have documentation that the search was conducted, and this should be maintained in accordance with your document retention policies.

Grantee Name: Whatcom County Prosecuting Attorney's Office

Grant Number: 22-31101-534

For full list of requirements, Click [Here](#) | [OCVA FAQ is here](#)

Background checks must include:

- Public sex offender and child abuse websites/registries
- Criminal history registries and similar repositories of criminal history records
- An eligible fingerprint search/background check has been completed

If the applicant determines that no minors will be served by staff being directly charged or staff/volunteers used as match for this federally funded grant, the search is not required.

Applicant hereby certifies that the recipient (and any subrecipients) have complied with the above regulations, as applicable.

Signature of Authorized Official _____

Printed Name of Authorized Official _____ Vanessa Martin

Date _____

Request for Volunteer Requirement Waiver

Current VOCA program guidelines requires that grant recipients must use volunteers as a condition of receiving funds unless the state administrator determines there is a compelling reason to waive this requirement. A "compelling reason" may be a statutory or contractual provision concerning liability or confidentiality of counselor/victim information, which bars using volunteers for certain positions, or the inability to recruit and maintain volunteers after a sustained and aggressive effort.

If an applicant requests a waiver of the volunteer requirement, the section below must be completed providing a compelling reason why the use of volunteers is not feasible for the agency.

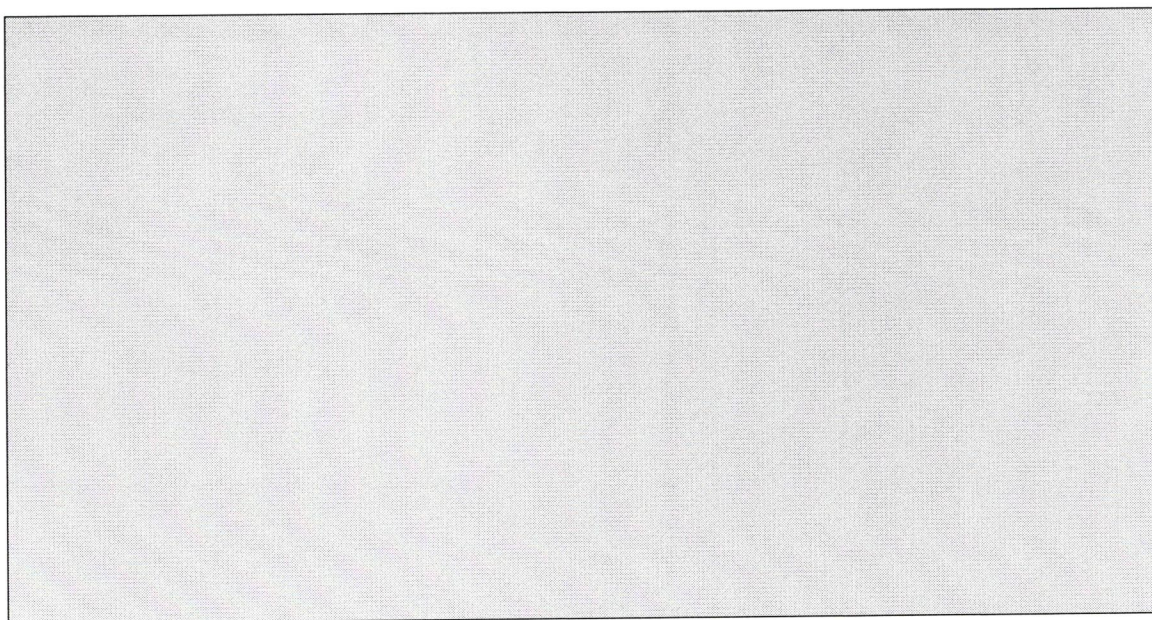
I am requesting a waiver for the use of volunteers for my VOCA project/program.

Yes or No? Respond in text box below:

If you are requesting a volunteer waiver, provide detailed explanation for your request in the following section. Waivers may only be requested in the following situations:

1. In the case of statutory or contractual provisions that prohibits the use of volunteers. (Attach a copy of the applicable statute or contract.)
2. In the case of a lack of volunteers. If you list this as a reason for the waiver request, you must document the efforts made to recruit volunteers.

Our agency is requesting a waiver for the following reason/s:



Subgrant Award Report (SAR)

Complete the information below, this will be used by OCVA to complete the federal Subgrant Award Report (SAR) which collects basic information on subgrant recipients and program activities that will be implemented with VOCA plus match funds.

How to video is here: <https://vimeo.com/365156967>

1. Organization Name: **Whatcom County Prosecuting Attorney's Office**
2. VOCA Crime Victim Assistance Funds Awarded in this grant: **\$20437.00**
3. Sub-Grant Number (number assigned to your contract): **22-31101-534**

4. Budget and Staffing

Indicate below the requested information based on the subrecipient's current fiscal year. Report the total budget available to the victim services program, by source of funding. Do not report the entire agency budget, unless the entire budget is devoted to victim services programs. For example, if VOCA funds are awarded to support a victim advocate unit in a prosecutor's office, only report the budget for the victim advocate unit.

Information Requested	Response	Explanation (as required)
A. Total budget for all victimization programs and services.	\$	<i>The amount reported is for the current fiscal year. Include the subaward amount for this contract/grant..</i>
B. Annual funding amounts allocated to all victimization programs and/or services for the current fiscal year.	State funds:\$ Local funds:\$ Other federal funds:\$ Other non-federal:\$	<i>Identify by source the amount of funds allocated to the victimization programs/services budget of the subgrantee agency.</i> DO NOT COUNT FUNDS IN MORE THAN ONE CATEGORY <i>OTHER FEDERAL includes all federal funding except the subaward amount reported in Question 2.</i>
C. Total number of paid staff for all subgrantee victimization program and/or services	Total Paid Staff: <i>Enter Whole Number</i>	Count each staff member once. Both full and part time staff should be counted as one staff member. DO NOT prorate based on FTE.
D. Number of staff hours funded through this VOCA award (plus match) for subgrantee's victimization programs and/or services	Number of Hours:	<i>Total COUNT of hours to work by all staff supporting the work of this VOCA subaward plus match.</i>
E. Number of volunteer staff supporting the work of this VOCA award (plus match) for subgrantee's victimization programs and/or services	Volunteer Staff <i>Enter Whole Number</i>	<i>COUNT each volunteer staff once. DO NOT prorate based on FTE.</i>
F. Number of volunteer hours supporting the work of this VOCA award (plus match) for subgrantee's victimization programs	Number of Hours	<i>Total count of hours to work by all volunteers supporting the work of this VOCA subaward plus match.</i>



DocuSign Contract and Certifications Review and Routing form

Office of Crime Victims Advocacy

Type of Action: New Contract/Grant ☒ Amendment ☐ IAG ☐

Federal ☒ State ☒

Program/Project Name: SFY 2022 Victim/Witness Assistance Grant

Contractor/Grantee Name: Whatcom County Prosecuting Attorney's Office

Contract/Grant Number: 22-31101-534

Term: 7/1/2021 to 6/30/2022

Reviewed by:	Title:	I verify that I have:	Initials:	Date:
Susanne Guinn	Grant Manager	Proofed documents		7/22/2021 6:08 AM PDT
Nicky Gleason	Section Manager	Matched approved Obligation Summary Memo and Allocation Spreadsheet Reviewed entry and coding in CMS		7/23/2021 2:39 PM PDT
Rick Torrance	Managing Director	Verified that correct template from IntraCOM has been used OR Documentation has been included with reason for exception		7/26/2021 7:36 AM PDT
Susanne Guinn	Grant Manager	Verified that grantee has completed all required certifications and/or required documents		

Certificate Of Completion

Envelope Id: 74B00E3AE7CE49DA85CFDDBE45418B72
 Subject: Please DocuSign: OCVA VW Grant 22-31101-534
 Division:
 Community Services and Housing
 Program: Office of Crime Victims Advocacy
 ContractNumber: 22-31101-534
 Source Envelope:
 Document Pages: 50
 Certificate Pages: 5
 AutoNav: Enabled
 EnvelopeId Stamping: Enabled
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Sent

Envelope Originator:
 Mia Davidson
 1011 Plum Street SE
 MS 42525
 Olympia, WA 98504-2525
 mia.davidson@commerce.wa.gov
 IP Address: 147.55.149.176

Record Tracking

Status: Original
 7/21/2021 3:34:43 PM
 Security Appliance Status: Connected
 Storage Appliance Status: Connected

Holder: Mia Davidson
 mia.davidson@commerce.wa.gov
 Pool: StateLocal
 Pool: Washington State Department of Commerce

Location: DocuSign
 Location: DocuSign

Signer Events

Susanne Guinn
 susanne.guinn@commerce.wa.gov
 Security Level: Email, Account Authentication
 (None)

Signature


Signature Adoption: Pre-selected Style
 Using IP Address: 147.55.134.62

Timestamp

Sent: 7/21/2021 3:37:27 PM
 Viewed: 7/22/2021 6:07:49 AM
 Signed: 7/22/2021 6:08:53 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Nicky Gleason
 nicky.gleason@commerce.wa.gov
 Washington State Department of Commerce
 Security Level: Email, Account Authentication
 (None)



Signature Adoption: Pre-selected Style
 Using IP Address: 198.239.10.248

Sent: 7/22/2021 6:08:55 AM
 Viewed: 7/23/2021 2:38:58 PM
 Signed: 7/23/2021 2:39:13 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Rick Torrance
 richard.torrance@commerce.wa.gov
 Washington State Department of Commerce
 Security Level: Email, Account Authentication
 (None)



Signature Adoption: Pre-selected Style
 Using IP Address: 198.239.10.170

Sent: 7/23/2021 2:39:15 PM
 Viewed: 7/26/2021 7:36:28 AM
 Signed: 7/26/2021 7:36:31 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Vanessa Martin
 Vmartin@co.whatcom.wa.us
 Security Level: Email, Account Authentication
 (None)

Sent: 7/26/2021 7:36:33 AM
 Viewed: 7/27/2021 1:55:12 PM

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
Accepted: 7/27/2021 1:55:12 PM ID: 07e6d697-2a02-4c7c-856a-02aa0d2493c6 Susanne Guinn susanne.guinn@commerce.wa.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign Diane Klontz diane.klontz@commerce.wa.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/21/2021 3:37:27 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Washington State Department of Commerce (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.15 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Washington State Department of Commerce:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: docusign@commerce.wa.gov

To advise Washington State Department of Commerce of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@commerce.wa.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Washington State Department of Commerce

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Washington State Department of Commerce

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Washington State Department of Commerce as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Washington State Department of Commerce during the course of your relationship with Washington State Department of Commerce.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-523

File ID:	AB2021-523	Version:	1	Status:	Agenda Ready
File Created:	09/02/2021	Entered by:	SMock@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Agreement		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	09/14/2021	Enactment #:			

Primary Contact Email: sdraper

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into Local Agency Agreement Supplement No. 5 between Whatcom County and the Washington State Department of Transportation for the Birch Bay Drive and Pedestrian Facility Project in the amount of \$300,000

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff memo, Proposed Agreement Supplement

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
Honorable Members of the Whatcom County Council

Through: Jon Hutchings, Director *EAX*

From: James P. Karcher, P.E., County Engineer *gpk*
Doug Burghart, Engineering Manager *DB*

Date: September 1, 2021

Re: Birch Bay Drive and Pedestrian Facility Project, CRP No 907001; FA No. STPE-K370(003)
Local Agency Agreement Supplement No. 5

Enclosed for your review and signature are two (2) originals each of Local Agency Agreement between the Washington State Department of Transportation (WSDOT) and Whatcom County for the Birch Bay Drive & Pedestrian Project (CRP 907001).

Requested Action

Public Works respectfully requests that the County Executive sign the attached documents to enter into an agreement with WSDOT to receive federal funding for the subject project.

Please return both originals of the Local Agency Agreement to my office for further processing. We will return a fully executed original to you once they are signed by WSDOT.

Background and Purpose

Whatcom County has been awarded additional federal Surface Transportation Block Grant Program (STPG) funds for the construction phase of the Birch Bay Drive & Pedestrian Project. A Local Agency Agreement is necessary to obligate the funds by September 15, 2021, as required in the attached award letters, or funds are subject to be reallocated by the Policy Board.

Funding Amount and Source

Total estimated project costs of \$15,291,786 will be covered by \$4,598,890 in federal STP funds and \$10,692,896 of Local Road Funds. Whatcom County has already obligated \$4,598,800 in federal funds for preliminary engineering (\$1,562,000) and construction (\$3,036,800). This Local Agency Agreement Supplement No. 5 will obligate \$300,000 of additional funding awarded to Whatcom County. These federal funds require a 13.5% local fund match. Sufficient budget authority exists to cover the Local Road Fund match on the federal funds.

Please contact Jim Karcher, at extension 6271, if you have any questions or concerns regarding this memo.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Public Works - Design & Construction
Division/Program: (i.e. Dept. Division and Program)	905900 Construction
Contract or Grant Administrator:	Doug Burghart
Contractor's / Agency Name:	Washington State Dept. of Transportation
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 201209003-4	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, grantor agency contract number(s): LA-7784 CFDA#: 20.205	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): STPE-K370(003)	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 339100	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ 5,333,735 (STP \$4,598,890; Local \$734,845) This Amendment Amount: \$ 346,821 (STP \$300,000; Local \$46,821) Total Amended Amount: \$ 5,680,556	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: This Local Agency Agreement Supplement No. 5 is required to obligate federal funds for the construction phase on the Birch Bay Drive and Pedestrian Facility Project, CRP No. 907001.	
Term of Contract: Completion of Project Expiration Date: N/A	

Contract Routing:	1. Prepared by: C. Swan	Date: 2021-09-01
	2. Attorney signoff: Christopher Quinn	Date: 9/1/2021
	3. AS Finance reviewed: M Caldwell	Date: 9/1/21
	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:



Agency Whatcom County		Supplement Number 5
Federal Aid Project Number STPE-K370(003)	Agreement Number LA 7784	CFDA No. 20.205 (Catalog of Federal Domestic Assistance)

The Local Agency requests to supplement the agreement number noted above.

All provisions in the basic agreement remain in effect except as modified by this supplement.

The Local Agency certifies that it is not excluded from receiving Federal funds by a Federal suspension or debarment (2 CFR Part 180). Additional changes to the agreement are as follows:

Project Description

Name Birch Bay Drive and Pedestrian Facility

Length 1.58 miles

Termini (MP 2.68 to MP 4.26) Lora Lane to Cedar Avenue

Description of Work ☒ No Change

This project will construct a soft shore roadway protection berm and drainage upgrades from Lora Lane to Cedar Avenue – with the exception of a 900-ft long section between the Cottonwood parking areas. An American with Disability Act (ADA) compliant pedestrian path will be constructed between Lora Lane and Cottonwood Drive.

Reason for Supplement

Additional Surface Transportation Block Grant (STBG) program funds have been acquired.

Are you claiming indirect cost rate? ☐ Yes ☒ No

Project Agreement End Date December 31, 2025

Does this change require additional Right of Way or Easements? ☐ Yes ☒ No Advertisement Date: August 20, 2019

Type of Work		Estimate of Funding				
		(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE 100/86.5 %	a. Agency	131,820.00		131,820.00	11,046.00	120,774.00
	b. Other Consultant, STPE US	1,618,000.00		1,618,000.00	181,670.00	1,436,330.00
Federal Aid Participation Ratio for PE	c. Other Non-participating	68,180.00		68,180.00	68,180.00	
	d. State	5,000.00		5,000.00		5,000.00
	e. Total PE Cost Estimate (a+b+c+d)	1,823,000.00	0.00	1,823,000.00	260,896.00	1,562,104.00
Right of Way %	f. Agency			0.00		
	g. Other			0.00		
Federal Aid Participation Ratio for RW	h. Other			0.00		
	i. State			0.00		
	j. Total R/W Cost Estimate (f+g+h+i)	0.00	0.00	0.00	0.00	0.00
Construction 86.5 %	k. Contract	3,495,733.00	346,821.00	3,842,554.00	518,745.00	3,323,809.00
	l. Other Contract Non-Par	5,340,372.00	-346,821.00	4,993,551.00	4,993,551.00	
	m. Other Material Testing Non-Par	30,000.00		30,000.00	30,000.00	
Federal Aid Participation Ratio for CN	n. Other Consultant Non-Par	511,694.00		511,694.00	511,694.00	
	o. Agency	500,000.00		500,000.00	500,000.00	
	p. State	15,002.00		15,002.00	2,025.00	12,977.00
	q. Total CN Cost Estimate (k+l+m+n+o+p)	9,892,801.00	0.00	9,892,801.00	6,556,015.00	3,336,786.00
	r. Total Project Cost Estimate (e+j+q)	11,715,801.00	0.00	11,715,801.00	6,816,911.00	4,898,890.00

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official
By

**Washington State
Department of Transportation**
By Director, Local Program

Title Whatcom County Executive

Date Executed

Agency Whatcom County		Supplement Number 5
Federal Aid Project Number STPE-K370(003)	Agreement Number LA 7784	CFDA No. 20.205 (Catalog of Federal Domestic Assistance)

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin. Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

XVII. Assurances

Local Agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

Instructions

1. **Agency** – Enter the agency name as entered on the original agreement.
2. **Supplemental Number** – Enter the number of the supplement. Supplement numbers will be assigned in sequence beginning with Number 1 for the first supplement.
3. **Project Number** – Enter the federal aid project number assigned by WSDOT on the original agreement.
4. **Agreement Number** – Enter the agreement number assigned by WSDOT on the original agreement.
5. **Project Description.** Enter the project name, length, and termini.
6. **Description of Work** – Clearly describe if there is a change in work such as the addition or deletion of work elements and/or changes to the termini. If the work has not changed, put a check mark in the “No Change” box.
7. **Reason for Supplement** – Enter the reason for this supplement, i.e., increase PE funding to cover design changes presented in the revised prospectus; request funding of construction phase; decrease construction funding to the contract bid amount. If the supplement is authorizing a construction phase, the project’s proposed advertisement date must be included in the space provided.
8. **Change Requiring Additional Right of Way or Easements** – Check the **Yes** box when the supplement covers a change in scope (Description of Work or Termini) that requires additional property rights than was previously expected, or when it’s determined that property rights are necessary and the project was previously submitted as no right of way required. Check **No** when this is the case.
9. **Claiming Indirect Cost Rate** – Check the Yes box if the agency will be claiming indirect costs on the project. For those projects claiming indirect costs, supporting documentation that clearly shows the indirect cost rate being utilized must be provided with the supplement. Indirect cost rate approval by your cognizant agency or through your agency’s self-certification and supporting documentation is required to be available for review by FHWA, WSDOT and /or State Auditor. Check the No box if the agency will not be claiming indirect costs on the project. See Section 23.5 for additional guidance.
10. **Project Agreement End Date** – Enter your previously established Project Agreement End Date. If authorizing a new phase of the project, update the Project Agreement End Date based on the following guidance:
 - a. For PE and RW – WSDOT recommends agencies estimate when the phase will be completed and add three years to determine the “Project Agreement End Date”.
 - b. For Construction – WSDOT recommends agencies estimate when construction will be completed and add three years to determine the “Project Agreement End Date”.
 - c. If an extension to a Project Agreement End Date is required between phase authorizations, the need for the extension must be described in the Reason for Supplement. Adequate justification to approve the extension must be submitted with the supplement. See Section 22.3 for additional guidance.

11. **Type of Work and Funding** – Complete this section in the manner described in Appendix 22.52.05.
- a. **Column 1** – Enter the amounts from column 1 of the original local agency agreement. If the agreement has already been supplemented, enter the amounts by type of work from column 3 of the last supplemental agreement.
 - b. **Column 2** – Enter additional amounts requested by type of work.
 - c. **Column 3** – Add the amounts in columns 1 and 2.
 - d. **Columns 4 and 5** – Enter the appropriate amounts based on the participation ratio recorded on the original agreement.
12. **Signatures** – An authorized official of the local agency signs the Supplemental Agreement, and writes in their title. Submit one originally signed supplement form to the Region Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their file. **Note:** Do **NOT** enter a date on the Date Executed line.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-450

File ID:	AB2021-450	Version:	1	Status:	Introduced
File Created:	07/22/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Resolution (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Resolution amending the Flood Control Zone District 2021 budget, request no. 2, in the amount of \$1,142,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #2 requests from the Flood Control Zone District Fund:

1. To appropriate \$1,142,000 in Public Works - Flood to provide additional funding for land acquisition and associated costs for the Jones Creek deflection berm.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
08/10/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Resolution, Jones Creek Supplemental Request

PROPOSED BY: Public Works
INTRODUCTION DATE: 8/10/21

RESOLUTION NO. _____

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

AMENDMENT NO. 2 OF THE 2021 BUDGET

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

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

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

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

	Expenditures	Revenues	Net Effect
Flood Control Zone District Fund	1,142,000	(913,600)	228,400
Total Supplemental	<u>1,142,000</u>	<u>(913,600)</u>	<u>228,400</u>

BE IT FURTHER RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that Exhibit B – Flood Capital Program of Resolution 2020-050 be amended to add \$1,142,000 to the Jones Creek Debris Flow Protection line item for a total of \$2,052,000.

ADOPTED this ____ day of _____, 2021

ATTEST:

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of Board of Supervisors

APPROVED AS TO FORM:

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

Supplemental Budget Request

Status: Pending

Public Works

Flood Control Zone District

Suppl ID # 3282

Fund 169

Cost Center 712004

Originator: Paula Harris

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Jones Creek Deflection Berm

X

Department Head Signature (Required on Hard Copy Submission)

Date

7/20/21

Costs:	Object	Object Description	Amount Requested
	4334.0310	DOE Grants	(\$913,600)
	6630	Professional Services	\$75,000
	6670	Construction Contracts	\$155,000
	7320	Land	\$912,000
	Request Total		\$228,400

1a. Description of request:

The town of Acme is located on the Jones Creek alluvial fan and is prone to damaging debris flows. The FCZD conducted a risk assessment for the Jones Creek fan and identified mitigation measures to reduce the risk to life and infrastructure. The preferred alternative includes acquisition of high risk properties and construction of a deflection berm to dissipate the debris flow energy and a setback berm to route the flow around the town of Acme.

This supplemental budget request includes funding for land acquisition and associated costs for the remaining properties needed to construct the project and demolition costs for the structures on the acquired property.

1b. Primary customers:

Residents of the town of Acme

2. Problem to be solved:

Residents and public and private infrastructure in the town of Acme are subject to potentially damaging debris flows. Several landslides in the upper watershed are actively moving, increasing the risk to the town and its residents. Numerous residences and the Acme Elementary School are located on the Jones Creek alluvial fan and both Galbraith and Turkington Roads are subject to debris flows. The impacts of debris flows are much greater than overland flooding as three foot diameter boulders can be entrained in flow depths as great as twelve feet deep in the highest risk areas of the fan.

The property acquisition that will occur using the requested budget was initially expected to occur next year. The property owner is willing to sell but wants the transaction to occur before the end of this year.

3a. Options / Advantages:

The FCZD conducted a risk assessment and evaluation of alternatives to mitigate the debris flow risk. The following structural alternatives were evaluated:

- Debris basin on the upper fan
- Debris basin with debris barrier
- Deflection and setback berms

The deflection and setback berm option was selected as the preferred alternative for several reasons. The other two alternatives include a debris basin sized for a specific storage volume; events generating larger

Tuesday, July 20, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Public Works

Flood Control Zone District

Suppl ID # 3282

Fund 169

Cost Center 712004

Originator: Paula Harris

volumes could result in damage to or failure of the structure. The berm option is less prone to failure for events exceeding the design event. In addition, the debris basin alternatives would involve significant instream construction and potentially create a barrier to fish passage, making them difficult or impossible to permit.

3b. Cost savings:

N/A - project is intended to reduce the risk to life and property

4a. Outcomes:

The property acquisition will be complete by the end of this year.

Construction of the berm is scheduled for 2023-24.

4b. Measures:

Closing of the property and construction of the berm project

5a. Other Departments/Agencies:

As part of the project an emergency access route will be provided lower on the fan to provide an alternate access for local residents when Turkington Road is closed due to debris flows/flooding. The alternate access will reduce the urgency to reopen Turkington Road after an event, reducing the risk to the M&O staff who respond.

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

Bridge crew typically removes sediment from the roadway and bridge and reopens the roadway

6. Funding Source:

Jones Creek land acquisition is included in the current Floodplains by Design grant awarded to the Flood Control Zone District. The grant provides for 80% reimbursement with the remaining 20% being funded by the FCZD.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-451

File ID:	AB2021-451	Version:	1	Status:	Introduced
File Created:	07/22/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 13, in the amount of \$1,615,450

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #13 requests funding from the General Fund:

1. To appropriate \$18,611 in County Clerk to fund additional court clerk position due to COVID-related court backlog.
2. To appropriate \$88,178 in District Court to fund additional staff and pro tem services due to COVID-related court backlog.
3. To appropriate \$99,419 in Prosecuting Attorney to fund four additional staff positions due to COVID-related court backlog.
4. To appropriate \$262,506 in Public Defender to fund nine additional staff positions due to COVID-related court backlog.
5. To appropriate \$129,605 in Superior Court to fund additional commissioner and judicial assistant positions due to COVID-related court backlog.
6. To appropriate \$129,400 in Non Departmental to fund CDBG Public Services Program pass-through grant to the Opportunity Council.

From the Election Reserve Fund:

7. To appropriate \$32,200 to fund elections' security improvements from grant proceeds.

From the Behavioral Health Programs Fund:

8. To appropriate \$27,000 in Health to fund training for first responders and social service providers from grant proceeds.

9. To appropriate \$39,000 in Health to fund building maintenance fees for the original triage center facility.

From the American Rescue Plan Act Fund:

10. To appropriate \$132,024 in Non-Departmental to fund grants manager and grant consultant.
11. To appropriate \$598,319 in Non-Departmental to fund transfers in support of COVID-related court backlog positions and services.
12. To appropriate \$29,594 in Non-Departmental to fund transfer to Administrative Services in support of grant and contract specialist position.

From the Administrative Services Fund:

13. To appropriate \$29,594 in AS-Finance to fund grant and contract specialist position.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
08/10/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Ordinance, Supplemental #13 Summary, Supplemental #13 Requests

**ORDINANCE NO.
AMENDMENT NO. 13 OF THE 2021 BUDGET**

WHEREAS, the 2021-2022 budget was adopted November 24, 2020; and,
WHEREAS, changing circumstances require modifications to the approved 2021-2022 budget;
and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the
Whatcom County Council,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2021-2022
Whatcom County Budget Ordinance #2020-068 is hereby amended by adding the following additional
amounts to the 2021 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
County Clerk	18,611	(18,611)	-
District Court	88,178	(88,178)	-
Prosecuting Attorney	99,419	(99,419)	-
Public Defender	262,506	(262,506)	-
Superior Court	129,605	(129,605)	-
Non Departmental	129,400	(129,400)	-
Total General Fund	727,719	(727,719)	-
Election Reserve Fund	32,200	(32,200)	-
Behavioral Health Programs Fund	66,000	(27,000)	39,000
American Rescue Plan Act Fund	759,937	-	759,937
Administrative Services Fund	29,594	(29,594)	-
Total Supplemental	1,615,450	(816,513)	798,937

BE IT FURTHER ORDAINED by the Whatcom County Council that Exhibit C – Position Control
Changes in the 2021-2022 Budget Ordinance should also be amended to provide for the FTE
changes listed in Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

() Approved () Denied

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

Satpal Sidhu, County Executive

Date: _____

EXHIBIT A		
Supplemental #13 - FTE CHANGES		
Department/Position	FTEs	Totals
County Clerk		
Specialty Court Clerk	1	1
District Court		
Clerk	1	
Receptionist	1	2
Prosecuting Attorney		
Deputy	2	
Victim-Witness Coordinator	1	
Legal Assistant	1	4
Public Defender		
Deputy	4	
Investigator	2	
Behavioral Health Specialist	1	
Legal Assistant	2	9
Superior Court		
Commissioner	1	
Judicial Assistant	1	2
Executive - Non Departmental		
Grants Manager	1	1
AS Finance		
Grant & Contract Specialist	1	1
Total FTEs		20

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 13				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
County Clerk	To fund additional court clerk position due to COVID-related court backlog.	18,611	(18,611)	-
District Court	To fund additional staff and pro tem services due to COVID-related court backlog.	88,178	(88,178)	-
Prosecuting Attorney	To fund four additional staff positions due to COVID-related court backlog.	99,419	(99,419)	-
Public Defender	To fund nine additional staff positions due to COVID-related court backlog.	262,506	(262,506)	-
Superior Court	To fund additional commissioner and judicial assistant positions due to COVID-related court backlog.	129,605	(129,605)	-
Non Departmental	To fund CDBG Public Services Program pass-through grant to the Opportunity Council.	<u>129,400</u>	<u>(129,400)</u>	<u>-</u>
Total General Fund		727,719	(727,719)	-
Election Reserve Fund	To fund elections' security improvements from grant proceeds.	32,200	(32,200)	-
Behavioral Health Programs Fund				
Health	To fund training for first responders and social service providers from grant proceeds.	27,000	(27,000)	-
Health	To fund building maintenance fees for the original triage center facility.	<u>39,000</u>	<u>-</u>	<u>39,000</u>
Total Behavioral Health Programs Fund		66,000	(27,000)	39,000
American Rescue Plan Act Fund				
Non Departmental	To fund grants manager and grant consultant.	132,024	-	132,024
Non Departmental	To fund transfers in support of COVID-related court backlog positions and services.	598,319	-	598,319
Non Departmental	To fund transfer in support of grant and contract specialist position.	<u>29,594</u>	<u>-</u>	<u>29,594</u>
Total American Rescue Plan Act Fund		759,937	-	759,937
Administrative Services Fund	To fund grant and contract specialist position in AS - Finance.	<u>29,594</u>	<u>(29,594)</u>	<u>-</u>
Total Supplemental		<u>1,615,450</u>	<u>(816,513)</u>	<u>798,937</u>

Supplemental Budget Request

Status: Pending

County Clerk

Suppl ID # 3278

Fund 1

Cost Center 3152

Originator: David Reynolds

Expenditure Type: Ongoing

Year 1 2021

Add'l FTE ☐

Add'l Space ☒

Priority 1

Name of Request: American Rescue Plan Act- Request for Clerk

X

Department Head Signature (Required on Hard Copy Submission)

7/19/21
Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$10,539
	6210	Retirement	\$1,080
	6230	Social Security	\$806
	6245	Medical Insurance	\$3,907
	6255	Other H&W Benefits	\$455
	6259	Worker's Comp-Interfund	\$182
	6269	Unemployment-Interfund	\$28
	6320	Office & Op Supplies	\$250
	6510	Tools & Equip	\$1,364
	8301	Operating Transfer In	(\$18,611)
	Request Total		\$0

1a. Description of request:

Whatcom County Superior Court has a large number of cases backlogged in all of our case types. These can only be resolved by court hearings which require the support of a dedicated clerk who can work with the wide variety of cases and hearings

1b. Primary customers:

Whatcom County Superior Court, justice partners, and consumers of Superior Court services.

2. Problem to be solved:

We have a significant backlog of cases due to the COVID-19 pandemic. Unlike our criminal justice partners, we have a back log on all case types, not just criminal justice cases. The only way to resolve in to increase the access to justice through additional court resources and hearings. The clerk is a mandated participant in all Superior Court Judicial proceedings.

3a. Options / Advantages:

This is the only option to resolve this backlog.

3b. Cost savings:

On the criminal side additional court resources will greatly assist in providing an outlet to resolve these stalled cases, and should in turn free up more jail space and defendants are processed. It should assist the Public Defenders' Office in moving cases and allow their a relief to the caseload standards they are up against and refer less cases to the office of assigned counsel which will provide a cost savings to the County.

4a. Outcomes:

More cases resolving in all Superior Court case types.

4b. Measures:

Caseload backlog will decrease to pre-pandemic levels.

Supplemental Budget Request

Status: Pending

County Clerk

Suppl ID # 3278

Fund 1

Cost Center 3152

Originator: David Reynolds

5a. Other Departments/Agencies:

The Whatcom County legal community will be impacted by this.

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

6. Funding Source:

American Rescue Plan Act funds to Whatcom County.

Supplemental Budget Request

Status: Pending

District Court

Suppl ID # 3280

Fund 1

Cost Center 1304

Originator: Bruce Van Glubt

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☒

Add'l Space ☐

Priority 1

Name of Request: District Court Covid-19 backlog

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$19,842
	6210	Retirement	\$2,034
	6230	Social Security	\$1,518
	6245	Medical Insurance	\$7,814
	6255	Other H&W Benefits	\$905
	6259	Worker's Comp-Interfund	\$312
	6269	Unemployment-Interfund	\$53
	6510	Tools & Equip	\$5,700
	6650	Ct Eval/Investigations	\$50,000
	8301	Operating Transfer In	(\$88,178)
	Request Total		\$0

1a. Description of request:

Management of the backlog of cases created by pandemic related cancelation and rescheduling of court hearings. In addition, these funds will be used to maintain ongoing workload increases created by new processes created to keep the court in operation during the pandemic. This can be achieved by hiring an additional receptionist and court clerk position, along with using the services of pro tem judicial officers.

1b. Primary customers:

The public, prosecutors, public defenders, civil attorneys, and others court users.

2. Problem to be solved:

Management of caseload backlog and ongoing support of new pandemic related processes in District Court:

1. Remote hearings

a. Pre-pandemic, the court did not conduct any remote hearings

b. Takes significantly longer for court clerks to prepare for and coordinate remote hearings. This includes processing remote hearing requests, adding the request and entering the email address into the record, preparing the technology in the courtroom, sending zoom links, processing additional log sheets, and downloading the zoom recordings, in addition to having to hand address and mail court documents to those that attended the hearing remotely.

c. Takes longer for the Judicial Officer to conduct remote hearings. Infraction calendars now take approximately 4 times as long when compared to pre-pandemic.

d. Creates a significant increase in phone call and email traffic over what was experienced pre-COVID.

e. Remote hearings will continue to be offered as the pandemic appears to resolve.

2. Email acceptance of court documents

a. Pre-pandemic emailed documents were not accepted by District Court. The emails are more time consuming and create additional workload as they need to be printed and responded to.

b. Email acceptance of court documents will continue to be offered as the pandemic appears to resolve.

Supplemental Budget Request

Status: Pending

District Court

Suppl ID # 3280

Fund 1

Cost Center 1304

Originator: Bruce Van Glubt

c. Pre-pandemic email inquiries (in addition to court documents) were not an available option. Staff now respond to 30-50 emails each day.

3. Backlog of criminal cases.

a. During the pandemic, criminal hearings were being canceled and rescheduled at the rate of approximately 900-1100 a month. Cause was found to delay speedy trial timelines.

b. Criminal cases are backlogged due to the fact that District Court did not conduct any jury trials from April, 2020 through June, 2021.

c. The backlog continues to grow as District Court is now only able to conduct one jury trial per week.

4. Backlog of civil case processing

a. Due to Gubernatorial directives, garnishments were suspended for many months which in turn created a backlog of delayed data entry, judicial review and case processing.

b. The suspension of civil trials have created a backlog.

5. Backlog of infraction cases

a. During the pandemic, infraction hearings were canceled and rescheduled. Cause was found to delay speedy trial timelines.

b. During the pandemic, the number of cases per calendar were reduced because of the amount of processing time the remote hearings require.

6. Jury Coordination

a. Jury coordination during the pandemic has continued.

b. Pre-pandemic Jury check in/orientations took one staff member. This process now takes a minimum of five staff members to assure safe social distancing.

7. Online infraction program

a. Although this option was available pre-pandemic, the use of this program has increased significantly during the pandemic. Processing cases with this program are more time consuming than in person hearings.

3a. Options / Advantages:

Eliminating improved customer service options for the public and continue to be unable to adequately process backlogged cases.

3b. Cost savings:

None.

4a. Outcomes:

Successful management of backlogged cases and maintenance of pandemic related customer service improvements.

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

ARPA

Supplemental Budget Request

Status: Pending

Prosecuting Attorney

Suppl ID # 3287

Fund 1

Cost Center 2619

Originator: Louise Trapp

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Prosecuting Attorney ARPA Funding

X

Department Head Signature (Required on Hard Copy Submission)

Date

7/22/2021

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$62,148
	6210	Retirement	\$7,117
	6230	Social Security	\$4,754
	6245	Medical Insurance	\$15,629
	6255	Other H&W Benefits	\$2,017
	6259	Worker's Comp-Interfund	\$624
	6269	Unemployment-Interfund	\$162
	6340	Books-Publications-Supsc	\$4,800
	6780	Travel-Educ/Training	\$1,168
	7115	Membership & Assoc Dues	\$1,000
	8301	Operating Transfer In	(\$99,419)
	Request Total		\$0

1a. Description of request:

The Prosecuting Attorney's Office is seeking approval to hire two attorneys, a legal assistant, and a victim/witness coordinator to address the backlog of cases due to the pandemic.

In order to properly investigate and litigate the most serious cases, to pursue the speedy resolution of criminal filings, and to safeguard the rights of victims of crime, the Prosecutor's Office needs these additional attorney and support staff positions.

1b. Primary customers:

The primary customers of this request are the citizens of Whatcom County and the victims of crime.

2. Problem to be solved:

The pandemic has drastically interfered with the functioning of our criminal courts. We were unable to hold a criminal jury trial for over a year, causing cases to be continued over and over again while prosecutors had no ability to force a resolution through trial. The pandemic led to fewer resolutions, which in turn caused an increase in our attorney's caseloads.

3a. Options / Advantages:

N/A

3b. Cost savings:

N/A

4a. Outcomes:

Increasing the number of attorneys and support staff will allow us to meet the obligation of providing quality prosecutorial services to the people of Whatcom County. We will be able to more effectively prosecute cases and we will be of benefit to our criminal justice system and the county as a whole.

Supplemental Budget Request

Status: Pending

Prosecuting Attorney

Suppl ID # 3287

Fund 1

Cost Center 2619

Originator: Louise Trapp

4b. Measures:

Indicators of successful outcomes will be measured by the number of resolved cases and the reduction of our attorneys current caseloads.

5a. Other Departments/Agencies:

There is an expected positive impact on the courts, the Public Defender's Office, and the law enforcement agencies of Whatcom County.

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

N/A

6. Funding Source:

American Rescue Plan Act funds.

Supplemental Budget Request

Status: Pending

Public Defender

Suppl ID # 3279 Fund 1 Cost Center 2662 Originator: Julie Wiles

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: ARPA Funding for 9 temp positions

X

[Signature]

7-19-21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$156,508
	6210	Retirement	\$17,807
	6230	Social Security	\$11,973
	6245	Medical Insurance	\$35,165
	6255	Other H&W Benefits	\$4,609
	6259	Worker's Comp-Interfund	\$1,534
	6269	Unemployment-Interfund	\$410
	6320	Office & Op Supplies	\$3,000
	6510	Tools & Equip	\$28,500
	6780	Travel-Educ/Training	\$3,000
	8301	Operating Transfer In	(\$262,506)
	Request Total		\$0

1a. Description of request:

The Whatcom County Public Defender's Office requests funding to hire nine temporary staff positions: four attorneys, two investigators, two legal assistants, and one behavioral health specialist. This increase in staff is necessary to address the backlog of cases by Covid-19 and to allow us to practice within the Standards of Indigent Defense.

1b. Primary customers:

Indigent defendants in the Whatcom County Superior and District Courts and respondents in the Whatcom County Juvenile Court and Involuntary Treatment Act Proceedings.

2. Problem to be solved:

Current pending caseloads have soared due to the Covid-19 pandemic. For more than a year, no jury trials were held in the Whatcom County courts and case resolutions came to a near standstill. Additional impediments to case resolutions included the inability to conduct in-person meetings with clients, victim/witnesses, and opposing counsel, increases in the seriousness of the cases pending, and higher recidivism rates due to restrictions on booking standards. As a result of the pandemic, the Public Defender's Office has seen open caseloads rise to intolerable levels and experienced lawyers have departed the office, in part due to those heavy caseloads.

3a. Options / Advantages:

The necessary reassignment of cases from attorneys who have departed the office, absences due to FMLA, and exceedingly high open caseloads have caused the Public Defender to send unprecedented numbers of cases back to the Office of Assigned Counsel. The result is a far less cost-effective defense. The Office of Assigned Counsel's budget for contracted private lawyers will be exceeded in 2021 by a large amount.

Supplemental Budget Request

Status: Pending

Public Defender

Suppl ID # 3279

Fund 1

Cost Center 2662

Originator: Julie Wiles

3b. Cost savings:

This request should be fulfilled with ARPA funds.

4a. Outcomes:

With additional staffing, the Public Defender's Office will be able to accept more cases, subject to the limitations of Standards of Indigent Defense, and the Office of Assigned Counsel will require fewer contract attorneys. Adding staff will also allow us to reduce assignments to attorneys who are carrying excessive open caseloads, which is critical to retaining our current employees.

4b. Measures:

Granting this supplemental request will allow our department to stay within State Standards for Public Defense and therefore allow us to continue to receive other grant funding that requires us to be within standards along with better staff retention and morale.

5a. Other Departments/Agencies:

Granting this request will have a positive impact on the Courts and the P.A.'s office. Having more legal staff to process and adjudicate cases will help to alleviate the backlog of cases as a result of the pandemic. In addition, the additional staff will be able to better communicate with the P.A.'s office on cases in order to resolve matters as efficiently as possible for clientele.

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

6. Funding Source:

The funding source is the ARPA federal funding.

Supplemental Budget Request

Status: Pending

Superior Court

Suppl ID # 3277

Fund 1

Cost Center 3113

Originator: David Reynolds

Expenditure Type: Ongoing

Year 1 2021

Add'l FTE ☒

Add'l Space ☒

Priority 1

Name of Request: American Rescue Plan Act request - Superior Court

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$60,072
	6120	Extra Help	\$38,155
	6210	Retirement	\$7,359
	6230	Social Security	\$4,596
	6245	Medical Insurance	\$7,814
	6255	Other H&W Benefits	\$1,251
	6259	Worker's Comp-Interfund	\$364
	6269	Unemployment-Interfund	\$157
	6320	Office & Op Supplies	\$750
	6510	Tools & Equip	\$7,087
	6860	Equipment Rental	\$2,000
	8301	Operating Transfer In	(\$129,605)
	Request Total		\$0

1a. Description of request:

The COVID 19 pandemic has resulted in a significant backlog of cases Whatcom County Superior Court. This is true of all case types. An additional judicial officer and justice support for all of our commissioners is needed to help resolve this backlog.

1b. Primary customers:

Individuals involved in the Whatcom County Superior Court system who's cases remain unresolved due to shortage of judicial resources

2. Problem to be solved:

There is no way to resolve the back log of cases absent an additional judicial officer. Our Court Commissioners have long worked without support staff and the result being they spend time performing those functions and limiting their time on the bench. A judicial assistant who can take care of these tasks for them will go a great way in providing more court time and less judicial prep time. More court time and resources is the only way to provide a vehicle to resolve this backlog.

3a. Options / Advantages:

The only solution to reducing court backlog is the increased access to justice, and support to the judicial officers to assist in adequately processing these cases.

3b. Cost savings:

More cases being resolved more quickly, and inmates awaiting access to trial will be reduced. In addition, it is hoped at the back log of cases are reduced, the Public Defenders office will be able to reduce their caseloads and in turn reduce the number of cases being sent to the Office of Assigned Counsel.

Supplemental Budget Request

Status: Pending

Superior Court

Suppl ID # 3277

Fund 1

Cost Center 3113

Originator: David Reynolds

4a. Outcomes:

Reducing the back log of Superior Court cases created by the COVID-19 Pandemic.

4b. Measures:

Backlog will be significantly decreased in a case types to pre COVID -19 Pandemic levels.

5a. Other Departments/Agencies:

Besides the criminal backlog, Superior Court has a back log of cases in all case types. An additional Court Commissioner is needed to help clear up cases and allow more trials to be scheduled before as Superior Court Judge. While a Commissioner can't do trials, there are many other hearings they can oversee to assist reducing the backlog. In addition, our current Commissioners have no support staff, and therefore must spent their valuable time gathering various documents, etc. for each of their calendars. A judicial assist can perform this function allowing the Commissioners time to be freed up to be available for hearings and less time in preparation for the hearings.

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

6. Funding Source:

American Rescue Plan Act Funding.

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3290

Fund 1

Cost Center 4298

Originator: Suzanne Mildner

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: OppCo Public Services CDBG Grant 2021-22

X

Satpal Singh

7/26/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4333.1422	HUD-CDBG	(\$129,400)
	6610	Contractual Services	\$129,400
	Request Total		\$0

1a. Description of request:

This request is for grant revenue from Washington State Department of Commerce for pass through funding to Opportunity Council as Subrecipient. This is an annual formula grant for direct public services, delivering housing services to low- and moderate-income residents in Whatcom, Island and San Juan counties.

1b. Primary customers:

Low- and moderate-income residents of Whatcom, Island and San Juan Counties

2. Problem to be solved:

This grant may be accessed through the local government, in partnership with our local community action agency Opportunity Council. It provides support for public services such as community outreach, resource referral, client housing education, energy conservation education and other housing services.

3a. Options / Advantages:

N/A

3b. Cost savings:

N/A

4a. Outcomes:

Accomplish HUD's objective of increasing the availability and accessibility of housing public services. The grant contract period is July 1, 2021 to June 30, 2022.

4b. Measures:

Opportunity Council submits ongoing reports regarding service delivery and numbers of persons served. A final report will be issued at grant closeout.

5a. Other Departments/Agencies:

Opportunity Council and 3 community resource centers in San Juan County.

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

Sheri Emerson, Associate Director of Opportunity Council is responsible for overseeing the program services.

6. Funding Source:

Federal grant from HUD through the Washington State Department of Commerce's CDBG Program.

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 3180

Fund 109

Cost Center 10925

Originator: Stacy Henthorn

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Election/IT Courthouse Network Closet

X

Diana Bradrick

7/23/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4333.9041	HAVA Election Security	(\$32,200)
	7070	Minor Remodeling	\$32,200
	Request Total		\$0

1a. Description of request:

County Council approved an Intergovernmental Grant Agreement in 2020 with the Secretary of State's office to address security concerns around elections for \$232,737.70.

We are requesting a minor remodel around exposed data cables/wires in the front election vault in the Auditor's office creating a new Election/IT Courthouse network closet. This new closet will hold the exposed data cables/wires limiting access and preventing accidental damage.

Two new prox locks are needed in the elections center to monitor security in and out of rooms.

1b. Primary customers:

Auditor staff and voters.

2. Problem to be solved:

Whatcom County received this HAVA Election Security Grant to address security concerns identified by the Secretary of State's office. There are exposed cables/wires in the front election vault with risk of damage. Getting these exposed data cables/wires enclosed in a closet will enhance security overall limiting risk of damage.

In addition, two new prox locks are needed for enhanced security control in the elections center. The prox locks will give us greater ability to monitor access in this area.

3a. Options / Advantages:

There are no other options.

3b. Cost savings:

N/A

4a. Outcomes:

Prior to the November General Election, the Election/IT Courthouse network closet will hold the data cable/wires and the two additional Prox Locks will be installed and working.

4b. Measures:

Installation of items identified will be installed and operational.

5a. Other Departments/Agencies:

All installations will be coordinated with County Facilities and Information Technology department.

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

Rob Ney and Perry Rice will assist to coordinate installations.

Friday, July 23, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Auditor

Suppl ID # 3180

Fund 109

Cost Center 10925

Originator: Stacy Henthorn

6. Funding Source:

2020 HAVA Election Security Grant.

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3288

Fund 124

Cost Center 124121

Originator: Anne Deacon

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Training for First Responders & Social Svs Prov

X

E. Kuntz

7/22/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4367.1000	Donations	(\$27,000)
	6610	Contractual Services	\$27,000
	Request Total		\$0

1a. Description of request:

The Health Department is requesting expenditure authority to utilize dedicated grant funding to create a training program for community professionals who respond to people experiencing episodes of behavioral health distress.

1b. Primary customers:

Training recipients will include First Responders from Law Enforcement and EMS as well as community social service providers.

2. Problem to be solved:

Whatcom County Health Department is working closely with community partners to expand and develop new programs that will respond and provide support to residents who are experiencing behavioral health distress or crises, or medical issues that don't require emergency services. First Responders and other professionals have identified the need for specialized training to enhance their knowledge, skills and abilities as they work in these new programs.

3a. Options / Advantages:

Training videos and other forms of training will provide responders and community professionals with the tools they need to be effective in their interventions and support of people in need. Curriculum will be available online and accessible.

3b. Cost savings:

Grant funding will provide the support for this training project, saving taxpayer dollars.

4a. Outcomes:

Training materials, websites, and curriculum will be available to professionals for use as needed. First responders and social services providers will be better equipped to manage the people they are working with and will be more familiar with resources in the community.

4b. Measures:

Number of professionals accessing and receiving training from all law enforcement agencies, all EMS districts, and social service providers. Since much of the training will be via video, community professionals will access to the trainings for many years into the future.

5a. Other Departments/Agencies:

The County will work with a consultant to accomplish the project, with input from EMS and Law Enforcement personnel, and GRACE leadership.

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

N/A

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3288

Fund 124

Cost Center 124121

Originator: Anne Deacon

6. Funding Source:

Whatcom Community Foundation

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3289 Fund 124 Cost Center 124116 Originator: Anne Deacon

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Triage Facility Maintenance

X 

Department Head Signature (Required on Hard Copy Submission)

7/22/21

Date

Costs:	Object	Object Description	Amount Requested
	6659.002	Building Maintenance Fee	\$39,000
	Request Total		\$39,000

1a. Description of request:

The purpose of this request is to request expenditure authority to cover annual maintenance expenses for the original crisis stabilization center located at 2030 Division Street, Bellingham WA. The facility is owned by the County and provides office space for mental health service providers who provide outreach services for the new Crisis Stabilization Center. When completing the current 21-22 budget, the maintenance expenses for the original facility were unintentionally omitted.

1b. Primary customers:

The facility currently provides a home base for behavioral health agency personnel who provide crisis outreach and recovery support. The professionals who use this space also provide back-up support to the services provided at the newly-constructed Crisis Stabilization Center.

2. Problem to be solved:

The County owned building requires ongoing annual maintenance service. Personnel who provide crisis services need a location close to the Crisis Stabilization Center to provide back-up services.

3a. Options / Advantages:

Use of the facility by behavioral health crisis outreach staff supports the community in services and increases behavioral health crisis support in a location that includes the recently completed Crisis Stabilization Center.

3b. Cost savings:

N/A

4a. Outcomes:

Necessary building maintenance will be completed to ensure the building is available for occupancy.

4b. Measures:

Ongoing maintenance will ensure the location is available for tenants.

5a. Other Departments/Agencies:

The Facilities Department manages the building maintenance needs of this County building.

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

Robert Ney, Facilities Manager

6. Funding Source:

Behavioral Health Program Fund. The Behavioral Health Fund anticipates a balance of \$5.5 M at the end of 2021.

Supplemental Budget Request

Status: Pending

Executive

Suppl ID # 3276

Fund 138

Cost Center 138100

Originator: Tawni Helms

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Grants Manager and Grant Consultant

X



7/20/2021

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$20,286
	6210	Retirement	\$2,485
	6230	Social Security	\$1,552
	6245	Medical Insurance	\$3,907
	6255	Other H&W Benefits	\$559
	6259	Worker's Comp-Interfund	\$182
	6269	Unemployment-Interfund	\$53
	6320	Office & Op Supplies	\$500
	6510	Tools & Equip	\$3,500
	6630	Professional Services	\$100,000
	Request Total		\$133,024

1a. Description of request:

Whatcom County has been allocated \$44,528, 542 of the Coronavirus State and Local Fiscal Recovery Funds authorized under the American Rescue Plan Act (ARPA). To help fulfill the Economic Relief & Recovery priority and pursue the additional funding that is available through ARPA and the new infrastructure package, Whatcom County will use ARPA funds to hire a Grant Manager and a grant consultant to respond to the innumerable and unprecedented grant opportunities before us.

This work will be accomplished through a small Economic Relief & Recovery team working under Administrative Services and tasked with identifying opportunities, preparing and managing grant applications using ARPA funds. The goal of this team will be to improve efficacy of programs that help address negative economic impacts.

1b. Primary customers:

Whatcom County residents and the community at large.

2. Problem to be solved:

An unprecedented amount of money has been allocated through ARPA in addition to the funds which the County received directly. For perspective, allocations to county governments represented less than 3.5% of the American Rescue Plan. Access to these additional funds will be contingent on our ability to identify opportunities, align projects with funding eligibility requirements, and submit well-written and timely applications.

To accomplish this, Whatcom County needs both grant writing and grant administration capacity. Additionally, this will impact the Finance Division as grant compliance and auditing requirements must also be ensured. Finance is submitting a separate supplemental for that purpose.

3a. Options / Advantages:

Supplemental Budget Request

Status: Pending

Executive

Suppl ID # 3276

Fund 138

Cost Center 138100

Originator: Tawni Helms

Without adequate personnel to pursue grant funding opportunities and ensure proper grant monitoring and compliance, Whatcom County will not be able to take advantage of the unprecedented funding opportunities being made available.

3b. Cost savings:

n/a

4a. Outcomes:

Whatcom County will be prepared to identify new funding opportunities and prepare and manage grant applications using ARPA funds. These grants will bring economic relief and recovery to our broader community.

4b. Measures:

Grants will be secured and managed in compliance with Federal, State and local requirements. Funds will be used to improve efficacy of programs that help address negative economic impacts through: use of data analysis, consumer outreach, improvements to data or technology infrastructure and impact evaluations as well as other funding eligible projects.

5a. Other Departments/Agencies:

Departments seeking grant information and support will have access to this new resource. The influx of new grant opportunities will also impact the Finance Division related to grant compliance. Finance will be seeking ARPA funds for a grant compliance officer to perform grant monitoring and ensuring grant compliance for Federal, State and local grants.

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

6. Funding Source:

American Rescue Act Fund

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3284

Fund 138

Cost Center 138100

Originator: Marianne Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Transfers to fund COVID court backlog positions

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$598,319
	Request Total		\$598,319

1a. Description of request:

Companion supplemental for transfers to support COVID related court backlog positions and services:

To County Clerk \$18,611, Supplemental # 3278
To District Court \$88,178, Supplemental # 3280
To Prosecuting Attorney \$99,419, Supplemental #
To Public Defender \$262,506, Supplemental # 3279
To Superior Court \$129,605, Supplemental # 3277

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

ARPA Fund

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3285

Fund 138

Cost Center 138100

Originator: M Caldwell

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Transfer to support Grant & Contract Specialist

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$29,594
	Request Total		\$29,594

1a. Description of request:

Companion supplemental to fund transfer to AS-Finance in support of a Grant & Contract Specialist position, Supplemental # 3283

1b. Primary customers:

2. Problem to be solved:

3a. Options / Advantages:

3b. Cost savings:

4a. Outcomes:

4b. Measures:

5a. Other Departments/Agencies:

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

6. Funding Source:

ARPA Fund

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3283

Fund 507

Cost Center 507130

Originator: Brad Bennett

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☒

Add'l Space ☐

Priority 1

Name of Request: Grant and Contract Specialist

X

Satpal Sidhu

7/21/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$17,904
	6210	Retirement	\$2,193
	6230	Social Security	\$1,370
	6245	Medical Insurance	\$3,907
	6255	Other H&W Benefits	\$543
	6259	Worker's Comp-Interfund	\$130
	6269	Unemployment-Interfund	\$47
	6510	Tools & Equip	\$3,000
	7110	Registration/Tuition	\$500
	8301	Operating Transfer In	(\$29,594)
	Request Total		\$0

1a. Description of request:

The Grant and Contract specialist will assist departments with research and compliance with state and federal grant requirements. Internal controls insuring grant contract compliance are required. The current Finance office staffing is inadequate to provide the required support to departments to ensure that complex grant requirements are adequately researched, communicated and addressed on a timely basis.

1b. Primary customers:

2. Problem to be solved:

Whatcom County does not have the capacity and dedicated expertise necessary to properly manage all aspects of federal and state grants. The number, dollar value and complexity of state and federal grants has increased over the last 5 years. The ARPA funding is subject to the complex federal requirements and will overwhelm our ability to address the issues inherent in federal grants.

3a. Options / Advantages:

Staffing of Administrative Services in lean. If the County wants to take advantage of grants it is necessary to provide staffing to properly administer the grants. If the county has inadequate internal controls over grants it will result in expanded scope of the state audit and increase audit costs.

3b. Cost savings:

4a. Outcomes:

The position will be filled in the 4th quarter of 2021. Beginning in late 2021 grant support will be available to departments.

4b. Measures:

Supplemental Budget Request

Status: Pending

Administrative Services

Finance

Suppl ID # 3283

Fund 507

Cost Center 507130

Originator: Brad Bennett

5a. Other Departments/Agencies:

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

6. Funding Source:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-498

File ID:	AB2021-498	Version:	1	Status:	Agenda Ready
File Created:	08/10/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology to provide Pollution Prevention Assistance Specialists, in the amount of \$293,568

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

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



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Washington State Department of Ecology – 2021-2023 Pollution Prevention Assistance Agreement

DATE: August 10, 2021

Attached is an Interlocal Agreement between Whatcom County and Washington State Department of Ecology (DOE) for your review and signature.

■ **Background and Purpose**

The Local Source Control (LSC) Partnership, which is overseen by the WA State Department of Ecology Hazardous Waste and Toxics Reduction Program, provides support to local government efforts in the Puget Sound Region to control, reduce, and eliminate toxic pollution sources. This Agreement provides funding for the Health Department's Pollution Prevention Assistance Specialist to provide technical assistance and education outreach to small businesses in an effort to promote pollution prevention practices and protect Puget Sound marine water quality.

■ **Funding Amount and Source**

Funding for this Agreement is provided by the Department of Ecology in the amount of \$293,568. These funds will be included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

■ **Differences between Previous Contracts**

Over the previous 2-year Agreement ending on 6/30/2021 (201907027), this 2-year Agreement:

1. Increases funding by \$34,863;
2. Updates Whatcom County's contract manager and key program staff;
3. Revises Unique Program Elements to include a) participation in an All-Staff Planning Committee and Stormwater Phase II Permittee Advisory Committee and b) updated performance measures and reporting requirements for the EnviroStars Program;
4. Reduces the number of technical assistance total/initial visits from 350/210 to 300/180;
5. Adds Section IV. Partnership Branding and Outreach, Section XI. Voucher Program and Section XII. Resources.

Please contact Jennifer Hayden, Environmental Health Supervisor at 360-778-6036 (JHayden@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.



WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8540 Environmental Health / 85400 Solid Waste Enforcement		
Contract or Grant Administrator:			Jennifer Hayden		
Contractor's / Agency Name:			Washington State Department of Ecology		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC: _____	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)			
Is this a grant agreement?		If yes, grantor agency contract number(s):		CFDA#:	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	C2200041			
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):			
Yes <input type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		Contract Cost Center:		657200	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):			
Is this agreement excluded from E-Verify?		No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>		
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 			
\$	293,568				
This Amendment Amount:					
\$					
Total Amended Amount:					
\$					
Summary of Scope: This Agreement supports local governments in providing funding for conducting technical assistance and education outreach to small businesses in an effort to promote pollution prevention practices and protect Puget Sound marine water quality.					
Term of Contract:		2 Years		Expiration Date: 06/30/2023	
Contract Routing:	1. Prepared by:		JT		Date: 08/05/2021
	2. Attorney signoff:		RB		Date: 08/10/2021
	3. AS Finance reviewed:		M Caldwell		Date: 8/5/21
	4. IT reviewed (if IT related):				Date:
	5. Contractor approved:				Date:
	6. Submitted to Exec.:				Date:
	7. Council approved (if necessary):		AB2021-498		Date:
	8. Executive signed:				Date:
	9. Original to Council:				Date:



DEPARTMENT OF
ECOLOGY
State of Washington

IAA No. C2200041

INTERAGENCY AGREEMENT (IAA)

BETWEEN

THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

AND

WHATCOM COUNTY HEALTH DEPARTMENT

THIS INTERAGENCY AGREEMENT ("Agreement" or "IAA") is made and entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and the Whatcom County Health Department, hereinafter referred to as the "CONTRACTOR," pursuant to the authority granted by Chapter 39.34 RCW.

THE PURPOSE OF THIS AGREEMENT is for the CONTRACTOR to provide Pollution Prevention Assistance (PPA) Specialists who will provide technical assistance and education outreach to small businesses in an effort to prevent pollution of waters of the state as part of the Pollution Prevention Assistance Partnership (formerly known as the Local Source Control (LSC) Partnership).

WHEREAS, ECOLOGY has legal authority (RCW 70A.214 and RCW 70A.300) and the CONTRACTOR has legal authority (Small Business Technical Assistance Action 11.2.2.3 of the approved 2016 Whatcom County Comprehensive Solid and Hazardous Waste Management Plan.) that allows each party to undertake the actions in this agreement.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1) SCOPE OF WORK

The CONTRACTOR shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, *Statement of Work*, and Appendix B, *Budget Detail*, attached hereto and incorporated herein.

2) PERIOD OF PERFORMANCE

The period of performance of this IAA will commence on **July 1, 2021**, and be completed by **June 30, 2023**, unless the Agreement is terminated sooner as provided herein. Amendments extending the period of performance, if any, shall be at the sole discretion of ECOLOGY.

3) COMPENSATION

Compensation for the work provided in accordance with this IAA has been established under the terms of RCW 39.34.130 and RCW 39.26.180(3). This is a performance-based agreement, under which payment is based on the successful completion of expected deliverables and compliance with all terms and conditions.

Compensation for this agreement will be released in two 1-year phases. Phase One is limited to 50 percent of the project budget and Phase Two can be up to the remaining percentage of the project budget. On or before August 15, 2022, ECOLOGY will evaluate available funding and the CONTRACTOR's performance and progress towards meeting contract deliverables and spending. To release the second year funding the CONTRACTOR, by June 30, 2022, must:

1. Complete a minimum of 40% of the total site visit deliverables, and
2. Utilize 40% of the total compensation award.

If performance obligations have been met and funding is available per ECOLOGY's determination, the full year 2 budget award will be considered available. Should the CONTRACTOR fail to make satisfactory progress or funding is limited, ECOLOGY will determine the appropriate additional funding to release for year 2 of the contract. ECOLOGY will consider various factors in determining year 2 funding including, but not limited to, available funding, performance to date, staff vacancies, time and costs spent on unique program elements, and potential circumstances beyond the CONTRACTOR's control.

The source of funds for this IAA is Model Toxics Control Operating Account (23P), Model Toxics Control Capital Account (23N). Both parties agree to comply with all applicable rules and regulations associated with these funds.

The parties have determined that the cost of accomplishing the work identified herein will not exceed two hundred ninety-three thousand, five hundred sixty-eight dollars and zero cents (\$293,568.00), including any indirect charges. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree via an amendment to a higher amount. Compensation for services shall be based on the terms and tasks set forth in Appendix A, *Statement of Work*. ECOLOGY will not make payment until it has reviewed and accepted the work.

Travel expenses (meals, lodging, and mileage) will be reimbursed according to current state rates at the time of travel, not to exceed the budget (see Appendix B, *Budget Detail*).

Purchase of source control tools or equipment (e.g. spill kits, plastic drum covers) and promotional items for distribution to businesses under this contract must be listed in *Goods and Services budget* or *Equipment budget* in Appendix B. Any purchases of equipment or goods and services over \$1,000.00 not specifically listed in Appendix B must be pre-approved by ECOLOGY. When the agreement expires, or when the equipment is no longer needed for the originally authorized purpose (whichever comes first) the disposition of equipment shall be at ECOLOGY's sole discretion.

Indirect rates will be paid as indicated in Appendix B, *Budget Detail*. Changes to the indirect rate may be considered by ECOLOGY. CONTRACTOR shall provide supporting documentation necessitating the change to ECOLOGY. ECOLOGY's approval will be communicated by e-mail. An increase in indirect rate does not increase the total contract award. Changes are handled by adjusting the budget between categories listed in Appendix B. Changes to the total budget cost of the contract shall require an amendment. The budget referenced in Appendix B may be adjusted between categories (with the exception of the voucher program budget category), with ECOLOGY's preapproval, and as long as the total budget is not exceeded.

ECOLOGY may, at its sole discretion, withhold payments claimed by the CONTRACTOR for services rendered, if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

4) BILLING AND PAYMENT PROCEDURE

Payment requests shall be submitted on state form, Invoice Voucher A19-1A. Invoice voucher shall reference the Agreement (IAA) number and clearly identify those items that relate to performance under this Agreement. Invoices shall describe and document to ECOLOGY's satisfaction a description of the work performed, the progress of the work, and related costs. Each invoice shall bill for actual hours worked during the quarter. The actual hours billed may be higher (as long as the total budget compensation award is not exceeded) or lower than the FTE estimate in Appendix A, *Statement of Work*. Attach supporting documentation to the invoice. See Appendix A, sections IV, V, and X for additional information (and section XI, Voucher Program if applicable).

Send invoices to:

State of Washington
Department of Ecology
Hazardous Waste & Toxics Reduction Program
Attn: Elaine Snouwaert
4601 N. Monroe Street
Spokane, WA 99205
Or
Electronically submit invoices to Elaine Snouwaert at Elaine.Snouwaert@ecy.wa.gov

Payment requests will be submitted on a quarterly basis. Invoices must be submitted by the dates outlined in Appendix A, section X. Upon expiration of this Agreement, any claim for payment not already made shall be submitted to ECOLOGY within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

Payment will be made within thirty (30) days of submission of a properly completed invoice (form A19-1A) with supportive documentation. All expenses invoiced shall be supported with copies of invoices paid.

Payment will be issued through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment, CONTRACTOR must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. For questions about the vendor registration process, contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

5) 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.

6) 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.

7) ASSURANCES

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

8) 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.

9) DISPUTES

Parties to this Agreement shall employ every effort to resolve a dispute themselves without resorting to litigation. In the event that a dispute arises under this Agreement that cannot be resolved among the parties, 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 then make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto, unless restricted by law. The cost of resolution will be borne by each party paying its own cost. As an alternative to this process, if state agencies, 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. The parties may mutually agree to a different dispute resolution process.

10) FUNDING AVAILABILITY

ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to 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, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the CONTRACTOR through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the CONTRACTOR. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

11) 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 the Superior Court for Thurston County.

12) 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.

13) 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:

- a. Applicable federal and state of Washington statutes, regulations, and rules.
- b. Mutually agreed upon written amendments to this Agreement.
- c. This Agreement, number C2200041.
- d. Appendix A, *Statement of Work*.
- e. Appendix B, *Budget Detail*.
- f. Appendix C, *Special Terms and Conditions*.
- g. Any other provisions or term of this Agreement, including materials incorporated by reference or otherwise incorporated.

14) 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 materials 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 materials relevant to this Agreement must be retained for six years after expiration of this Agreement. 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. Each party will utilize reasonable security procedures and protections for all materials related to this Agreement. All materials are subject to state public disclosure laws.

15) 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.

16) RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "work made for hire" as defined by the United States Copyright Act, Title 17 U.S.C. section 101 and shall be owned by state of Washington, ECOLOGY. 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, and register these items, and the ability to transfer these rights.

17) 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.

18) SUBCONTRACTORS

CONTRACTOR agrees to take complete responsibility for all actions of any Subcontractor used under this Agreement for the performance. When federal funding is involved there will be additional contractor and subcontractor requirements and reporting.

Prior to performance, all subcontractors who will be performing services under this Agreement must be identified, including their name, the nature of services to be performed, address, telephone, WA State Department of Revenue Registration Tax number (UBI), federal tax identification number (TIN), and anticipated dollar value of each subcontract. Provide such information to ECOLOGY's Agreement manager.

19) SUSPENSION FOR CONVENIENCE

ECOLOGY may suspend this Agreement or any portion thereof for a temporary period by providing written notice to the CONTRACTOR a minimum of seven (7) calendar days before the suspension date. CONTRACTOR shall resume performance on the first business day following the suspension period unless another day is specified in writing by ECOLOGY prior to the expiration of the suspension period.

20) 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 fifteen (15) business days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

21) TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement without cause upon thirty (30) calendar day 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.

22) 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 written amendment to this Agreement signed by an authorized representative of the parties.

23) AGREEMENT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications, notifications, and billings questions regarding the performance of this Agreement. The parties agree that if there is a change in representatives, they will promptly notify the other party in writing of such change, such changes do not need an amendment.

The ECOLOGY Representative is:	The CONTRACTOR Representative is:
Name: Elaine Snouwaert Address: 4601 N. Monroe Street Spokane, WA 99205 Phone: (509) 329-3503 office (509) 385-5169 cell Email: Elaine.Snouwaert@ecy.wa.gov	Name: Jennifer Hayden Address: Whatcom County Health Department 509 Girard Street Bellingham, WA 98225 Phone: (360) 778-6036 Email: JHayden@co.whatcom.wa.us

24) 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.

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

IN WITNESS WHEREOF, the parties below, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their signatures below.

**State of Washington
Department of Ecology**

Whatcom County Health Department

By:

Signature Date

Heather R. Bartlett

Deputy Director

By:

Signature Date

Erika Lautenbach

Director

PROGRAM APPROVAL

Approved by email SS/JT
Sue Sullivan, Environmental Manager

08/06/2021
Date

WHATCOM COUNTY

SATPAL SIDHU
County Executive

STATE OF WASHINGTON)
)
COUNTY OF WHATCOM)

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

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

My Commission expires: _____

APPROVED AS TO FORM:

Approved by email RB/JT
Royce Buckingham, Prosecuting Attorney

08/10/2021
Date

APPENDIX A
STATEMENT OF WORK
Whatcom County Health Department

Section I. Introduction

This Statement of Work is for the 2021-2023 biennial Interagency Agreement (IAA) for the Pollution Prevention Assistance (PPA) Partnership, which is overseen by the Washington State Department of Ecology (ECOLGY), Hazardous Waste and Toxics Reduction Program.

The mission of the Pollution Prevention Assistance Partnership is:

“We protect Washington’s residents and environment by helping small businesses reduce toxic chemical use, safely manage dangerous waste, and keep stormwater free of pollutants.”

The CONTRACTOR, through their Pollution Prevention Assistance (PPA) program, will conduct multimedia source control site visits and pollution prevention activities to businesses that are small quantity generators (SQGs) of dangerous waste. In this context an SQG is any business, non-profit, facility, school, or other organization that generates less than 220 pounds of dangerous waste per calendar month and less than 2.2 pounds of extremely hazardous waste per calendar year. The site visits, along with other pollution prevention activities conducted by the CONTRACTOR, will be designed to reduce or eliminate dangerous waste and other pollutants at the source through best management practices that prevent spills and discharges to ground, air, and water (especially to industrial wastewater and stormwater).

To further facilitate the reduction or elimination of toxic chemical use at the source, the CONTRACTOR will seek and discuss opportunities to assist businesses with switching processes, products, or equipment to use effective safer-alternatives. This program will be known as the “Product Replacement Program” or PRP.

The PPA work is expected to fall within these general proportions:	
Technical Assistance (TA) visits (approximately 10-15% of TA visits will involve PRP) (see Section III)	70%
Unique Program Elements (see Section II)	15%
Training (see Section VIII)	10%
Other (admin, staff meetings, etc.)	5%

The CONTRACTOR is expected to:

- Interact with other partners within the PPA Partnership to provide technical assistance and training, and share resources and experiences.
- Set up alerts to receive notifications when requests for information have been made on the PPA Partnership SharePoint Discussion Board.
- Ensure at least one staff member is available to provide timely information and feedback to ECOLOGY's PPA Coordinator and to attend mandatory meetings and trainings. Feedback on Partnership goals, direction, and projects will occasionally be requested via online surveys and email requests.
- Act in a professional and ethical manner, and shall avoid any conflict of interest that might influence the CONTRACTOR's actions or judgment.
- Disclose immediately to ECOLOGY any interest, direct or indirect, that might be construed as prejudicial in any way to the professional judgment of the CONTRACTOR in rendering service under this Agreement.

Key staff, estimated FTE, and their roles are identified in Table 1. Please note, this is an estimate of time dedicated to this contract over the full two years of the contract; quarterly invoicing must reflect **actual** hours worked even if hours are higher or lower than the FTE estimate.

Table 1: Key Staff

Staff Name	Estimated FTE	Role
Jennifer Hayden	0.02	Contract Management
Edward Halasz	0.60	PPA Specialist
Arend Meijer	0.25	PPA Specialist
Bill Angel	0.00	Backup/PPA Specialist
Jennifer Hawes	0.00	Billing

Section II. Unique Program Elements

The CONTRACTOR will conduct the unique elements for their PPA program, outlined in Table 2.

Table 2: Unique Program Elements

Program Element	Deliverable(s)
All-Staff Planning Committee - <i>Four separate committees (one for each training event) made up of PPA specialists and Ecology.</i>	Work with one or two other jurisdictions to plan 1 All-Staff Training Event (virtually or in-person)
	With other committee members determine a lead to schedule planning meetings, track tasks, and finalize the agenda.
	Arrange for meeting logistics (venue, food and beverage if in person) and speakers.
	Answer questions and share your experiences and tips for success.

Stormwater Phase II Permittee Advisory Committee - PPA specialists to review materials and advise developers of the WSU Stormwater Center's business inspection training materials with the purpose of promoting consistency across businesses and coordination to avoid overlap.	Participation in 90% of committee meetings. Participate on a committee to assist WSU's development of permittee guidance and training. Provide insights on conducting business visits.
	Work with the other members of the committee and Ecology to draft and finalize a work plan. This work plan should describe the roles and responsibilities of participants and outline the tasks to be completed.
	Review all materials.
	Mentor up to three permittees staff (optional).
EnviroStars Program	Promote EnviroStars Program to business.
	Recruit 27 of businesses into EnviroStars
	Report quarterly on number of businesses who receive EnviroStars information and number who enroll

Section III. Technical Assistance Visits

The CONTRACTOR will conduct technical assistance site visits to small quantity generators of dangerous wastes, and to businesses or organizations that have the potential to pollute stormwater. Approximately 60% of the visits will be Initial Visits. If Initial Visits fall below 60%, combined Initial Visits and Follow-up Visits must account for at least 80% of the total visits. While necessary, efforts should be made to minimize Screening Visits.

- An **Initial Visit** occurs at the actual site and results in a completed 'checklist' (or enough data gathered to complete data entry into the LSC database). It will either be the first complete visit to a site OR the first visit in two or more years.
- A **Screening Visit** is an attempted visit to the site, but the business declined or put off the visit, OR you were interrupted during the visit and were unable to gather complete data, OR you discover that the facility does not exist anymore OR you discover that the business does not qualify for a visit under the PPA program (e.g. it is a medium or large quantity generator).
- A **Follow-Up Visit** should occur within 90 days of the Initial Visit. Follow-up should generally be done through an on-site visit. However, a phone conversation, mail or email exchange may count as a Follow-Up Visit if it includes confirmation that the issues that were identified in the initial visit were resolved. Follow-up Visits must be conducted to resolve High Priority Environmental Issues (See section below).

Table 3: Number of Technical Assistance Visits

Number of Total Visits	300
<i>Target for Initial Visits</i>	<i>180</i>

Business sectors, organizations, waste streams, and/or geographical area that will provide a focus for the 2021-2023 technical assistance visits are listed in Table 4.

Table 4: Technical Assistance Targets

Target	Rationale for selecting
Whatcom County	Defined area of legal jurisdictional authority.
Marijuana Grow Operations	New growth industry with significant potential impacts. This industry was committed to in the 2019-2021 contract, however, little outreach was completed due to COVID-19 restrictions.
City Of Ferndale	Whatcom County Health Department is supporting their municipal stormwater permit requirements.

ECOLOGY may direct a portion of technical assistance visits toward specific priority sources or contaminants.

High Priority Environmental Issues

The below list is ECOLOGY's high priority environmental issues because they have the potential to directly impact human health and/or the environment. If one or more of these issues are found during a site visit, a Follow-up visit is justified but not necessarily required. The severity of the issue will help determine if a Follow-up visit is necessary. A Follow-up visit to a business for other (non-high priority) issues is at the discretion of the CONTRACTOR.

When unable to resolve high priority environmental issues, the Pollution Prevention Specialist will refer the issue to ECOLOGY or other appropriate agency. Serious concerns about impacts to human health and/or the environment warrant a consultation with ECOLOGY or other regulatory agencies to determine whether or not the issue needs to be referred.

- Hazardous waste being improperly designated
- Hazardous waste being improperly disposed
- Hazardous products/wastes being improperly stored
- Compromised dangerous waste containers need to be repaired or replaced
- Illegal plumbing connection
- Illicit discharge of wastewater to storm drain
- Improperly stored containerized materials
- Improperly stored non-containerized materials
- Leaks and spills in dangerous waste storage areas

Visit Guidance

The following guidance applies to technical assistance visits, unless otherwise discussed with ECOLOGY:

1. Prior to the visit:
 - Coordinate with other entities that may be conducting business visits in the area to reduce potential "inspection fatigue."
 - Check with ECOLOGY Urban Waters staff (where applicable) to ensure that the business is not currently being visited by Urban Waters staff.

- Research site and issues prior to the visit using a combination of data sources such as LSC Database for previous visits or visits to similar businesses, industry resources, news articles, etc.
 - To the extent possible, verify the site is not a medium or large quantity generator.
 - Check to see if a sector specific Checklist or Tip Sheet is available on the PPA Partnership SharePoint site to help guide the visit.
2. During the visit:
- Provide technical assistance on proper management of dangerous waste, prevention of stormwater pollution, spill prevention, and reduction of hazardous substance use (when applicable).
 - Ensure, at a minimum, all items on the basic Checklist are reviewed. If while at the site, it becomes apparent the business is a medium or large quantity generator, either complete the visit and count it as a screening visit, OR formally refer the dangerous waste portion to ECOLOGY to count it as a full initial visit. This site should not be scheduled for future visits, unless it is likely their generator status has changed to qualify as an SQG.
 - If appropriate, encourage businesses to participate in local green business programs, such as the EnviroStars business certification program.
 - If a Product Replacement Program (PRP) opportunity exists for the business, discuss the opportunity, terms and conditions, and steps to qualify as outlined in Section V.
 - Discuss spill response preparedness and offer spill kit for developing a plan. Funds can be used to purchase spill kits to provide to businesses. Occasionally ECOLOGY will provide spill kits through a bulk order, if funding is available.
 - If possible, photograph observed issues for before and after success stories.
 - Activities that may be beneficial during the visit include, but are not limited to, walking the site (interior and exterior), checking storm drains, checking for illicit connections, checking dumpster and waste storage, providing handouts, and ensuring necessary permits are in place.
3. At the end of the visit or after the visit:
- Provide written follow-up to document the results of the visit. This can be done by leaving a copy of the 'Checklist' or other documentation with the business at the end of the visit, by using a commitment postcard (format available in Branding Documents on PPA Partnership SharePoint), by sending a follow-up letter/email, or alternatively by sending a 'thank you' postcard if no issues were identified.
 - If necessary, coordinate with other agencies (e.g. the fire marshal, code enforcement, stormwater, wastewater treatment, and/or moderate risk waste staff) to ensure that the information you are providing is consistent with the other agency's regulations and/or best management practices.
 - The PPA Specialists will make referrals to ECOLOGY as needed and report results.

Section IV. Partnership Branding and Outreach

When unique outreach or educational materials are developed by the CONTRACTOR using PPA Partnership funds, a draft must be sent to ECOLOGY for review and approval. To the extent feasible, the

CONTRACTOR must utilize the Partnership's branding tools and templates available to produce these materials. The intent of this requirement is to facilitate a unified image and consistent messaging across the Partnership. The Partnership logo and other branding resources are available on the PPA Partnership SharePoint site.

It may be appropriate to include funding acknowledgement on some outreach materials. The CONTRACTOR will consult with ECOLOGY's PPA Partnership Coordinator to determine whether funding acknowledgement is required.

Finalized materials which may be useful to other Partnership contractors should be provided for upload to the resource Document Library on the PPA Partnership SharePoint Site.

Each CONTRACTOR must maintain a PPA webpage which meets the minimum requirements developed by the 2020 Resource Consistency Workgroup. See PPA Partnership SharePoint Site for requirements. The incorporation of the minimum webpage requirements should be completed by June 30, 2022 unless otherwise approved by ECOLOGY.

Section V. Product Replacement Program (PRP)

The Product Replacement Program is designed to eliminate Persistent Bioaccumulative Toxic (PBT) chemicals from use in commerce. The PRP removes and replaces PBT chemicals present in products, processes, or technologies to help prevent toxics from entering the environment. One of the best and most effective ways to prevent further environmental contamination, protect water quality, and reduce human health risk is to eliminate these toxic chemicals at the source. The PRP assists businesses with switching to safer alternatives.

PPA contractors are integral to the PRP. The CONTRACTOR will seek and discuss opportunities to assist businesses with switching processes, products, or equipment to use effective safer-alternatives. For technical assistance visits, where PRP is discussed, CONTRACTOR will record in the LSC Database the type of product or equipment replacement opportunity the business is interested in and other required information.

The CONTRACTOR will assist ECOLOGY with the following programs:

1. Replacement of dry cleaning technology that uses perchloroethylene by visiting dry cleaners, discussing the program, assisting with required paperwork, and completing the final visit after new machine installation. Guidelines for this program are outlined in separate documents and posted on the PPA Partnership SharePoint.
2. Promoting awareness of the national mercury thermostat takeback program at appropriate businesses.

Additional takeback and replacement programs ECOLOGY is exploring for addition to the PRP include, but are not limited to:

1. PFAS-containing firefighting foam takeback program. Currently ECOLOGY is working directly with fire departments, but this program may be expanded to businesses with PFAS-containing fire suppression systems.
2. Flame retardants in foam and equipment at gymnasiums, play centers, and recreation facilities.
3. Degreasers and solvents in parts washing systems in multiple business sectors.

4. PCB-containing light ballasts in schools.
5. Additional chemicals and products may also be added to this list.

ECOLOGY, in collaboration with the PPA Partnership, will develop procedures and criteria, which must be met for a business to receive reimbursement for any of the above chemicals or products. PRP payments for reimbursement to the business will come directly from ECOLOGY and are not included within the CONTRACTOR's funding compensation associated with this contract.

The PRP reimbursement payment will be made through direct disbursement from ECOLOGY to the business implementing the product or equipment replacement. In order to facilitate these payments, the CONTRACTOR must assist ECOLOGY in maintaining records indicating how the business qualified for the PRP reimbursement per the PRP program's eligibility criteria. Eligibility criteria will be developed by ECOLOGY and the Product Replacement Program Committee for each type of reimbursement offered.

The CONTRACTOR will provide technical assistance to the business to help ensure the business qualifies for a PRP reimbursement payment from ECOLOGY by completing the following steps, unless otherwise specified in guidelines developed specific to an individual reimbursement. Specific requirements for individual reimbursement programs will be maintained on the PPA Partnerweb SharePoint site.

1. CONTRACTOR conducts technical assistance visit and provides business with recommendations to reduce or eliminate a qualifying chemical or product. These recommendations must be recorded in the LSC Database.
2. CONTRACTOR must communicate to the business that it may take up to 4 months to receive payment from ECOLOGY after purchase and that the business must respond to inquiries from ECOLOGY or the Office of Financial Management (OFM) in a timely manner to avoid delays in payment.
3. CONTRACTOR assists business as needed with paperwork required to apply for reimbursement, including a state payee registration form.
4. Business purchases approved product or equipment and converts fully to utilization of new product or equipment in accordance with the eligibility criteria for the PRP reimbursement.
5. Business submits receipts for the product or equipment purchase and installation to ECOLOGY's PRP Coordinator. This submittal may be facilitated through the CONTRACTOR's representative for some PRP projects.
6. CONTRACTOR may be requested by ECOLOGY to verify through a site visit and review of records that product or equipment has been installed per PPA Specialist or ECOLOGY recommendations, old product or equipment has been legally disposed of or decommissioned, and all other eligibility criteria have been met.

For information about an optional voucher program that the CONTRACTOR can provide directly to a business, see Section XI.

Section VI. Timeline

Table 5: Timeline

Time Period	Goal for number of Site Visits	Unique Program Element activities	Technical Assistance Target activities
July 1, 2021 – December 31, 2021	45 Initial, 22 Follow-up, 8 Screening	<ul style="list-style-type: none">• EnviroStars program• Stormwater Phase II Permittee Advisory Committee	Whatcom County
January 1, 2022 – June 30, 2022	45 Initial, 22 Follow-up, 8 Screening	<ul style="list-style-type: none">• EnviroStars program• All-Staff Planning Committee• Stormwater Phase II Permittee Advisory Committee	Marijuana Grow Operations
July 1, 2022 – December 31, 2022	45 Initial, 23 Follow-up, 7 Screening	<ul style="list-style-type: none">• EnviroStars program• Stormwater Phase II Permittee Advisory Committee	City of Ferndale
January 1, 2023 – June 30, 2023	45 Initial, 23 Follow-up, 7 Screening	<ul style="list-style-type: none">• EnviroStars program• Stormwater Phase II Permittee Advisory Committee	Whatcom County

Section VII. Local Source Control (LSC) Database

Information gathered during technical assistance visits by the CONTRACTOR must include all of the elements that are listed in the most up-to-date PPA Checklist (check PPA Partnership SharePoint site for details) and be entered into ECOLOGY's LSC database. The following guidance applies to all technical assistance visits, unless otherwise discussed with ECOLOGY:

- Collect enough information to complete all of the applicable fields in ECOLOGY's LSC database and enter it into the database within 15 work days of the visit.
- If you make a referral to a regulatory agency, enter the information about the referral into the database within 15 work days of the referral.
- Ensure that data entry is complete and accurate.
- At a minimum all elements on the most recent version of ECOLOGY's PPA Checklist must be checked at each business visit. Specialists must attest that they have verified all elements.
 - Additional sector specific checklists are available on the ECOLOGY PPA Partnership SharePoint Site.
 - CONTRACTOR may substitute use of their own version(s) of the checklist(s) as long as it contains all elements on ECOLOGY's most recent checklist (See PPA Partnership SharePoint for details), and has been reviewed and approved by ECOLOGY staff.
- Refer to the LSC database instructions posted in the database interface, or contact ECOLOGY PPA staff, for assistance with database entry.
- If using paper checklists or equivalent documentation, maintain originals in accordance with your local public disclosure laws.

Section VIII. Training

ECOLOGY expects that the CONTRACTOR will provide basic training to the Pollution Prevention Assistance Specialists on topics relevant to their position. ECOLOGY will provide additional training to ensure that CONTRACTOR's staff are properly trained and supported to conduct PPA activities, and that experienced staff are exposed to new information, and have opportunities to share their expertise for the benefit of the PPA Partnership. The following types of training are provided. Table 6 below contains a tentative training schedule; ECOLOGY will communicate the final schedule to the CONTRACTOR.

New PPA Specialist Mentoring and Training

ECOLOGY staff and experienced PPA Specialists will provide a variety of training support to new PPA staff. ECOLOGY will provide new hires a “welcome email” within the first two weeks of work as a PPA Specialist. This email will provide instructions for accessing the PPA Partnership SharePoint, LSC Database, and guidance on resources and training. All Specialists are expected to create an “alert” for the PPA Partnership SharePoint Discussion Board to receive email alerts at least once per week when topics are posted.

1. New PPA Specialist Training & SharePoint Resources

New PPA specialist training is provided in the form of self-paced online modules available through ECOLOGY's PartnerWeb SharePoint site, and web-based discussion panels. The web-based discussion panels will be planned and conducted by ECOLOGY staff and include new specialists and experienced PPA specialists who can offer suggestions and feedback to new specialists. The discussion panels are scheduled for the second Thursday of every other month from 10:30 to 12:00. On occasion these meetings will need to be rescheduled to accommodate panelists or new specialists who cannot make the originally scheduled date. ECOLOGY staff will provide as much notice as possible when these panels are rescheduled.

Schedule:

Discussion Panel Schedule – July 2021 thru June 2023		
2021	2022	2023
August 12, 2021	February 10, 2022	February 9, 2023
October 14, 2021	April 14, 2022	April 13, 2023
December 9, 2021	June 9, 2022	June 8, 2023
	August 11, 2022	
	October 13, 2022	
	December 8, 2022	
Attendance Requirement: All new specialists who have not yet attended six (6) discussion panels are required to attend. Panelists are required to attend all discussion panels.		

2. Field Mentoring & Training Review

The CONTRACTOR will provide training to their new staff to ensure they can perform the work. In addition, ECOLOGY will assign two experienced PPA Specialists as mentors to provide field training and support to a new hire. If available, one mentor will be from the CONTRACTOR's organization and the other mentor from another PPA contractor (partner) jurisdiction in as close proximity as possible. Mentors will be assigned within two weeks of notifying ECOLOGY of new staff hires.

Field mentoring will involve a series of accompanied field visits designed by the mentor and ECOLOGY staff to support the needs of the new hire. When the mentor and new hire determine they

are ready, an ECOLOGY staff will accompany the new hire on a few technical assistance visits, to ensure that they are providing accurate information on proper waste management, spill prevention, storm water pollution prevention, and toxics reduction opportunities.

All-Staff Trainings for all PPA Specialists

All-Staff Trainings will be planned and conducted by teams of PPA Specialists from two to three PPA contractors (partners). When appropriate these trainings will be held in-person to facilitate interaction and networking between PPA Specialists, ECOLOGY, and invited presenters. Depending on current situations related to the COVID-19 pandemic or other health and safety concerns, All Staff Trainings may be held virtually via an online platform. Training topics are intended to help new staff become more competent in their work, and experienced staff to gain greater technical depth on relevant topics. ECOLOGY staff will determine the teams, provide initial guidance, review agendas, and provide support for planning and logistics.

Schedule: Typically, these trainings are held the second Wednesday in September and March or April. The trainings are usually scheduled between 8:30 a.m. and 3:30 p.m. with overnight travel allowed for jurisdictions if needed (see state travel rules). ECOLOGY must pre-approve overnight travel if it is being charged to the PPA budget. When training is held virtually online, the training will be scheduled across two half-days.

If staff and resources become available, ECOLOGY will add an additional All Staff Training event. An additional training event would likely be held in June.

Attendance Requirement: Unless prior approval has been given by ECOLOGY, it is mandatory for at least one PPA specialist per jurisdiction to attend the All Staff Trainings. This person is responsible for disseminating information back to the PPA specialists from that jurisdiction. Managers are welcome but not required to attend. Generally, training substitutions are not allowed for the All Staff Trainings, however, exceptions may apply. ECOLOGY staff must approve non-emergency absences or training substitutions at least two weeks prior to the training.

Webinar Trainings

ECOLOGY conducts Webinars during most of the months that do not have All Staff Trainings. These sessions are intended to expose PPA Specialists to new information or technical topics relevant to their work. Suggestions on topics and speakers are welcomed from PPA contractors (partners). ECOLOGY will also ask PPA contractors to present on case studies.

Schedule: These are one and a half hour sessions, held on the second Wednesday of the month. Occasionally these sessions will need to be scheduled at alternative times to accommodate speaker availability. Up to eight Webinars will be scheduled each year.

Attendance Requirement: Each PPA Specialist must attend at least six of the eight Webinars each year.

Another type of training that is relevant to PPA Specialists' work may be substituted for up to two of the Webinars. Notification of the substitution must be provided to and pre-approved by ECOLOGY at least two weeks in advance of the Webinar.

Table 6: Tentative Training Schedule (subject to change)

Date	Type	Date	Type
July, 2021	No training	July, 2022	No training
August 11, 2021	Webinar	August 10, 2022	Webinar
September 8-9, 2021	Webinar or All-Staff*	September 14-15, 2022	Webinar or All-Staff*
October 13-14, 2021	Webinar or All-Staff*	October 12-13, 2022	Webinar or All-Staff*
November 10, 2021	Webinar	November 9, 2022	Webinar
December 8, 2021	Webinar	December 14, 2022	Webinar
January 12, 2022	Webinar	January 11, 2023	Webinar
February 9, 2022	Webinar	February 8, 2023	Webinar
March 9-10, 2022	Webinar or All-Staff*	March 8-9, 2023	Webinar or All-Staff*
April 13-14, 2022	Webinar or All-Staff*	April 12-13, 2023	Webinar or All-Staff*
May 11, 2022	Webinar	May 10, 2023	Webinar
June 8, 2022	Webinar	June 14, 2021	Webinar
* When possible an in-person All Staff Training will be held in conjunction with the NW Chapter Annual Conference.			

Section IX. Reporting and Contract Changes

Quarterly Progress Reports

A brief progress report shall be submitted quarterly with each invoice (see schedule in Section X, Table 7). This report should indicate the work completed during the quarter and billed on the invoice, including the type and number of visits conducted, progress on Unique Program Elements, and any other information regarding contract performance that should be brought to ECOLOGY's attention. The Progress report must also include the number of visits where the PRP was presented and discussed. The Progress report should only include the status of the work conducted during the quarter and NOT include a roll-up of progress to-date since it services as backup documentation for the expenses included in the quarterly invoicing, see Section X.

Annual Reports

Annual reports are used to briefly summarize contract status to-date including: number of site visits performed, Unique Program Element activities conducted, Technical Assistance Target activities conducted, lessons learned, and budget status. Annual reports shall be provided to ECOLOGY by July 31, 2022 and July 31, 2023. The report shall include two to three 'case studies' of a business or organization that benefitted from a PPA site visit. Photographs of the business before and after the visit, showing the beneficial changes should be provided, if at all possible. The second year annual report should capture details for the full contract period as ECOLOGY will use these reports to create a biennial report on the Partnership. ECOLOGY will make report templates available on the PPA Partnership SharePoint. ECOLOGY will request, with advanced notice, that PPA CONTRACTORS provide presentations on their case studies at Webinars and All-Staff meetings.

Contract Changes

Any of the following changes shall be reported to the ECOLOGY PPA Partnership Coordinator within 10 business days:

- Key personnel changes (staff or manager leaving, new hires, etc.)

- Initiation of or changes to a subcontract (see Section 18 of the Interagency Agreement for specific information that is required regarding subcontractors)

Section X. Invoicing

Invoice (billing) procedures are outlined in the Interagency Agreement, (see Section 4). In addition, the following information is provided:

- See also Appendix A, Statement of Work, Section V.
- The Invoice Voucher (form A19-1A) must have a wet signature or scanned if submitted electronically. If submitting a scanned copy, the CONTRACTOR will retain original signed A-19-1A in CONTRACTOR's records per record retention requirements.
- Support documents may be submitted via email.
- Each invoice shall only bill for actual hours worked during the quarter which may be higher or lower than the FTE estimate in Section I, Table 1 of Appendix A, *Statement of Work*.
- Quarterly invoicing will follow the schedule in Table 7.

Table 7: Invoicing Schedule

Quarter	Months	Due Date
1	July, August, September 2021	November 10, 2021
2	October, November, December 2021	February 10, 2022
3	January, February, March 2022	May 10, 2022
4	April, May, June 2022	July 31, 2022 (earlier Due Date due to end of fiscal year requirements)
5	July, August, September 2022	November 10, 2022
6	October, November, December 2022	February 10, 2023
7	January, February, March 2023	May 10, 2023
8	April, May, June 2023	July 31, 2023 (earlier Due Date due to end of biennium requirements)

Section XI. Voucher Program

The CONTRACTOR will offer businesses vouchers for the cost of pollution prevention equipment or other recommendations, in accordance with the procedures developed for this voucher program. Payments will be made directly by the CONTRACTOR to the business. Examples of qualifying equipment or costs include but are not limited to secondary containment, drum covers, drum funnels with lids, infrastructure changes, substitution of less toxic products, and catch basin cleaning. The CONTRACTOR must maintain records for each of their voucher reimbursement payments issued and ensure a business is limited to one voucher per calendar year. Each voucher payment will be capped at \$500 or less. These reimbursements will come from the \$5,000 budget category included in this contract and cannot be shifted to or from

other budget categories (see Appendix B). Documentation of voucher payments will be submitted to ECOLOGY with the quarterly invoicing (Section X).

The specific forms, processes, and procedure for this voucher program will be developed in the first six months of this contract by the Product Replacement Program Advisory Committee. The CONTRACTOR will follow the procedures approved by ECOLOGY and housed on the PPA Partnership SharePoint. The target date for beginning to offer this voucher program is January 3, 2022.

Section XII. Resources

The following are resources to materials referenced in this contract. Links to and the resources listed are subject to change.

- PPA Partnership SharePoint:
<https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/SitePages/Home.aspx>
- LSC Database:
<http://ecyaphwtr/lsc/Home.aspx>
- Invoice Voucher A19-1A:
<https://des.wa.gov/sites/default/files/public/documents/HRPayroll/SACS/A-19-1AForm.doc?=5c82f>
- Partnership Report Templates:
<https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/Templates/Forms/AllItems.aspx>
- Checklists & Tip Sheets:
https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/_layouts/15/start.aspx#/Checklist%20%20Tip%20Sheets/Forms/AllItems.aspx
- New Specialist Training modules:
https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/_layouts/15/start.aspx#/New%20Specialist%20Training/Forms/AllItems.aspx
- Travel Per Diem Rates:
<https://www.ofm.wa.gov/sites/default/files/public/resources/travel/colormap.pdf>

APPENDIX B BUDGET DETAIL

See sections #3, *Compensation*, and #4, *Billing and Payment Procedures*, for additional instructions.

Category		Amount
Salaries		\$123,208.00
Benefits		\$89,602.00
Subcontracts		
Goods & Services (see Table A)		\$12,844.00
Equipment (see Table B)		
Travel/Training		\$5,200.00
Voucher Program (Section XI)		\$5,000.00
Subtotal Direct Costs		\$235,854.00
Indirect Costs*	Rate (%)	25%
	Indirect Amount	\$57,714.00
Total Award		\$293,568.00

* Applied to all budget categories except the Voucher Program

Table A.

Goods & Services (items over \$1000 must be listed here or approved by ECOLOGY prior to reimbursement)	Estimated Cost
EnviroStars Fee	\$5,922 per year

Table B.

Equipment (items over \$1000 must be listed here or approved by ECOLOGY prior to reimbursement)	Estimated Cost

APPENDIX C

SPECIAL TERMS AND CONDITIONS

1) Certification Regarding Suspension, Debarment, Ineligibility or Voluntary Exclusion

- a) CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
 - b) CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
 - c) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
 - d) CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
 - e) CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - f) Pursuant to 2CFR180.330, the CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
 - g) CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
 - h) CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier CONTRACTORS or subcontractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.
-



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-509

File ID:	AB2021-509	Version:	1	Status:	Agenda Ready
File Created:	08/27/2021	Entered by:	JThomson@co.whatcom.wa.us		
Department:	Health Department	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

Primary Contact Email: ABeck@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 the development of a housing communications strategy, in the amount of \$19,050

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

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



MEMORANDUM

TO: Whatcom County Council
FROM: Tyler Schroeder, Deputy Executive
Through: Ann Beck, Human Services Supervisor
Jennifer Moon, Program Specialist
RE: City of Bellingham – Reading Communications Cost Sharing
DATE: August 27, 2021

Attached is an interlocal agreement between Whatcom County and City of Bellingham for your review and signature.

- **Background and Purpose**
This contract provides funding for Reading Communications to work in partnership with City of Bellingham, Whatcom County and local community organizations to gather information, develop a communications strategy and create a resource toolkit to be used, as needed to inform and mobilize the community about the challenges and solutions to ending homelessness in Whatcom County.
- **Funding Amount and Source**
This contract provides shared funding between Whatcom County and the City of Bellingham. Whatcom County will use some of the remaining COVID-19 funds available. These funds are included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.
- **Differences from Previous Agreement**
This is a new agreement. Funding to support the Reading Communications agreement will be shared between Whatcom County's residual COVID-19 funding and the City of Bellingham.

Please contact Kathleen Roy at extension #6007 or Tyler Schroeder at X5207 if you have any questions regarding this agreement.

Encl.



WHATCOM COUNTY CONTRACT INFORMATION SHEET				Whatcom County Contract No. _____	
Originating Department:			Health		
Division/Program: <i>(i.e. Dept. Division and Program)</i>			8550 Human Services / 855040 Housing		
Contract or Grant Administrator:			Ann Beck/Jennifer Moon		
Contractor's / Agency Name:			City of Bellingham		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC: _____	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)			
Is this a grant agreement?		If yes, grantor agency contract number(s):		CFDA#:	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):			
Yes <input type="checkbox"/>	No <input type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		Contract Cost Center:		134210	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):			
Is this agreement excluded from E-Verify?		No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:					
<input type="checkbox"/> Professional services agreement for certified/licensed professional.					
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).		
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.		
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.			
\$	19,050				
This Amendment Amount:					
\$					
Total Amended Amount:					
\$					
Summary of Scope: Under this agreement, the Contractor provides shared funding for a homelessness communications strategy and resource tool-kit.					
Term of Contract:		1 Year		Expiration Date: 8/31/2022	
Contract Routing:	1. Prepared by:		TH		Date: 09/20/21
	2. Health Budget Approval:		KR/JG		Date: 08/24/2021
	3. Attorney signoff:		RB		Date: 08/24/2021
	4. AS Finance reviewed:		M Caldwell		Date: 8/27/21
	5. IT reviewed (if IT related):				Date:
	6. Contractor approved:				Date:
	7. Executive Contract Review:				Date:
	8. Council approved (if necessary):				Date:
	9. Executive signed:				Date:
	10. Original to Council:				Date:

**INTERLOCAL AGREEMENT FOR
HOMELESSNESS COMMUNICATION STRATEGY
CITY OF BELLINGHAM - WHATCOM COUNTY**

The **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington (hereinafter the "City"), with offices at 210 Lottie Street, Bellingham, Washington 98225, and **WHATCOM COUNTY**, a political subdivision of the State of Washington, acting through the Whatcom County Health Department, (hereinafter the "County"), located at 509 Girard Street, Bellingham, Washington 98225, in consideration of the mutual covenants herein, do agree as follows:

1. **PURPOSE.** This Agreement sets out the terms of agreement for the City to reimburse the County for half the cost of the contract between the County and Reading Communications (Whatcom County contract #202108037 incorporated herein by reference). Reading Communications has been hired to work in partnership with City of Bellingham, Whatcom County and local community organizations to gather information, develop a communications strategy and create a resource toolkit to be used, as needed to inform and mobilize the community about the challenges and solutions to ending homelessness in Whatcom County.
2. **TERM OF AGREEMENT.** Notwithstanding the date of execution hereof, this Agreement shall be in effect from September 1, 2021 through August 31, 2022.
3. **LIAISON.** The City's Project Manager for this Agreement is Tara Sundin. The County's responsible person is Ann Beck, Human Services Supervisor.
4. **FUNDS PROVIDED AND METHOD OF PAYMENT.** The City agrees to reimburse the County up to \$19,050. Payment shall be based on properly executed quarterly invoices. The County shall submit the invoices, documentation and any necessary reports by the 25th of the month following the period being invoiced, except for January where the same will be due by the 10th of the month. Invoices shall be sent to 210 Lottie Street – Bellingham, WA 98225 or babarr@cob.org. The City will make payment to the County no more than thirty (30) days after said reimbursement request is received and approved by the City.
5. **EXTRA WORK AND CHANGE ORDERS.** Work in addition to or different from that provided for in this contract shall only be allowed by prior authorization in writing, as a modification to this Agreement. Such modifications shall be attached hereto and shall be approved in the same manner as this Agreement.

6. **ACCOUNTING AND AUDIT.** The County agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this Agreement. The financial records shall be made available to representatives of the City or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the City shall designate.
7. **INDEMNIFICATION AND INSURANCE.** The County agrees to defend the City, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability arising out of the acts or work of the County, its employees, subcontractors, or agents (including field work) pursuant to this Agreement, where such liability is incurred as a result of the actions or omissions of such parties. County will obtain and maintain in force adequate insurance and/or self-insurance with coverage limits sufficient to cover potential liability arising within the Scope of Work.

County specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this contract shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts.

8. **COMPLIANCE WITH LAWS.** The County shall comply with all applicable laws, ordinances, and codes of the local, State, and Federal governments. County shall submit any and all information the City requires to demonstrate compliance with such laws, ordinances, and codes within two weeks of City's request for such information. The County covenants that its employees have no interest and will not acquire interest, direct or indirect, or any other interest which would conflict in any manner or degree with the performance of services hereunder. The County further covenants that in the performance of this Agreement, no person having such interest will be employed.
9. **NONDISCRIMINATION IN CLIENT SERVICES.** The County shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, gender identity, or disability, unlawfully deny a qualified individual any facilities, financial aid, services or other benefits provided under this Agreement or otherwise deny or condition services in a manner that violates any applicable laws against discrimination. If assignment or subcontracting has been authorized, said assignment or subcontract shall include appropriate safeguards against discrimination in client services binding upon each contractor or subcontractor. The County shall take such action as may be required to ensure full compliance with the provisions of this clause, including sanctions for noncompliance.

10. TERMINATION; REDUCTION IN FUNDING.

- A. Should either party hereto believe that the other has failed to perform, or is likely to be unable to substantially perform, all or a material part of its obligations under this Agreement, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this Agreement may be terminated upon seven (7) days written notice (delivered by certified mail).
- B. In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to City budgetary constraints or economic downturn resulting in reduced revenues, and prior to its normal completion, the City may summarily terminate the Agreement as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced, or limited is so great that the City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination of this Agreement. Termination under this Section shall be effective upon receipt or written notice thereof.
- C. Termination of this Agreement shall not prevent the City from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

11. ASSIGNMENT. Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party; provided, however, that the City acknowledges that the County contracts with service providers to work in partnership with the Whatcom County, the City and local community organizations to gather information, develop a communications strategy and create a resource toolkit to be used, as needed, to message the challenges and solutions to ending homelessness in Whatcom County.

12. VENUE STIPULATION. This Agreement has been and shall be considered as having been made and delivered within the State of Washington, and shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained therein, shall be instituted and maintained only in Skagit County Superior Court, Washington.

- 13. STATUS OF COUNTY.** Neither County nor personnel employed by the County shall acquire any rights or status in the City's employment, nor shall they be deemed employees or agents of the City for any purpose other than as specified herein. County shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.

EXECUTED, this ____ day of _____, 2021, for the **WHATCOM COUNTY**:

Satpal Sidhu, Whatcom County Executive *Date*

APPROVED AS TO FORM:

Approved by email RB/JT
Royce Buckingham, Prosecuting Attorney

08/24/2021
Date

APPROVED AS TO PROGRAM:

Approved by email AD/JT
Anne Deacon, Human Services Manger

08/20/2021
Date

APPROVAL AS TO DEPARTMENT:

Erika Lautenbach, Director

Date

EXECUTED, this ____ day of _____, 2021, for the **CITY OF BELLINGHAM**.

Seth Fleetwood, Mayor

Attest:

Finance Director

Approved as to Form:

Office of the City Attorney

Departmental Approval:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-489

File ID:	AB2021-489	Version:	1	Status:	Agenda Ready
File Created:	08/05/2021	Entered by:	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Resolution		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Resolution approving the 2022 recommended Convention Center (Lodging Tax) allocations for tourism-related facilities and activities as defined through RCW 67.28.1816 in the amount of \$1,469,575

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution approving the 2022 recommended Convention Center (Lodging Tax) allocations for tourism-related facilities and activities as defined through RCW 67.28.1816 in the amount of \$1,469,575

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed resolution, Funding requests

PROPOSED BY: Executive

RESOLUTION NO. _____

**APPROVING THE 2022 RECOMMENDED CONVENTION CENTER
ALLOCATIONS FOR TOURISM-RELATED FACILITIES AND ACTIVITIES
AS DEFINED THROUGH RCW 67.28.1816**

WHEREAS on August 4, 2021, the Whatcom County Lodging Tax Advisory Committee (LTAC) held a public meeting to consider 2022 funding for use of Convention Center Funds; and

WHEREAS, of the sixteen applications submitted, the LTAC recommends funding for all sixteen eligible applicants in the amount of \$753,800 and further detailed in attachment A; and

WHEREAS, the LTAC further recommends a 15% contingency in the amount of \$150,000 to be used in the event eligible applicants seek funding for tourism programs later in the year; and

WHEREAS, the 2022 funding recommendations totaling \$903,800 were determined based on the ability to promote and serve tourism activities in Whatcom County as defined in RCW 67.28; and

WHEREAS, all funding recipients must submit a report to the County describing the actual number of people traveling for business or pleasure on a trip as well as describing the results of the event of activity sponsored by the Convention Center Fund; and

WHEREAS, in addition to the above referenced funding allocations directed to Chamber operations, events and festivals the LTAC further supports and recommends special project funding in the amount of \$565,775 for the delayed Wayfinding project developed by MERJE Design and facilitated by Bellingham Whatcom Tourism; and

WHEREAS, the 2022 Convention Center Fund revenue is projected at \$779,284 and the 2022 fund balance is projected to be \$1,585,372; and

NOW, THEREFORE, BE IT RESOLVED, that the Whatcom County Council hereby authorizes the County Administration to allocate \$1,469,575 from the Lodging Tax Fund for the purposes of tourism related activities as recommended by the Lodging Tax Advisory Committee and detailed in attachment A.

APPROVED this _____ day of _____, 2021.

ATTEST:

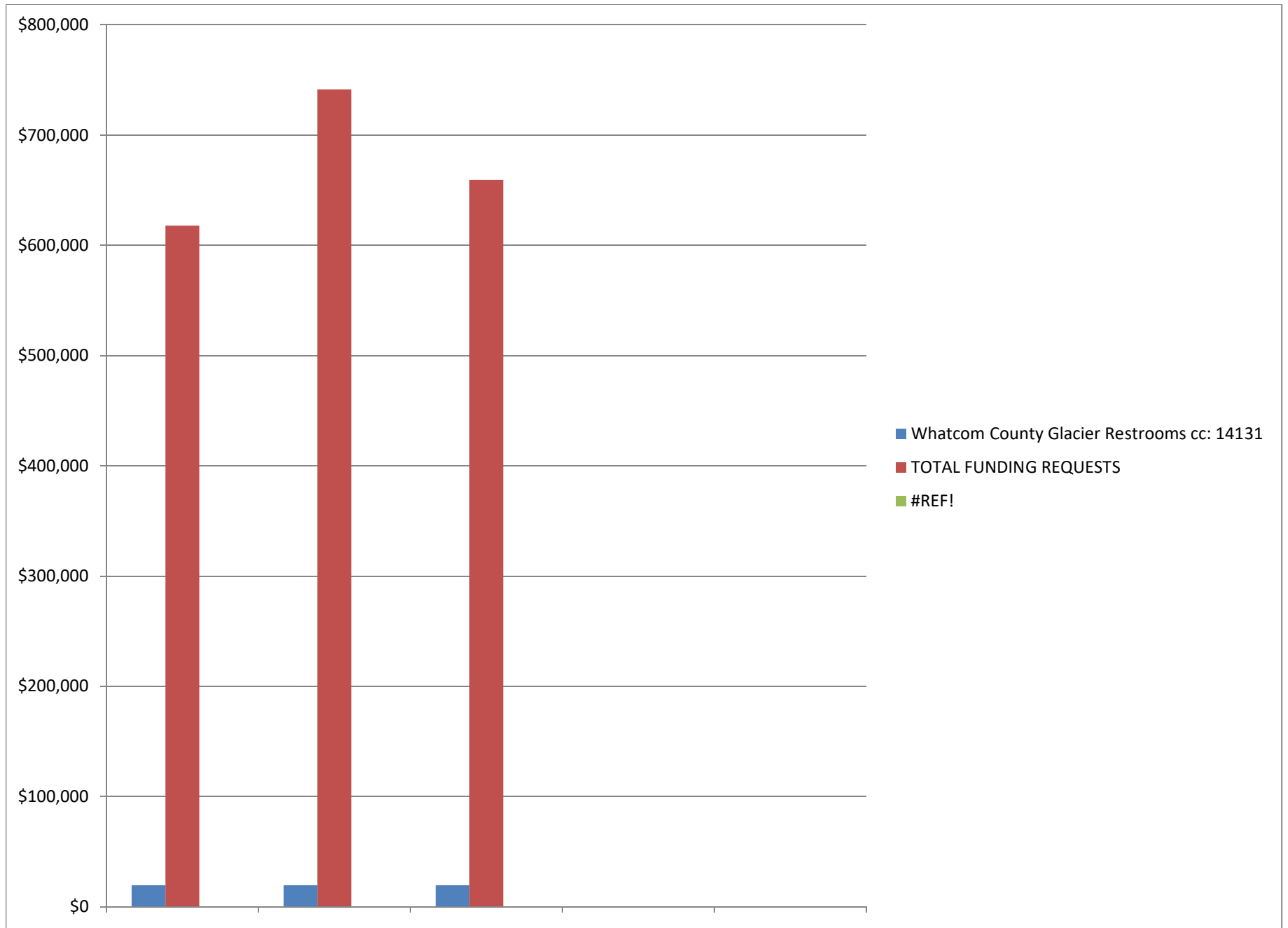
WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED as to form:

Christopher Quinn per 8/5/21 email
Civil Deputy Prosecutor



CONVENTION CENTER - HOTEL/MOTEL TAX FUNDS - 2022

Tab	Requesting Agency	2021 Approved	2022 Requests	Committee Approved	Bellingham Funded	Notes
	Chamber VIC or Tourism Bureau					
	Bellingham Regional Chamber of Commerce	\$25,000	\$25,000	\$25,000		anticipated request
	Bellingham/Whatcom County Tourism	\$290,000	\$290,000	\$290,000	\$200,000	
	Birch Bay Chamber of Commerce - VIC	\$100,000	\$110,000	\$110,000		
	Ferndale Chamber of Commerce	\$12,000	\$12,000	\$12,000		anticipated request
	Mt. Baker Foothills Chamber/Visitor Center	\$100,000	\$110,000	\$110,000		
	Point Roberts Chamber of Commerce	\$0	\$17,500	\$17,500		
	Chambers & Tourism SUBTOTAL	\$527,000	\$564,500	\$564,500		
	Whatcom County Glacier Restrooms cc: 14131	\$19,500	\$19,500	\$19,500		County Glacier Restrooms
	Allied Arts	\$0	\$14,800	\$14,800	\$22,281	
	Bellingham Festival of Music	\$0	\$10,000	\$10,000	\$20,000	
	Cascadia Film Festival	\$0	\$10,000	\$10,000	\$23,500	
	North Cascades Bluegrass Festival	\$0	\$20,000	\$20,000		
	Scottish Dance Society	\$0	\$10,000	\$10,000	\$10,000	
	Seafeast	\$0	\$20,000	\$20,000	\$20,000	
	Sustainable Connections	\$0	\$35,000	\$35,000	\$10,000	
	Sylvia Center	\$0	\$25,000	\$25,000	\$15,000	
	Whatcom Events	\$0	\$25,000	\$25,000	\$30,000	
	Event and Festivals SUBTOTAL	\$19,500	\$189,300	\$189,300		
	TOTAL ANNUAL FUNDING REQUESTS	\$546,500	\$753,800	\$753,800		
	16% Contingency used for mid-year allocations	\$100,000	\$150,000	\$150,000		(1% contingency when including Wayfinding)
	TOTAL ANNUAL FUNDING REQUESTS w/Contingency	\$646,500	\$903,800	\$903,800		
	Special Project Request					
	WC Portion of Multi-jurisdictional Wayfinding Project	\$565,775	\$565,775	\$565,775		Pending project start up
	PROPOSED EXPENDITURE BUDGET	\$1,858,775	\$1,469,575	\$1,469,575		Annual Lodging Tax Funding Allocation



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-506

File ID:	AB2021-506	Version:	1	Status:	Agenda Ready
File Created:	08/24/2021	Entered by:	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee				Final Action:
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract agreement between Whatcom County and West Publishing for online access to proprietary law publications in the amount of \$143,007

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Request authorization for the County Executive to enter into a contract agreement between Whatcom County and West Publishing (Thomson Reuters) for online access to proprietary law publications in the amount of \$143,007

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Routing Form, Staff Memo - Sole Source, Proposed Contract

TO: Satpal Singh Sidhu
FROM: Gayle Isaac, Law Librarian
RE: West subscription contract for Law Library
DATE: July 23, 2021

Enclosed is the renewal contract between Whatcom County Law Library and West Publishing for your review and approval.

Background and Purpose

This is a three-year sole source subscription contract with West for online database subscriptions. Sole Source Approval letter is attached. The contract expires July 31, 2024.

Funding Amount and Source

The funding amount is \$3,856.00 per month or \$46,272 annually with a 3 percent increase cap in Year 2 and Year 3, plus the cost of individual hardcopy volumes which is \$519 per month with a 5 percent increase cap in Year 2 and Year 3. The source of funding is generated by the Law Library's statutory allotment from the number of Civil Court Filings in Superior Court and District Court via the general fund.

Differences from Previous Contract

Due to decreased usage related to Covid-19 it has become evident that the Law Library will be able to reduce the number of online subscriptions from five to four. This is an annual savings of \$6, 827.

Thank you.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

202108043

Originating Department:	Law Library <i>Executive</i>
Division/Program: (i.e. Dept. Division and Program)	Law Library
Contract or Grant Administrator:	Gayle Isaac
Contractor's / Agency Name:	West Publishing
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ 143,007 (total amount over 3 years) This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope:	
This is a sole source subscription with West Publishing for legal research databases	
Term of Contract: Three years	
Expiration Date: 3 years from date of execution	

Contract Routing:	1. Prepared by: <i>Gayle Isaac</i>	Date: <i>7/23/2021</i>
	2. Attorney signoff: <i>C. Quinn per email</i>	Date: <i>8/23/2021</i>
	3. AS Finance reviewed: <i>Bennett</i>	Date: <i>8/23/21</i>
	4. IT reviewed (if IT related):	Date:
	5. Contractor signed: <i>✓</i>	Date: <i>7-16-21</i>
	6. Submitted to Exec.: <i>✓</i>	Date: <i>8-23-21</i>
	7. Council approved (if necessary):	Date:
	8. Executive signed:	Date:
	9. Original to Council:	Date:



Satpal Singh Sidhu
Whatcom County Executive



TO: Brad Bennett, Finance Manager

FROM: Gayle Isaac, Law Librarian

RE: Sole source designation for West subscription

DATE: August 19, 2021

Attached are the WEST subscriber agreements that will require the Executive's approval and your approval as to having sole source standing. This agreement renews and replaces our previous subscriber agreements for both on-line legal research and our print subscription. Both of these subscriber agreements provide access to proprietary legal materials giving the public and our local legal community the tools that facilitate efficient legal research and access to justice.

West is considered the foremost provider of integrated information solutions to the U.S. legal market and has been doing so for more than 145 years. While there are other on-line research tools, West is the only company that can provide the treatises/series that are critical to our legal community. The following is a partial list of the exclusive (proprietary) content we have access to through our current subscriber agreement: Washington Practice Series, West Key Number System, and the Washington Digest. The Washington Practice Series is the most used resource we have in the Law Library and is not available through any other vendors. The same holds true for the Washington Digest and the West Key Number System.

West also allows us to enter into an agreement, in our case it is 36 months, which allows them to prorate the annual cost of these books and bill equal monthly payments. This allows the Law Library to accurately predict our annual costs for the books we maintain rather than have books invoiced and paid for upon receipt which could often lead to budget shortfalls towards the end of the year.

Please provide your written decision below.

SOLE SOURCE DESIGNATION:

APPROVED


DATED:

8/23/21

Thank you.

Approved: _____

Brad Bennett, Finance Manager

 THOMSON REUTERS	Order Form Order ID: Q-01068824 Contact your representative claire.spydell@thomsonreuters.com with any questions. Thank you.
--	--

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 See Attachment for details

Material #	Product	Monthly Charges	Minimum Terms (Months)
40757482	West Proflex	\$3,855.61	36

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Your subscription is effective upon the date we process your order ("Effective Date") and Monthly Charges will be prorated for the number of days remaining in that month, if any. Your subscription will continue for the number of months listed in the Minimum Term column above counting from the first day of the month following the Effective Date. Your Monthly Charges during the first twelve (12) months of the Minimum Term are as set forth above. If your Minimum Term is longer than 12 months, then your Monthly Charges for each year of the Minimum Term are displayed in the Attachment to the Order Form. You are also responsible for all Excluded Charges as defined below.

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At the end of the Minimum Term, your Monthly Charges will increase by 7%. Thereafter, the Monthly Charges will increase 7% every 12 months unless we notify you of a different rate at least 90 days before the annual increase. You are also responsible for all Excluded Charges. Excluded Charges may change after at least 30 days written or online notice. Either of us may cancel the Post Minimum Term subscription by sending at least 60 days written notice. Send your notice of cancellation to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan, MN 55123-1803.

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Thomson Reuters General Terms and Conditions, apply to all products ordered including ebooks, and is located at <https://static.legalsolutions.thomsonreuters.com/static/ThomsonReuters-General-Terms-Conditions.pdf>. In the event that there is a conflict of terms between the General Terms and Conditions and this Order Form, the terms of this Order Form control. This Order Form is subject to our approval.

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Applicable Law. If you are a state or local governmental entity, your state's law will apply and any claim may be brought in the state or federal courts located in your state. If you are a non-governmental entity, this Order Form will be interpreted under Minnesota state law and any claim by one of us may be brought in the state or federal courts in Minnesota. If you are a United States Federal Government Customer, United States federal law will apply and any claim may be brought in any federal court.

Charges, Payments & Taxes. You agree to pay all charges in full within 30 days of the date of invoice. You are responsible for any applicable sales, use, value added tax (VAT), etc. unless you are tax exempt. If you are a non-government customer and fail to pay your invoiced charges, you are responsible for collection costs including attorneys' fees.

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<http://static.legalsolutions.thomsonreuters.com/static/agreement/plan-2-pro-govt-agencies.pdf>

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- West km Software
- West LegalEdcenter
- Westlaw
- Westlaw Doc & Form Builder
- Westlaw Paralegal
- Westlaw Patron Access
- Westlaw Public Records

Additional Order Form Terms and Conditions

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Acknowledgement: Order ID: Q-01068824

Signature of Authorized Representative for order

Whatcom County Superior Court Judge
Member of the Board
Title

Printed Name

EVAN JONES

Date

22 July 2021

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This Order Form will expire and will not be accepted after 5/17/2021.

AUTHORIZED WEST REPRESENTATIVE

Signature: Charles W Holmsten

Printed Name: Chuck Holmsten

Title: Senior SCM Consultant

Date: 7/16/2021

APPROVED FOR WHATCOM COUNTY

Tyler Schroeder
Deputy County Executive

(Date)



THOMSON REUTERS™

Attachment**Order ID: Q-01068824**

Contact your representative claire.spydell@thomsonreuters.com with any questions.
Thank you.

Payment, Shipping, and Contact Information**Payment Method:**

Payment Method: Bill to Account
Account Number: 1003199172

Order Confirmation Contact (#28)

Contact Name: Isaac, Gayle
Email: gisaac@co.whatcom.wa.us

Shipping Information:

Shipping Method: Ground Shipping - U.S. Only

eBilling Contact

Contact Name Gayle Isaac
Email gisaac@co.whatcom.wa.us

ProFlex Multiple Location Details

Account Number	Account Name	Account Address	Action
1003199172	WHATCOM COUNTY LAW LIBRARY	311 GRAND AVE STE B3 BELLINGHAM WA 98225-4038 US	New

ProFlex Product Details

Quantity	Unit	Service Material #	Description
1	Each	40757482	West Proflex
4	Seats	42115623	Pat Acc - Litigation for Patron Access
4	Seats	42567003	Pat Acc - National Analytical for Patron Access (WestlawPRO™)
4	Seats	42115621	Pat Acc - National Core for Patron Access
4	Seats	42115619	Pat Acc - National Reporter Images for Patron Access

Account Contacts

Account Contact First Name	Account Contact Last Name	Account Contact Email Address	Account Contact Customer Type Description
Gayle	Isaac	gisaac@co.whatcom.wa.us	EML PSWD CONTACT
Gayle	Isaac	gisaac@co.whatcom.wa.us	PATRON ACC TECH CONT

IP Address Information

From IP Address	To IP Address	From IP Address	To IP Address	From IP Address	To IP Address
1.1.1.1	1.1.1.1				

Lapsed Products

Sub Material	Active Subscription to be Lapsed
40757481	West Proflex

Charges During Minimum Term

Material #	Product Name	Year 1 Charges	% incr Yr 1-2	Year 2 Charges	% incr Yr 2-3	Year 3 Charges	% incr Yr 3-4	Year 4 Charges	% incr Yr 4-5	Year 5 Charges
40757482	West Proflex	\$3855.61	3.00%	\$3971.28	3.00%	\$4090.42	N/A	N/A	N/A	N/A

Charges During Minimum Term

Pricing is displayed only for the years included in the Minimum Term. Years without pricing in above grid are not included in the Minimum Term. Refer to your Order Form for the Post Minimum Term pricing.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-487

File ID:	AB2021-487	Version:	1	Status:	Agenda Ready
File Created:	08/03/2021	Entered by:	CHalka@co.whatcom.wa.us		
Department:	Council Office	File Type:	Contract		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Memo, Proposed Contract Amendment #2



MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Cathy Halka, Legislative Analyst
RE: Amend contract for Hearing Examiner Services
DATE: August 4, 2021

Enclosed are two (2) originals of a second contract amendment between Whatcom County and Michel Bobbink for your review and signature.

- **Background and Purpose**

Michael Bobbink has been providing hearing examiner services to Whatcom County for over 25 years. Michael Bobbink was the sole responder in 2019 to a Request for Proposals (RFP #19-70) and was selected to provide services to the County. The 2019 contract (#201911034) allows for one year contract renewals for a total of no more than three years. In 2020, Council approved an amendment to the contract (#201911034-1). The second and final amendment (contract #201911034-2) is being proposed for Council consideration.

- **Funding Amount and Source**

The 2022 Council budget includes funding for this contract amendment, including the 5% increase.

- **Differences from Previous Contract**

The contract amendment is similar to previous years with a few changes. The original contract amount for 2020 was \$97,661.65, and the first contract amendment for 2021 included a 5% reduction in annual contract cost to \$92,778.57. This second amendment to the contract includes the original contract amount of \$97,661.65. The timeframe of the contract is extended through December 31, 2022. The General Terms are revised to include recently adopted contract clause changes regarding non-discrimination. The Scope of Work also amends the clause concerning preparation of written recommendations and decisions to clarify that this duty is inclusive of clerical services.

Please contact Cathy Halka at extension 5019, if you have any questions or concerns regarding the terms of this agreement.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.
201911034-2

Originating Department:	Council								
Division/Program: (i.e. Dept. Division and Program)	Council								
Contract or Grant Administrator:	Cathy Halka								
Contractor's / Agency Name:	Michael Bobbink								
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____									
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____									
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)									
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____									
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____									
Is this contract the result of a RFP or Bid process? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): RFP19-70 Contract Cost Center: 1600.6630									
Is this agreement excluded from E-Verify? No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.									
If YES, indicate exclusion(s) below: <table border="0"> <tr> <td><input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.</td> <td><input type="checkbox"/> Goods and services provided due to an emergency</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than \$100,000.</td> <td><input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than 120 days.</td> <td><input type="checkbox"/> Work related subcontract less than \$25,000.</td> </tr> <tr> <td><input type="checkbox"/> Interlocal Agreement (between Governments).</td> <td><input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</td> </tr> </table>		<input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency	<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.	<input type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency								
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).								
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.								
<input type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.								
Contract Amount:(sum of original contract amount and any prior amendments): \$ 190,440.22 This Amendment Amount: \$ 97,661.65 Total Amended Amount: \$ 288,101.87	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. 								
Summary of Scope:									
Contractor will perform hearing examiner duties in accordance with Whatcom County Code, including review and prepare for hearings, preside over hearings, and prepare all written recommendations and decisions.									
Term of Contract: 1 year	Expiration Date: 12/31/2022								

Contract Routing:	1. Prepared by: Cathy Halka	Date: 8/4/2021
	2. Attorney signoff: Karen Frakes (by email)	Date: 8/6/2021
	3. AS Finance reviewed: M Caldwell	Date: 8/13/21
	4. IT reviewed (if IT related):	Date:
	5. Contractor signed: Cathy Halka	Date: 8/16/2021
	6. Submitted to Exec.:	Date:
	7. Council approved (if necessary):	Date:
	8. Executive signed:	Date:
	9. Original to Council:	Date:

Amendment No. 2
 Whatcom County Contract No. 201911034
 CONTRACT BETWEEN WHATCOM COUNTY AND
Michael Bobbink

THIS AMENDMENT is to the Contract between Whatcom County and Michael Bobbink, dated December 4, 2019 and designated "Whatcom County Contract No. 201911034". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment extends the term of this Agreement through December 31, 2022, and increases the maximum consideration by \$ 97,661.65 to a total consideration of \$ 288,101.87.

This Amendment replaces Sections 35.1 and 35.2 of the General Conditions as shown in attached General Conditions (Revisions to 35.1 and 35.2).

This Amendment replaces the Scope of Work, Exhibit A, to clarify the intent of the contract to include clerical services in the preparation of written recommendations and decisions.

Finally, Exhibit B is amended as shown in the attached Exhibit B.

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

This Amendment takes effect: January 1, 2022, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Michael Bobbink have executed this Amendment on the date and year below written.

DATED this 16th day of August, 2021.

CONTRACTOR:

MICHAEL BOBBINK

Michael Bobbink
 MICHAEL BOBBINK

STATE OF WASHINGTON)

COUNTY OF WHATCOM)

ss.

On this 16 day of August, 2021, before me personally appeared Michael Bobbink to me known to be the Hearing Examiner of the _____ and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Jennifer Schneider
 NOTARY PUBLIC in and for the State of Washington,
Jennifer Schneider printed name,
 residing at Everton, WA
 My commission expires 9/19/23

WHATCOM COUNTY:

Recommended for Approval:

 8.11.2021

Department Supervisor Date

Approved as to form:

Karen Frakes (by email) 8/6/2021

Prosecuting Attorney Date

Approved:

Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

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

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

CONTRACTOR INFORMATION:

MICHAEL BOBBINK

528 CLARK ROAD
BELLINGHAM, WA, 98225

Contact Name: Michael Bobbink
Contact Phone: 360-220-1134
Contact FAX: n/a
Contact Email: mbobbink@live.com

GENERAL CONDITIONS (REVISIONS TO 35.1 AND 35.2)

35.1 Non-Discrimination in Employment:

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

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

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

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

EXHIBIT A
(SCOPE OF WORK)

The contractor shall perform the following hearing examiner duties in accordance with Whatcom County Code:

- Review applicable ordinances, statutes, and files in preparation for public hearing
- Preside over the hearing. Set the order of the testimony and ensure that all relevant material is included in the hearing record. Interrogate staff members and witnesses when appropriate.
- Conduct field inspections and examine the property which is in the subject of the hearing, when appropriate.
- Review the facts and the applicable ordinances and statutes to determine whether the standards requisite for issuance of a permit have been met.
- Review administrative determinations appealed to the Hearing Examiner to ensure that the ordinances were correctly applied by the administrator, and that the facts were correctly determined.
- Prepare all written recommendations and decisions of applications for land use permits and administrative appeals within the time frame outlined in the Whatcom County Code, inclusive of any clerical services associated with preparation.
- On rare occasions, the Hearing Examiner will appoint a Hearing Examiner Pro Tem to conduct hearings.

The County reserves the right to negotiate the assignment of major project permit applications outside of this contract

EXHIBIT B
(COMPENSATION)

In consideration of the services performed under the terms of this contract, the contractor shall be paid Eight Thousand One Hundred Thirty-Eight Dollars and Forty-Seven Cents (\$8,138.47) per month for a total not to exceed Ninety-Seven Thousand Six Hundred Sixty-One Dollars and Sixty-Five Cents (\$97,661.65) to the end of the contract date of December 31, 2022.

Billing Procedures: The contractor shall submit written claims on a monthly basis for reimbursement of services provided unless otherwise approved in writing by the County. It is agreed that the contractor shall be paid for his services within 30 days of receipt of the monthly claim and upon determination of accuracy. Monthly claims are to be submitted to the Clerk of the Council.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-502

File ID:	AB2021-502	Version:	1	Status:	Agenda Ready
File Created:	08/20/2021	Entered by:	SWinger@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Resolution		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Resolution in the matter of the sale of surplus personal property and setting a date for public hearing, pursuant to WCC 1.10

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The County Purchasing Agent is required by Whatcom County Code 1.10.180 to submit a list (see Exhibit 'A') of surplus personal property to the Council for authority to dispose of said personal property

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
-------	--------------	---------	----------

Attachments: Proposed Resolution, Exhibit A

PROPOSED BY: Finance

DATE INTRODUCED: 09/14/2021

RESOLUTION NO. _____

A RESOLUTION IN THE MATTER OF THE SALE OF SURPLUS PROPERTY

AND THE SETTING OF A DATE FOR PUBLIC HEARING THEREON PURSUANT TO WCC 1.10

WHEREAS, the following described property listed in Exhibit "A", hereby incorporated by reference, is now and has been the property of Whatcom County; and

WHEREAS, the County Purchasing Agent has determined that it is in the best interest of the County to sell such property;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that a public hearing on the matter of the sale of such property be held on _____, 2021 or as soon thereafter as is possible, in the Whatcom County Council Chambers at 311 Grand Avenue, Bellingham, Washington, for the purpose of admitting testimony for and against the propriety of selling such equipment; and

BE IT FURTHER RESOLVED that the Clerk of the County Council is directed to give notice of such hearing in the manner prescribed by law.

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 Prosecuting Attorney

Exhibit "A"
CAPITAL EQUIPMENT SURPLUS REQUEST
September 2021

PUBLIC WORKS – EQUIPMENT SERVICES							
UNIT	YEAR	MAKE	MODEL	DEPT	VIN #	EST MILES/HRS	COMMENTS
063	2007	Chevy	Colorado Crew Cab 4x4 Truck	HLTH	1GCDT13E978223476	129,776	Already Replaced
075	2005	Toyota	Prius Hybrid Sedan	HLTH	JTDKB22U653101886	100,685	Already Replaced
096	2005	Toyota	Prius Hybrid Sedan	HLTH	JTDKB22U053102371	106,392	Already Replaced
188	2001	Ford	F350 XL 4x4 Truck	ER&R	1FDWF37S41EB19574	121,949	Already Replaced
BC 12002	2001	Makita	G410R Generator w/ #188	ER&R	1000524	N/A	Already Replaced
203	1993	GMC	C3500 Truck	M&O	1GDJC34K8PE502613	115,520	Already Replaced
213	1988	International	5YD Single Axle Dump Truck	M&O	1HTLDTV9KH625883	56,465	Already Replaced
224	1987	Dodge	D 350 Truck	ER&R	1B6MD3453HS494677	100,200	Already Replaced
229	2005	Kenworth	T800B Six Wheel Dump Truck	M&O	1NKDXBEXX5R091326	240,122	Already Replaced
314	1991	CAT	140G Grader	M&O	72V13873	11,094	Already Replaced
315	2000	Brentwood	Pup Trailer	M&O	2B9KSBK8YS304420	N/A	Already Replaced
316	2000	Brentwood	Pup Trailer	M&O	2B9KSBK9YS304426	N/A	Already Replaced
329	2012	John Deere	6430 Tractor	M&O	1L06430PTBP704136	8,246	Already Replaced
338	2012	John Deere	6430 Tractor	M&O	1L06430PVPB705617	17,699	Already Replaced
341	2010	Broce	RJT350 Broom	M&O	406973	1,162	Already Replaced
342	2010	Broce	RJT350 Broom	M&O	406974	4,231	Already Replaced
360	1984	John Deere	850 Dozer	M&O	J713373	1,236	Already Replaced
445	2001	Zieman	Tilt Top Trailer	M&O	1ZCT32A271ZP23573	N/A	Already Replaced
456	1990	Swenson	Sander w/ #213	M&O	54038	N/A	Already Replaced
457	1991	Swenson	Sander w/ #229	M&O	N/A	N/A	Already Replaced
476	2009	Snow-Boss	Plow 8'6"	M&O	115957	N/A	Already Replaced
477	2003	Pump	Pump TP-150 6"	M&O	TP-150/3/02	N/A	Already Replaced
496	1981	Anti-Ice	1500 gallon Tank	M&O	B-427602	N/A	Already Replaced
529	2012	US Mower	Rotary Mid Mount Mower	M&O	102074	N/A	Already Replaced
538	2012	US Mower	Rotary Mid Mount Mower	M&O	102062	N/A	Already Replaced
579	1994	Snow Plow	Snow plow w/ #229	M&O	N/A	N/A	Already Replaced
596	1980	Snow Plow	12' snow plow	M&O	11-143-9	N/A	Already Replaced
869	2008	Ford	F250 4x4 EX Cab Truck	PARKS	1FTSX21Y18EA18736	145,301	Already Replaced

DESCRIPTION	
Miscellaneous buckets for equipment the county no longer owns	Miscellaneous broken and unusable tools, parts, and supplies
Obsolete plow mounts	Used & unsalvageable bridge decks
Miscellaneous obsolete vehicle parts	Miscellaneous obsolete inventory items (culvert, timbers, etc.)
Wash rack misc./obsolete parts (incl. pressure washer parts)	Miscellaneous obsolete hydraulic cylinders

GENERAL FUND – SURPLUS EQUIPMENT						
UNIT	YEAR	MAKE	MODEL/DESCRIPTION	DEPT	PROPERTY TAG #	COMMENTS

DESCRIPTION
Miscellaneous worn, obsolete, or broken office equipment, computer components, and furniture



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-518

File ID:	AB2021-518	Version:	1	Status:	Agenda Ready
File Created:	09/01/2021	Entered by:	MKeeley@co.whatcom.wa.us		
Department:	Human Resources Division	File Type:	Resolution		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Resolution to amend Resolution 2020-046 for unrepresented Whatcom County employees

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Please refer to Executive memo for background and more information

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff Memo, Proposed Resolution



TO: County Council Members
FROM: Satpal Sidhu, County Executive
DATE: September 1, 2021
SUBJECT: Amendment #2 to Unrepresented Resolution 2020-046

For your consideration, I recommend the following one-time Amendment #2 to the 2020-046 Unrepresented Resolution:

- Increase in carryover cap of vacation/PTO by 40 hours (240→280) (330 →370)
- Modification of cash out provision (50% of up to 80 hours → 100% of up to 40 hours)

While some temporary improvement was made, Unrepresented employees continue to struggle with unprecedented workload demands due to the COVID-19 pandemic and are unable to take the time off necessary to avoid losing large amounts of vacation/PTO at the end of the year. You adopted similar amendments previously on July 7, 2020 with the implementation of unpaid furlough and again on September 29, 2020.

While this change will not prevent all employees from losing time, it will provide a meaningful mechanism to help balance workload with time off and also creates parity with our other groups who can request a cash out of 100% of up to 40 hours each year.

If you have any questions, please contact Melissa Keeley at extension 5309.

PROPOSED BY: Executive

INTRODUCTION DATE: September 14, 2021

RESOLUTION NO. 2021 – _____

AN AMENDMENT TO RESOLUTION NO. 2020-046

**A RESOLUTION IN THE MATTER OF ADOPTING A SALARY SCHEDULE AND
POLICIES FOR UNREPRESENTED WHATCOM COUNTY EMPLOYEES
EFFECTIVE JANUARY 1, 2021 through DECEMBER 31, 2021**

WHEREAS, a Resolution in the Matter of Adopting a Salary Schedule and Policies for Unrepresented Whatcom County Employees for the year 2020 was adopted November 10, 2020; and

WHEREAS, the workload demands related to the COVID-19 pandemic and reopening plans have continued to disproportionately impact County leaders' ability to take time off work; and

WHEREAS, allowing additional end of year carry-over on a one-time basis will prevent some of the loss of earned accruals; and

WHEREAS, modifying the end of year cash out on a one-time basis will create parity among County employees;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that Resolution 2020-046 is hereby amended as follows:

6.2 Vacation (Groups C through H).

... unused vacation in excess of two hundred and eighty (280) at the end of the business day on December 31 shall be forfeited.

Employees with vacation anticipated to be above the 280 hours carryover maximum can cash out up to forty (40) hours at 100% at the end of 2021. Requests for cash out must be submitted no later than November 30.

6.4.5 Paid Time Off Bank Carryover/Cash Out (Groups A and B).

No more than three hundred and seventy (370) PTO hours at the end of the business day on December 31 can be carried over to the following calendar year; any additional hours are forfeited.

Employees with PTO anticipated to be above the 370 hours carry over maximum can cash out up to forty (40) hours at 100% at the end of 2021. Requests for cash out must be submitted no later than November 30.

AND FURTHER, THEREFORE, BE IT RESOLVED, that Resolution No. 2020-046 is hereby amended as described herein effective September 14, 2021.

APPROVED this 14th day of September, 2021.

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

ATTEST:

Barry Buchanan, Council Chair

Dana Brown-Davis, Council Clerk

APPROVED as to form:



Civil Deputy Prosecuting Attorney



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-453

File ID:	AB2021-453	Version:	1	Status:	Agenda Ready
File Created:	07/23/2021	Entered by:	MAamot@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Discussion		
Assigned to:	Council Planning and Development Committee	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion of proposed Zoning amendments relating to density credits in the UR4 zone in the Birch Bay UGA, density credits for accessory dwelling units, and modifying the minimum lot size, width, depth and other requirements in the Urban Residential zone

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed amendments to Whatcom County Title 20 (Zoning) to modify the Density Credits Chapter, modify the Urban Residential 4 dwellings/acre (UR4) zone in the Birch Bay UGA to allow increased density if density credits are purchased, modify the minimum lot size, width, depth and other requirements in the Urban Residential zone, and modify the accessory dwelling unit regulations to allow larger unit size if density credits are purchased.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Draft Ordinance with Exhibits, Planning Commission Findings

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius
Director

Memorandum

July 23, 2021

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

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Density Credit / Lot Size Zoning Code Amendments (PLN2019-00005)

The Whatcom County Council adopted Comprehensive Plan Policy 2A-14 in 2016. This policy included convening a multi-stakeholder work group to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.

The former County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group [Final Report](#)* was issued on October 3, 2018. This report included a number of recommendations, including expanding the density credit program to the Urban Residential 4 dwellings/acre (UR4) zone in Birch Bay Urban Growth Area and accessory dwelling units.

Density credits allow development incentives, such as increased density or more floor area, in exchange for a voluntary contribution towards preserving resource lands and open space. This is accomplished through a voluntary payment of funds to Whatcom County for use in the Whatcom County Conservation Easement Program, formerly known as the Purchase of Development Rights Program, in order to access incentives specifically set forth in the zoning code.

The subject amendments would implement the Work Group's density credit recommendations. They would also modify the minimum lot size, width, depth and other requirements in the Urban Residential zone to provide greater flexibility for development.

Thank you for your review and consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
WHATCOM COUNTY ZONING CODE
RELATING TO DENSITY CREDITS AND LOT SIZES**

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations;

WHEREAS, The County Council held a public hearing; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The subject proposal consists of the following amendments to the Official Whatcom County Zoning Ordinance (Title 20):
 - a. Amending the Density Credits Chapter;
 - b. Amending the Urban Residential 4 dwellings/acre (UR4) zone in the Birch Bay UGA to allow increased density if density credits are purchased;
 - c. Amending the minimum lot size, width, depth and other requirements in the Urban Residential zone; and
 - d. Amending the accessory dwelling unit regulations to allow larger unit size if density credits are purchased.
2. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 28, 2021.
3. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 25, 2021.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 25, 2021.

5. Notice of the Planning Commission hearing was sent to the County's e-mail list on June 25, 2021.
6. The Planning Commission held a public hearing on the subject amendments on July 8, 2021.
7. In order to approve an amendment to the development regulations, the County must find that the amendment is consistent with the comprehensive plan (WCC 22.10.060(2)).
8. The Whatcom County Council adopted Policy 2A-14 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.
9. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017.
10. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* was issued on October 3, 2018. This report included a number of recommendations, including expanding the density credit program to the UR4 zone in Birch Bay Urban Growth Area and accessory dwelling units.

Urban Growth

11. The Growth Management Act states "Each county . . . shall 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)).
12. The Growth Management Act 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 is in the process of being amended to include density credit language.
13. Density credits allow development incentives, such as increased density or more floor area, in exchange for a voluntary contribution towards preserving resource lands and open space. This is accomplished through a voluntary payment of funds to the County for use in the Whatcom County Conservation Easement Program (WCC 3.25A), which was formerly known as the Purchase of Development Rights Program, in order to access incentives specifically set forth in the zoning code.
14. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) indicated:

. . . 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 . . . zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program. . . (p. 33).

15. The subject amendments include density bonus provisions in the UR4 zone within the Birch Bay urban growth area (UGA) if density credits are purchased.
16. The subject amendments also modify the minimum lot size, width, depth and other requirements in the Urban Residential zone
17. 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.
18. The State Department of Commerce *Housing Memorandum: Issues Affecting Housing Availability and Affordability* (June 2019) identifies "Reasonable Measures as Tools for Increasing Housing Availability and Affordability" including:

Allow or require small lots (5,000 square feet or less) for single-family neighborhoods within UGAs. Small lots limit sprawl, contribute to the more efficient use of land, and promote densities that can support transit. Small lots also provide expanded housing ownership opportunities to broader income ranges and provide additional variety to available housing types (p. 116).
19. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by concentrating urban levels of growth in UGAs, allowing increased density, allowing smaller lots, and providing creative options for developers in a UGA.

Accessory Dwelling Units (ADU)

20. Accessory dwelling units are allowed in a number of zoning districts, both within UGAs and outside UGAs.

21. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) recommended accessory dwelling unit incentives if density credits are acquired. Specifically, the Final Report stated:

. . . Accessory dwelling units are currently limited to 1,248 square feet. . . 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. . . (p. 34).

22. 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. . .

23. 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 the Whatcom County Conservation Easement Program (WCC 3.25A). The purpose of this program is:

To establish a voluntary agricultural, forestry, and ecological conservation easement program for Whatcom County which will enhance the protection of the county's farmland, forestland, and important ecosystem areas, enhance the long-term viability of the agricultural and forestry enterprises within the county and provide public benefit by retaining properties in permanent resource use, in addition to the protection of ecosystem functions and values (WCC 3.25A.020).

24. The rural zones already allow accessory dwelling units and the subject amendments allow increased size of these units. However, the subject amendments compensate for this increased size by requiring a contribution to the Whatcom County Conservation Easement Program.
25. 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 Whatcom County Conservation Easement Program, thereby preserving rural character and agricultural lands.

Incentives

26. Whatcom County Comprehensive Plan policies relating to incentives include:

Policy 2F-3: Revise regulations to include incentive programs.

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 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, cluster development, and acquisition of easements.

Policy 2UU-5: Augment land use regulations by engaging in a proactive program of public investment, landowner incentives, and other actions aimed at preserving open space.

27. The subject amendments provide density bonus provisions, which are entirely optional. A land owner may choose to develop property as currently allowed by the zoning code. Alternatively, a land owner may choose to utilize the density bonus provisions by purchasing density credits.
28. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a voluntary incentive that would allow increased density in the Birch Bay UGA and flexibility in the accessory dwelling unit provisions while contributing to preservation of rural and agricultural lands.

CONCLUSION

The subject zoning 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 Density Credits Chapter (WCC 20.91) are hereby adopted as shown on Exhibit A.

Section 2. Amendments to the Urban Residential District Chapter (WCC 20.20) are hereby adopted as shown on Exhibit B.

Section 3. Amendments to the accessory dwelling unit regulations (WCC 20) are hereby adopted as shown on Exhibit C.

Section 4. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2021.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chairperson

APPROVED as to form:

() Approved () Denied

/s/ Royce Buckingham

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Exhibit A

Whatcom County Zoning Code Amendments

Density Credits Chapter

Amend the Density Credits Chapter (WCC 20.91) as follows:

Chapter 20.91

DENSITY CREDITS

Sections:

20.91.010 Purpose.

20.91.020 Developer incentives.

20.91.030 Density credit price and timing.

20.91.010 Purpose.

The overall purposes of this chapter are to incentivize increased land use intensity in urban growth areas, allow greater flexibility for accessory dwelling units, and decrease residential density in agricultural, forestry, and rural areas by authorizing density credits. Density credits allow increased density or flexibility in zoning regulations 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~~ Whatcom County Conservation Easement Program (Chapter 3.25A WCC) in order to allow a higher density or greater flexibility as specifically set forth in the Whatcom County Zoning Code. (Ord. 2017-062 § 3 Exh. C).

Rationale: The subject proposal would, among other things, allow an increase in size of the accessory dwellings if density credits are purchased. This should be acknowledged in the Density Credits chapter purpose statement.

Additionally, WCC 3.25A has been expanded to include forestry and ecologically valuable lands and renamed as the “Whatcom County Conservation Easement Program” (Ordinances 2018-065 and 2021-037).

20.91.020 Developer incentives.

Density credits may be used to gain the following benefits:

- (1) Resort Commercial Zone in the Birch Bay Urban Growth Area. Each density credit purchased allows one additional single-family residential dwelling in the Resort Commercial zone up to the limit on total dwelling units set by WCC 20.85.108.
- (2) Urban Residential Zone in the Birch Bay Urban Growth Area. Each density credit purchased allows one additional dwelling in the UR4 zone up to the maximum gross density limit on total dwelling units set by WCC 20.20.252.
- (3) Accessory Dwelling Units. Each density credit purchased allows increased accessory dwelling unit size as set forth in the accessory dwelling unit regulations of the applicable zoning district. (Ord. 2017-062 § 3 Exh. C).

Rationale: The subject proposal would allow an increase in density in the Urban Residential zone in the Birch Bay UGA and an increase in size of accessory dwellings, if density credits are purchased.

20.91.030 Density credit price and timing.

The price per density credit is set by the county council in the Unified Fee Schedule.

- (1) Planned Unit Developments. If a developer using density credits is granted initial PUD approval pursuant to WCC 22.05.120, the required number of density credits shall be purchased from Whatcom County prior to final PUD approval under WCC 20.85.365.
- (2) Subdivisions. If a developer using density credits is granted preliminary long subdivision approval pursuant to WCC 21.05, the required number of density credits shall be purchased from Whatcom County prior to final long subdivision approval under WCC 21.06.
- (3) Short Subdivisions. If a developer using density credits is granted preliminary short subdivision approval pursuant to WCC 21.04.034, the required number of density credits shall be purchased from Whatcom County prior to final short subdivision approval under WCC 21.04.035.
- (4) Accessory Dwelling Units. The required density credits for increasing the size of an accessory dwelling unit shall be purchased from Whatcom County prior to issuance of the building permit. (Ord. 2017-062 § 3 Exh. C).

Rationale: The existing density credit rules allow an increase in density from 7 to 14 units per acre in the Resort Commercial Zone in the Birch Bay UGA through the planned unit development (PUD) process, which allows flexibility in zoning standards. The subject proposal would allow an increase in density in the Urban Residential zone in the Birch Bay UGA from 4 to 5 units/acre through the standard land division process without the need for a PUD. The fee would be paid at the final plat stage, which actually creates the lots. Accessory dwelling units require an administrative approval use permit, but the density credit fee could be paid at the building permit stage.

Exhibit B

Whatcom County Zoning Code Amendments

Urban Residential (UR) District

Amend the Urban Residential District text (WCC 20.20) as follows:

20.20.050 Permitted Uses

.052 Single-family attached dwellings; provided, that public sewer, water and, ~~where identified by the appropriate subarea Comprehensive Plan policies,~~ stormwater ~~management~~ collection and detention facilities serve the site, not more than four units are attached, and the number of dwelling units conforms to the density requirements of the district.

20.20.251 Minimum lot size.

For the purpose of creating new building lots within the Urban Residential District, several land use densities are herein provided. The minimum lot size requirements for new construction vary according to the method of subdivision, as well as whether or not public sewer, water, and, where required by regulation, stormwater ~~management~~ collection and detention facilities serve the project site. Where the lot cluster land division method is used, the minimum lot size is based on consideration of the zoning district's setback requirements and the Whatcom County health code regulations for sewage systems and drinking water, but shall not be less than that shown below. Where a maximum lot size is imposed, clustered lots shall be as small as allowed by the health department. (Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2007-048 § 2 Exh. B, 2007).

20.20.252 Maximum density, minimum lot size and maximum lot size.

District	Maximum Gross Density	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
UR: all densities without public sewer and water**	Maximum gross density: 1 dwelling unit/10 acres	N/A*	8,000 sq. ft.	22,000 sq. ft.	80%
UR: in Lake Whatcom Watershed with public sewer and water, and stormwater <u>management</u> collection and detention facilities	Maximum density: 1 dwelling unit/5 acres	5 acres	N/A	N/A	N/A
UR: all densities with public sewer or water**	Maximum gross density: 1 dwelling unit/10 acres	N/A*	8,000 sq. ft.	22,000 sq. ft.	80%
UR-3: with public sewer and water, and stormwater <u>management</u> collection and detention facilities	Maximum gross density: 3 dwelling units/1 acre	12,000 sq. ft.	8,000 sq. ft.	N/A	25%
UR-4: with public sewer and water, and stormwater <u>management</u> collection and detention facilities	Maximum gross density: 4 dwelling units/1 acre Minimum net density: 4 dwelling units/1 acre**	<u>5,000 sq. ft.</u> 8,000 sq. ft.	<u>4,000 sq. ft.</u> 6,000 sq. ft.	N/A	20%
<u>UR4: in the Birch Bay Urban Growth Area with public sewer and water, and stormwater management facilities, when density credits are purchased pursuant to WCC 20.91.020(2)</u>	<u>Maximum gross density: 5 dwelling units/1 acre</u> <u>Minimum net density: 5 dwelling units/1 acre**</u>	<u>4,500 sq. ft.</u>	<u>3,500 sq. ft.</u>	<u>N/A</u>	<u>20%</u>

District	Maximum Gross Density	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
UR-6: with public sewer and water, and stormwater management-collection-and-detention facilities	Maximum gross density: 6 dwelling units/1 acre Minimum net density: 6 dwelling units/1 acre**	<u>4,000 sq. ft.</u> 5,500 sq. ft.	<u>3,000 sq. ft.</u> 4,000 sq. ft.	N/A	20%

* For the purpose of administering the lot consolidation provisions of WCC [20.83.070](#), the conventional minimum lot size shall be 10 acres.

** Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical area regulations and infrastructure requirements. (Ord. 2016-011 § 1 (Exh. Q), 2016; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2009-071 § 2 (Exh. B), 2009; Ord. 2009-024 § 1 (Exh. A), 2009; Ord. 2008-036 Exh. A, 2008; Ord. 2007-050 § 1 Exh. A, 2007; Ord. 2007-048 § 2 Exh. B, 2007).

Rationale:

- UR: all densities without public sewer and water – Delete double asterisk because there are no minimum densities for development in this zone when public water and sewer are not available.
- “Stormwater management” facilities – is more current terminology (e.g. the Zoning Code references the “*Washington State Department of Ecology Stormwater Management Manual for Western Washington*”).
- UR: all densities with public sewer or water – Having only public sewer or water is the same as being without public sewer and water, which is already addressed in the table. Therefore, this text is redundant and should be deleted.
- UR4 Zone – The State Department of Commerce’s *Housing Memorandum: Issues Affecting Housing Availability and Affordability* (June 2019) identified the following as one of the Reasonable Measures as Tools for Increasing Housing Availability and Affordability: “Allow or require small lots (5,000 square feet or less) for single-family neighborhoods within UGAs. Small lots limit sprawl, contribute to the more efficient use of land, and promote densities that can support transit. Small lots also provide expanded housing ownership opportunities to broader income ranges and provide additional variety to available housing types” (p. 116). The proposed amendment would reduce the minimum lot size in the UR4 zone, when density credits are not used, to 5,000 square feet (4,000 square feet if clustered).
- UR4 in the Birch Bay UGA – Allow 5 dwellings/acre in UR4 zones in the Birch Bay Urban Growth Area, if density credits are purchased. Establish minimum lot size and minimum reserve area for this new density category in the Urban Residential Zone.
- UR-6 zone – The UR-6 zone only exists in the Bellingham UGA. Bellingham typically does not extend public water and sewer, so the density is one dwelling/10 acres. However, if the city ever made an exception and extended water and sewer, it would be reasonable to allow smaller lots size in order to densify the UGA (e.g. if a developer had difficulty achieving full buildout on a site because of wetlands).

~~20.20.253 Minimum lot size outside an urban growth area.~~

~~Reserved by Ord. 2011-013. (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 2005-041 § 1 Exh. A, 2005; Ord. 98-083 Exh. A § 11, 1998; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 82-58, 1982. Formerly 20.20.251).~~

~~20.20.254 Maximum density and minimum lot size outside an urban growth area.~~

~~Reserved by Ord. 2011-013. (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 2005-041 § 1 Exh. A, 2005; Ord. 98-083 Exh. A § 12, 1998; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 84-38, 1984; Ord. 82-58, 1982. Formerly 20.20.252).~~

Rationale:

The above code language was deleted in 2011 (Ordinance 2011-013). Keeping historical references, which no longer apply, clutters up the code. A person can look at old ordinance in order to obtain historical information.

20.20.255 Minimum lot width and depth.

District	Width at Street Line		Width at Bldg. Line	Minimum Mean Depth
	Conventional	Cluster		
UR: all districts without public sewer and water	300'	70'*	80'	100'
UR: with public sewer and water, and stormwater <u>management</u> collection and detention facilities:				
3 units per acre	30'	30'	70'	80'
4 units per acre	30'	30'	60'	70'
<u>5 units per acre (with purchase of density credits)</u>	<u>25'</u>	<u>25'</u>	<u>40'</u>	<u>60'</u>
<u>6 units per acre</u>	<u>25'</u>	<u>25'</u>	<u>40'</u>	<u>50'</u>
*30' on a cul-de-sac only				

(Ord. 2016-011 § 1 (Exh. Q), 2016; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2007-048 § 2 Exh. B, 2007; Ord. 98-083 Exh. A § 13, 1998; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 84-38, 1984; Ord. 82-58, 1982. Formerly 20.20.253).

Rationale:

- 5 units per acre – Establish width at street line, width at building line, and minimum mean depth for this new density classification (that may be used if density credits are obtained).
- 6 units per acre – Establish width at street line, width at building line, and minimum mean depth for this existing density classification. It appears that it may have been an oversight to leave these requirements out of the code.

20.20.305 Lot clustering.

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost, increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, open space or possible future development.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

(3) Lot clustering is required for residential land divisions when:

~~(a) The property is located within a short-term planning area and~~ public water and sewer are not available; ~~or~~

~~(b) The property is located within a long-term planning area.~~ (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 2005-041 § 1 Exh. A, 2005; Ord. 90-45, 1990).

Rationale:

Short term and long term planning areas were zoning designations used in the past to distinguish between parts of the UGA that could be developed at urban densities and/or annexed in the immediate future and other parts of the UGA where urban development was anticipated later in the planning period. However, short term and long term planning area designations were deleted in 2016 UGA (see Ordinances 2016-034 and 2016-035).

Requiring clustering in a UGA developed at a density of one dwelling/ten acres (because it does not yet have public water and sewer) would allow the reserve tract to be developed more efficiently at urban densities later on when public water and sewer become available.

20.20.310 Design standards.

The creation of new building lots, pursuant to this section, shall be governed by the following design standards:

- (1) Clustered building lots may be created only through the subdivision or short subdivision process.
- (2) Building lots should be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.
- (3) ~~Within short-term planning areas w~~Where public water and sewer are not available ~~and within long-term planning areas~~, all clustered building lots shall be grouped together in a single cluster. In all other cases, where practical, the majority of building sites should be arranged in a cluster or concentrated pattern to be compatible with physical site features, allow for the efficient conversion of the reserve tract to other uses in the future, and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.
- (4) Common access to clustered building lots should be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the reserve tract for the purpose of future approved development. (Ord. 2007-048 § 2 Exh. B, 2007; Ord. 90-45, 1990; Ord. 87-12, 1987; Ord. 87-11, 1987).

Exhibit C

Whatcom County Zoning Code Amendments

Urban Residential (UR) District

Amend the UR District (WCC 20.20) as follows:

20.20.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed ~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;

Rationale: *The Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) states:

...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).

... 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. . . (p. 34)

The County Council considered the recommendations of the Work Group and docketed this amendment for further review (Resolutions 2019-015 and 2021-007).

(7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:

- (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
- (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
- (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

~~(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres;~~

Rationale: There are no Urban Residential zones located outside of urban growth areas anymore.
--

~~(1011)~~ Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

~~(1112)~~ Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter 20.80 WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

~~(1213)~~ All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Urban Residential Medium Density (URM) District

Amend the URM District (WCC 20.22) as follows:

20.22.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~The maximum size of an accessory apartment or detached dwelling unit shall not exceed~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

~~(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres;~~

Rationale for Change: There are no Urban Residential Medium density zones located outside of UGAs.

~~(11) Accessory apartments and detached accessory dwelling units to single family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:~~

~~(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and~~

~~(b) All of the above approval requirements shall be met for so long as the accessory unit remains;~~

Rationale for Change: There are no Urban Residential Medium density zones located in the Lake Whatcom Watershed.

~~(1012)~~ Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

~~(1113)~~ All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Urban Residential Mixed (UR-MX) District

Amend the UR-MX District (WCC 20.24) as follows:

20.24.130 Administrative approval uses.

.133 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(11) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(12) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Residential Rural (RR) District

Amend the RR District (WCC 20.32) as follows:

20.32.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following approval requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

(11) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Rural Residential-Island (RR-I) District

Amend the RR-I District (WCC 20.34) as follows:

20.34.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) ~~Outside of an urban growth area, the~~ minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

Rationale for Change: There are no urban growth areas on Lummi Island.
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(11) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed on Lummi Island, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Rural (R) District

Amend the R District (WCC 20.36) as follows:

20.36.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

(11) Accessory apartments and detached accessory dwelling units to single-family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:

(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and

(b) All of the above approval requirements shall be met for so long as the accessory unit remains;

(12) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

(13) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Point Roberts Transitional (TZ) District

Amend the TZ District (WCC 20.37) as follows:

20.37.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case~~ The maximum size of shall an accessory apartment or detached dwelling unit shall not exceed be larger than 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

- (8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;
- (9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:
- (a) Detached accessory dwelling units and associated land cannot be financed or sold separately from the original dwelling, except in the event the zoning permits such a land division; and
 - (b) One of the dwellings must be the primary domicile of the owner;
- (10) The minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;
- (11) Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;
- (12) All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC).

Small Town Commercial (STC) District

Amend the STC District (WCC 20.61) as follows:

20.61.150 Administrative approval uses.

.153 Residential type uses.

(1) Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

(a) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;

(b) 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;

(c) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;

(d) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;

(e) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;

(f) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed ~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;

(g) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:

(i) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;

(ii) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;

- (iii) All reserve tracts within long plats and short plats created by the cluster subdivision method;
- (h) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;
- (i) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:
 - (i) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and
 - (ii) One of the dwellings must be the primary domicile of the owner. (Ord. 2016-043 § 1 Exh. A, 2016; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2011-013 § 2 Exh. B, 2011; Ord. 2010-016 § 1 (Exh. A), 2010; Ord. 99-012 § 1(2), 1999).

Resort Commercial (RC) District

Amend the RC District (WCC 20.64) as follows:

20.64.130 Administrative approval uses.

.132 Accessory apartments or detached accessory dwelling units to single-family dwellings; provided, that all of the following requirements are met:

- (1) In addition to an existing or permitted dwelling, there shall be no more than one accessory apartment or detached accessory dwelling unit per lot;
- (2) 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;
- (3) Proof that adequate provisions have been made for potable water, wastewater disposal, and stormwater runoff for the additional dwelling unit must be obtained prior to application for a building permit;
- (4) There shall be only one front entrance to the house visible from the front yard and street for houses with accessory apartments and only one additional entrance visible from the front yard for detached accessory dwelling units;
- (5) Accessory apartments and detached accessory units shall be clearly a subordinate part of an existing residence;
- (6) ~~In no case shall~~ The maximum size of an accessory apartment or detached dwelling unit shall not exceed~~be larger than~~ 1,248 square feet in floor area, except when the density credit program is utilized the size may be increased to a maximum of 1,748 square feet;
- (7) Long plats and short plats which are granted after January 25, 1994, shall be marked, specifically designating lots allowed to be developed with accessory apartments or detached accessory dwelling units at the option of the developer for future individual owners. Accessory apartments and detached accessory dwelling units shall be prohibited on:
 - (a) All lots in long plats which received preliminary plat approval after January 25, 1994, unless those lots have been specifically marked for such use through the long plat process;
 - (b) All lots within short plats which received approval after January 25, 1994, unless those lots have been specifically marked for such use through the short plat process;
 - (c) All reserve tracts within long plats and short plats created by the cluster subdivision method;

(8) A common driveway serving both the existing unit and any accessory unit shall be used to the greatest extent possible;

(9) A deed restriction is recorded with the Whatcom County auditor prior to building permit issuance, stating:

(a) Detached accessory dwelling units and associated land cannot be sold separately from the original dwelling, except in the event the zoning permits such a land division; and

(b) One of the dwellings must be the primary domicile of the owner;

(10) Outside of an urban growth area, the minimum lot size for detached accessory units shall be on a lot of record no less than 4.5 acres, unless the parcel is large enough to accommodate two dwelling units consistent with the underlying zoning density;

~~(11) Accessory apartments and detached accessory dwelling units to single family dwellings are allowed within the Lake Whatcom watershed, only under the following circumstances:~~

~~(a) Development of the parcel with the primary residence and accessory apartment or detached accessory dwelling shall conform to the density of the zoning district in which it is located. Adjacent properties in the same ownership may be bound by covenant to comply with the underlying zoning density; and~~

~~(b) All of the above approval requirements shall be met for so long as the accessory unit remains;~~

Rationale for Change: There are no Resort Commercial zones located in the Lake Whatcom Watershed.

~~(1112)~~ Detached accessory dwelling units shall be located so as to minimize visual impact to the public right-of-way and to adjacent properties. Location in immediate proximity to the primary residence is preferred. Location closer to property lines than to the primary residence may be considered by the administrator when such location serves the goal of reducing overall visual impact to public right-of-way and adjacent properties, and such location still meets the setback requirements as stated in Chapter [20.80](#) WCC. To minimize environmental and visual impact the applicant may be required to provide fencing and/or planting to screen the unit from public right-of-way and adjacent properties;

~~(1213)~~ All mobile homes must demonstrate compliance with minimum HUD Fire Safety Standards and compliance with Washington Administrative Code (WAC). (Ord. 2016-043 § 1 Exh. A, 2016; Ord. 2012-032 § 2 Exh. B, 2012; Ord. 2010-016 § 1 (Exh. A), 2010; Ord. 2006-061 § 1 (Att. A)(7), 2006; Ord. 98-018 § 1, 1998; Ord. 95-031, 1995; Ord. 87-12, 1987; Ord. 87-11, 1987).

**WHATCOM COUNTY
PLANNING COMMISSION**

**Density Credit / Lot Size
Zoning Code Amendments**

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The subject proposal consists of the following amendments to the Official Whatcom County Zoning Ordinance (Title 20):
 - a. Amending the Density Credits Chapter;
 - b. Amending the Urban Residential 4 dwellings/acre (UR4) zone in the Birch Bay UGA to allow increased density if density credits are purchased;
 - c. Amending the minimum lot size, width, depth and other requirements in the Urban Residential zone; and
 - d. Amending the accessory dwelling unit regulations to allow larger unit size if density credits are purchased.
2. A Determination of Non-Significance was issued by the SEPA Responsible Official on May 28, 2021.
3. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 25, 2021.
4. Notice of the Planning Commission hearing for the subject amendments was posted on the County website on June 25, 2021.
5. Notice of the Planning Commission hearing was sent to the County's e-mail list on June 25, 2021.
6. The Planning Commission held a public hearing on the subject amendments on July 8, 2021.
7. In order to approve an amendment to the development regulations, the County must find that the amendment is consistent with the comprehensive plan (WCC 22.10.060(2)).

8. The Whatcom County Council adopted Policy 2A-14 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.
9. The County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017.
10. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* was issued on October 3, 2018. This report included a number of recommendations, including expanding the density credit program to the UR4 zone in Birch Bay Urban Growth Area and accessory dwelling units.

Urban Growth

11. The Growth Management Act states “Each county . . . shall 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)).
12. The Growth Management Act 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 is in the process of being amended to include density credit language.
13. Density credits allow development incentives, such as increased density or more floor area, in exchange for a voluntary contribution towards preserving resource lands and open space. This is accomplished through a voluntary payment of funds to the County for use in the Whatcom County Conservation Easement Program (WCC 3.25A), which was formerly known as the Purchase of Development Rights Program, in order to access incentives specifically set forth in the zoning code.
14. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) indicated:

. . . 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 . . . zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program. . . (p. 33).

15. The subject amendments include density bonus provisions in the UR4 zone within the Birch Bay urban growth area (UGA) if density credits are purchased.
16. The subject amendments also modify the minimum lot size, width, depth and other requirements in the Urban Residential zone
17. 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.
18. The State Department of Commerce *Housing Memorandum: Issues Affecting Housing Availability and Affordability* (June 2019) identifies “Reasonable Measures as Tools for Increasing Housing Availability and Affordability” including:
 - Allow or require small lots (5,000 square feet or less) for single-family neighborhoods within UGAs. Small lots limit sprawl, contribute to the more efficient use of land, and promote densities that can support transit. Small lots also provide expanded housing ownership opportunities to broader income ranges and provide additional variety to available housing types (p. 116).
19. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by concentrating urban levels of growth in UGAs, allowing increased density, allowing smaller lots, and providing creative options for developers in a UGA.

Accessory Dwelling Units (ADU)

20. Accessory dwelling units are allowed in a number of zoning districts, both within UGAs and outside UGAs.
21. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) recommended accessory dwelling unit incentives if density credits are acquired. Specifically, the Final Report stated:

. . . Accessory dwelling units are currently limited to 1,248 square feet. . . 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. . . (p. 34).

22. 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. . .

23. 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 the Whatcom County Conservation Easement Program (WCC 3.25A). The purpose of this program is:

To establish a voluntary agricultural, forestry, and ecological conservation easement program for Whatcom County which will enhance the protection of the county's farmland, forestland, and important ecosystem areas, enhance the long-term viability of the agricultural and forestry enterprises within the county and provide public benefit by retaining properties in permanent resource use, in addition to the protection of ecosystem functions and values (WCC 3.25A.020).

24. The rural zones already allow accessory dwelling units and the subject amendments allow increased size of these units. However, the subject amendments compensate for this increased size by requiring a contribution to the Whatcom County Conservation Easement Program.

25. 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 Whatcom County Conservation Easement Program, thereby preserving rural character and agricultural lands.

Incentives

26. Whatcom County Comprehensive Plan policies relating to incentives include:

Policy 2F-3: Revise regulations to include incentive programs.

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 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, cluster development, and acquisition of easements.

Policy 2UU-5: Augment land use regulations by engaging in a proactive program of public investment, landowner incentives, and other actions aimed at preserving open space.

27. The subject amendments provide density bonus provisions, which are entirely optional. A land owner may choose to develop property as currently allowed by the zoning code. Alternatively, a land owner may choose to utilize the density bonus provisions by purchasing density credits.
28. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a voluntary incentive that would allow increased density in the Birch Bay UGA and flexibility in the accessory dwelling unit provisions while contributing to preservation of rural and agricultural lands.

CONCLUSION

The subject zoning amendments are consistent with the Whatcom County Comprehensive Plan.

RECOMMENDATION

Based upon the above findings and conclusions, the Planning Commission recommends approval of the following amendments to the Whatcom County Zoning Code:

Exhibit A, Density Credits Chapter (WCC 20.91).

Exhibit B, Urban Residential District Chapter (WCC 20.20).

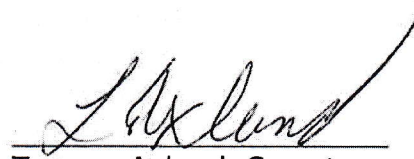
Exhibit C, accessory dwelling unit regulations (WCC 20).

WHATCOM COUNTY PLANNING COMMISSION

Kelvin Barton, Chair

7/12/2021

Date



Tammy Axlund, Secretary

7/9/21

Date

Commissioners voted to recommend approval on July 8, 2021 (vote was 8-0 with 1 member absent). Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Stephen Jackson, Jon Maberry, Natalie McClendon, and Dominic Mocerri.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-499

File ID:	AB2021-499	Version:	1	Status:	Agenda Ready
File Created:	08/11/2021	Entered by:	MAamot@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Discussion		
Assigned to:	Council Planning and Development Committee			Final Action:	
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion of a draft ordinance to amend the zoning code by adding a new chapter, WCC 20.17 - Temporary Homeless Facilities, and adding definitions for Temporary Homeless Facility and related terms (WCC 20.97)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

A proposal to amend the Whatcom County Zoning Code (Title 20) by adding a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17) and adding definitions for Temporary Homeless Facility and related terms (WCC 20.97).

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Draft Ordinance, Planning Commission Findings

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius
Director

Memorandum

August 11, 2021

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

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Temporary Homeless Facility Regulations (PLN2021-00003)

The Whatcom County Council adopted interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities (Ordinances 2018-039, 2018-041, 2019-074, and 2020-053). These ordinances also requested County staff to prepare proposed revisions to the County's land use regulations relating to temporary homeless facilities and bring the revisions to the Planning Commission and County Council for review.

The Planning Commission held a public hearing and issued recommendations on July 22, 2021. The Planning Commission's recommended proposal would amend the Whatcom County Zoning Code by:

- a. Adding a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17). This new chapter includes a purpose statement, locational requirements, capacity and duration of temporary homeless facilities, requirements for temporary homeless facilities, application procedures, and permit procedures.
- b. Adding definitions of "Temporary Homeless Facility" and related terms (WCC 20.97).

Under the proposed regulations, temporary homeless facilities would normally be allowed only within urban growth areas, where more intensive land uses are permitted, services typically exist nearby, and transportation options are more readily available. However, under state law, this provision cannot be applied to facilities on property owned or controlled by religious organizations (RCW 36.01.290). Therefore, such temporary homeless facilities could be located anywhere throughout the County.

Thank you for your review and consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
WHATCOM COUNTY ZONING CODE RELATING TO
TEMPORARY HOMELESS FACILITY REGULATIONS**

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations;

WHEREAS, The County Council held a public hearing; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The Whatcom County Council adopted interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities (Ordinances 2018-039, 2018-041, 2019-074, and 2020-053). These ordinances also requested County staff to prepare a draft ordinance and proposed revisions to the County's land use regulations relating to these facilities.
2. The proposal is to amend the Whatcom County Zoning Code (Title 20) as follows:
 - a. Add a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17); and
 - b. Add definitions of "Temporary Homeless Facility" and related terms (WCC 20.97).
3. Notice of the subject amendments was submitted to the Washington State Department of Commerce on July 1, 2021.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 6, 2021.

5. Notice of the Planning Commission hearing was sent to the County's e-mail list on July 7, 2021.
6. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on July 9, 2021.
7. Notice of the Planning Commission hearing was posted on the County website on July 9, 2021.
8. The Planning Commission held a public hearing on the subject amendments on July 22, 2021.
9. Pursuant to WCC 22.10.060(2), in order to approve an amendment to the development regulations, the planning commission and county council must find that the amendment is consistent with the comprehensive plan.
10. The Whatcom County Comprehensive Plan Housing Chapter states:

. . . Subsidized housing, homeless housing, transient, emergency, and special needs housing are all part of the affordability riddle, and in some instances a major part. Residents currently possessing safe and decent housing may not fully understand the scope of the housing problem and they may tend not to want housing for less advantaged households near them. In that regard, the location of affordable housing can be as difficult an issue as funding. Many people who do not want rural sprawl also do not want in-fill near them. . . (p. 3-10).
11. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-1 states:

Review and revise existing regulations to identify inhibitions to housing for the varying preferences of those needing housing. Focus on population segments with particular needs such as temporary, transitional, or emergency housing.
12. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-2 states:

Evaluate all new regulations or codes developed at the county level to ensure they accommodate housing preferences and needs existing at that time.
13. State law limits local government regulation of temporary homeless facilities hosted by religious organizations (RCW 36.01.290).
14. According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2020 Annual Report* (July 2020), at least 707 people were homeless in Whatcom County in January 2020 (p. 9). Of the 707 homeless people, 218 were unsheltered living in camps, cars, and other places not

meant for human habitation (p. 13). However, the Annual Report also “. . . acknowledged that Point in Time Counts consistently underestimate the number of those who are homeless . . .” (p. 2). According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2021 Annual Report* (July 2021), 859 people were homeless in Whatcom County in January 2021 (p. 7). Of the 859 homeless people, 218 were unsheltered (p. 8).

15. According to *A Home for Everyone Strategic Plan to End Homelessness in Whatcom* (2019), “interim housing” includes both emergency shelters and transitional housing (p. 37). These living conditions are considered as “sheltered homelessness” (p. 13). This Plan states that a number of providers participate in interim housing services “but the demand for shelters is far from being met in Whatcom County” (p. 38). Unsheltered homelessness is used to describe “the living conditions for individuals or households who sleep in places not meant for human habitation, such as tents, doorways, abandoned buildings, vehicles, or other places outside” (p. 13).
16. Homelessness continues to be a local, regional and national challenge due to many social and economic factors.
17. Tent encampments, tiny house encampments, and other homeless facilities have become temporary mechanisms to provide shelter for homeless individuals and families.
18. Temporary homeless facility regulations and permit processing requirements are necessary to preserve and protect public health and safety.
19. Temporary homeless facility regulations and permit processing requirements are necessary to prevent or mitigate adverse impacts to public or private property.
20. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a regulatory framework for addressing some of the community’s temporary housing needs in an orderly fashion.

CONCLUSION

The subject Whatcom County development regulation 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. Amendments to the Whatcom County Zoning Code (Title 20) relating to Temporary Homeless Facilities are hereby adopted as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2021.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chairperson

APPROVED as to form:

() Approved () Denied

/s/ Royce Buckingham

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Exhibit A

NOTE: The proposal is to insert an entirely new chapter in the Whatcom County Zoning Code (Title 20, Chapter 20.17). Underlining and strikethroughs below are solely to show differences between the proposal and County Ordinance 2020-053 (and/or, as applicable, Bellingham Municipal Code provisions).

Chapter 20.17

Temporary Homeless Facilities

Sections:

- 20.17.010 Purpose.**
- 20.17.020 Permit Required.**
- 20.17.030 Location.**
- 20.17.040 Capacity of Temporary Homeless Facilities.**
- 20.17.050 Duration of Temporary Homeless Facilities.**
- 20.17.060 Requirements for Temporary Homeless Facilities.**
- 20.17.065 Additional Requirements for Temporary Building Encampments.**
- 20.17.070 Application.**
- 20.17.080 Permit Procedures.**

20.17.010 Purpose.

The purpose of this chapter is to allow and establish a review process for the location, siting, and operation of temporary shelters for people experiencing homelessness (known as temporary homeless facilities, as defined in chapter 20.97). These regulations are intended to protect public health and safety by requiring safe operations of the shelters for both the shelter guests and the broader community. Temporary homeless facilities~~shelters~~ include temporary building encampments, temporary tent encampments, temporary safe parking areas, and temporary tiny house encampments. ~~This chapter does not include regulations for interim housing.~~

Rationale: The Purpose statement above is from Bellingham Municipal Code 20.15.010 relating to “Temporary Shelters for People Experiencing Homelessness” with changes shown with underlining and strike-throughs. Bellingham Municipal Code 20.15A and 20.08.020 have specific provisions relating to longer duration “Interim Housing” that the Whatcom County Code does not contain.

20.17.020 Permit Required.

Temporary homeless facilities must have a sponsor and managing agency as defined in chapter 20.97.

Establishment of a temporary homeless facility shall require ~~approval of~~ an administrative approval use permit, ~~as described in this ordinance,~~ and compliance with all other applicable County regulations. The director shall have authority to grant, grant with conditions or deny an application for an administrative approval use permit for a temporary homeless facility~~under this ordinance.~~

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 6), with proposed changes shown with underlining and strike-throughs.

20.17.030 Location.

Temporary homeless facilities are only allowed in urban growth areas. This locational requirement does not apply to temporary homeless facilities on property owned or controlled by religious organizations under RCW 36.01.290.

Section 20.17.030 above is not in Ordinance 2020-053. Under this provision temporary homeless facilities would be allowed only within urban growth areas, where more intensive land uses are permitted, services typically exist nearby, and transportation options are more readily available. However, this provision cannot be applied to facilities on property owned or operated by religious organizations under RCW 36.01.290.

20.17.040 ~~Capacity~~ Duration of Temporary Homeless Facilities.

- (1) ~~No more than a~~ A maximum of ~~50~~100 people may be housed in an individual temporary homeless facility~~ies (encampments)~~ located in the unincorporated County ~~at any time~~. Multiple temporary homeless facility~~encampment~~ locations may be permitted provided that the aggregate total of people in all temporary homeless facilities~~tent and/or tiny house encampments~~ shall not exceed 100.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 5), with proposed changes shown with underlining and strike-throughs. The Planning Commission modified the 1st sentence so it applies to individual facilities. The 2nd sentence applies to all facilities in unincorporated Whatcom County.

20.17.050 Duration of Temporary Homeless Facilities.

- (1) The director shall not grant a permit for the same site more than once in any calendar year nor; ~~provided that director is not authorized to~~ issue a permit for the same site sooner than 180 days from the date the site is vacated ~~as provided for in Section 4 of this ordinance.~~

- (2) Temporary tent encampments and temporary safe parking areas may be approved for a period not to exceed 190 days. The director may grant one 190-day extension, provided all conditions have been complied with and circumstances associated with the use have not changed. ~~This extension shall be subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1).~~ The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its preexistingpre-encampment condition.
- (3) Temporary tiny house encampments may be approved for a period of between six months and ~~up to~~ one year, provided the sponsor and managing agency comply with all permit conditions. The director may grant one or more extension(s) not to exceed one additional year, ~~provided enabling legislation allows so. Extensions are subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1).~~ The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its preexistingpre-encampment condition.

Rationale: The requirements above (subsections 1-3) are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 5), with proposed changes shown with underlining and strike-throughs. All decisions by the Director are subject to appeal under WCC 22.05.160. See also proposed WCC 20.17.080(5) below.

- (4) Temporary building encampments may be approved for a period of up to five years, provided the sponsor and managing agency comply with all permit conditions. Should the original permit be granted for a period of less than five years, the director may grant one or more extensions up to a total of five years. ~~Extensions are subject to a Type I review process under BMC 21.10.100 and may be appealed to the hearing examiner as provided in BMC 21.10.250.~~ The permit shall specify a date by which the use shall be terminated and the site vacated and, where applicable, restored to its preexisting condition.

Rationale: The requirements above (subsection 4) are a modified version of requirements from Bellingham Municipal Code 20.15.060, with proposed changes shown with underlining and strike-throughs. All decisions by the Director are subject to appeal under WCC 22.05.160. See also proposed WCC 20.17.080(5) below.

20.17.060 Requirements for Temporary Homeless Facilities.

The following requirements shall apply to all temporary homeless facilities approved under this chapter ordinance, unless modified by the director through ~~approval of~~ an administrative approval use permit.

- (1) The temporary homeless facilityencampment shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily residential uses. The temporary homeless facilityencampment shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or public recreational uses. ~~unless~~ These buffers may be reduced if the director finds that a reduced buffer width will provide adequate separation between the temporary homeless

~~facility encampment~~ and adjoining uses, due to changes in elevation, intervening buildings or other physical characteristics of the site ~~of the encampment~~.

Rationale: The definition of “temporary homeless facility” encompasses all four types of temporary homeless facilities (including encampments).

- (2) No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.
- (3) A temporary homeless facility shall comply with the applicable ~~regulations development standards~~ of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel’s total lot coverage, as defined by WCC 20.97.217.
- (4) A six-foot-tall fence is required around the perimeter of the ~~temporary homeless facility encampment~~ to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the county engineer. ~~unless the director determines that~~ the director may waive the fence requirement if there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.
- (5) Exterior lighting must be directed downward and glare contained within the temporary ~~homeless facility encampment~~.
- (6) The maximum number of residents at a temporary ~~homeless facility encampment~~ site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.
- (7) On-site parking of the sponsor shall not be displaced unless sufficient required off-street parking remains available for the host's use to compensate for the loss of on-site parking or unless a shared parking agreement is executed with adjacent properties.
- (8) A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the ~~temporary homeless facility site encampment~~, shall be submitted for review and approval.
- (9) No children under the age of 18 are allowed to stay overnight in the temporary ~~homeless facility encampment~~, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the ~~temporary homeless facility encampment~~, the sponsor and the managing agency shall actively endeavor to find alternative shelter for the child through community partners such as Northwest Youth Services, Opportunity Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth services organizations. Children under the age of 18 without a parent or guardian present shall be allowed to remain in a temporary ~~homeless facility encampment~~ while alternative shelter is being sought.
- (10) The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary ~~homeless facility encampment~~ residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative

approval use permit. ~~Said-The~~ code of conduct shall be incorporated into the conditions of approval. The managing agency shall post the County approved written code of conduct on site.

- (11) An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. The managing agency shall demonstrate that: ~~Individuals or organizations shall~~

- A. Individuals in the agency have ~~either a~~ demonstrated experience providing similar services to homeless residents; ~~and/or~~
- B. Individuals in the agency have certification or academic credentials in an applicable human service field; ~~and/or~~
- C. Individuals in the agency have applicable experience in a related program with a homeless population; ~~or-~~
- D. ~~Should an individual or organization not have any of the preceding qualifications,~~
Additional prescriptive measures will be implemented ~~may be required~~ to minimize risk to both residents of the temporary homeless facility and the community in general.

- (12) The sponsor and the managing agency shall ensure the temporary homeless facility complies ~~compliance~~ with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.

Rationale: The change above would clarify that the sponsor and managing agency are responsible to ensure the homeless facility complies with State and County laws, but that an individual's compliance with certain laws is enforced by the Sheriff's Office.

- (13) The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:

- (a) Potable water, which shall be available at all times at the site;
- (b) Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
- (c) Hand-washing stations by the toilets and food preparation areas;
- (d) Food preparation or service tents; and
- (e) Refuse receptacles.

- (14) Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and temporary homeless facility ~~encampment~~ residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.

- (15) The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their

contact information shall be provided to the Whatcom County Sheriff's Office as described above.

- (16) Facilities for dealing with trash shall be provided on-site throughout the temporary homeless facility~~encampment~~. A regular trash patrol in the ~~immediate~~-vicinity of the ~~temporary encampment~~ site shall be provided.
- (17) The sponsor and the managing agency shall take reasonable and legal steps to obtain verifiable identification information (recognizing this may not be possible if a homeless individual's identification documents have been lost or stolen), to include full name and date of birth, from current and prospective temporary homeless facility~~encampment~~ residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the temporary homeless facility~~encampment~~. This log shall be available upon request to law enforcement agencies and prospective ~~encampment~~ residents shall be so advised by the sponsor and managing agency. Persons who have active warrants, or who are required to register as sex offenders, are not allowed in a temporary homeless facility~~prohibited from the encampment's location~~.
- (18) The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the temporary homeless facility~~encampment~~ when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.
- (19) All permanent or temporary structures shall have fully operational smoke detectors installed and can be battery operated. Fire extinguishers shall be provided for each site. The number and type of fire extinguishers shall be determined by the director in consultation with the managing agency. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.

Rationale: The added language above was recommended by the Whatcom County Building Services Division Manager/Deputy Fire Marshal.

- (20) The sponsor, the managing agency and temporary homeless facility~~encampment~~ residents shall cooperate with other providers of shelters and services for homeless persons within the County and shall make inquiry with these providers regarding the availability of existing resources.
- (21) The sponsor and/or managing agency shall provide before-~~setup~~encampment photos of the host site with the application. Upon vacation of the temporary homeless facility~~encampment~~, all temporary structures and debris shall be removed from the host site within one calendar week.
- (22) Upon cessation of the temporary homeless facility~~encampment~~, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been removed or destroyed.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 4), with proposed changes shown with underlining and strike-throughs.

20.17.065 Additional Requirements for Temporary Building Encampments.

In addition to the requirements of WCC 20.17.020, the following requirements apply to temporary building encampments, unless modified by the director during the administrative approval use permit approval process:

- (1) Temporary building encampments hosted in existing structures that do not meet building codes at the time of application may be provisionally approved consistent with the requirements of RCW 19.27.042.
- (2) No more than one bed (or bunkbed for a parent/guardian and a child under the age of 18) per 35 square feet of floor area is permitted.
- (3) The number of toilets required for each encampment will be determined by the Whatcom County Health Department after a review of factors such as the potential number of guests.

Rationale: The requirements above are drawn from requirements from Bellingham Municipal Code 20.15.030.

20.17.070 Application.

Application for an administrative approval use permit shall be made on forms provided by the County, and shall be accompanied by the following information; provided, that the director may waive any of these items, upon request by the applicant and finding that the item is not necessary to analyze the application. An application to establish a temporary homeless facility shall be signed by both the sponsor and the managing agency ("applicant") and contain the following:

- (1) A site plan of the property, drawn to scale, showing existing natural features, existing and proposed grades, existing and proposed utility improvements, existing rights-of-way and improvements, and existing and proposed structures, tents and other improvements (including landscaping and fencing at the perimeter of the proposed facility~~encampment~~ and the property and off-street parking);
- (2) A vicinity map, showing the location of the site in relation to nearby streets and properties;
- (3) A written summary of the proposal, responding to the standards and requirements of WCC 20.17~~this ordinance~~;
- (4) The written code of conduct, operations plan and a transportation plan as required by WCC 20.17.020~~this ordinance~~;
- (5) Statement of actions that the applicant will take reasonable steps to obtain verifiable identification from encampment~~temporary homeless facility~~ residents and to use the identification to obtain sex offender and warrant checks from appropriate agencies;

- (6) Project statistics, including site area, building coverage, number and location of tents and temporary structures, expected and maximum number of residents, and duration of the temporary homeless facility encampment;
- (7) Address and parcel number of the subject property;
- (8) Photographs of the site;
- (9) A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
- (10) Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25 and the Unified Fee Schedule; and
- (11) A list of any requirements under WCC 20.17 ~~that this ordinance for which~~ the applicant is asking to modify.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 7), with proposed changes shown with underlining and strike-throughs.

20.17.080 Permit Procedures.

- (1) Notice. All temporary homeless facility applications shall be reviewed under a Type II process under WCC 22.05, except that the final decision must be rendered within 60 days of a determination of completeness. Additionally, the notice of application shall contain proposed duration and operation of the temporary homeless facility, number of residents for the facility encampment, and contain a County website link to the proposed written code of conduct, operations plan and transportation plan for the facility.
- (2) Decision and Notice of Decision. Final action on permit applications made under this section shall be in accordance with WCC 22.05. Before any such permit may be granted, the applicant shall demonstrate and the director shall find consistency WCC 22.05.02 ~~820.84.220~~ and the following:
 1. The proposed use meets the requirements of WCC 20.17 ~~this ordinance~~; and
 2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts ~~that which~~ the proposed temporary homeless facility encampment may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the temporary homeless facility encampment will be limited.

A notice of the decision shall be provided in accordance with WCC 22.05.

- (3) Conditions. Because each temporary ~~homeless facility encampment~~ has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative approval use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to protect public health, life and safety and minimize nuisance-generating features such as noise, waste, air quality, unsightliness, traffic, physical hazards and other similar impacts that the temporary ~~homeless facility encampment~~ may have on the area in which it is located. In cases where the application for an administrative approval use permit does not meet the provisions of ~~WCC 20.17 this ordinance~~ (except when allowed under ~~WCC 20.17.080(4) subsection (D) of this section~~) or adequate mitigation may not be feasible or possible, the director shall deny the application.
- (4) Modification of Requirements. The director may approve an administrative approval use permit for a temporary ~~homeless facility encampment~~ that relaxes one or more of the standards in this ordinance only when, in addition to satisfying the decision criteria stated above, the applicant submits a description of the standard to be modified and demonstrates how the modification would result in a safe ~~facility encampment~~ with minimal negative impacts to the host community under the specific circumstances of the application. In considering whether the modification should be granted, the director shall first consider the effects on the health and safety of ~~temporary homeless facility encampment~~ residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on ~~temporary homeless facility encampment~~ residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.
- (5) Appeal. The director's decision, including permit extensions, may be appealed to the hearing examiner as provided in WCC 22.05.020(1) and 22.05.160.
- (6) Revocation. The director shall also have the authority to revoke an approved administrative approval use permit, pursuant to WCC 22.05.150 at any time a sponsor or managing agency has failed to comply with the applicable provisions of ~~WCC 20.17 this ordinance~~ or the permit.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 8), with proposed changes shown with underlining and strike-throughs.

Chapter 20.97

DEFINITIONS

NOTE: The proposal is to insert entirely new definitions in the Whatcom County Zoning Code (Title 20) as shown below. Underlining and strikethroughs below are solely to show differences between the proposal and County Ordinance 2020-053. Code Publishing would provide proper codification numbers for these new definitions.

"Temporary homeless facility" means a facility providing temporary housing accommodations that includes a sponsor and managing agency, the primary purpose of which is to provide temporary shelter for people experiencing homelessness in general or for specific populations of the homeless. Temporary homeless facilities ~~include but are not limited to are temporary building encampments, temporary safe parking areas,~~ temporary tent encampments and temporary tiny house encampments.

"Temporary building encampment" means a temporary homeless shelter in a building or other permanent structure with overnight sleeping accommodations for the homeless, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. This definition includes low-barrier shelters and other similar uses.

"Temporary safe parking area" means a temporary homeless shelter for a group of people living in their vehicles, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.

"Temporary tent encampment" means a short-term living facility for a group of homeless people that is composed of tents or other temporary structures, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.

"Temporary tiny house encampment" means a temporary homeless facility for a group of people living in purpose-built tiny houses for people experiencing homelessness, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. Temporary tiny houses for the homeless are between 100 and 300~~typically less than 200~~ square feet and easily constructed and moved to various locations. ~~For the purposes of this ordinance, temporary tiny houses~~ are not dwelling units and, as such, are not required to meet building codes.

"Managing agency" means an organization identified as the manager of a temporary homeless facility that has the capacity to organize and manage a temporary homeless facility on a 24 hour basis. Managing agencies are limited to religious organizations and non-profit agencies. A group of homeless residents is not considered a managing agency. A "managing agency" may be the same entity as the sponsor.

"Sponsor" means an organization that:

- A. Invites a temporary homeless facility to reside on land they own or lease; and
- B. Is a State of Washington registered not-for-profit corporation and federally recognized tax exempt 501(c)(3) organization; or
- C. Is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, which expresses its religious mission, in part, by organizing living accommodations for the homeless.

Rationale: The definitions above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 3), with the following modifications and additions:

- The definition of "Temporary homeless facility" in Ordinance 2020-053 indicates that these facilities "include but are not limited to" temporary tent encampments and temporary tiny house encampments. The City of Bellingham's definition of "Temporary homeless shelter" includes four types of shelters: Temporary building encampments, temporary safe parking areas, temporary tent encampments, and temporary tiny house encampments (Bellingham Municipal Code 20.08.020). The above definition has been modified to include all four types of temporary homeless facilities and delete the phrase "include but are not limited to" in order to increase clarity.
- A definition of "Temporary building encampment" was added that is consistent with Bellingham Municipal Code 20.08.020.
- A definition of "Temporary safe parking area" was added consistent with Bellingham Municipal Code 20.08.020, except that the Planning Commission removed the phrase "This definition does not include recreational vehicles." Therefore, RVs would be allowed in temporary safe parking areas.
- In the definition of "Temporary tiny house encampment," the size of tiny houses was modified from "typically less than 200 square feet" to "between 100 and 300 square feet." This provides consistency with the definition in the Bellingham Municipal Code 20.08.020. It also provides clarity for the public, managing agencies, sponsors, and staff relating to the allowed size of temporary tiny houses.
- The definition of "Managing agency" has been modified by inserting a clause that management is "on a 24 hour basis" (recommended by the Whatcom County Building Services Division Manager/Deputy Fire Marshal). Additionally, a phrase included in the definition of "Managing Agency" in Bellingham Municipal Code 20.08.020 has been added ("A group of homeless residents is not considered a managing agency").

**WHATCOM COUNTY
PLANNING COMMISSION**

Temporary Homeless Facility Regulations

FINDINGS OF FACT AND REASONS FOR ACTION

1. The Whatcom County Council adopted interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities (Ordinances 2018-039, 2018-041, 2019-074, and 2020-053). These ordinances also requested County staff to prepare a draft ordinance and proposed revisions to the County's land use regulations relating to these facilities.
2. The proposal is to amend the Whatcom County Zoning Code (Title 20) as follows:
 - a. Add a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17); and
 - b. Add definitions of "Temporary Homeless Facility" and related terms (WCC 20.97).
3. Notice of the subject amendments was submitted to the Washington State Department of Commerce on July 1, 2021.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 6, 2021.
5. Notice of the Planning Commission hearing was sent to the County's e-mail list on July 7, 2021.
6. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on July 9, 2021.
7. Notice of the Planning Commission hearing was posted on the County website on July 9, 2021.

8. The Planning Commission held a public hearing on the subject amendments on July 22, 2021.
9. Pursuant to WCC 22.10.060(2), in order to approve an amendment to the development regulations, the planning commission and county council must find that the amendment is consistent with the comprehensive plan.
10. The Whatcom County Comprehensive Plan Housing Chapter states:

. . . Subsidized housing, homeless housing, transient, emergency, and special needs housing are all part of the affordability riddle, and in some instances a major part. Residents currently possessing safe and decent housing may not fully understand the scope of the housing problem and they may tend not to want housing for less advantaged households near them. In that regard, the location of affordable housing can be as difficult an issue as funding. Many people who do not want rural sprawl also do not want in-fill near them. . . (p. 3-10).
11. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-1 states:

Review and revise existing regulations to identify inhibitions to housing for the varying preferences of those needing housing. Focus on population segments with particular needs such as temporary, transitional, or emergency housing.
12. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-2 states:

Evaluate all new regulations or codes developed at the county level to ensure they accommodate housing preferences and needs existing at that time.
13. State law limits local government regulation of temporary homeless facilities hosted by religious organizations (RCW 36.01.290).
14. According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2020 Annual Report* (July 2020), at least 707 people were homeless in Whatcom County in January 2020 (p. 9). Of the 707 homeless people, 218 were unsheltered living in camps, cars, and other places not meant for human habitation (p. 13). However, the Annual Report also “. . . acknowledged that Point in Time Counts consistently underestimate the number of those who are homeless . . .” (p. 2). According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2021 Annual Report* (July 2021), 859 people were homeless

in Whatcom County in January 2021 (p. 7). Of the 859 homeless people, 218 were unsheltered (p. 8).

15. According to *A Home for Everyone Strategic Plan to End Homelessness in Whatcom* (2019), "interim housing" includes both emergency shelters and transitional housing (p. 37). These living conditions are considered as "sheltered homelessness" (p. 13). This Plan states that a number of providers participate in interim housing services "but the demand for shelters is far from being met in Whatcom County" (p. 38). Unsheltered homelessness is used to describe "the living conditions for individuals or households who sleep in places not meant for human habitation, such as tents, doorways, abandoned buildings, vehicles, or other places outside" (p. 13).
16. Homelessness continues to be a local, regional and national challenge due to many social and economic factors.
17. Tent encampments, tiny house encampments, and other homeless facilities have become temporary mechanisms to provide shelter for homeless individuals and families.
18. Temporary homeless facility regulations and permit processing requirements are necessary to preserve and protect public health and safety.
19. Temporary homeless facility regulations and permit processing requirements are necessary to prevent or mitigate adverse impacts to public or private property.
20. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a regulatory framework for addressing some of the community's temporary housing needs in an orderly fashion.

CONCLUSION


The subject Whatcom County development regulation 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, amendments to the Whatcom County Zoning Regulations (Title 20) relating to Temporary Homeless Facilities.

WHATCOM COUNTY PLANNING COMMISSION


Kelvin Barton, Chair


Tammy Axlund, Secretary

7-26-2021
Date

7/23/21
Date

Commissioners voted to recommend approval on July 8, 2021 (vote was 8-0 with 1 member absent). Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Jim Hansen, Stephen Jackson, Kimberley Lund, Jon Maberry, Natalie McClendon, and Dominic Mocerì.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-415

File ID:	AB2021-415	Version:	1	Status:	Agenda Ready
File Created:	07/14/2021	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Discussion		
Assigned to:	Council Committee of the Whole	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa

TITLE FOR AGENDA ITEM:

Discussion of an ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for the use and presence in County Rights-of-Way to allow for the transportation of natural gas within and through Whatcom County

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Franchise Agreement, Franchise Fact Sheet, Application

JON HUTCHINGS
DIRECTOR



MEMORANDUM

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

THROUGH: Jon Hutchings, Director *JH*

FROM: Andrew Hester, Public Works Real Estate Coordinator *AH*

RE: Franchise for Cascade Natural Gas Corporation

DATE: July 14, 2021

▪ **Requested Action**

Adopt an ordinance that grants a franchise to Cascade Natural Gas Corporation allowing it to use and be present in County Rights of Way for the installation, maintenance, operation, repair, modification, replacement, and/or removal of such new or existing pipeline facilities, together with equipment and appurtenances thereto, for the transportation of natural gas within and through Whatcom County per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

▪ **Background and Purpose**

Cascade Natural Gas Corporation's existing franchise agreement has expired and they have applied for a new franchise agreement for the purposes of utilizing County rights of way for the transportation of natural gas.

Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

Encl.

ORDINANCE NO. _____

AN ORDINANCE GRANTING CASCADE NATURAL GAS CORPORATION (“GRANTEE”) A CORPORATION, ITS SUCCESSORS, GRANTEES AND ASSIGNS THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR NEW OR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF NATURAL GAS WITHIN AND THROUGH WHATCOM COUNTY (“GRANTOR”).

WHEREAS, Cascade Natural Gas Corporation (hereinafter "Grantee") has applied for a nonexclusive Franchise to operate and maintain a natural gas pipeline system within and through Whatcom County (hereinafter the "County" or "Grantor"); and,

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the ____ day of _____, 2021, and notice of this hearing has been duly published on the _____ day of _____, 2021, and the ____ day of _____, 2021, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of the County and its inhabitants that a franchise be granted to Grantee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a non-exclusive franchise set forth in the language herein below, Sections 1 through 18, is hereby granted to Cascade Natural Gas Corporation for a period of 25 years from the Effective Date.

Section 1. Definitions.

For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

1.1 Construct or Construction shall mean installing, removing, replacing, and repairing new or existing pipeline(s) and/or Facilities and may include, but is not limited to, digging and/or excavating for the purposes of installing, removing, replacing, and repairing new or existing pipeline(s) and/or Facilities.

1.2 **Effective Date** shall mean the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Grantee, upon which the rights, duties and obligations shall come in effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.

1.3 **Facilities** shall mean the Grantee's pipeline system, lines, valves, mains, appurtenances, and all other Facilities related to the purpose of transportation and/or distribution of Grantee's product(s).

1.4 **Franchise** shall mean this Franchise and any amendments, exhibits, or appendices to this Franchise.

1.5 **Franchise Area** means the area within the jurisdictional boundaries of the Grantor, including any areas annexed by Grantor during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

1.6 **Hazardous Substance** shall mean any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant. The term shall specifically include natural gas, petroleum and petroleum products and their bi-products, residue, and remainder in whatever form or state. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, injury, sickness, illness, behavior abnormalities or, genetic abnormalities.

1.7 **Maintenance or Maintain** shall mean examining, testing, inspecting, repairing, maintaining and replacing Grantee's pipeline system and/or Facilities or any part thereof as required and necessary for safe operation.

1.8 **Pipeline Corridor** shall mean the pipeline pathway through the Franchise Area in which the existing or future pipeline system and or Facilities of the Grantee are located, including any Rights-of-Way, Public Property, and/or easement over and through private property.

1.9 **Public Properties** shall mean the present and/or future property owned or leased by Grantor within the present and/or future corporate limits or jurisdictional boundaries of the Grantor.

1.10 **Operate or Operations** shall mean the use of Grantee's new or existing pipeline(s) and/or Facilities for the transportation, distribution and handling of natural gas within and through the Franchise Area.

1.11 **Rights-of-Way** means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas located within the Franchise Area.

Section 2. Grant of Authority.

2.1 Grantor hereby grants to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Washington, and which is authorized to transact business within the State of Washington, its successors and assigns (as provided in Section 4), the right, privilege, authority and Franchise to Construct, Operate and Maintain its existing and future pipeline system and/or Facilities related to the transportation, distribution and handling of natural gas within the Franchise Area, including but not limited to Rights-of-Way, public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, rights of way and similar public ways and extensions and additions thereto, including but not limited to rights-of-way dedicated for compatible uses now or hereafter held by the Grantor within its corporate boundaries.

2.2 This Franchise is non-exclusive. Grantor reserves all rights to its property, including, without limitation, the right to grant additional Franchises, easements, licenses and permits to others to use the Rights-of Way and Public Properties, provided that the Grantor shall not grant any other Franchise, license, easement or permit that would unreasonably interfere with Grantee's permitted use under this Franchise. This Franchise shall in no manner prohibit the Grantor or limit its power to perform work upon its Rights-of-Way, Public Properties or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of-Way and Public Properties, or any part of them, as the Grantor may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other Public Properties of every type and description.

2.3 This Franchise is conditioned upon the terms and conditions contained herein and Grantee's compliance with all applicable federal, state or other regulatory programs that currently exist or may hereafter be enacted by any regulatory agencies with jurisdiction over the Grantee.

2.4 By granting this Franchise, the Grantor is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee. Grantee agrees and covenants to, at its sole cost and expense, take all reasonable and prudent steps to protect, support, and keep safe from harm its pipeline system and/or Facilities, or any part thereof, when necessary to protect the public health and safety.

2.5 This Franchise is only intended to convey a limited right and interest. It is not a warranty of title or interest in Grantor's Rights-of-Way or other Public Property. None of the rights granted herein shall affect the Grantor's jurisdiction over its property, streets or Rights-of-Way.

Section 3. Term.

3.1 Each of the provisions of this Franchise shall become effective upon the Effective Date, subject to Grantee's acceptance of the terms and conditions of this Franchise and shall remain in effect for twenty-five (25) years thereafter.

3.2 Prior to the expiration of this Franchise, either party may request renewal of the Franchise. Upon such request, the parties shall enter into good faith negotiations with regard to renewal of the Franchise and the terms and conditions thereof. If such negotiations continue in good faith

beyond the expiration date of this Franchise, Grantee's rights and responsibilities under this Franchise shall be controlled by the terms of this Franchise during the period of such negotiations.

Section 4. Assignment and Transfer of Franchise.

4.1 This franchise shall not be leased, assigned or otherwise transferred without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld or delayed.

4.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the County not less than 120 days prior to the proposed date of transfer: (a) a summary setting forth the identity of the transferee and the nature and type of the proposed assignment or transfer and, (b) Any other information reasonably required and requested by the County, including but not limited to information about the proposed assignee's or transferee's safety record; and, c) An application fee which shall be set by the County, plus any other costs actually and reasonably incurred by the County in processing and investigating the proposed assignment or transfer.

4.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the Grantee.

4.4 Any transfer or assignment of this Franchise without the prior written consent of the County shall be void and result in revocation of the Franchise.

Section 5. Compliance with Laws and Standards.

5.1 In carrying out any authorized activities under the privileges granted herein, Grantee shall meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the pipeline and its operation. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or the pipeline(s) and Facilities.

5.2 In the case of any conflict between the terms of this Franchise and the terms of Grantor's ordinances, codes, regulations, standards and procedures, this Franchise shall govern.

Section 6. Construction and Maintenance.

6.1 All pipeline Construction, Maintenance or Operation undertaken by Grantee, upon Grantee's direction or on Grantee's behalf shall be completed in a workmanlike manner.

6.2 Except in the case of an emergency where immediate action is required to protect the integrity of Facilities, the Grantee shall first file with the Grantor such detailed plans, specifications and profiles of the intended work as may be required by the Grantor prior to

commencing any Construction and/or Maintenance work in the Franchise Area,. Grantor may require such additional information, plans and/or specifications as are in Grantor's opinion necessary to protect the public health and safety during the Construction and/or Maintenance work and for the remaining term of this Franchise.

6.3 All Construction and/or Maintenance work shall be performed in conformity with the maps and specifications filed with the Grantor, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

6.4 All pipe and other components of any Facilities used in Construction and/or Maintenance activities within the Franchise Area will shall comply with applicable federal regulations, as from time to time amended

6.5 Except in the event of an emergency, Grantee shall provide Grantor at least ten (10) calendar days written notice prior to any Construction and/or Maintenance, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee's pipeline(s) or Facilities within the Franchise Area.

6.6 Work shall only commence upon the issuance of applicable permits by the County, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the pipeline(s) or Facilities, Grantor's property or other persons or property, Grantee may proceed without first obtaining the normally required permits. During normal working hours Grantee shall verbally notify the Director for Whatcom County Public Works or the Whatcom County Engineer as soon as possible after the event of the need to perform emergency repairs. In the event Grantee must take emergency action, Grantee shall (1) take all reasonable and prudent steps to protect, support, and keep safe from harm its pipeline(s) and/or Facilities, or any part thereof; Grantor's property; or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

6.7 Unless such condition or regulation is in conflict with a federal requirement, the Grantor may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the Grantor's property including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any Rights-of-Way improvements, private facilities and public safety.

6.8 Whenever necessary, after Constructing or Maintaining any of Grantee's pipeline(s) or Facilities within the Franchise Area, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise. Such restoration shall be done in a manner consistent with

applicable codes and laws, under the supervision of the Grantor and to the Grantor's satisfaction and specifications.

6.9 Grantee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice prior to commencing any Maintenance or Construction under this Franchise and additionally to those owners or other persons in control of property in the Franchise Area when the Maintenance or Construction will affect access or otherwise impact the property.

6.10 Intentionally omitted.

6.11 The Grantee shall provide upon the request of the Grantor a survey depicting the location of the Pipeline Corridor within the Franchise Area as well as the approximate location of Grantee's pipeline system and Facilities within the Pipeline Corridor along with all other known utilities, landmarks, and physical features.

6.12 Grantee shall also provide upon request of the Grantor, detailed as-built design drawings showing the size, depth and location of all pipes, valves, gauges, other service appurtenances and Facilities within the Franchise Area.

6.13 Per the terms and conditions of the permitting process, the Grantee shall provide updated and corrected as-built drawings and a survey showing the location, depth and other characteristics of the Facilities within the Franchise Area.

6.14 Nothing in this Franchise shall be deemed to impose any duty or obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by Grantor.

6.15 Grantee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise area, including safety of all persons and property during the performance of any work.

Section 7. Operations, Maintenance, Inspection, Testing.

7.1 Grantee shall operate, maintain, inspect and test its pipeline(s) and Facilities in the Franchise Area in full compliance with the applicable provisions of all federal, state and local laws, regulations and standards, as now enacted or hereafter amended, and any other future laws or regulations that are applicable to Grantee's pipeline(s) and Facilities, products and business operations.

7.2 If the federal Office of Pipeline Safety or the state regulatory agency significantly decrease their staffs, or if any congressional or legislative study indicates that federal or state regulatory

oversight has significantly decreased in effectiveness during the term of this Franchise, then Grantee and County agree to expeditiously negotiate new franchise provisions that will provide the County with access to detailed information regarding testing and inspection such as would have been routinely submitted to the federal or state regulatory agencies under the regulations in effect at the time of the Effective Date. If Grantor and Grantee fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution provisions of Section 13.

Section 8. Encroachment Management.

8.1 Upon request of the Grantor, Grantee shall provide a written encroachment management plan that demonstrates how Grantee's pipeline(s) and/or Facilities are and will be protected against possible encroachment. This plan shall include at least the following: (1) education and one-call involvement as defined in Federal Regulations, and (2) an encroachment management processes demonstrating: (a) Grantee's process for monitoring activity in or near the Pipeline Corridor; (b) Grantee's field verification of the location of Facilities within the Pipeline Corridor; (c) Grantee's encroachment tracking system; (d) Grantee's review/coordination process for critical encroachments; (e) control center notification of existing or active encroachments; and f) assertive protection of the pipeline Rights-of-Way.

8.2 Upon notification to Grantee of planned construction by another within ten (10) feet of Grantee's Pipeline Corridor, Grantee shall flag the precise location of its Facilities before the construction commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that Grantee's Pipeline is not damaged by the construction.

Section 9. Leaks, Ruptures and Emergency Response.

9.1 Grantee shall have in place, at all times during the term of this Franchise, a system for remotely monitoring pressures and flows across the Franchise Area. The remote monitoring must be able to accurately detect pipeline ruptures.

9.2 During the term of this Franchise, Grantee shall have a written emergency response plan and procedure for locating leaks and ruptures and for shutting down valves as rapidly as possible.

9.3 Upon acceptance of this Franchise, Grantee shall provide, for Grantor's approval and acceptance, a copy of its emergency response plans and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the adequacy of Grantee's emergency response plan, the parties will submit the plan to independent, third party review. If the review recommends that Grantee make modifications or additions to Grantee's emergency response plan, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the recommendations, Grantee shall provide a written report to the Grantor explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over the whether to follow the recommendations.

9.4 Grantee's emergency plans and procedures shall designate Grantee's responsible local emergency response officials and a direct 24-hour emergency contact number for the control center operator. Grantee shall, after being notified of an emergency, cooperate with the Grantor and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

9.5 The parties agree to meet once every (5) Calendar years, or upon request of the Grantor, to review the emergency plans and procedures. Grantee shall coordinate this meeting with the Grantor.

9.6 Grantee shall be responsible for all costs incurred in responding to any leak, rupture or other release of natural gas from Grantee's pipeline system and/or Facilities, and all reasonable remediation costs. This provision shall not be interpreted to preclude Grantee from seeking contribution, indemnity and subrogation for such costs from a party liable for the leak, rupture, or other release of natural gas from Grantee's system and/or Facilities.

9.7 If requested by Grantor in writing, Grantee shall provide a written summary concerning any leak or rupture within thirty (30) days with of the event, including, but not limited to, the leak or rupture's date, time, amount, location, response, remediation and other agencies Grantee has notified.

9.8 The Grantor may demand that any substantial leak or rupture be investigated by an independent pipeline consultant mutually selected by Grantor and Grantee. Grantee shall be solely responsible for paying all of the consultant's reasonable costs and expenses incurred in investigating the occurrence and reporting the findings. Grantee shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to Grantee's pipeline(s) and/or Facilities may be warranted.

9.9 If the consultant recommends that Grantee make modifications or additions to Grantee's pipeline(s) and/or Facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the consultant's recommendations, Grantee shall provide a written report to the Grantor explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the consultant's recommendations.

Section 10. Relocation.

10.1 In the event that Grantor undertakes or approves the construction of or changes to the grade or location of any water, sewer or storm drainage line, street, sidewalk or other County improvement project or any governmental agency or any person or entity acting in a governmental capacity, or on the behalf of, under the authority of, or at the request of the Grantor or any other governmental agency, undertakes any improvement project and the Grantor determines that the project might reasonably require the relocation of Grantee's Facilities, Grantor shall provide the Grantee at least one hundred and twenty (120) calendar days prior

written notice or such additional time as may reasonably be required, of such project requiring relocation of Grantee's pipeline(s) and/or Facilities.

10.2 Grantor shall provide Grantee with copies of pertinent portions of the plans and specifications for the improvement project. Upon request, Grantee shall, at its cost and expense, determine and identify for Grantor the exact location of its pipeline(s) and Facilities potentially affected by the improvement project.

10.3 Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the County written alternatives to the relocation within forty-five (45) calendar days of receiving the plans and specifications. The County shall evaluate the alternatives and advise Grantee in writing if one or more of the alternatives is suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If requested by the County, Grantee shall submit additional information to assist the County in making the evaluation. The County shall give each alternative proposed by Grantee full and fair consideration but retains full discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the County ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as proposed by the County.

10.4 If any improvement project under this section is required in the interest of public health, safety, welfare, necessity or convenience, as adjudged in the sole discretion of the Grantor, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk

10.5 Grantor shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Facilities, in order to minimize costs while meeting Grantor's project objectives.

10.6 Grantor must act reasonably and in good faith when evaluating, considering, and making all decisions reserved to it referenced in this Section 10.

10.7 Grantee shall complete relocation of its Facilities so as to accommodate the improvement project at least ten (10) calendar days prior to commencement of the improvement project or such other time as the parties may agree in writing.

Section 11. Removal, Abandonment in Place

11.1 In the event of Grantee's permanent cessation of use of its Facilities, or any portion thereof, within the Franchise Area, the Grantee may purge its Facilities as directed by Grantor and abandon them in place. The Grantor shall have the right to request and require Grantee to remove Facilities..

11.2 In the event of the removal of all or a portion of the Facilities, Grantee shall restore the Franchise Area to as good or better condition as it was in before the work began.

11.3 Removal and restoration work shall be done at Grantee's sole cost and expense and to Grantor's reasonable satisfaction. Grantee shall be responsible for any environmental review required by state or federal law for the removal of any Facilities and the payment of any costs of the environmental review.

11.4 If Grantee is required to remove its Facilities and fails to do so and/or fails to adequately restore the Franchise Area or other mutually agreed upon action(s), Grantor may, after reasonable notice to Grantee, remove the Facilities, restore the premises and/or take other action as is reasonably necessary at Grantee's expense. This remedy shall not be deemed to be exclusive and shall not prevent Grantor from seeking a judicial order directing that the Facilities be removed.

11.5 Unless the removal of the abandoned facilities is required by the permitting process, the Grantee may purge its pipelines and other Facilities, as directed by Grantor, and abandon them in place. Grantee shall be responsible for any environmental review required by state or federal law for the abandonment of any pipeline(s) and/or other Facilities and the payment of any costs of such environmental review. Grantor's consent to the abandonment of Facilities in place shall not relieve the Grantee of the obligation and/or costs to remove or to alter such Facilities in the future in the event it is reasonably determined that removal or alterations is necessary or advisable for the health and safety of the public, in which case the Grantee shall perform such work at no cost to the Grantor. Grantee shall notify Whatcom County Engineer when abandonment of Grantee's facilities occur without the requirement of the County permitting process.

11.6 The parties expressly agree that paragraph 11.5 shall survive the expiration, revocation or termination of this Franchise.

Section 12. Violations, Remedies and Termination.

12.1 In addition to any rights set out elsewhere in this Franchise, or other rights it may possess at law or equity, the Grantor reserves the right to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise. The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

12.2 Intentionally omitted.

12.3 Grantor may also terminate this Franchise if Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within ninety (90) calendar days of Grantor's providing Grantee written notice, which shall be served registered mail upon the Region Director , or, if not reasonably capable of being cured within ninety (90) calendar days, within such other reasonable period of time as the parties may agree.

12.4 This Franchise shall not be terminated except upon a majority vote of the full membership of the County Council, after reasonable notice to Grantee and an opportunity to be heard.

12.5 In the event of termination under this franchise due to Grantee's material breach, Grantee shall immediately discontinue operation of the Facilities through the Franchise Area. Either party may in such case invoke the dispute resolution provisions. Alternatively, Grantor may elect to seek relief directly in Superior Court, in which case the dispute resolution requirements shall not be applicable in this limited situation. Once the Grantee's rights to Operate in the Franchise Area have terminated, Grantee shall comply with Franchise provision regarding

12.6 Notwithstanding the forgoing, the Grantor and Grantee hereby agree that it is not the Grantor's intention to terminate the rights conferred upon Grantee under this Franchise for violations of the Franchise resulting from a good faith error by Grantee or that have resulted in no material adverse impact on the Grantor or its inhabitants.

12.7 Termination of this franchise shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the pipeline pursuant to this Franchise and to restore the Franchise Area.

12.8 The parties acknowledge that the covenants set forth herein are essential to this Franchise, and, but for the mutual agreements of the parties to comply with such covenants, the parties would not have entered into this Franchise. The parties further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the parties shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any of the covenants contained herein should the other party fail to perform them.

Section 13. Dispute Resolution.

13.1 In the event of a dispute between Grantor and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Franchise. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute

13.2 If the parties are unable to resolve the dispute under the procedure set forth in this section, the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall

have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

13.3 If the parties fail to achieve a resolution of the dispute through mediation, either party may then pursue any available judicial remedies, provided that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

Section 14. Indemnification.

14.1 General Indemnification. Except to the extent caused by the acts or omissions of a party not under the direction and control of Grantee, Grantee shall indemnify, defend and hold harmless Grantor from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of Grantee's Facilities, and the products contained in, transferred through, released or escaped from said pipeline and appurtenant Facilities, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws. If any action or proceeding is brought against Grantor by reason of the Facilities, Grantee shall defend the Grantor at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor, which approval shall not be unreasonably withheld.

14.2 Environmental Indemnification. Except to the extent caused by the acts or omissions of a party not under the direction and control of Grantee, Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the Facilities or (c) other activity related to this Franchise by Grantee, its agents, contractors or subcontractors. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

Section 15. Insurance and Bond Requirements.

15.1 During this Franchise, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of FIFTY MILLION UNITED STATES DOLLARS (\$50,000,000.00) for each occurrence, in a form and with a carrier reasonably acceptable to the Grantor, naming

Grantor as an additional insured, but only to the extent of Grantee's indemnity obligations included herein, to cover any and all insurable liability, damage, claims and loss as set forth in Section 14.1 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and loss as set forth in Section 14.2 above, except for liability for fines and penalties for violation of environmental laws as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, pollution liability coverage, at a minimum covering liability from sudden and accidental occurrences, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace.

15.2 Proof of insurance and a copy of the insurance policy, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor upon request. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days prior written notice to the Grantor.

15.3 Intentionally omitted.

15.4 The indemnity, insurance and bond provisions contained herein shall survive the termination of this Franchise and shall continue for as long as the Grantee's Facilities shall remain in use by Grantee in or on County Rights of Way or on the Franchised Areas or until the parties execute a new Franchise Agreement which modifies or terminates these indemnity, insurance and bond provisions.

Section 16. Receivership and Foreclosure.

16.1 Grantee shall immediately notify the Grantor in writing if it: files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any parts of its business operations, pipeline(s) or Facilities within or affecting the Franchise Area.

16.2 Upon the foreclosure or other judicial sale of all or a substantial part of Grantee's business operations, pipeline(s) or Facilities within or affecting the Franchise Area, or upon the termination of any lease covering all or a substantial part of the pipeline(s) or Facilities within or affecting the Franchise Area, or upon the occasion of additional events which effectively cause termination of Grantee's rights or ability to operate the pipeline(s) or Facilities within or affecting the Franchise Area, Grantee shall notify the Grantor of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Franchise Agreement governing the consent of the Grantor to such change in control of the Grantee shall apply.

16.3 The Grantor shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise Agreement and remedied any existing violations and/or defaults; and

(b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement granted to the Grantee except where expressly prohibited by Washington law.

Section 17. Legal Relations.

17.1 Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.

17.2 Grantee accepts any privileges granted by Grantor to the Franchise Area, public Rights-of-Way and other Public Property in an "as is" condition. Grantee agrees that the Grantor has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of facilities or the facilities themselves in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the County or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Franchise.

17.3 Grantee waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply. This Franchise shall not create any duty of the Grantor or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the County or any of its officials, employees or agents in the exercise of powers reserved to the Grantor. Further, this Ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the Grantor shall be deemed a duty to the general public and not to any specific party, group or entity.

17.4 This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that in any action, except actions based on federal questions, venue shall lie exclusively in Whatcom County, Washington.

Section 18. Miscellaneous.

- 18.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise Agreement so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.
- 18.2 Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.
- 18.3 In the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Grantee, then Grantee's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- 18.4 The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.
- 18.5 By entering into this Franchise, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Franchise.
- 18.6 This Franchise and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.
- 18.7 Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday,

payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the Grantor:

Whatcom County Executive
Whatcom County Courthouse
311 Grand Ave., Suite 108
Bellingham, WA 98225

To Grantee:

Cascade Natural Gas Corporation
Attn: Region Director, NW
1520 S. 2nd Street
Mount Vernon, WA 98273

18.8 The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.

18.9 This Franchise Agreement and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Franchise Agreement can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Franchise Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought. All previous Franchise Agreements between the parties pertaining to Grantee's Operation of its pipeline(s) and/or Facilities are hereby superseded.

18.10 This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the Whatcom County Council the Statement of Acceptance, attached hereto as Exhibit A (the "Franchise Acceptance").

18.11 Should Grantee fail to file the Franchise Acceptance with the County Council within 30 days after the adoption of this ordinance, then the County shall have the right by ordinance to declare Grantee's forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter. The County shall retain this right to

terminate the Franchise until such time as Grantee files the Franchise Acceptance pursuant to the terms herein.

18.12 The Effective Date of this Franchise shall be the ____ day of _____, 20__, after adoption by the Whatcom County Council and legal publication or recording of this ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided.

ADOPTED this _____ day of _____ 2021.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 6/30/2021)

Satpal Singh Sidhu, County Executive

()Approved ()Denied

Date Signed: _____

FRANCHISE FACT SHEET

Applicant:	Cascade Natural Gas Corporation
Type of Franchise:	Pipeline/Natural Gas
Brief description:	Franchise is for the purpose of constructing/operating/maintaining pipeline facilities for natural gas.
Location/ Abbreviated legal description:	All rights-of-way within Whatcom County
Duration:	25 years
Existing or New Franchise?	Existing franchise
Related Council Agenda Bills:	AB2021-414 AB2021-415
Related Ordinance Numbers:	N/A
Additional Information:	N/A

Date of Fact Sheet: July 9, 2021

APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL:

COMES NOW, Cascade Natural Gas Corporation

who respectfully petitions the Whatcom County Council for a twenty-five (25) year
franchise to lay, construct, maintain, and repair
Install, operate, abandon, replace, and remove new or existing natural gas facilities
within and through Whatcom County

and all necessary appurtenances along, over, and across the following roads situated
in Whatcom County, Washington:
All rights of way situated within the jurisdictional boundaries of Whatcom County

The petitioner further requests that the Whatcom County Council fix a time and place
for a public hearing on the granting of this continuation of franchise, and that public
notice be given, at the expense of the petitioner, as provided by law; and that, at
said hearing, petitioner be granted the franchise continuation herein requested.

DATED: 7-21-2021

Cascade Natural Gas Corporation

Company Name

8113 W. Grandridge Blvd.

Mailing Address

Kennewick, WA 99336

City State Zip

360-336-3887

Phone Number

David Gutschmidt

Signature of authorized agent/owner

David Gutschmidt

Print or type name



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-395

File ID:	AB2021-395	Version:	1	Status:	Agenda Ready
File Created:	07/01/2021	Entered by:	CStrong@co.whatcom.wa.us		
Department:	Planning and Development Services Department	File Type:	Discussion		
Assigned to:	Council Committee of the Whole	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion and periodic update of the Shoreline Management Program

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

7.13.2021: Overview of the periodic update of Whatcom County's Shoreline Management Program (SMP), which includes amendments to the Whatcom County Comprehensive Plan (shoreline and other policies), WCC Titles 23 (shoreline regulations) and 22 (permitting procedures), WCC Chapter 16.16 (critical areas regulations), and the official Shoreline Map. Additionally, the project addresses Council's docketed items 1) PLN2019-00011, a directive to amend the Comp Plan and codes to allow the seasonal extraction of sand and gravel from dry upland areas under certain conditions (but has been found to be unnecessary); and 2) PLN2018-00010, the addition of a Sustainable Salmon Harvest Goal policy to the Comp Plan.

9.14.2021: Discussion of proposed Comp Plan policy amendments pertaining to the SMP Periodic Update and docket item #PLN2018-00010 regarding a Sustainable Salmon Harvest Goal policy.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
07/13/2021	Council Committee of the Whole	DISCUSSED	

Attachments: Memo for 9.14 - Proposed Amendments to Comp Plan, Staff Report to Planning Commission, Exhibit A - CP Ch. 10 Env't, 2021-05-13 (PC Approved), Exhibit B - CP Ch. 11 Shorelines, 2021-05-13 (PC Approved), Exhibit C - CP Ch. 8 MRL 2021-05-13 (PC Approved), Exhibit H - Synopsis of Public Comments (revised 2021-04-28)



Memorandum

DATE: August 31, 2021
TO: The Honorable Whatcom County Council
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Continued Review of Shoreline Management Program (SMP) Periodic Update 2020

Today's Goal

On September 14th the Council's Committee of the Whole (COTW) will review and talk about the proposed amendments to the Comprehensive Plan (C/P) for the SMP Periodic Update. The COTW should review and be prepared to comment on the amendments to:

- Exhibit A – C/P Ch. 10 Environment
- Exhibit B – C/P Ch. 11 Shorelines
- Exhibit C – C/P Ch. 8 Marine Resource Lands

The COTW might also want to have handy the Exhibit H (Table of public comments with staff responses), as we point to a few of those comments in this memo.

All these document were previously provided to the Council, but are also available on PDS's SMP Update webpage <http://www.co.whatcom.wa.us/3097/Shoreline-Master-Program-Periodic-Update>.

Proposed Comprehensive Plan Amendments Related to the SMP Update

Scoped Amendments (Note: Topic #s and letters refer to the number assigned in the Scoping Report)

Topic #9, Layout and Structure of the SMP

- a) *Reorganize the SMP, putting the background information, discussions, and goals and policies into the Comprehensive Plan as a chapter. Simplify the language as much as possible and remove redundancies.*

One of the biggest changes was to reorganize the SMP to shorten it and make it easier to use. One of the ways we're doing this is to move the SMP policies into the Comprehensive Plan. The SMP was already adopted by reference as part of the CompPlan; it just wasn't contained in it. However, in modern code construction, code normally doesn't contain policies (or appendices) as our current Title 23 does. Staff is proposing to create a new Chapter 11 of the CompPlan entitled "Shorelines" (Exhibit B). We have moved all the SMP policies from Title 23 (Exhibit D) as well as related policies from Chapter 10, Environment (Exhibit A), to this chapter, putting all the shoreline policies into one place. Thus, the amendments to Chapter 10 are mostly showing the deletion of policies that are moving to Chapter 11.

Most of the changes shown in C/P Ch. 11 (Exhibit B) are also in support of this effort. We have moved everything from Title 23 that appeared to be policy (rather than regulation) into this chapter. We've also put it in the same format as other chapters of the CompPlan, struck redundancies, and corrected

grammar and tenses. There are, however, a few proposed new policies and/or amendments that we discuss below.

Another major organizational change is to move all procedural permitting regulations to WCC Title 22 (Exhibit E). Title 22 was created a few years ago to eventually contain all of the County's procedures for land use permitting and code administration. However, moving sections to this Title is continuing to occur as we progress through various code amendments (e.g., the annual code scrub, upcoming code enforcement amendments, this SMP update, etc.).

Similarly, since WCC Chapter 16.16 (Exhibit F, Critical Areas) is adopted as part of the SMP, they are to be read together, and where there are redundancies between Ch. 16.16 and Title 23, we are proposing to delete those redundancies in Title 23.

We won't get into the details of proposed amendments to Title 22 or Ch. 16.16 yet, but will address them in more detail at one of your next meetings.

Topic #17, Shoreline Uses

- a) *Revise as necessary any SMP policies or regulations pertaining to the Cherry Point area as directed by Council.*

In 2018 the Council started a process of amending the policies and regulations related to fossil fuel facilities in the Cherry Point Management Area. The Council hired consultants specifically for this task and it was principally administered under a separate process. Some of those amendments, to C/P Chapter 2, WCC Chapter 16.08 (SEPA), WCC Title 20 (Zoning), and WCC Title 22 (Land Use) were adopted on 7/27/21 by Ord. 2021-046. Those amendments to the Whatcom County Code have been incorporated as existing text where appropriate.

However, the Council's corresponding amendments to C/P Ch. 11 (Exhibit B) and WCC Title 23 (Exhibit D, which the Council will review at a later date) have not yet been reviewed by the Council as these were being processed through this SMP update.

As staff is proposing to do with the rest of the SMP policies, we've moved the Cherry Point Management Area policies from Title 23 to C/P Ch. 11 (page 11-38 to 42). As such, they're not shown as new policies (i.e., no underline) in Exhibit B, but Council's proposed amendments to them are being shown in strikeout/ underline.

- f) *Update Memorandum of Understanding with Department of Archaeology and Historic Preservation*

Through this update process, staff was not able to actually update the MOU with DAHP and Lummi Nation, as that will take some time and involve many others. But based on the language in it, we are proposing some new policies to the cultural resources sections of both the Overall SMP Goals and Objectives (Exhibit B, page 11-9) and the General Policies (page 11-27) sections (see policies 11G-3, 11G-4, & 11X-9). We are also proposing to revise the regulations, but we'll look at those when we review Title 23. None of these amendments change the way we currently do things, they just clarify our current practices.

- j) *Add standards for live-aboards in marinas.*

Though standards are proposed to be added to Title 23, staff is also proposing to add Policy 11DD-13 to CompPlan Ch. 11 (Exhibit B, page 11-35) to support the addition of those regulations. (We'll review the standards when we get to Title 23 amendments.)

Topic #6, Climate Change/Sea Level Rise

- a) *Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations.*

First, Council should know that that there is no requirement to address climate change or sea level rise in the state statutes, including the Shoreline Management Act (SMA). Nonetheless, Council's direction through the Scoping Document was to:

"Develop and/or strengthen policies regarding climate change/sea level rise (CC/SLR), including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations."

Chapter 10 of the CompPlan (Exhibit A) already contains a section on Climate Change (starting on page 10-7), including Goal 10D and Policies 10D-1 through 10D-10. Based on public comments the Planning Commission also added a new policy, Policy 10D-11. However, these policies are aimed at how the County should respond overall and are not specific to the shoreline itself.

But based on Council's direction staff has developed seven new policies specific to our management of the shoreline in light of anticipated impacts due to climate change (Exhibit B, C/P Ch. 11, Policies 11AA-1 – 11AA-7), including proposed Policy 11AA-5, which reads:

"Whatcom County should periodically assess the best available sea level rise projections and incorporate them into future program updates, as relevant"

This policy specifically addresses *"the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations."*

We understand that some folks would like to see more directive policies¹, as well as actual regulations²; however, before adopting (and then implementing) something along those lines, we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.). As we mentioned when the Commission and Council were scoping this project, staff anticipates this year the completion of the CoSMoS model, on which the City of Bellingham and Whatcom County Public Works are working, which should provide the Best Available Science to Whatcom County. The Department of Ecology has also advised us that any such regulations should be built on data, which is what PS-CoSMoS will be providing. Furthermore, once the data is available, we should perform vulnerability and risk assessments to see what kind and where the problems might be, and update our shoreline inventory and characterizations. Without such science, we would be open to challenges. The policies being introduced would set us up for developing regulations once this model is completed.

It should also be noted that in reviewing development proposals, Planning and Development Services already requires structures to be built above the anticipated flood/sea level rise stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.

Nonetheless, this is a policy decision and all comments are being forwarded to the Council for their consideration.

¹ See Exhibit H, Public Comments FW/WEC01, FW/WEC02, WCPW07, WCPW08, RES03, RFW02, RFW03, RFW04, RFW11, RFW17, P6605, DK01, AC01, & PR03.

² See Exhibit H, Public Comments FW/WEC12, FW/WEC21, WCPW08, WCPW09, WCPW10, & RES03.

Topic #8, Habitat

a) Reference WDFW and DNR's Shore Friendly Program

Staff has amended C/P Policy 11I-2 (Exhibit B, page 11-11) to reference this program as an example of "voluntary and incentive-based public and private programs."

c) Consider ways to improve protections for salmon and forage fish habitat

Policy 11LL-4 in C/P Ch. 11 (Exhibit B, page 11-43) is proposed to be amended as one of the ways to support this directive by adding additional critical saltwater habitats to the list of where moorage structures ought to be avoided. Other amendments in support of this are included in the regulations, which the Council will review at a future meeting.

Topic #19, Water Quality

a) Include language/policies about the importance of Lake Whatcom as the source of drinking water for most of the County and the water quality improvement plan (TMDL).

After reviewing the existing CompPlan, staff believes that it already addresses this issue sufficiently. In Chapter 10, under *Water Resources* (Exhibit A, page 10-11), subsection *Lake Whatcom Watershed Management* (pages 10-22 – 10-25) there are four pages of text describing Lake Whatcom's importance as a source of drinking water and the efforts the County (and City of Bellingham) are under taking to protect it. Under Goal 10-J alone there are 14 specific policies (Policies 10J-1 - 10J-14) regarding protecting Lake Whatcom, and there are numerous other, more generic goals and policies that deal with water quality protection.

Topic #21, Marine Resource Lands

a) Consider adding a Marine Resource Lands policy section as developed by the Marine Resources Committee

When the Council amended the CompPlan in 2016 they included a new section entitled "Marine Resource Lands" that contained one goal and one policy that directed staff to assist in developing the section more thoroughly:

Goal 8T: Conserve and enhance Whatcom County's marine land base for the long-term and sustainable production of commercial and recreational economic activities.

Policy 8T-1: Whatcom County will work with committees including but not limited to the Marine Resource Committee, the Shellfish Protection Advisory Committee, and other local marine land experts to create a new section of this chapter to support Goal 8T to be docketed and processed for consideration no later than 2017.

The project was docketed as (PLN2017-00005), and staff worked with these groups to help develop some language, goals, and policies for this section, which is shown as Exhibit C (C/P Ch. 8). However, there was mixed recommendations from the groups who reviewed the language.

- The **Marine Resources Committee** reviewed the proposal at their June 7, 2018, meeting, and after adding Policy 8V-4 (addressing educational efforts and programs) they recommended that the County Council adopt the proposed language.
- The **Birch Bay Watershed and Aquatic Resources Management Committee (BBWARM)** reviewed the proposal at their June 20, 2018, meeting. They recommended that the Council *not* adopt the proposed language. They felt that the new Marine Resource Lands section of the CompPlan was already covered by the existing Shoreline Management Program and that

including it would add unnecessary complication/duplication. They recommended that the Council postpone any action on the Marine Resource Lands amendment until the SMP update commenced.

- The **Portage/Drayton Shellfish Protection Districts** reviewed the proposal at their July 25, 2018, meeting. However, they did not have a quorum and could not act.
- The **Planning Commission** held a workshop on June 14, 2018 and a public hearing on June 28, 2018. At that time, they recommended that the Council *not* adopt the Marine Resource Lands proposal. There was concern amongst some of the Commissioners that regulations adopted subsequent to these policies could affect farmers, even though staff explained that the intent of these proposed amendments was not to address agricultural runoff. They also thought it would be better to consider this during our SMP update, perhaps incorporating some of the goals and policies into that rather than having a separate section.

When staff subsequently brought the project forward to Council's Planning & Development Committee for review they decided to consider it with the SMP update, which is why it's before you now, again. The Planning Commission has this time recommended approval of this amendment to C/P Chapter 8 (Exhibit C) after their public hearing on April 22, 2021.

Other Comprehensive Plan Amendments

Sustainable Salmon Harvest Goal

There is also a new Policy 10L-19 proposed to be added to Chapter 10 regarding a sustainable salmon harvest goal (Exhibit A, page 11-46). Adding this policy is not a part of the SMP Update *per se*, and in fact was not part of the scope. Rather, it is a policy the Council expressed interest in adding in support of the fisheries co-manager's Sustainable Salmon Harvest Goal. Adding such a policy was placed on the docket by Council in 2018 (#PLN2018-00010). Rather than process its addition as a separate CompPlan amendment, staff is proposing to add it while we're already amending the CompPlan for the SMP Update. The WRIA 1 Salmon Recovery Staff Team—representing the fisheries co-managers (WDFW, Lummi Nation, and Nooksack Tribe)—helped develop this policy language.

Whatcom County Planning & Development Services Staff Report

Shoreline Management Program Periodic Update 2020

I. File Information

File #: PLN2020-00006, PLN2019-00011, & PLN2018-00010

File Name: Shoreline Management Program Periodic Update 2020

Applicant: Whatcom County Planning and Development Services (PDS)

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

Location: Countywide.

Staff Recommendation: Approve, though it should be noted that staff still recommends that the maximum impact area allowed through a Reasonable Use Exception be 2,500 sq. ft., rather than the 4,000 allowed in the existing code (Exhibit F, §16.16.270(C)(12)).

II. Background

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

The County adopted its current SMP in 2007 (Ordinance No. 2007-017; approved by Ecology in 2008) through a comprehensive update process, which included an inventory and characterization of shoreline land use and ecological conditions (otherwise known as the "baseline condition"), a shoreline restoration plan, and an evaluation of cumulative impacts to ensure implementation of the SMP would result in no net loss of shoreline ecological functions.

Since then, the Council has amended the SMP numerous times, though those amendments were fairly minor in nature, addressing specific issues. The SMP was most recently amended in 2019 to adopt by reference the 2017 Critical Areas Ordinance (CAO).

Periodic Update Requirements

The primary requirement of the periodic update process is to ensure that the SMP remains consistent with updates to the legislative requirements of the SMA. The Washington State Department of Ecology (DOE) provides a list of legislative amendments which have taken effect between 2007 and 2017 as a Periodic Review Checklist.

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

The County's Comprehensive Plan and other development regulations were also reviewed for consistency with the SMP, and amendments are being proposed to maintain consistency.

The periodic review process also represents an opportunity to revise and improve the overall functionality, clarity, and usability of the SMP for both the public and County staff. This includes clarifying permit processes and requirements and improving the overall organization and clarity of the documents. The majority of amendments shown in the documents are to achieve this goal.

Note that this periodic update is not required to: re-evaluate the ecological baseline that was established as part of the 2007 comprehensive update; extensively assess no net loss criteria other than to ensure that proposed amendments do not result in degradation of the baseline condition; or change shoreline jurisdiction or environment designations, unless deemed appropriate and necessary. And doing so was not included in the scope or budget for this update, so staff has not undertaken any amendments that would require such actions. A link to those 2007 documents can be found below under "Attachments."

Project Scope

In starting this project, staff compiled ideas for amendments from various sources (see Public Outreach, below) and compiled them into a list that the Planning Commission and Council reviewed and adopted as the "Scoping Document." This set the "bookends" for what staff would work on (and by corollary, what we would not work on). It contains a list of 22 topic areas, with 68 specific issues to address. A link to that document can be found below under "Attachments."

Staff understands that through the review process other ideas may arise, but if they are big issues that need a lot of work to accomplish, we will not be able to take them on and meet our update deadline of June 30th or stay within budget.

Public Outreach

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

The early months of the project were used to gather input and outline the extent of the review; three public open houses were held in different parts of the County to illicit amendment ideas¹. Both the

¹ Note: Though we had planned on holding three additional open houses to present the draft to the public, due to the COVID-19 pandemic we had to cancel those and rely on electronic review.

Planning Commission and the County Council then reviewed and adopted a final scope of potential amendments based on input from staff, the public, local jurisdictions, tribes, and other stakeholders.

Based on that scope, County staff and consultants drafted amendments. These draft amendments were issued for a 30-day public review period from August 18 – September 18, 2020, before the Planning Commission’s work sessions. Prior to the Planning Commission’s hearing the revised amendments were reissued for another 30-day public review period, from March 12 – April 12, 2021.

Planning Commission Review

Between October 2020 and April 2021 the Planning Commission held nine public work sessions to review the draft amendments. After a second 30-day public review period they then held a joint Planning Commission/Department of Ecology public hearing on April 22, 2021.

County Council/Department of Ecology Review

Staff expects that the Council will hold multiple work sessions and an additional public hearing prior to adoption. By state law, the SMP update was supposed to be adopted by June 30, 2020; however, as a DOE grant recipient (and in part due to the pandemic) our official deadline is now June 30, 2021. Staff anticipates that Council will provisionally adopt the update via resolution forwarding it to DOE for their final review and approval. After we receive DOE’s approval, Council will then need to adopt an ordinance adopting and effecting the update. If the anticipated schedule is kept, the revised SMP should become effective sometime this Fall.

Attachments

To Review (provided in your packet):

- Exhibit A – CompPlan Ch. 10 Environment
- Exhibit B – CompPlan Ch. 11 Shorelines
- Exhibit C – CompPlan Ch. 8 Marine Resource Lands
- Exhibit D – WCC Title 23 Shoreline Regulations
- Exhibit E – WCC Title 22 Land Use & Development
- Exhibit F – WCC 16.16 Critical Areas Regulations
- Exhibit G – Shoreline Map
- Exhibit H – Table of public comments, with staff responses
- Exhibit I – No Net Loss Addendum
- Exhibit J – Shoreline Restoration Addendum

Background Documents:

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

All documents are available on PDS’s SMP Update webpage at <http://www.co.whatcom.wa.us/3119/SMP-Update-2020-Documents>.

III. Amendments

The proposed amendments are found in Exhibits A through G. Please refer to those attachments; explanations are provided therein. Following, however, is a list of proposed policy changes.

Scoped Amendments

This is the list of items Council directed staff to address, and how we did. Topic #s refer to the topic number assigned in the Scoping Report.

Topic #1, Consistency with State law (required amendments)

- a) **Revise language to cite updated substantial development cost threshold or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

Every five years the Office of Financial Management (OFM) recalculates the dollar threshold for projects qualifying as exempt from having to obtain a substantial development permit. Thus, in §22.07.020(B)(1) (Exhibit E), we have updated the dollar amount to the most recent (2017) OFM calculation of \$7,047. Additionally, we have revised the definition of “substantial development” in §23.60.190 to better meet the state definition (Exhibit D).

- b) **Revise the definition of “development” to clarify that development does not include dismantling or removing structures.**

The definition of “development” has been updated to meet DOE guidelines (Exhibit D, §23.60.040(6)).

- c) **Add reference to statutory exceptions to local review to the SMP. Revise or remove existing references to remedial actions and projects certified pursuant to RCW 80.50 to clarify their status as exceptions to local review under the SMA.**

The requisite language has been added (and revised) to §22.07.010(G) (Exhibit E) to clarify the referenced project types’ status as exceptions to local review under the SMA, and deleted from (old) §23.50.060 (Exhibit D).

- d) **Revise language to include a shoreline permit exemption for retrofitting existing structures to comply with the ADA or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

The requisite language has been added as §22.07.020(B)(17) (Exhibit E).

- e) **Revise language in the SMP to cite the updated cost thresholds for dock construction or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

§22.07.020(B)(8) has been revised to meet the statutory requirements (Exhibit E) and the cost threshold has been deleted from the definition of “substantial development” in §23.60.190 (Exhibit D).

- f) **Revise the SMP aquaculture provisions for consistency with WAC 173-26-241(3)(b).**

§23.40.050, in particular subsections (D)(1) and (G), has been revised to be consistent with WAC 173-26-241(3)(b) regarding commercial geoduck farming. (Exhibit D)

- g) Revise the SMP to clarify that the effective date of SMP amendments is 14 days from notice of final approval by Ecology.**

Both §23.05.090 (Effective Date) and §23.10.030(C)(2) (Administrative Duties) have been updated to clarify that the effective date of SMP amendments is 14 days from notice of final approval by Ecology (Exhibit D).

- h) Review the SMP for consistency with 2003 SMP Guidelines and make any necessary changes.**

Numerous amendments are proposed to make our SMP consistent with the SMP Guidelines; too many to list here. However, prior to submitting to DOE for approval, staff will complete the SMP checklist for their use.

Topic #2, Consistency with State law

- a) Revise the SMP for consistency with Ecology's updated permit filing procedures.**

The requirements for filing permits with DOE have been updated in §22.07.060 (Filing Shoreline Permits with the Department of Ecology) (Exhibit E).

- b) Revise language to clarify that forest practices that involve only timber cutting are not SMA "developments" and do not require Shoreline Substantial Development Permits.**

§23.40.110 (Forest Practices), subsection (A)(3) has been added to clarify that forest practices that involve only timber cutting are not SMA "developments" and do not require Shoreline Substantial Development Permits. (Exhibit D)

- c) Revise language in §23.50.040 to clarify that the SMA does not apply to lands under exclusive federal jurisdiction.**

Subsection (E)(1) has been added to §23.10.020 (Applicability, which used to be §23.50.040) to clarify that the SMA does not apply to lands under exclusive federal jurisdiction. (Exhibit D)

- d) Update definitions to include distinct definitions for "nonconforming use," "nonconforming structure," and "nonconforming development" in accordance with WAC 173-27-080.**

The definitions of "nonconforming lot" (§23.60.140(5)) and "nonconforming use" (§23.60.140(7)) have been amended, and a new definition of "nonconforming structure" (§23.60.140(6)) has been added, to conform to WAC 173-27-080. (Exhibit D)

- e) Define special procedures for WSDOT projects per WAC 173-27-125.**

Subsection (1)(c) has been added to §22.05.130 (Permit Review Time Frames) to define special procedures for WSDOT projects. (Exhibit E)

- f) Incorporate a reference to WAC 173-27-215 for criteria and procedures for instances in which a shoreline restoration project creates a shift in OHWM.**

A reference to WAC 173-27-215 for criteria and procedures for instances in which a shoreline restoration project creates a shift in OHWM has been added as §23.40.180(A)(3) (Restoration and Enhancement) (Exhibit D).

- g) Revise definition of "Floodway" for complete consistency with Ecology's recommended language.**

The definition of "floodway" has been amended to be consistent with DOE's recommended language. (§23.60.060(21), (Exhibit D))

h) Update the list and maps of streams and lakes that are in shoreline jurisdiction as necessary.

The list of waters that are in the shoreline jurisdiction has been revised in §23.20.010(B) (Shoreline Jurisdiction), using the language from the WAC 90.58.030 (2)(d). (Exhibit D)

i) Revise the SMP to include the required provisions in WAC 90.58.140(12).

§23.40.080 (Dredging and Dredge Material Disposal), subsection (B)(4)(b) has been added to clarify that dredge material disposal at an open water disposal site approved through the Dredged Material Management Program (RCW 79.105.500) is allowed and shall not require a shoreline permit. (Exhibit D)

Topic #3, Consistency with WCC Ch. 16.16 (Critical Areas)

a) Ensure Council changes in Ch. 16.16 regarding standards for view preservation are reflected in the SMP.

§16.16.235(5) (Activities Allowed with Notification) of the critical areas regulations (Exhibit F) allows for view corridors to be created and maintained (though certain restrictions apply). Subsection (L) has been added to §23.30.030 (Views and Aesthetics) (Exhibit D) that acknowledges and cross-references this allowance (except for in the Natural shoreline environment).

Topic #4, Consistency with Land Use procedures (Title 22)

a) Update SMP to align with recently adopted Title 22 permit procedures.

In keeping with placing all land use permitting procedures in one place (Title 22) started a couple of years ago, all shoreline permitting procedures in Title 23 (Exhibit D) are being moved to Title 22 (Exhibit E). Where processes overlap with PDS's other project permit types, we refer to and rely on (slightly modified) existing language (Ch. 22.05). However, shoreline permits also have requirements unique to them, so have supplemented the processing rules with a new Ch. 22.07 (Additional Requirements for Shoreline Permits and Exemptions).

Topic #5, Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173-26)

a) Clarify permit review no net loss analysis

The primary regulations ensuring no net loss are:

- §23.10.040(A) (Code Interpretation) requires that the regulations be interpreted to allow development only when a proposal is "designed, constructed, and/or mitigated to provide no net loss of or a net lift to ecological functions and ecosystem wide processes." (Exhibit D)
- §23.30.010(B) (Ecological Protection) requires that "any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes." (Exhibit D)
- §23.60.140(4) (Definition) defines what no net loss means. (Exhibit D)
- §16.16.250(2) (Critical Areas Review Process) requires that applicants demonstrate no net loss to the Director's satisfaction in order to approve a critical areas review (and thus, a project permit). (Exhibit F)
- §16.16.260(C) General Mitigation Requirements allows for alternative mitigation options in order to provide the greatest ecological benefit... to achieve no net loss of ecological functions. (Exhibit F)
- §16.16.260(G) requires that mitigation plans demonstrate no net loss. (Exhibit F)

However, the term is also used in numerous other sections as a reminder of this requirement.

b) Clarify development mitigation requirements.

The mitigation standards have been clarified in the following sections as described:

- §16.16.260 (General Mitigation Requirements):
 - Subsection (B) now contains text describing what information the Director may use in determining the extent and type of mitigation required. This text had been found repeated in various Articles of Ch. 16.16, so we've moved it to the overall mitigation section.
 - Subsection (C) is a new policy that will allow for off-site mitigation when it's better for the environment. In the past several years of processing permits, staff has found that the best overall solution is not necessarily "on-site and in-kind" mitigation, since sometimes there's not enough room, or that the mitigation is in a place that can't be guaranteed to remain after the initial 5-year monitoring period. Under this new policy, though the preference is still for "on-site and in-kind" (subsection (1)), off-site and in-kind mitigation may be allowed when the applicant demonstrates that greater biological and/or hydrological functions and values will be achieved (subsection (2), or on-site and out-of-kind mitigation may be allowed when the applicant demonstrates an ecological uplift of biological and/or hydrological functions and values will be achieved (subsection (3). Subsections (4) and (5) also point to our already existing use of Alternative Mitigation Plans and Mitigation Banking.
 - Like subsection (B), subsections (D) and (E) have been moved from the more specific critical areas rules (habitat conservation areas) to the more general so as to apply more broadly.
 - Subsection (G)(3) has been moved from §23.30.010 (Ecological Protection). This text puts the burden on the applicant "demonstrate that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts and results in no net loss of shoreline and critical area ecological functions." Since WCC Ch. 16.16 (Critical Areas) is considered a part of the Shoreline Management Program, staff thought it more fitting that all the rules for mitigation plans be in one place.
- §16.16.680 (Wetlands – Mitigation Standards)
 - Certain sections that we moved to §16.16.260 (General Mitigation Requirements) have been deleted, since the general now covers the specific.
 - To account for temporal loss of functions, in subsection (C) staff is proposing to amend the wetland buffer² mitigation ratio from a standard 1:1 (subsection (C)(1)) to a range of ratios depending on when the mitigation is implemented (subsection (4)) (including at a double ratio for those who don't initially get permits (subsection (c)) and the mitigation is provided long after the impact. This section now mimics the HCA mitigation standards (§16.16.760(E)(3)).
- §16.16.740 (Habitat Conservation Area Buffers). Apart from the clarifying amendments, staff is proposing to modify:
 - Subsection (B) (Habitat Conservation Areas Buffer Widths), which includes Table 4. The mitigation schema in Table 4 moves us from an older system of classifying water types and

² Note that the ratios for *wetland* mitigation (Table 2, which are from DOE guidance) are not proposed for amendment.

buffer widths to the newer WDFW water-typing system. Though we had already adopted this newer system in identifying surface waters of the state (16.16.710(C)((1)(a)), we had not followed through on using that nomenclature for the various types' buffer widths (the table didn't match the text). Table 4 corrects this. The buffer widths themselves are the same except for Type S – Freshwater. It is currently 150 feet, but staff is proposing to increase it to 200 feet, which is the federal court's recommended width based on *National Wildlife Federation v. FEMA* (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472).

- §16.16.760 (Habitat Conservation Areas – Mitigation Standards)
 - Certain sections that we moved to §16.16.260 (General Mitigation Requirements) have been deleted, since the general now covers the specific.
 - We have added subsection (D) as a reminder to applications that the Army Corps of Engineer Regional General Permit 6 for inland marine waters may apply to their project(s). RGP-6 is a permit issued by the Corps that authorizes the construction of new residential in- and overwater structures in inland marine waters of Washington State while meeting the Endangered Species Act, though it has conditions on the construction.
 - Like with wetland buffer mitigation, we have added subsection (E)(3), doubling the mitigation ratio for those who don't initially get permits (subsection (c)) and the mitigation is provided long after the impact.
- §16.16.640 (Wetland Buffer Modification) and §16.16.745 (Habitat Conservation Area Buffer Modification). In Articles 6 (Wetlands) and 7 (Habitat Conservation Areas) staff is proposing to combine their respective buffer modification rules into one section for each Article, each covering the types of buffer modifications allowed (increase, averaging, reduction, and variance). For wetlands, we have also modified some of the text to be consistent with DOE guidance (Wetlands in Washington State, Volume 2, Appendix 8C, updated 2018).

c) Align appeal procedures with State statutes.

Subsection (3) has been added to §22.05.160 (Appeals) to align the County's shoreline permit appeals process with the state statutes. (Exhibit E)

d) Shoreline permit review (Exemption, Substantial, Conditional Use, or Variance) should reflect State statutes and level of review required.

The rules for shoreline permit review have been updated to meet state standards in Ch. 22.07. (Exhibit E)

e) Align Use standards with State statutes.

Staff is proposing numerous amendments throughout Ch. 23.40 (Shoreline Use and Modification Regulations) that we believe better aligns them with State statutes, in most cases using the language from the WAC. Furthermore, in the existing code Table 23.100.010 is fairly meager and many uses allowed or prohibited are included only in the text of the various use and modification categories, making it difficult to find them all. We have updated that table as Table 1 Shoreline Use by Environment Designation and moved all allowances and prohibitions from the text to the table, hopefully making it easier to see what one can or can't do in the various environment designations.

f) Incorporate improved permit streamlining for priority salmon recovery projects

§22.07.020 (Exemptions from Shoreline Substantial Development Permits) subsection (B)(16) already exempts projects whose primary purpose is to improve fish or wildlife habitat or fish passage. (Exhibit E)

Topic #6, Climate Change/Sea Level Rise

a) Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations.

Chapter 10 of the CompPlan (Exhibit A) already contains a section on Climate Change (starting on page 10-8), including Goal 10D and Policies 10D-1 through 10D-10. However, these are aimed at how the County should respond overall and are not specific to the shoreline itself.

Council's direction through the Scoping Document, recommended for approval by the Planning Commission, was to "develop and/or strengthen policies...", not regulations. Thus, staff has developed seven new policies specific to our management of the shoreline in light of anticipated impacts due to climate change (Exhibit B, C/P Ch. 11, Policies 11AA-1 – 11AA-7), including proposed Policy 11AA-5, which reads:

"Whatcom County should periodically assess the best available sea level rise projections and incorporate them into future program updates, as relevant"

This policy specifically addresses *"the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations."*

We understand that some folks would like to see more directive policies³, as well as actual regulations⁴; however, before adopting (and then implementing) something along those lines, we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.). As we mentioned when the Commission and Council were scoping this project, staff anticipates the development of the CoSMoS model on which the City of Bellingham and Whatcom County Public Works are working, which should provide the Best Available Science to Whatcom County. The policies being introduced would set us up for developing regulations once this model is completed.

It should also be noted that in reviewing development proposals, Planning and Development Services already requires structures to be built above the anticipated flood/sea level rise stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.

Nonetheless, this is a policy decision and all comments are being forwarded to the Planning Commission and Council for their consideration.

Topic #7, Definitions

a) Add definitions for common words with a specific meaning in the SMP.

In Ch. 23.600 (Exhibit D) we added many definitions of words that were undefined, amended others to meet current standards and/or to be consistent amongst Titles, and deleted those words already defined elsewhere but added the sentence to §23.60.005, "Any words not defined herein shall be defined pursuant to WWC Chapter 16.16 (Critical Areas) or Titles 20 (Zoning) or 22 (Land Use and Development), or their common meanings when not defined in code."

³ See Exhibit H, Public Comments FW/WEC01, FW/WEC02, WCPW07, WCPW08, & RES03

⁴ See Exhibit H, Public Comments FW/WEC12, FW/WEC21, WCPW08, WCPW09, WCPW10, & RES03.

b) Add definitions for regional, local, and accessory utilities. Ensure consistency with Zoning.

Said definitions have been added to §23.60.210(6). (Exhibit D)

c) Define a single use dock and joint use dock.

“Shared moorage” was already defined in §23.60.190. Additionally, definitions of all moorage types have been added to §23.60.130(17) “Moorage Structure.” (Exhibit D)

Topic #8, Habitat

a) Reference WDFW and DNR’s Shore Friendly Program

Staff has amended C/P Policy 11I-2 (Exhibit B) to reference this program as an example of “voluntary and incentive-based public and private programs.”

b) Consider strengthening ecological connectivity and wildlife corridor requirements.

§23.40.030 (General Shoreline Use and Modification Regulations), subsection J (which is existing language moved from elsewhere), already requires that buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to or from important habitat areas.

Apart from all the existing rules about maintaining connectivity in WCC Ch. 16.16 (Critical Areas) (Exhibit F), new rules to strengthen ecological connectivity and wildlife corridor requirements in that document include:

- In §16.16.225 (General Regulations), new subsection (C) has been added, requiring development proposals to maintain ecological connectivity and habitat corridors;
- In §16.16.255 (Critical Areas Assessment Reports) new subsection(C)(3) has been added, strengthening the requirement that connectivity be addressed in assessment reports;
- In §16.16.640 (Wetland Buffer Modification), subsection (A) allows the Director to increase wetland buffers to protect wetland functions and provide connectivity to other wetland and habitat areas;
- In §16.16.745 (Habitat Conservation Area Buffer Modification) subsection (A)(2) allows the Director to increase wetland buffers to protect wetland functions and provide connectivity when a Type S or F waterbody is (among other things) located within 300 feet of another Type S or F water body, a fish and wildlife HCA, or A Category I, II or III wetland;

c) Consider ways to improve protections for salmon and forage fish habitat.

Policy 11LL-4 in C/P Ch. 11 (Exhibit B) is proposed to be amended in support of this task by adding additional critical saltwater habitats to the list of where moorage structures ought to be avoided.

And while the protection of fish and wildlife habitat is already required throughout various sections of Title 23 (Exhibit D), additional language has been added in:

- §23.30.040 (Vegetation Management) has been amended to strengthen and better tie the protection and/or revegetation of native shoreline vegetation to the protection of salmon and forage fish habitat.
- In §23.40.060 (Marinas and Launch Ramps) (Exhibit D), subsection (E)(8) has been added to the standards requiring that boat launches be designed to minimize impacts to critical saltwater habitats.
- In §23.40.140 (Mining):

- Subsection (A)(3) now states that “Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.”
- Subsection (A)(6) has been added to prohibit “motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout” pursuant to RCW 90.48.615.
- Subsection (B)(1) has been added for consistency with WAC 173-26-241(3)(h), prohibiting mining waterward of the ordinary high-water mark of a river if it would cause a net loss of ecological functions of the shoreline.
- In §23.40.150 (Moorage Structures):
 - Subsections (A)(6) and (7) (moved from the existing Boating Facilities section) prohibits moorage structures in certain shoreline habitats.
 - Subsections (B) & (C), having to do with construction and locational standards for moorage structures have been amended and augmented to meet current state and federal habitat protection requirements and guidance.
- In §23.40.190 (Shoreline Stabilization), subsection (A)(10) has been amended to prohibit hard shoreline stabilization in jurisdictional shoreline streams on estuarine shores, in wetlands, and in salmon spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.
- In §23.40.220 (Utilities), subsection (B)(5)(a) has been added, require that hydropower facilities shall be located, designed, and operated to minimize impacts to fish and wildlife resources.

Similarly, while the protection of fish and wildlife habitat is already required throughout various sections of WCC 16.16 (Critical Areas) (Exhibit F), in §16.16.255 (Critical Areas Assessment Reports) new subsection (C)(3) has been added, strengthening the requirement that impacts to salmon and forage fish habitat be address in assessment reports to improve protections for salmon and forage fish.

d) Clarify functional disconnect standards for protection of Fish & Wildlife Habitat Conservation Areas

The term “functional disconnect,” which many people have interpreted differently and is not widely used anymore, has been eliminated in §16.16.630(B) (Wetland Buffers) and §16.16.740 (Habitat Conservation Area Buffers), which now say, “Buffers shall not include areas of an existing, legally established substantially developed surface.”

Topic #9, Layout and Structure of the SMP

a) Reorganize the SMP, putting the background information, discussions, and goals and policies into the Comprehensive Plan as a chapter

One of the biggest changes was to reorganize the SMP to shorten it and make it easier to use. One of the ways we’re doing this is to move the SMP policies into the Comprehensive Plan. The SMP was already adopted by reference as part of the CompPlan; it just wasn’t contained in it. However, in modern code construction, code normally doesn’t contain policies (or appendices) as our current Title 23 does. Staff is proposing to create a new Chapter 11 of the CompPlan entitled “Shorelines” (Exhibit B). We have moved all the SMP policies from Title 23 (Exhibit D) as well as related policies from Chapter 10, Environment (Exhibit A), to this chapter, putting all the shoreline policies into one place. Thus, the amendments to Chapter 10 are mostly showing the deletion of policies that are moving to Chapter 11.

Most of the changes shown in C/P Ch. 11 (Exhibit B) are also in support of this effort. We have moved everything from Title 23 that appeared to be policy (rather than regulation) into this chapter. We’ve also

put it in the same format as other chapters of the CompPlan, struck redundancies, and corrected grammar and tenses. There are, however a few proposed new policies and/or amendments that we discuss below.

Another major organizational change is to move all permitting regulations to WCC Title 22 (Exhibit E). Title 22 was created a few years ago to eventually contain all of the County's procedures for land use permitting and code administration. However, moving sections to this Title is continuing to occur as we progress through various code amendments (e.g., the annual code scrub, upcoming code enforcement amendments, this SMP update, etc.).

Similarly, since WCC Chapter 16.16 (Exhibit F, Critical Areas) is adopted as part of the SMP, they are to be read together, and where there are redundancies between Ch. 16.16 and Title 23, we are proposing to delete those redundancies in Title 23 (Exhibit D).

b) Simplify the language as much as possible and remove redundancies

See response to 18.a.

Topic #10, Nonconforming

a) Ensure consistency with Zoning, CAO, and SMP regarding nonconforming uses and structures.

Staff has rewritten Chapter 23.50 (Nonconforming Uses, Structures, and Lots) to conform to the latest DOE guidance addressing nonconforming uses, development, and lots as separate issues. Additionally, definitions for each term have been added to §23.60.140. (Exhibit D)

In §16.16.275 (Nonconforming Uses, Structures, and Lots) (Exhibit F) two amendments are proposed to align this chapter with Title 20 (Zoning) and Title 23 (SMP):

- In subsection (B), the time within which an intentionally abandoned *nonagricultural* nonconforming use or structure may maintain its nonconforming status is changed from 5 years to 12 months, the same timeframe in Title 20 (Zoning).
- In subsection (E), a new (1) is being added, stating that "intentional demolition or removal is not a casualty," as in Title 23 (SMP).

b) Add standards for nonconforming structures to meet current construction standards.

In §23.50.020 (Nonconforming Structures) (Exhibit D):

- (A)(4) now allows legal nonconforming non-overwater structures to be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased, *provided that a nonconforming structure that is moved any distance must be brought into conformance with this program and the Act.*
- (A)(5) allows overwater nonconforming structures to be maintained or repaired to the extent that nonconformance with the standards and regulations of this program is not increased; *provided that when replacement is the common method of repair, the replaced components shall meet the construction and materials standards of §23.40.150 (Moorage Structures).*

c) Address nonconforming expansion dimensional standards.

§23.50.010 (Nonconforming Uses), subsection (B) now clearly states that the expansion, alteration, and/or intensification of a nonconforming use is prohibited, and §23.50.020 (Nonconforming Structures), subsections (E) & (F) clearly address when and how expansion of nonconforming structures are handled. (Exhibit D)

d) Clarify administratively approved single-family dimensional standards.

To §23.50.020 (Nonconforming Structures), subsection (F), we have added clear standards as to how to address the enlargement or expansion of nonconforming single-family structures. (Exhibit D)

Topic #11, Overwater Structures

a) Add dimensional standards for overall square footage.

§23.40.150 (Moorage Structures) has been completely revamped to meet current state and federal standards. To meet this scoped recommendation, thorough design and dimensional standards, including for overall square footage, have been added to subsection (B) (Exhibit D).

b) Add shared moorage standards.

Dimensional standards for shared moorage have been added to §23.40.150 (Moorage Structures), subsection (B). Subsection (D) prioritizes shared moorage over individual use structures. And subsection (F) provides additional standards for shared moorage. (Exhibit D)

Topic #12, Permitting

a) Consider simplifying utility repair and maintenance permitting.

In §16.16.235 (Activities Allowed with Notification), though subsection (B)(2) already allows maintenance and repair of infrastructure (including utilities), it has been amended to be clearer by adding the term “utility corridors.” Additionally, a new subsection (B)(3) has been added regarding utility installation.

b) Add a reference to the Swift Creek Sediment Management Action Plan so as to clarify permitting procedures for actions necessitated by this plan.

To §23.10.020 (Applicability) we have added subsection (H), which lists what activities the SMP does not apply to. Subsection (H)(1) applies to “Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act (such as the Swift Creek Sediment Management Action Plan), or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.”

c) Single-Family Residential Development on Constrained Lots

Staff is proposing to redefine what and how **reasonable use exceptions and variances** are used and who decides them. Our Hearing Examiner has questioned our current schema, in particular why he isn’t the final decision maker, as the current code allows an administrative determination to be made *after* a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust any administrative remedies before seeking a quasi-judicial decision. Staff is proposing that reasonable use exceptions be the last method of altering standards to allow reasonable economic use of constrained property, and that they be decided upon by the Hearing Examiner (see 16.16.270 Reasonable Use Exceptions). Under the proposed schema we would use (in hierarchical order):

- **Administrative Reduction/Average** – Staff would have the ability to administratively reduce or average a buffer by 25% if the impacts can be fully mitigated, though avoidance and minimization criteria are applied. This allows for flexibility in project design and road alignments. If this doesn’t work, then...

- **Administrative Variance** – Staff would have the ability to administratively grant an administrative variance⁵ to reduce a buffer by 25-50% if the impacts can be fully mitigated and the variance criteria are met. If this doesn't work, then...
- **Hearing Examiner Variance** – The Hearing Examiner would have the ability to grant a variance from *any* dimensional standard by any degree if the impacts can be fully mitigated and the variance criteria are met. If this doesn't work, then...
- **Hearing Examiner Reasonable Use Exception** – The Hearing Examiner would have the ability to grant a Reasonable Use Exception to allow up to 2,500 square feet of impacts, and the homeowner would only have to mitigate what can actually fit on the property (which conceivably could be none).

In this schema, the degree to which one can vary standards while providing the least amount of mitigation moves up a level at each step, with the Hearing Examiner making the tougher decisions through a quasi-judicial process. This would return the reasonable use exception to truly the last effort of avoiding a taking.

However, to counter the additional time and cost of this process, staff is also proposing to create a new category of variances, called minor variances (16.16.273 Variances). They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number of cases having to go to the Hearing Examiner and cost less to the citizens of Whatcom County overall.

Note, too, that under the reasonable use rules, staff had proposed to go back to the 2,500 sq. ft. maximum impact area we had prior to the 2017 Critical Areas update⁶, as under a reasonable use exception granted by the Hearing Examiner no mitigation would be required. The Planning Commission disagreed with this amendment and voted to retain the 4,000 sq. ft. impact area. This is the one policy difference on which staff and the Commission differs, and staff still recommends to Council that it be changed back to 2,500 sq. ft.

Topic #13, Public Access

a) Clarify standards for construction in the aquatic designation (work occurring in the water).

This issue had to do with what materials are allowed for structures built in contact with water (e.g., moorage structures). The list of such materials (untreated wood, concrete, approved plastic composites, or steel) are already found in §23.30.020(D) (Water Quality and Quantity), §23.40.125(E)(1)(e) (Cherry Point Management Area), §23.40.150(C)(2) (Moorage Structures), §23.40.210(B)(8) (Transportation), & §23.50.020(D) (Nonconforming Structures), with no distinction between galvanized or non-galvanized steel, as had been scoped. However, state law and guidance makes no such distinction, so the list has been unaltered. (Exhibit D)

⁵ This mechanism was created by Council in 2020 and is found in WCC 22.05.024 (Variances).

⁶ Note that the Planning Commission has provisionally voted to keep it at 4,000 sq. ft., though they have not yet made their final recommendation.

b) Add ADA standards consistent with federal statutes.

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks) (6), we have added language that allows stairs and walkways to exceed standard width requirements to meet ADA requirements. (Exhibit D)

In both §16.16.620 (Wetlands – Use and Modification) subsection (H) and §16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (G)(1), text has been added to allow trails to exceed standard width requirements to meet ADA requirements. (Exhibit F)

c) Consider revising dimensions for stairs and walkways located within the shoreline or critical area buffers to accommodate public trails.

In §23.40.160 (Recreation), subsection (A)(6) has been added, directing applicants to WCC Chapter 16.16 (Critical Areas), which contains the standards for trails in critical areas (including the shoreline setback (i.e., HCA buffer). (Exhibit D)

In §16.16.325 (Landslide Hazard Areas – Use and Modification), a new subsection (A)(3) has been added to allow trails (meeting certain conditions) in landslide hazard areas. (Exhibit F)

In §16.16.620 (Wetlands – Use and Modification), subsection (H) (Recreation) has been amended to allow public trails to include viewing platforms, and to be closer than the outer 25 percent of the buffer “when necessary to provide wetland educational opportunities or for public health and safety,” and to be wider than the standard widths when necessary to meet ADA requirements. Corresponding amendments have also been made to 16.16.720(G)(1) (Habitat Conservation Areas – Use and Modification) (Exhibit F).

d) Consider amending trail location standards to allow trails to be located closer than in the outer 50% of a critical area buffer.

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks), we have added subsection (11) that allows passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails in the shoreline buffer. (Exhibit D)

In §16.16.620 (Wetlands – Use and Modification), subsection (H) (Recreation) has been amended to allow public trails to include viewing platforms, and to be closer than the outer 25% of the buffer “when necessary to provide wetland educational opportunities or for public health and safety,” and to be wider than the standard widths when necessary to meet ADA requirements. Corresponding amendments have also been made to 16.16.720(G)(1) (Habitat Conservation Areas – Use and Modification) (Exhibit F).

Topic #14, Shoreline Designations

a) Consider changing the shoreline designation for certain, more urban parks to an urban designation.

It turned out that changing shoreline (environment) designations on certain properties would have entailed updating the 2007 shoreline inventory and characterization reports, which was beyond the scope of this periodic update.

Topic #15, Shoreline Jurisdiction and Environment Designation Map

a) **Revise the Shoreline Jurisdiction and Environment Designation map to conform to the latest FEMA FIRM maps**

The Shoreline map has been updated to include all areas of the FEMA floodway and floodplain. This primarily widened the Resource designation on the Nooksack from Ferndale to Lynden and portions of the South Fork of the Nooksack though narrowed it in some areas. Floodway and Floodplain are differentiated in the database. It should be noted that the actual shoreline jurisdiction has not changed, as that is set by state law and our code (§23.20.010), but the map now more accurately displays the jurisdiction.

A few other changes have been made as well. These include:

- UGA and City boundaries have been updated.
- On the Lummi Nation, parcels that have been put under Tribal jurisdiction since the last update were updated with the “Tribal” shoreline designation.
- Designations were adjusted, where necessary, to match the updated and spatially corrected parcel boundaries. This was just a housekeeping task and no designations were changed.
- Shoreline designation breaks (thick black bars) have been removed from the map as they made it difficult to read.
- The complex of beaver ponds north and south of H Street Road between Sunrise and Markwork Roads (NE of Lynden) were added to the Conservancy designation. These ponds have grown in size and now surpass the 20-acre threshold for being a Water of the State. Since these ponds were identified and characterized in the 2007 Characterization report, we did not need to update that report; the data is still valid.
- At the request of the owners of APN 390302-428076-0000, 390302-485039-0000, and 390302-440200-0000 we have removed the Resource environment designation from a mining pond located to the NW of the intersection of E. Pole X Everson-Goshen Roads, just southeast of Everson. This designation was applied during the last SMP update, but has been determined to have been an error. Though it is a waterbody greater than 20 acres, it is a mineral extraction pond and DOE guidance is that such ponds do not qualify as a Water of the State until mineral extraction is complete and the restoration plan is realized. Once that happens, it automatically is designated as Conservancy under state law and our SMP. The County would then have 3 years to amend the map and finalize its designation.

Topic #16, Shoreline Modifications

a) **Review for consistency with the 2SHB 1579 regarding HPAs, and with State guidelines regarding prioritizing living shorelines over hardscape solutions.**

In §23.40.010 (Shoreline Use and Modification), Table 1 (Shoreline Use by Environment Designation), the various types of stabilization have been broken out into their respective types. Bioengineering Approaches & other Soft-Shore Measures are shown as permissible, while hardscape solutions are either prohibited or require a Conditional Use Permit, and then allowed only when necessary for shoreline restoration or to support a water-dependent use that cannot be located elsewhere. Then throughout §23.40.190 (Shoreline Stabilization) language has been added to prioritize soft- over

hardscape stabilization measures, in particular in subsection (A)(5), where an order of preference has been established. (Exhibit D)

b) Consider allowing interpretive, wayfinding, safety, and park identification signs, based on park standards.

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks) (10) (Signs) we have added language that allows interpretive, wayfinding, and park identification signs on publicly owned park properties. (Exhibit D)

Topic #17, Shoreline Uses

a) Revise as necessary any SMP policies or regulations pertaining to the Cherry Point area as directed by Council.

In 2018 the Council started a process of amending the policies and regulations related to fossil fuel facilities in the Cherry Point Management Area. The Council hired consultants specifically for this task and it is principally being administered under a separate process. Their amendments affecting C/P Ch. 2 (Land Use), WCC Ch. 16.08 (SEPA), WCC Title 20 (Zoning), and WCC Title 22 (Land Use & Development) have already been reviewed by the Commission. None of the Council's amendments to C/P Ch. 2, WCC Ch. 16.08, or WCC Title 20 affects the documents the Planning Commission reviewed as part of this SMP Update.

Their amendments to Title 22, however, have been incorporated into Exhibit E, and are being show as new as they are not yet adopted. We have also incorporated the Commission's recommended changes to this specific language, also flagged by comments in the document.

Their amendments also affect WCC Title 23 (Exhibit D) and (by way of this update) C/P Ch. 11 (Exhibit B), and the Planning Commission has not yet reviewed these as they are being processed through this update. As we are proposing to do with the rest of the SMP policies, we're moving the Cherry Point Management Area policies from Title 23 to C/P Ch. 11 (Exhibit B). As such, they're not shown as new policies (i.e., no underline) in Exhibit B, but Council's proposed amendments to them are being show in strikeout/ underline. Other changes to Title 23 regarding this topic are flagged as Council-proposed language in §23.40.125 (Cherry Point Management Area). (Exhibit D)

b) Revise as necessary any SMP policies or regulations pertaining to sand and gravel extraction as directed by Council.

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

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

To carry out this directive we have tried to mimic the language of the WAC, eliminating language that is not required but adding (or retaining) required language. (§23.40.140 (Mining), Exhibit D)

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

At the federal level, the Endangered Species Act (ESA) is the primary law affecting this activity. It requires that any activities be done in such a manner as to not cause a “take” of any listed species, which also means protecting their habitat from impacts. At the state level, the Shoreline Management Act requires that there be no net loss of shoreline ecological functions and processes. As one can imagine, either of these requirements would make it difficult to make it easier to extract sand and gravel.

c) Ensure internal consistency with allowed uses in the code and the Use Table.

In the existing code, the allowances/permit type required for some uses are specified in Table 1 and others are sprinkled about the text, making it difficult to find whether something is allowed or not. So throughout Ch. 23.40 (Shoreline Use and Modification Regulations) we have removed any use allowances found in the text and expanded the table to include these (as well as other uses that hadn’t been specified). Thus, almost all rules about whether something’s allowed or not, and with what type of permit, are found in Table 1. There were also several footnotes that modified the table. We have replaced these footnotes with just one, telling the reader to look to the text for certain uses in certain environment designations, as there remain a few specific provisions in the text, typically stating that certain uses have caveats in certain environment designations. In short, we believe we have made things easier to find, and the text and the table should be internally consistent now.

d) Modify the accessory structure height standards.

In §23.40.020 Shoreline Bulk Provisions, subsection (E) (Height), two new subsections have been added. Subsection (4) would allow equipment necessary for the functions of water-dependent uses or the servicing of vessels to extend above the applicable maximum height limit provided in Table 1, provided that such structures shall be designed to minimize view obstruction. Subsection (5) would allow residential accessory structures that are not waterward of the primary structure to be built to the maximum height for the environment designation.

e) Add standards for retaining walls.

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks), we have added subsection (8) to allow retaining walls or similar slope stabilization structures, when associated with an approved shoreline use or development; and in (9) have clarified that retaining walls can exceed the standard 4-foot height limit for fences, walls, and hedges. (Exhibit D)

f) Update Memorandum of Understanding with Department of Archaeology and Historic Preservation.

Through this update process, staff was not able to actually update the MOU with DAHP, as that will take some time and involve many others. But based on the language in it, we are proposing some new policies to the cultural resources sections of both the Overall SMP Goals and Objectives (Exhibit B, page 11-9) and the General Policies (page 11-27) sections (see policies 11G-3, 11G-4, & 11X-9).

We are also proposing to revise the regulations in §23.30.050 (Cultural Resources) (Exhibit D). The existing regulations are full of rules about how reports are supposed to be done and what they need to contain. However, Department of Archaeologic and Historic Preservation (DAHP) now has standard practices outlined in their guidance, and we are proposing to remove all of our extraneous rules and just refer to DAHP's standards; this cuts down on the amount of text considerably and ensures that practices and reports follow state standards. The proposed text has been collaboratively developed with us, DAHP, and the Lummi Nation Tribal Historic Preservation Office (LNTHPO).

That said, there are three policy issues posed by the revised text:

- Subsection (A)(1) reads:

Upon receipt of an application for a permit, exemption, or other approval for a proposed project, the County shall determine whether the project lies within 500 feet of a site known to *or could* contain a cultural resource based on the Washington State Department of Archaeology & Historic Preservation's (DAHP) Inventory of Cultural Resources.

Currently, our regulations require applicants to prepare a cultural resources report (and adhere to any recommendations therein) if their project lies within 500 feet of a site known to contain a cultural resource based on the Washington State Department of Archaeology & Historic Preservation's (DAHP) Inventory of Cultural Resources. The LNTHPO has proposed that we insert the phrase "or could" in this sentence. They would like to be consulted on all projects within the shoreline, not just ones within 500 ft of a previously recorded site, as they believe they may have additional information regarding an area that is not included in the State's inventory. They would like an opportunity to review and comment on the report no matter what may be found. However, this would expand the scope beyond what we regulate now.

- Subsection (A)(4) reads:

Based upon consultation with DAHP and the affected Tribe(s), the Director may approve the report *with tribal concurrence* or reject or request revision of the conclusions reached and/or management recommendations when the assessment is inaccurate or does not fully address the cultural resource management concerns involved.

The LNTHPO recommends that we include the phrase "with tribal concurrence." This would mean that the Tribe would have to agree with a report before PDS could approve it.

Staff believes that requiring their concurrence runs contrary to the GMA's permitting requirements of expeditious review and issuance, as it could hold up projects while we're awaiting their concurrence. A simple fix may be to set a time limit for how long they have to respond.

- Subsection (A)(5) reads:

If the cultural resource report identifies the presence of a cultural resource, any permit issued shall be conditioned on meeting the approved report's management recommendations. *If no cultural resources are found, then the permit may be issued without conditions regarding cultural resources.*

The LNTHPO commented that an Inadvertent Discovery Plan (IDP) should be required regardless of whether cultural resources are found, as there are times when additional requirements are necessary (e.g., when there is a site documented just outside of the project area, monitoring

may be recommended). However, this does go beyond what we do now and so raise it as a policy issue.

g) Clarify Forest Practice standards.

§23.40.110 (Forest Practices) has been updated to reflect the WAC provisions for Forest Practices in shorelines. (Exhibit D)

Additionally, the current Ch. 16.16 (Critical Areas) does not have guidance for Conversion Option Harvest Plans as allowed by WAC 222. For other permits this would allow for a limited removal of trees, while retaining larger trees to help with managing a riparian buffer. When development alters a functioning forested system some level of continued forest management is required (see 16.16.720(V)). To alleviate this issue, staff is proposing to add to 16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (P). The section sets performance standards for removing timber in Habitat Conservation Areas (e.g., riparian areas) and would allow timber harvesting to occur within buffers while still retaining the HCA's functions. These standards vary by water type, and are tied to existing buffer conditions. This amendment is aimed at closing a loophole wherein applicants remove trees before applying for a development permit, which is when the CAO becomes applicable (except for Class IV Conversions, forest practices are not reviewable under the CAO).

h) Add temporary use standards.

This was a task staff had proposed, thinking we might be able to develop a temporary use permit for short-term uses. However, we could not find a good example from other jurisdictions, nor is there any guidance from Ecology. Thus, we determined it is probably best to review such uses at the time of a request for a temporary easement, temporary use permit, etc.

i) Clarify utility standards for regional, local, and accessory.

Under the existing code, the only categories for utilities are local or regional transmission lines, which has led some people to believe that utility installation, repair, or maintenance to single-family homes (accessory utilities) needs the same level of permitting and scrutiny as a power substation or regional transmission line.

In the proposed amendments to §23.40.010 (Shoreline Use and Modification), Table 1 (Shoreline Use by Environment Designation), utilities have been broken out into three categories: accessory, local, and regional. Each are now distinctly defined in §23.60.210(6), and have distinct permitting paths, depending on what environment designation they are located, making it clear that running an electrical line (or something similar) to a house is outright permitted.

Additionally, in §23.40.220 (Utilities) we have moved all the utility requirements that had been spread throughout in various sections into one, cohesive section.

j) Add standards for live-aboard vessels in marinas.

In §23.40.060 (Marinas and Launch Ramps) standards for live-aboard vessels have been added as subsection (F) (Exhibit (D)). Staff is also proposing to add Policy 11DD-13 to CompPlan Ch. 11 (Exhibit B) to support the proposed addition of standards to Title 23.

Topic #18, Shoreline Setbacks/ Riparian Management

a) Update vegetation conservation standards to prefer limbing over removal.

§23.30.030 (Views and Aesthetics) (Exhibit D), subsection (M) now points to the regulations in §16.16.235(B)(5) (Activities Allowed with Notification) (Exhibit F).

§16.16.235(B)(5) (Activities Allowed with Notification) has been updated to stress limbing over removal of trees to provide view corridors (Exhibit F).

b) Provide incentives to enhance Fish and Wildlife Habitat Conservation Areas (FWHCA).

This was another task staff had scoped. We had hoped to create an incentive for new single-family residential development to maintain and/or improve shoreline vegetation by allowing those who do so to have a reduced shoreline buffer. Unfortunately, we could not figure out a way of doing this without impacting existing homeowners' views. Furthermore, it would have required an update to the inventory and characterization background documents, which was not included in the scope or budget of the project.

Additionally, given that the shoreline is defined and regulated as a Habitat Conservation Area, theoretically we should not allow uses (other than water-oriented uses and single-family residences which are SMA 'preferred uses') within the shoreline, as they would necessitate vegetation clearing. However, we know that folks that have waterfront property want and expect to have access (for swimming, boating, relaxation, etc.) and recreational amenities near the shore (e.g., fire pits, kayak sheds, etc.), so we have added to 16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (G)(4), which sets limits on how much of the shoreline can be cleared of vegetation for such uses and requires mitigation to offset the impacts so as to achieve No Net Loss.

c) Clarify setback standards for protection of views to and from the water.

To protect views of the shoreline from existing structures when new development is proposed, §23.30.030 (Views and Aesthetics) (Exhibit D), new subsection (B) now allows setbacks to be modified pursuant to WCC 23.400.020(D) (Shoreline Bulk Provisions, Setbacks, Common-Line Setback for Single-Family Residences). That section (incorporated from former Appendix F) allows for setbacks to be reduced or increased, depending on how existing homes are situated, to provide the greatest view opportunities for both the existing and new development (though when reduced, mitigation (i.e., planting of the shoreline setback) may be required).

To minimize impacts to views from the water, §23.30.030 (Views and Aesthetics) (Exhibit D), new subsection (C) also now allows the Director to require the planting of vegetation to mitigate the impacts.

Furthermore, §23.30.030 (Views and Aesthetics) (Exhibit D), new subsection (L) precludes new uses or development from substantially obscuring shoreline views within shoreline view areas or from existing residences on adjacent property.

Topic #19, Water Quality

a) Include language/policies about the importance of Lake Whatcom as the source of drinking water for most of the County and the water quality improvement plan (TMDL).

After reviewing the existing CompPlan, staff believes that it already addresses this issue sufficiently. In Chapter 10, under *Water Resources* (Exhibit A, page 10-11), subsection *Lake Whatcom Watershed Management* (pages 10-22 – 10-25) there are four pages of text describing Lake Whatcom's importance as a source of drinking water and the efforts the County (and City of Bellingham) are under taking to protect it. Under Goal 10-J alone there are 14 specific policies (Policies 10J-1 - 10J-14) regarding protecting Lake Whatcom, and there are numerous other, more generic goals and policies that deal with water quality protection more generically.

Topic #20, Wetland Buffers

- a) **PDS will conduct a parallel process, convening a group of local wetland consultants, to consider revisions to the CAO regulations regarding wetland habitat function score break points, buffer widths, reduction, averaging to meet DOE guidelines, and having buffers based on habitat performance instead of static/standard buffers. If they complete this work in time, it can be incorporated into this update; otherwise it can follow.**

In July 2018 the Washington Department of Ecology (DOE) modified the habitat score ranges and recommended buffer widths in their wetland buffer tables in the DOE guidance, with some minor text changes to ensure consistency. Some citizens, local environmental consulting firms, and the Building Industry Association of Whatcom County then requested that we amend our code to meet this new guidance, and it was docketed as PLN2019-00008.

The project was brought before the Planning Commission on March 14, 2019. But there was confusion as to what we actually *had* to do at that time and what impacts it would have on development. DOE had informed staff that, while we didn't need to amend our code at that point (having just updated Ch. 16.16 (Critical Areas) (Exhibit F) that they would review our code for consistency with their guidance when Ch. 16.16 was opened for amendment again, noting that that would occur during the 2020 SMP Periodic Update.

So at the Commission's request, staff worked with the local wetlands consultants to review the issue and try to determine what effects it might have. Three consulting firms⁷ provided analyses based on data from projects they had worked on. From these analyses, it appears that many of Whatcom County's lower quality wetlands (e.g., small Category IV wetlands in agricultural fields) would end up with smaller buffers, but that our higher quality wetlands (Categories II and III) would end up with larger buffers. (But even this is speculation, as ATSI noted that the comparison results are not statistically significant.⁸) Thus, farmers may benefit but developers/ builders may suffer, as many of our lower quality wetlands are those found in agriculture fields, while our higher quality wetlands are typically found in non-agriculture rural areas.

Nonetheless, given the Department of Ecology's statements that they'll be monitoring the SMP Update to ensure that we meet their latest guidance (which is based on Best Available Science), and given that Comprehensive Plan Policy 10M-2 directs the County to "Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines," staff is proposing to amend §16.16.630 (Wetland Buffers) Table 1 (Standard Wetland Buffer Widths) to meet DOE guidance. As indicated, these changes would lessen buffers on lower quality wetlands, and increase them on higher quality ones.

Topic #21, Marine Resource Lands

- a) **Consider adding a Marine Resource Lands policy section as developed by the Marine Resources Committee**

When the Council amended the CompPlan in 2016 they included a new section entitled "Marine Resource Lands" that contained one goal and one policy that directed staff to assist in developing the section more thoroughly:

⁷ NW Ecological Services, NW Wetlands Consulting, and Aqua-Terr Systems, Inc.

⁸ Paired sample t-tests were conducted to compare the proposed buffer results with categories of the wetlands impacted.

Goal 8T: Conserve and enhance Whatcom County's marine land base for the long-term and sustainable production of commercial and recreational economic activities.

Policy 8T-1: Whatcom County will work with committees including but not limited to the Marine Resource Committee, the Shellfish Protection Advisory Committee, and other local marine land experts to create a new section of this chapter to support Goal 8T to be docketed and processed for consideration no later than 2017.

The project was docketed as (PLN2017-00005), and staff worked with these groups to help develop some language, goals, and policies for this section, which is shown as Exhibit C (C/P Ch. 8). However, there was mixed recommendations from the groups who reviewed the language.

- The **Marine Resources Committee** reviewed the proposal at their June 7, 2018, meeting, and after adding Policy 8V-4 (addressing educational efforts and programs) they recommended that the County Council adopt the proposed language.
- The **Birch Bay Watershed and Aquatic Resources Management Committee** (BBWARM) reviewed the proposal at their June 20, 2018, meeting. They recommended that the Council *not* adopt the proposed language. They felt that the new Marine Resource Lands section of the CompPlan was already covered by the existing Shoreline Management Program and that including it would add unnecessary complication/duplication. They recommended that the Council postpone any action on the Marine Resource Lands amendment until the SMP update commenced.
- The **Portage/Drayton Shellfish Protection Districts** reviewed the proposal at their July 25, 2018, meeting. However, they did not have a quorum and could not act.
- The **Planning Commission** held a workshop on June 14 and a public hearing on June 28, 2018. They recommended that the Council *not* adopt the Marine Resource Lands proposal. There was concern amongst some of the Commissioners that regulations adopted subsequent to these policies could affect farmers, even though staff explained that it was not our nor CM Weimer's intent to address agricultural runoff. They also thought it would be better to consider this during our SMP update, perhaps incorporating some of the goals and policies into that rather than having a separate section.

When staff brought the project forward to Council's Planning & Development Committee for review they decided to consider it with the (then) upcoming SMP update.

Topic #22, No Net Loss

a) Prepare a No Net Loss technical memo

On September 10, 2019, staff presented to the Council's Natural Resources Committee an overview of how No Net Loss is achieved.

No net loss incorporates the following concepts:

- The existing condition or baseline of shoreline ecological functions, documented in the 2007 documented in the shoreline inventory and characterization, should not deteriorate due to permitted development.
- Shoreline functions may improve through shoreline restoration.
- New adverse impacts to the shoreline environment that result from planned development should be avoided.

- When this is not possible, impacts should be minimized through mitigation sequencing.
- Mitigation for development projects alone cannot prevent all cumulative on-going impacts and shoreline violations, so restoration is also needed.

Based on past practice, current science tells us that most, if not all, shoreline development produces some impact to ecological functions. However, the recognition that future development will occur is basic to the no net loss standard. The challenge is in maintaining shoreline ecological functions while allowing appropriate new development and ensuring adequate land for preferred shoreline uses and public access. With due diligence, local governments can properly locate and design development projects and require conditions to avoid or minimize impacts.

In 2007 Whatcom County underwent a comprehensive update of its Shoreline Management Program (SMP). At that time the County prepared an Inventory and Characterization Report (Vol. I), a Scientific Literature Review (Vol. II), a Restoration Plan (Vol. III), and a Cumulative Effects Analysis (Vol. IV), all of which were approved by County Council and the Department of Ecology. These documents formed the basis for developing the County's Shoreline Management Program and determining that it would achieve no net loss of ecological functions when implemented.

Whatcom County is now undergoing a periodic update. For such an update the County is not required to re-do all these documents except to augment them if something changes that might negatively affect the shoreline's ecological functions. For the most part there are few significant policy changes in this update; most of the proposed amendments are an effort to reorganize the SMP so as to make it easier to use and understand.

There are a few policy changes, though, and the No Net Loss Statement, prepared by The Watershed Company as an addendum to the 2007 Cumulative Effects Analysis, addresses these (Exhibit I). The conclusion is that each of these amendments works to strengthen the shoreline ecological protections provided by the SMP.

b) Shoreline Restoration Plan Addendum

Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development by requiring mitigation. However, over all, protection, restoration, and mitigation are needed to achieve no net loss. Restoration is the only mechanism by which we can improve shoreline functions and ecosystem-wide processes over time. Local governments must achieve this standard through both the SMP planning process and by appropriately regulating individual developments as they are proposed in the future.

The concept of no net loss of shoreline ecological functions is rooted in the Act and in the goals, policies, and governing principles of the state's shoreline guidelines. These principles suggest that no net loss is achieved primarily through regulatory approaches and that restoration occurs mainly via goals, policies, and voluntary or incentive-based mechanisms. It is also important to note that more than simply preventing further loss of ecological functions, master program provisions must also "...achieve overall improvements in shoreline ecological functions over time when compared to the status upon adoption of the master program."

The mandate to improve functions over time provides the basis for restoration planning and creates a distinction between mitigation and restoration. As mentioned, applicants for shoreline permits must fully mitigate new impacts caused by their proposed development. However, applicants are not required to restore past permitted ecosystem damages as a condition of permit approval. Permit applicants will not be required to implement the restoration measures identified in the plan as mitigation for project

impacts, but they may elect to implement elements of this plan as mitigation for shoreline development if appropriate. And they may be required to mitigate for recurring impacts.

SMP updates: Achieving no net loss of ecological function

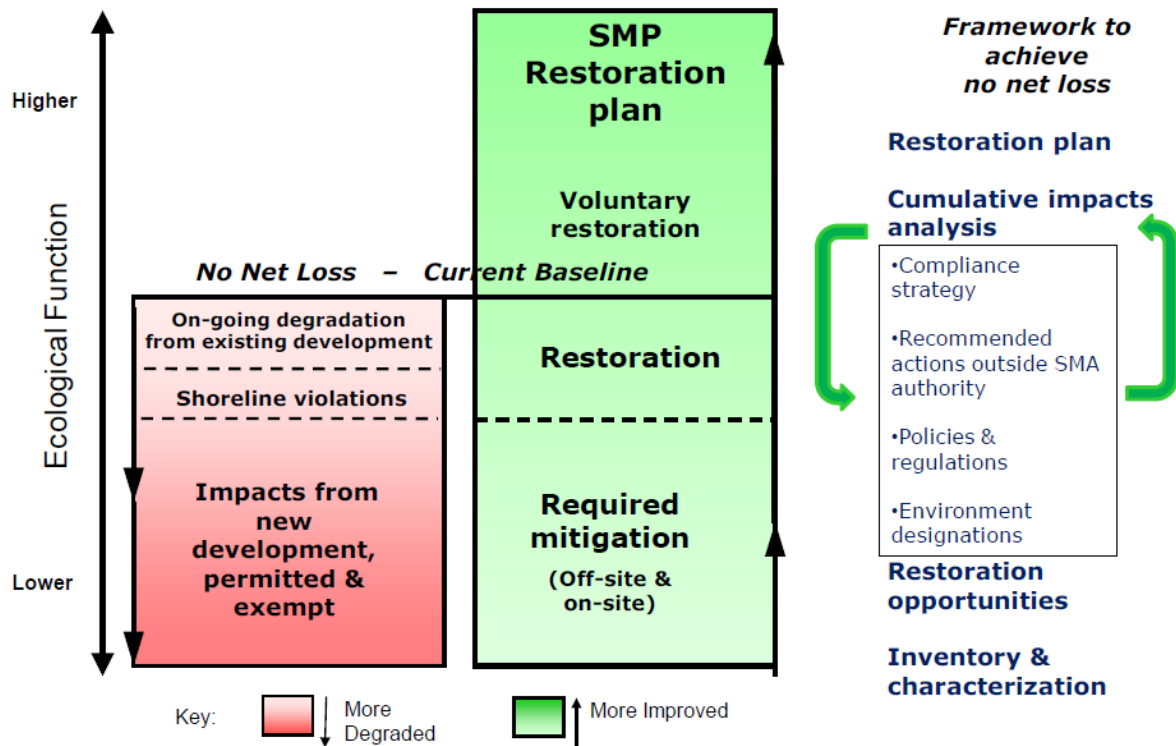


Figure 4-1: During the SMP update process, local governments should use existing shoreline conditions as the baseline for measuring no net loss of shoreline ecological functions.

Exhibit J is an addendum to the 2007 Shoreline Restoration Plan. It references projects listed in the Shoreline Restoration Plan containing enhancement and restoration project proposals and updates them based on information received by the County, agencies, tribes, and stakeholder organizations. It also lists several projects that were not included in that Plan, but nonetheless have been undertaken and completed, and that improve shoreline ecological functions.

It is important to note that to continue to achieve NNL over time the County should continue to fund and implement the projects listed in the restoration plan.

Non-Scoped Amendments

Sustainable Salmon Harvest Goal

There is a new Policy 10L-19 proposed to be added to Chapter 10 regarding a sustainable salmon harvest goal (Exhibit A, page 11-47). Adding this policy is not a part of the SMP Update per se, and in fact was not part of the scope. Rather, it is a policy the Council expressed in interest in adding in support of the fisheries co-manager's Sustainable Salmon Harvest Goal. Adding such a policy was placed on the docket by Council in 2018 (#PLN2018-00010). Rather than process its addition as a separate CompPlan amendment, staff is proposing to add it while we're already amending the CompPlan for the SMP

Update. We should note, however, that through the Salmon Recovery Staff Team the fisheries co-managers (WDFW, Lummi Nation, and Nooksack Tribe) are reviewing this draft language and may propose some additional amendment(s) to it. If so, we will inform the Planning Commission later in your review.

Short-Term Rentals

Though already approved by Council via Resolution 2016-039 and by the Department of Ecology, Council's actions on short-term rentals has not been finalized by ordinance. Thus, staff has included in the draft Title 23 those amendments on short-term rentals already approved. Please note that there are similar amendments to Title 20 that Council has not acted on, and these would need to be followed up shortly after the SMP amendments are approved.

UGA Wetlands

In 16.16.225 (General Regulations) staff is proposing to add subsection (B)(7), which would allow "alteration of Type III or IV wetlands that have a habitat area score of less than 6 when associated with an approved commercial development within an Urban Growth Area" when impacts are mitigated. This would allow the alteration of certain wetlands in Urban Growth Areas (UGAs) (in particular, Birch Bay) so as to encourage development of commercially zoned property. Commercial development in Birch Bay is challenging because so much of the remaining commercially zoned property contains small, isolated wetlands. Yet under the Growth Management Act we're supposed to encourage development within UGAs so that development doesn't sprawl to less developed areas of the County.

IV. Comprehensive Plan Evaluation

The proposed amendments to the regulations (WCC Titles 22 and 23 and Ch. 16.16) have been developed using the guidance of the Comprehensive Plan so as to remain consistent. Generally, the specific guiding goals and policies would be listed here so as to inform the Council of consistency; however, that would just be a relisting of each, as every goal and policy of Comprehensive Plan Chapter 11 is relevant. Those goals and policies may be reviewed in Exhibit B. Suffice it to say that staff finds no inconsistencies.

V. Draft Findings of Fact and Reasons for Action

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. Whatcom County is subject to the requirements of the Washington State Growth Management Act (GMA), RCW 36.70A.480 'Shorelines of the State.'
2. On February 27, 2007 (Ordinance # 2007-017), Whatcom County adopted a comprehensive update to the SMP as required by law. This comprehensive SMP update review included but was not limited to assessment of ecological functions, baseline conditions, and SMP environmental designations. This local adoption was approved by the Washington State Department of Ecology (Ecology).
3. The Washington State Shoreline Management Act (SMA), RCW 90.58.080 (4)(a)(ii), mandates Whatcom County shall periodically review its SMP every 8-years. This periodic update is due June 30, 2021. The purpose of this periodic review is to update the local SMP to reflect changes to state law and associated rules and guidance, ensure internal consistency with the Whatcom County Comprehensive Plan and associated development regulations, as well as provide an opportunity to improve usability and predictability of the SMP.

4. The GMA, RCW 36.70A.130(1), also mandates that Whatcom County's Comprehensive Plan and development regulations are subject to continuing review and evaluation.
5. RCW 36.32.120(7) provides that the county legislative authorities shall make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law.
6. Whatcom County Planning and Development Services (PDS) submitted an application (PLN2020-00006) to make various amendments to Whatcom County's Shoreline Management Program.
7. On May 21, 2019, the County Council reviewed and approved the Shoreline Master Program Periodic Review Public Participation Plan. The Public Participation Plan was submitted to Ecology. Public outreach regarding the proposed amendments was conducted through:
 - a. A dedicated project webpage;
 - b. Legal notices published in the official newspaper of record for Whatcom County;
 - c. Electronic announcements and notifications to:
 - Subscribers of relevant lists in the Kitsap County Electronic Notification System;
 - Relevant Kitsap County advisory groups; and
 - Relevant local, state and federal agencies, and community groups;
 - Federally recognized tribes with usual and accustomed areas in Whatcom County and relevant tribal organizations;
 - d. Three public open houses;
 - e. Meetings with citizen advisory groups and various interested parties;
 - f. Two 30-day public review periods of the amendments, one prior to the Planning Commission review workshops (August – September 2020) and a joint public comment period with the Department of Ecology prior to their joint public hearing (March – April 2021).
 - g. Ten public workshops and a public hearing with the Planning Commission; and
 - h. X public workshops and a public hearing with the County Council.
8. With the assistance of a consultant and development of a consistency analysis, Whatcom County PDS proposed amendments to the Whatcom County Comprehensive Plan (Chapters 8 (Resource Lands), 10 (Environment), and 11 (Shorelines)) and WCC Titles 22 (Land Use & Development) and 23 (Shoreline Management Regulations), and WCC Chapter 16.16 (Critical Areas).
9. Following review and approval by the Whatcom County Council, a public participation plan, consistency analysis, and scoping document was developed to aid in developing the draft amendments.
10. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on February 18, 2021.
11. Notice of the subject amendments was submitted to the Washington State Department of Commerce on March 12, 2021, for their 60-day review.
12. On April 22, 2021, the Planning Commission held a duly noticed joint public hearing with the Department of Ecology to consider testimony on the proposed draft amendments to the Shoreline Master Program and related codes.
13. The County Council held a duly noticed public hearing on the proposed amendments on X , 2021.
14. As evidenced by the recommendation of the Surface Mining Advisory Committee, Title 23 already meets Council's intent to allow sand and gravel extraction within shoreline jurisdiction under certain

circumstances as described in PLN2019-00011 and thus no amendments are proposed to achieve this.

15. The amendments are consistent with the Shoreline Management Act, Growth Management Act, Whatcom County Comprehensive Plan, and other applicable requirements.
16. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.

VI. Proposed Conclusions

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VII. Recommendation

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

Chapter Ten Environment

Introduction

Each person in Whatcom County has a fundamental right to a healthful and safe environment in which to live and grow. With this right comes a responsibility to contribute to the protection and enhancement of our natural environment. Consequently, an important goal of the Whatcom County Comprehensive Plan is to protect or enhance the county's environmental quality. This means that, individually and collectively, we have the obligation to protect these resources for our children and their children. Essential to this is the establishment of safe development practices and patterns that do not significantly disrupt ecosystems and that ensure the continuation of ample amounts of clean water, natural areas, farmlands, forest lands, and fish and wildlife habitat.

Chapter Organization

This chapter is composed of an introduction and four sections organized by topic heading. The first section, entitled "General Environmental Management," addresses general environmental goals and policies. The remaining three sections deal with Natural Hazards, Water Resources, and Ecosystems. Together, the sections of this chapter provide the direction necessary to ensure and promote long-term sustainability of the environment in Whatcom County.

Purpose

Whatcom County's natural environment, with its seasonally abundant supply of water, its beauty, and its other natural resources, has attracted people to our community for generations. This setting is important to our sense of well-being, to our health, to our economic well-being, and to our future. Sustaining these assets in the face of increasingly intense human activity becomes more difficult each year. The challenge of protecting this environment while accommodating growth requires maintaining guidelines for development so that growth does not ultimately overrun the very assets that brought most of us here. The purpose of this chapter is to create such guidelines.

GMA Goals and Countywide Planning Policies

GMA Planning Goal 10, "Environment" (RCW 36.70A.020(10)), provides the directive for much of this chapter. It requires Whatcom County to "protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water." In addition, some of the goals and policies of this chapter support Planning Goal 9, "Open Space and Recreation" (RCW 36.70A.020(9)), which directs the county to "conserve fish and wildlife habitat."

Relative to environmental protection, Whatcom County's Countywide Planning Policies (CWPP) give the most attention to water issues. They state, "The quality of life and economic health of Whatcom County communities depend on the maintenance of a safe and reliable water supply. All jurisdictions and water

1 purveyors should cooperate to ensure the protection and quality of the area's water
2 resources." Specific policies address water, promoting inter-jurisdictional
3 cooperation in conserving, protecting, and managing the water resource, and in
4 reducing water pollution (CWPP Policies N.1 – 6). The CWPPs also support
5 protecting wildlife habitat and corridors, natural drainage features, and "other
6 environmental, cultural and scenic resources."

7 **GMA Requirements**

8 The GMA requires Whatcom County to identify and manage critical areas in such a
9 manner as to prevent destruction of the resource base and reduce potential losses
10 to property and human life. The GMA has identified Critical Areas to include the
11 following areas and ecosystems:

- 12 • Wetlands
- 13 • Critical Aquifer Recharge Areas
- 14 • Fish and wildlife habitat conservation areas
- 15 • Frequently flooded areas
- 16 • Geologically hazardous areas

17 **Environmental Setting**

18 Whatcom County bedrock geology can be divided into five bedrock geologic
19 provinces. From east to west these provinces are the Methow terrain, the Cascade
20 Crystalline Core, the Northwest Cascades System, the Fraser Lowland, and the San
21 Juan Island system. Tectonic activity over the past 15 million years has created the
22 present North Cascades and the formation of Mount Baker, a 10,000-foot high
23 composite volcano.

24 The mountains of Whatcom County, as well as the streams, lakes, valleys, hills, and
25 shoreline features are the result of millions of years of geologic events. Over 2.5
26 million years ago, during the Ice Ages, glacial ice invaded the Puget Sound lowlands
27 from the north at least four times, with the last major glacial event, the Fraser
28 Glaciation, ending approximately 12,000 years ago. A minor advance of glacial ice,
29 the Sumas Advance, ended approximately 10,000 years ago. The ice formed from
30 the accumulation of snow in the British Columbia Coast Range and interior of British
31 Columbia. Numerous glaciers are still present within the mountains of Whatcom
32 County, and some of these mountain glaciers formerly extended far down the
33 mountain valleys of the County. The underlying bedrock was deeply eroded during
34 these glacial events creating very steep mountainsides, and in some areas,
35 particularly in northwestern Whatcom County, a thick sequence of glacial related
36 sediments was deposited. The glacial ice was approximately 6,000 feet thick in the
37 vicinity of Bellingham.

38 Two main glacial advances are the most important to our area, the Salmon Springs
39 glaciation and the later Vashon glaciation. Each time the massive glacier advanced,
40 it dammed up the Puget lowlands to form a huge lake. As the floating ice melted,
41 sand, gravel, clay and occasional boulders would melt out of the ice and fall to the
42 sea floor. This deposit, the Bellingham Drift, covers the ground surface over a large
43 area of western Whatcom County. Each time the Ice Age glacier advanced, it also
44 compacted underlying sediments with its great weight. It created a concrete-like

1 material called "till" (also known as "hardpan") beneath it. Because the Bellingham
2 Drift consists primarily of clay and silt, it is relatively impermeable; water tends to
3 accumulate on the ground surface. Wetlands are common on the Bellingham Drift.

4 On the bottom of the lake, "rock flour", the finely ground remains of rocks
5 pulverized by glacial action, settled out. These deposits became the familiar "blue
6 clays" of the Puget lowland. The milky color of the Nooksack River is due to the
7 same kind of rock flour, created by glacial activity on the slopes of Mount Baker.

8 Additionally, each time the glacier retreated, water from the melting ice deposited
9 thick layers of sand and gravel known as "outwash." The outwash areas are
10 typically where we find our most productive aquifers, since these loose sands and
11 gravel are porous and drain rapidly. While these areas absorb rainwater for our
12 later use from wells, they are also vulnerable to contamination. An example of this
13 phenomenon is found in the outwash sands and gravels resulting from the Sumas
14 Advance. Large meltwater streams and rivers flowed from this glacier depositing
15 the Sumas Outwash sands and gravels. The Sumas Outwash sands and gravels
16 make up the best non-floodplain farmland in the County and some of the highest
17 quality construction gravel deposits. Abandoned outwash channels were formerly
18 used as sources of peat.

19 Each of these glacial sediments, lake bed deposits, till and outwash is present in
20 various places and in varied combinations in Whatcom County. These sediments
21 provide both the formations that hold the groundwater for many of the area's wells,
22 and the parent material for most of the different soils.

23 Out of these long physical processes a complex natural ecology has emerged that
24 supports a diversity of wildlife. Many of our lakes, rivers, and streams support fish
25 including, but not limited to, native species such as the five pacific salmon
26 (Chinook, Coho, Sockeye, Chum, Pink) as well as Steelhead, Rainbow Trout,
27 Cutthroat (coastal and resident), Bull Trout, and Dolly Varden. Every year salmon
28 return to spawn in the streams and rivers of Whatcom County. Whatcom County is
29 located within the Pacific Migratory Flyway and serves as a stopover and critical
30 habitat area for many migratory birds. Bufflehead and goldeneye ducks winter here.
31 Additionally, numerous bird species including scoters, snow geese, trumpeter
32 swans, canvasbacks, cormorants, grebes, loons, and other migrating waterfowl
33 pass through every spring and fall as they travel between their breeding grounds in
34 Alaska and Canada and their wintering grounds in California and Mexico. Mallards,
35 Canada geese, great blue herons, and numerous songbirds live in the county
36 year-round. Maintaining these unique resources is a high priority for both present
37 and future county residents. Whatcom County is home to a distinct subspecies of
38 the Great Blue Heron, which has the third largest colony in the Puget Sound area.
39 The wetlands, fields, streams, and nearshore habitat in the county support many
40 birds of special concern, such as the bald eagle (protected under the Bald and
41 Golden Eagle Protection Act), the pileated woodpecker (candidate for State
42 threatened list), and the peregrine falcon (ESA candidate species). The National
43 Audubon Society has designated Semiahmoo, Drayton Harbor, and Birch Bay as
44 "Important Bird Areas."

1 Environmental Management

2 Introduction

3 General environmental goals and policies are intended to provide guidance for
4 environmental management that will promote environmental protection and good
5 stewardship practices through a balance of public education and involvement;
6 incentives, acquisition, and voluntary programs; land use planning and regulations;
7 environmental monitoring; and intergovernmental cooperation. These goals and
8 policies are also intended to provide guidance to County government as it assists its
9 citizens in maintaining a balance between individual property rights, economic
10 development, and environmental protection.

11 Background Summary

12 Development in the last 100 years has had a significant impact on the natural
13 environment in Whatcom County. At the turn of the 20th century, some areas
14 surrounding Lynden, Sumas, and Ferndale were logged, drained, and converted to
15 agricultural land and other types of development. In the intervening years, many of
16 the remaining forests were logged, many streams re-routed and channelized, and
17 much of the native vegetation removed and replaced with a wide variety of
18 introduced vegetative types. Roads now crisscross most areas, with homes, farms,
19 businesses, and industries scattered throughout the county.

20 Issue, Goals, and Policies

21 There are designated lands in Whatcom County that can still accommodate
22 development. Whatcom County also has areas that are sensitive to human activity,
23 including wetlands, streams, lakes, and marine shorelines, and lands that can pose
24 a hazard to the community, including floodplains and unstable slopes. In these
25 areas development must be carefully planned or limited to maintain environmental
26 quality and public safety. This can be done through the creation and
27 implementation of goals and policies that seek to reduce hazards and prevent
28 adverse environmental impacts.

29 Community and Environmental Protection

30 The elements of the natural environment: water, air, soil, plants, and animals; are
31 interconnected and interdependent, functioning as one dynamic ecosystem.
32 Environmental resources within this ecosystem are extensive and, in some cases,
33 irreplaceable. They provide important beneficial uses to the community such as: the
34 supply of clean drinking water; management of stormwater run-off and flood
35 hazard management; support for a wide variety of fish and wildlife; fresh air; and a
36 sense of place in which residents invest, enjoy, and expect.

37 Some of these same resources result in serious environmental constraints or pose a
38 hazard to development and a danger to the community. Flooding in the Nooksack
39 River is frequent and impacts much of the valley floor. There are numerous
40 wetlands and hydric soils throughout the lowlands that provide critical wetland
41 functions and are generally unsuitable for development. The steep gradient and

- 1 geologic structure of the mountain ranges in conjunction with heavy annual
2 precipitation can contribute to slope instability and flood-prone drainage basins.
- 3 Much of the environmental degradation and destruction to property occurs as a
4 result of a lack of information or understanding rather than willful action.
5 Ecosystems are subtle and complex. Too often both their benefits and hazards are
6 not readily apparent to the community. Additionally, baseline information is not
7 always available to help identify the real costs or hazards of building in Whatcom
8 County. There is a need for further research and education.
- 9 **Goal 10A: Protect natural resources and systems, life, and property**
10 **from potential hazards.**
- 11 Policy 10A-1: Support good stewardship of Whatcom County lands, and apply
12 this principle to the management of public lands.
- 13 Policy 10A-2: Protect the environment through a comprehensive program that
14 includes voluntary activity, education, incentives, regulation,
15 enforcement, restoration, monitoring, acquisition, mitigation,
16 and intergovernmental coordination.
- 17 Policy 10A-3: Continue to identify, designate, and protect Critical Areas and
18 other important environmental features.
- 19 Policy 10A-4: Manage designated Critical Areas as needed, to minimize or
20 protect against environmental degradation and reduce the
21 potential for losses to property and human life.
- 22 Policy 10A-5: Actively pursue voluntary, cooperative, and mutually beneficial
23 efforts aimed at advancing county environmental goals.
- 24 Policy 10A-6: Aim to meet or exceed national, state, and regional air quality
25 standards. Work with the Northwest Clean Air Agency to ensure
26 compliance with applicable air quality standards.
- 27 Policy 10A-7: Using Best Available Science, support efforts to educate and
28 inform the public as to the benefits of a healthy and viable
29 environment, ecologically fragile areas, and their economic and
30 social value.
- 31 Policy 10A-8: Lead and/or coordinate efforts with property owners, citizen
32 groups, and governmental and non-governmental agencies in
33 furthering Whatcom County's environmental goals and policies.
- 34 Policy 10A-9: Cooperate with state and federal agencies and neighboring
35 jurisdictions to identify and protect threatened and endangered
36 fish and wildlife species and their habitats.
- 37 Policy 10A-10: Support acquisition, conservation easements, open space, and
38 other such programs to protect high-value natural areas as
39 identified through the GMA planning process, the Natural
40 Heritage Plan, the state Priority Habitats and Species (PHS)
41 program, the Lake Whatcom Management Program, and other
42 sources.

1 Policy 10A-11: Designate high-value open space and natural areas for
2 acquisition, conservation easements, open space, and other
3 such programs to protect these natural areas upon request or
4 consent of the property owner.

5 Policy 10A-12: Broadly inform the people of Whatcom County of the locations
6 of potential development constraints associated with natural
7 conditions. Information should include known natural hazards
8 and an assessment of the potential danger to both the property
9 owner and the public.

10 Administration and Regulation

11 There are currently a multitude of regulations and administrative processes at the
12 federal, state and local level that, together, have become excessive and difficult to
13 understand. Conflicting regulations and complicated administrative processes can
14 create undue hardship on community members and result in reduced levels of
15 environmental protection.

16 **Goal 10B: Simplify and harmonize regulations relating to the**
17 **identification, delineation, and protection of**
18 **environmental features.**

19 Policy: 10B-1: Develop, as a significant component of a comprehensive
20 environmental management program, non-regulatory measures
21 that include voluntary activity, education, incentives,
22 restoration, acquisition, advanced mitigation (i.e., mitigation
23 done in advance of impacts), and intergovernmental
24 coordination.

25 Policy 10B-2: Provide incentives for good stewardship of the land through the
26 use of non-regulatory and innovative land use management
27 techniques.

28 Policy 10B-3: Support education as an important tool in developing public
29 appreciation for the value of ecosystems and provide the public
30 with informational materials and presentations relating to
31 natural system functions, regulations, and issues.

32 Policy 10B-4: Promote cooperation and coordination among involved
33 government agencies when multiple agencies have jurisdiction
34 over aspects of a single project.

35 Policy 10B-5: Process the environmental review of building and development
36 permit applications within an established timeframe that is
37 predictable and expeditious.

38 Policy 10B-6: Provide clear, timely, appropriate, and understandable direction
39 to citizens, developers, and property owners.

40 Policy 10B-7: Ensure regulations are as simple and easy to understand as
41 possible and maintain effective inspection, compliance, and
42 enforcement measures as necessary.

~~Policy 10B-8: Recognize the policies of the Whatcom County Shoreline Management Program as constituting a "Shoreline Element" of this plan. The shoreline program regulations and policies shall be considered to be consistent with this plan.~~

Comment [CES1]: No longer needed, as a new Chapter 11, Shorelines, has been created.

The Environment and Property Rights

Prior to the 1970s, growth in Whatcom County was relatively slow and received little management. As a result, private property owners were left to their own resources as they determined how best to use their land. However, as increasing numbers of people moved to this area and settled, a greater demand was placed on Whatcom County's natural resources.

The problems that arise from this situation have caused many to realize what one person does with his/her property may have an impact on the larger environmental system that sustains us as a community and on the rights of other property owners.

Land use decisions can no longer be considered exclusively private matters. We are aware public actions impact every private citizen in Whatcom County and private actions may have public consequences as well. To that end, the law must protect the public good from detrimental private actions. Nevertheless, the right of the individual to use his or her property, within the bounds permitted by law, is a value supported by law and the community and must be recognized when making land use decisions in Whatcom County.

Goal 10C: In implementing environmental policies, provide for protection of private property rights, economic opportunities, and plan appropriately for growth.

Policy 10C-1: Actively pursue voluntary and cooperative efforts that advance Whatcom County's goals in a mutually beneficial manner.

Policy 10C-2: When adopting new environmental protection programs, consider multiple economic parameters including development objectives, impacts, and the economic benefits of the natural environment as both a resource and an amenity.

Policy 10C-3: Emphasize an approach to environmental protection by encouraging the use of conservation easements, open space taxation, land acquisition, purchase/voluntary, workable transfer of development rights, and other mechanisms that assist affected property owners.

Policy 10C-4: Avoid standards and procedures likely to require compensation to property owners or invalidation of such rules.

Climate Change

Climate change is a global phenomenon that has the potential for significant local impacts to natural resources, ecosystem functions, as well as human health, infrastructure, and the economy. In Washington State, the Climate Impacts Group (CIG), a consortium of scientists at the University of Washington, has done the

1 most extensive analysis of potential local climate change impacts in the Pacific
2 Northwest. Based on a range of climate change model projections, as well as peer-
3 reviewed scientific publications, the CIG concludes that during the next 20-40 years
4 the Pacific Northwest climate may change significantly. See *Climate Change*
5 *Impacts and Adaptation in Washington State: Technical Summaries for Decision*
6 *Makers, Climate Impacts Group, University of Washington, December 2013*. The
7 CIG confirms that global climate models project mid-21st century temperatures in
8 the Pacific Northwest higher than the natural range of temperature observed in the
9 20th century. The CIG reports that as a result of likely climate change, causing
10 slightly higher average annual temperature, impacts to the Pacific Northwest will
11 likely affect a broad spectrum of the natural environment, but most notably
12 changes to water resources, including:

- 13 • More precipitation falls as rain rather than snowfall in the Cascades due to an
14 increased snow-line elevation;
- 15 • Decreased (winter) mountain snowpack and earlier (spring) snowmelt;
- 16 • Higher winter streamflow in rivers that depend on snowmelt;
- 17 • Higher winter streamflow in rain-fed river basins resulting in scouring floods
18 that negatively affect salmon populations if winter precipitation and rain-on-
19 snow events increases in the future as projected;
- 20 • Earlier peak (spring) streamflow in rivers that depend on snowmelt;
- 21 • Lower summer streamflow in rivers and streams; and,
- 22 • Decreased water in summer for irrigation, fish, human consumption and
23 recreational use (more drought-like conditions).

24 Climate change impacts are likely to include longer-term shifts in forest types and
25 species, potentially increasing wildfire risk and greater exposure to insects and
26 disease. Nearshore and riverine fisheries may be subjected to increased stress due
27 to even lower average summer stream flows (and higher summer stream
28 temperatures) and increased acidity in Puget Sound. Agricultural sector concerns
29 include the cost of climate adaptation, development of more climate-resilient
30 technologies, and management and availability of adequate water supplies.
31 Susceptibility to natural hazards is also expected to intensify due to climate change,
32 including increased landslides, erosion, and coastal and riverine flooding due to
33 more winter rainfall, and potential rising sea levels.

34 In 2007, Whatcom County completed a Climate Protection and Energy Conservation
35 Action Plan that laid out specific actions and targets for reducing greenhouse gas
36 emissions and increasing energy conservation efforts in response to potential
37 climate change.

38 In addition many insurance industry experts are now factoring in the costs of
39 climate change into insurance premiums as the increase in the frequency and
40 severity of extreme weather events around the world results in a corresponding
41 increase in claims costs.

42 Local government, residents and businesses must anticipate that as the climate
43 changes, more frequent and severe damage to private and public infrastructure will

1 occur. Maintenance costs and insurance premiums can be expected to increase
2 accordingly.

3 **Goal 10D:** **Strengthen the sustainability of Whatcom County's**
4 **economy, natural environment, and built communities by**
5 **responding and adapting to the impacts of climate**
6 **change.**

7 Policy 10D-1: Whatcom County's natural resource-based economic sectors,
8 ecosystems, water resources, infrastructure, emergency
9 management, and public health all face climate change related
10 risks in the future. The County should consider potential long-
11 range climate change implications into its on-going functional
12 planning and implementation actions. The County should:

- 13 1. Study the resilience of its natural and built environments to
14 the potential impacts of climate change;
- 15 2. Identify the relative vulnerability of these sectors to climate
16 change; and,
- 17 3. Examine the adaptive capacity of these sectors to cope with
18 or mitigate climate change and take advantage of any
19 beneficial opportunities.

20 Policy 10D-2: Develop strategies that encourage a diversified and sustainable
21 economy that is resilient to the impacts of climate change.

22 Policy 10D-3: Promote the efficient use, conservation, and protection of water
23 resources.

24 Policy 10D-4: Pursue strategies to reduce the vehicle miles traveled (VMT) in
25 the county by encouraging expanded availability and use of
26 public transportation, carpooling, and non-vehicular modes of
27 transportation.

28 Policy 10D-5: Establish land use patterns that minimize transportation-related
29 greenhouse gas emissions and encourage preservation of
30 natural resource lands and the protection of water resources.

31 Policy 10D-6: Convene a climate impact advisory committee by 2017. The
32 advisory committee should consist of (but not be limited to)
33 experts in energy efficiency and carbon emission reduction,
34 representatives from Whatcom County, and interested
35 community members. The committee will be tasked with:

- 36 • Evaluating Whatcom County's compliance with meeting
37 targets set forth in the 2007 Climate Plan;
- 38 • Establishing new targets that meet or exceed state and
39 federal climate impact goals;
- 40 • Updating the Climate Plan, at minimum every five years, or
41 as needed to meet targets;
- 42 • Recommending updates to the Whatcom County

- 1 Comprehensive Plan in accordance with meeting Whatcom
2 County's emission reduction goals;
- 3 • Ensuring that Whatcom County government facilities and
4 operations are designed to meet or exceed goals and
5 standards resolved in the current Climate Protection and
6 Energy Conservation Action Plan; and
 - 7 • Recommend updates to Whatcom County land use policies
8 and development regulations to support renewable energy
9 development goals.
- 10 Policy 10D-7: Encourage sustainability by developing strategies and practices
11 to increase the use of renewable, net-neutral carbon energy in
12 Whatcom County facilities and County vehicles, with a goal of
13 net zero man-made carbon emission by 2050.
- 14 Policy 10D-8: Encourage sustainability by developing strategies and practices
15 to reduce landfill waste from Whatcom County government
16 facilities to near zero.
- 17 Policy 10D-9: Identify responsible parties and agencies and encourage them
18 to identify and properly seal and/or burn methane that is
19 escaping into the atmosphere from wells.
- 20 Policy 10D-10: Create updates to Whatcom County land use policies and
21 development regulations to support renewable energy
22 development goals.
- 23 Policy 10D-11: Protect ecological functions and ecosystem-wide processes of
24 Marine Resource Lands and critical areas in anticipation of
25 climate change impacts, including sea level rise.

Comment [P/C2]: Suggested by Re-
Sources, Futurewise, & WEC.
P/C approved 8-0-0 (1 absence).

26 **Natural Hazards**

27 **Introduction**

28 The location, climate, and geology of Whatcom County combine to create many
29 natural hazards to people and their developments. Earthquakes, volcanoes,
30 landslides, and flooding are some of the major natural hazards found in our region.
31 Additionally, old mines are scattered around the county that could be dangerous to
32 the community. Natural Hazards goals and policies are intended to provide
33 guidance to county government as it assists its citizens in effectively managing
34 natural hazards in a manner that minimizes the danger to each member of this
35 community, while continuing to provide for economic opportunities.

36 **Background Summary**

37 Natural Hazards include the following (**Map 10-4**):

38 **Landslide Hazards** – The geologically recent retreat of glaciers from the Whatcom
39 County landscape, succeed by contemporaneous geomorphic processes of erosion,
40 sediment transport, deposition, isostatic rebound and tectonic uplift, has left many

1 hillsides over-steepened and susceptible to naturally occurring and human-
2 triggered slope failure and erosion. Several large, well-known landslides are
3 presently active in Whatcom County, such as the Swift Creek Slide on Sumas
4 Mountain. In addition, numerous large-scale, pre-historic slope failure deposits
5 have been mapped by past workers and are readily identified in more recently
6 available LiDar imagery. Various slope failure processes contribute to the mosaic of
7 landslide hazards present in the county and the potential exists for a multitude of
8 impacts ranging from periodic small- to large-scale rockfall and slides, massive
9 debris slides and avalanches, destructive debris flows, and deep-seated earthflows,
10 slumps and slides. These landslide processes act on large- and small-scale, and
11 though much less catastrophic in nature, smaller landslides occur more frequently
12 and pose a continual hazard to County residents and infrastructure. Certain types of
13 geologic conditions and formations commonly cause landslides, namely the
14 Chuckanut Formation and the Darrington Phyllite, but are also frequently observed
15 in unconsolidated glacial sediments, in the presence of day-lighting groundwater
16 seams and springs, on slopes in excess of 35 percent, along coastal bluffs, and in
17 areas of fluvial erosion.

18 **Alluvial Fan Hazards** – Alluvial fan hazards areas exist where steep mountain
19 streams flow onto floodplains or into lakes and deposit debris and sediment.
20 Because these streams are steep and flow in confined canyons, they can carry more
21 sediment and debris than a similar-sized stream flowing over flat land. During a
22 large storm, streams on alluvial fans can create catastrophic flooding and debris
23 floods, such as were experienced in 1983 in the Lake Whatcom area. During this
24 storm event, the Sudden Valley development on Lake Whatcom incurred significant
25 damage to property from flooding and debris flows on the Austin Creek alluvial fan.

26 **Flood Hazards** – Heavy winter rains and a transient snowpack combined with the
27 steep and sometimes unstable slopes of Whatcom County's foothills create
28 conditions ideal for flooding and debris flows along many of our rivers and streams.
29 The Nooksack River floodplain alone covers 38,000 acres in Whatcom County. In
30 1989 and 1990, the Nooksack River overflowed and flooded lowland Whatcom
31 County causing millions of dollars of damage. During some extreme floods, the
32 Nooksack River overflows near Everson and adversely impacts residents along
33 Johnson Creek in Sumas, and in the Abbotsford area of British Columbia. It is
34 projected that climate change will increase flood risk, due to increased sea level
35 and changes in rainfall patterns. Significant damage may result from such floods. In
36 1991, Whatcom County formed a countywide Flood Control Zone District to address
37 the major flooding issues in the county.

38 **Volcanic Hazards** – The presence of Mt. Baker is an asset to our region. Its
39 10,778-foot peak is one of the dominant features of Whatcom County's landscape.
40 However, Mt. Baker is also considered one of the most active volcanoes in the
41 Cascade Range, and of the six major volcanoes in the range, Mt. Baker is
42 considered by geologists to be very hazardous during and after an eruption.
43 Pyroclastic flows, ash flows, and especially volcanic mudflows, also known as
44 lahars, are believed to be the greatest dangers to human life and development in
45 Whatcom County. Geologic evidence indicates that an eruption on Mt. Baker caused

1 a major lahar about 6,600 years ago that inundated the Middle Fork Nooksack
2 Valley from its headwaters downstream past the confluence with the North Fork at
3 Welcome. The same lahar is now known to have been over 300 feet deep in the
4 upper reaches of the Middle Fork and extended as far west as Nugent's Corner. A
5 major lahar along the Nooksack would divert the river from its channel and cause
6 mass flooding. Fortunately, volcanic eruptions are infrequent with periods of
7 hundreds and thousands of years between events, but this infrequency also makes
8 forecasting a volcanic eruption extremely difficult. However, a major eruption of Mt.
9 Baker would pose a serious threat to human life and property. The deeply
10 weathered nature of the rocks forming Mt. Baker may also fail, triggering a
11 mudflow that would travel rapidly down the stream channels ringing the volcano
12 and result in damage similar to that from a volcanic eruption trigger. Mapping over
13 the past decade of other Cascade volcanoes has demonstrated massive mudflows
14 extending from the volcanoes to Puget Sound, and from Mount Rainier and Glacier
15 Peak.

16 **Earthquake Hazards** – Whatcom County lies within the influence of the
17 convergent plate margin between the Pacific and North American Plate termed the
18 Cascadia Subduction Zone. Regionally-extensive and damaging earthquakes,
19 termed mega-thrusts, are possible when stress generated between the subducting
20 Pacific Plate and over-riding North American Plate is released. A mega-thrust
21 earthquake is capable of generating an earthquake of magnitude 9, or greater, and
22 research has indicated an approximate recurrence interval of 500-600 years.
23 Associated with the stresses generated at the convergent plate margin are shallow,
24 crustal faults that are mapped throughout Whatcom County. Earthquake activity on
25 these fault systems is much more frequent than that observed at the Cascadia
26 Subduction Zone, and the Deming area is considered one of the most seismically
27 active areas in Washington. Recent research has shown these crustal faults are
28 capable of generating a magnitude 7 earthquake with an average recurrence
29 interval of 30 to 50 years. While all buildings are susceptible to damage from
30 seismic-shaking, structures built on peat soils, large areas of non-structural fill, or
31 liquefiable soils are prone to more severe shaking during an earthquake. If the
32 shaking is strong enough, or of sufficient duration, structures may collapse or
33 become damaged due to building fatigue, ground settlement/liquefaction, and/or
34 lateral spreading. In addition to seismic hazards posed by the Cascadia Subduction
35 Zone, a significant mega-thrust earthquake has the potential to generate a large
36 and destructive tsunami that has the potential to affect most low-bank areas of the
37 County.

38 **Mine Hazards** – Mine hazard areas are sites of abandoned underground mine
39 shafts, adits, and mine tailings. Coal mining was a major industry in Whatcom
40 County in the early part of the 20th century, and several major mines were
41 developed in various parts of the county. All of the formerly active mines are now
42 no longer worked and are abandoned. For the most part these mine locations are
43 known and mapped, such as the extensive coal mines under the northern part of
44 the City of Bellingham and in the Blue Canyon area of South Lake Whatcom.

1 **Issues, Goals, and Policies**

2 **Landslides** – Siting human development on or adjacent to known landslide hazard
3 areas can create health and safety risks. The risks can be elevated due to extreme
4 weather events and earthquakes, but may also occur with little or no warning. In
5 the case of the Swift Creek Landslide, the release of asbestos-laden sediment poses
6 an additional risk to public health. Development activity can de-stabilize naturally
7 unstable slopes and impact ecosystems. However, predicting the exact timing,
8 location, or extent of a damaging landslide is difficult, and in particular areas of the
9 county landslide hazards are not possible to completely mitigate or avoid. In some
10 circumstances, the development of upland properties may place downslope
11 neighbors and ecosystems at risk from rockfall or landslides. A similar relationship
12 holds true for development at the toe of a potentially unstable slope. In either
13 event, development in proximity to landslide hazards must proceed in consideration
14 of potential impacts in order to ensure life safety and preserve and protect public
15 and private infrastructure.

16 **Alluvial Fans** – Because alluvial fan areas are associated with streams, are
17 generally gently sloping and elevated above the adjacent floodplain, and are
18 located at the base of mountains, they have historically been popular places to
19 develop. However, once every 10-25 years, a large storm event occurs in our area
20 and streams flood homes and developments, causing damage to property,
21 ecosystems, and sometimes loss of lives.

22 **Flooding** – Floodwaters from the Nooksack River can damage homes, agricultural
23 areas, businesses, and industries in the small cities situated along the river; fish
24 and wildlife habitat and other ecosystems; and disrupt transportation and utility
25 corridors. Storm tides can flood homes and roads along low, exposed marine
26 shorelines in the Birch Bay, Sandy Point, Point Roberts, and Gooseberry Point
27 areas. Homes along Lake Whatcom, Lake Samish, and Cain/Reed Lakes have also
28 been impacted by flooding during extreme storm events. Property and public safety
29 are also impacted by rapid channel morphology events.

30 **Volcanos** – A volcanic eruption or mudflow at Mount Baker could potentially
31 severely affect river flow on the Nooksack River or Baker River and cause severe
32 property damage near the volcanoes or along lahar routes. A lahar is an extremely
33 rare and unpredictable occurrence. Evacuation routes should be planned and made
34 public. Development should be regulated according to the Critical Areas Ordinance.

35 **Earthquakes** – A major earthquake may likely and significantly affect Whatcom
36 County. If the shaking is strong enough, buildings may collapse, roads could be
37 damaged, and/or communications, power, and utilities could be severely disrupted,
38 mud and rock slides could occur on unstable slopes, and local sea levels may
39 change as shorelines assume altered post-quake elevations.

40 **Mines** – Some abandoned mine areas may pose a risk of ground subsidence from
41 the collapse of abandoned mine shafts. Air and water pollution may also be hazards
42 associated with abandoned mine tailings and trapped toxic gases. Development on
43 or near mine hazards could be adversely impacted.

1 **Gas wells** – Several exploratory oil & gas wells have been drilled around the
2 county over the last 70+years. Some of these present potential environmental
3 hazards due to ongoing leakage of gas.

4 **Old Landfills** – There are known abandoned landfills in the County and possibly
5 some that are unknown. There are also several sites around the County that
6 contain large numbers of abandoned vehicles and other debris. As with most
7 landfills these locations pose some degree of risk of hazardous substances leaking
8 into local aquifers.

9 **Balanced Management** – A central issue common to all development in natural
10 hazard areas is the need for Whatcom County to balance the responsibility of local
11 government to protect the public interest and provide for a safe and healthy
12 environment while safeguarding the rights of private property owners.

13 **Economic Impact** – Damage to private and public property resulting from the
14 siting of human development in areas of natural hazards is significant to the people
15 of Whatcom County. The 1990 Nooksack River floods caused over \$20 million
16 dollars in damage to roads, bridges, buildings, and farmland. Disaster relief efforts
17 are expensive and dangerous to conduct during an emergency. Public efforts to
18 reduce hazards, such as the establishment of the Flood Control Zone District, are
19 also expensive.

20 **Goal 10E:** **Minimize potential loss of life, damage to property, the**
21 **expenditure of public funds, and degradation of**
22 **ecosystems resulting from development in hazardous**
23 **areas such as floodplains, landslide-prone areas, seismic**
24 **hazards areas, volcanic impact areas, abandoned mine**
25 **and exploratory gas well locations, potentially dangerous**
26 **alluvial fans, and other known natural hazards by**
27 **advocating the use of land acquisition, open space**
28 **taxation, conservation easements, growth planning,**
29 **regulations, and other options to discourage or minimize**
30 **development, or prohibit inappropriate development in**
31 **such areas.**

32 Policy 10E-1: Avoid or minimize public investments for future infrastructure
33 development on known natural hazard areas.

34 Policy 10E-2: Use Best Available Science and data to research and investigate
35 the nature and extent of known natural hazards in the county
36 and make this information available to the general public and
37 policy makers in an accessible and understandable form.

38 Policy 10E-3: Broadly inform the people of Whatcom County of the locations
39 of known natural hazards, and the potential for adverse impacts
40 of such natural hazards to the health, safety, and welfare of
41 people and their properties.

42 Policy 10E-4: Establish acceptable levels of public risk for development in
43 known natural hazard areas based upon the nature of the
44 natural hazard and levels of public risk, and maintain regulatory

1		criteria for approving, disapproving, conditioning, or mitigating
2		development activity.
3	Policy 10E-5:	Prohibit the siting of critical public facilities in known natural
4		hazard areas unless the siting of the facility can be shown to
5		have a public benefit that outweighs the risk of siting in the
6		particular hazard area.
7	Policy 10E-6:	Maintain a comprehensive program of regulatory and non-
8		regulatory mechanisms to achieve Natural Hazard goals and
9		policies. This program should include such mechanisms as
10		education, tax incentives, zoning, land use regulations,
11		conservation easements, purchase of development rights,
12		transfer of development rights, and public acquisition.
13	Policy 10E-7:	Be consistent with the Natural Hazard goals and policies and
14		consider the locations of Natural Hazard Areas when establishing
15		or changing zoning patterns and densities.
16	Policy 10E-8:	To address the causes of flooding and avoid expensive and
17		maintenance-intensive bank protection measures, the County
18		should prioritize its floodplain property acquisition program.
19	Policy 10E-9:	Discourage new development in the floodplain.
20	Policy 10E-10:	Require applicants for development permits located in natural
21		hazard areas to provide development plans designed to
22		minimize the potential to exacerbate the natural hazard as well
23		as the risk of damage to property or threats to human health
24		and safety. In natural hazard areas where engineering solutions
25		cannot be designed to withstand the forces expected to occur
26		under the design event of a particular natural hazard, or off-site
27		adverse impacts to adjacent properties or ecosystems cannot be
28		adequately mitigated, Whatcom County may deny development
29		permits intended for permanent or seasonal human habitation
30		as described in the Critical Areas Ordinance.
31	Policy 10E-11:	Consider conducting a public process with affected citizens,
32		technical experts, and decision-makers to establish
33		recommended levels of public risk for each of the identified
34		natural hazards. In developing recommended levels of public
35		risk for natural hazards, consider the appropriate variables
36		affecting developments in hazardous areas. These variables may
37		include:
38		• Specific types of risk associated with the particular hazard
39		area;
40		• The gradation of hazards associated with a particular geo-
41		hazard;
42		• Level of detail necessary to map hazard areas;

- Different levels of risk associated with different ownership classes (e.g. public ownership versus private ownership);
- Different levels of risk associated with different types of land uses; and,
- Mitigation measures related to specific adverse impacts of development in hazard areas.

Once a set of risk levels has been identified, propose these risk levels for adoption of legislation by the County Council as the level to which future development must be designed.

Policy 10E-12: Consider establishing acceptable levels of public risk for use in approving and conditioning development activity in known natural hazard areas. The established level of risk may be expressed as the potential hazard posed as determined by scientific and historical methods applicable to each specific natural hazard.

Policy 10E-13: Review the findings and recommendations of alluvial fan hazard evaluations and make appropriate recommendations for land use and zoning regulations to the County Council to assist in reducing the hazards posed on these fans. Whatcom County has completed or nearly completed alluvial fan evaluations of Canyon Creek, Jones Creek, and Glacier-Gallop Creeks.

Policy 10E-14: Review the findings and recommendations of the Comprehensive Flood Hazard Management Plan (CFHMP) and make appropriate recommendations for land use and zoning regulations to the County Council to assist in the implementation of the CFHMP.

Policy 10-15E: Identify known locations of abandoned wells that could produce methane and/or other hazardous substances and where immediate danger of methane and hazardous substance leaking exists, condition development approvals on affected parcels to mitigate those impacts.

Water Resources

Introduction

Water resources refer to the numerous surface waters such as lakes, streams, wetlands; groundwater; estuaries; and marine waterbodies within Whatcom County (**Map 10-1**). These waterbodies are often integrally linked through the complex network referred to as the water cycle. The water cycle describes the series of transformations that occur in the circulation of water from the atmosphere onto the surface and into the subsurface regions of the earth, and then back from the surface to the atmosphere. Water resources of Whatcom County provide: natural beauty; recreation; habitat for fish and wildlife; water for drinking, agriculture, and industry; and other benefits essential to the quality of life and economic health of

1 the community. The quality of life and economic health of our county's communities
2 depend on the maintenance of a safe and reliable water supply. Decisions affecting
3 any element of the water environment must be based on consideration of the
4 effects on other elements.

5 **Background Summary**

6 Whatcom County has 16 major freshwater lakes, 3,012 miles of rivers and streams,
7 over 37,000 acres of wetlands, 134 miles of marine shoreline, and aquifers
8 containing an undetermined amount of groundwater. These water resources serve
9 multiple uses, including providing a source of drinking water for the people of
10 Whatcom County. Surface water sources such as Lake Whatcom, the Nooksack
11 River, and Lake Samish provide water to more than half the county residents, with
12 the remainder relying on groundwater, either from individual wells or from about
13 300 public water systems. Agriculture relies on both ground and surface water for a
14 variety of uses, including irrigation and drinking water for livestock. Businesses and
15 industries may also require water, sometimes in substantial quantities, from non-
16 potable and potable supplies. Water is also essential to meet many of what are
17 referred to as "instream" uses, such as recreation, shellfish growing and harvesting,
18 fish and wildlife habitat, aesthetics, and other uses and benefits.

19 Groundwater is contained in aquifers, which are subterranean layers of porous rock
20 or soil. Most of the surficial aquifers in Whatcom County are replenished by
21 rainwater. Aquifers are often integrally linked with surface water systems and are
22 essential for meeting instream and out-of-stream water needs such as for drinking
23 water, agriculture, industry, and other uses.

24 Rainfall that runs into drainage courses such as ditches, streams, wetlands, rivers,
25 lakes, and the Strait of Georgia supports local surface and marine waters. Natural
26 drainage systems have many important functions, including storing excess water
27 flow, purifying surface water, recharging groundwater, conveying water, and
28 supporting important biological activities. As more areas in Whatcom County are
29 being urbanized, natural water resource systems are being replaced with built
30 systems, leading to permanent changes in hydrology.

31 Whatcom County government has a major role in helping to maintain these benefits
32 through its many responsibilities and programs, particularly in the areas of health,
33 safety, land use, and development. The intent of the following goals and policies is
34 to provide guidance to Whatcom County government as it assists its citizens in
35 effectively managing our water resources in a manner that ensures that the
36 benefits of those resources are maintained far into the future. The water resource
37 section focuses primarily on groundwater and surface water management. Surface
38 water management relates generally to watershed protection and stormwater/
39 drainage systems. However, some policy direction may indirectly be provided for
40 areas such as wetlands, estuaries, streams, and marine waterbodies within the
41 Water Resource section. Some of these areas are covered in more detail in other
42 sections within the Environment Chapter.

1 **Whatcom County Water Resource Programs**

2 Whatcom County has and/or participates in numerous water resource programs
3 aimed at protecting and enhancing water quality and quantity, including:

- 4 • WRIA 1 Watershed Management Project;
- 5 • Lake Whatcom Watershed Management;
- 6 • Groundwater Protection & Management;
- 7 • Flood Hazard Management; and,
- 8 • Stormwater Management.

9 **WRIA 1 Watershed Management Project**

10 The WRIA 1 Watershed Management Project is the result of the 1998 Washington
11 State Watershed Management Act, which required all participating local
12 governments to address water quantity, with the option of addressing water
13 quality, instream flows, and fish habitat. The WRIA 1 Watershed Management
14 Project has brought together citizens, local governments, tribes, and state and
15 federal agencies to address these issues.

16 The framework for watershed management in the state is based on geographic
17 areas known as Water Resource Inventory Areas (WRIAs). WRIA 1 includes the
18 Nooksack River basin and several adjoining smaller watersheds, such as the coastal
19 drainages of Dakota and California Creeks, as well as Lake Whatcom.

20 Watershed planning in WRIA 1 started in 1998 with the signing of a Memorandum
21 of Agreement (MOA) between the *Initiating Governments*. In the WRIA 1 the
22 Initiating Governments are Whatcom County, City of Bellingham, Public Utility
23 District No. 1, Lummi Nation, and Nooksack Tribe (the latter joining slightly later
24 through a Letter of Agreement). The role of the Initiating Governments was to
25 review a recommended Watershed Plan and take it to their governments' councils
26 for adoption.

27 *Historical Organization (1999-2016)*

28 *WRIA 1 Joint Board*

29 In 1999, an Interlocal Agreement further formalized the government-to-
30 government relationship essential to the tribes' participation in the process by
31 creating a *Joint Board*. The Joint Board is comprised of the Initiating Governments,
32 including the mayor of the City of Bellingham, executive for Whatcom County,
33 manager of Public Utility District No. 1, and designated policy representatives of
34 Lummi Nation and Nooksack Tribe. The Board manages the project's administrative
35 functions such as contracts and budgets. Members of the Joint Board also sit on the
36 Joint Policy Boards.

37 *WRIA 1 Joint Policy Boards*

38 The WRIA 1 Joint Policy Boards are comprised of members of the WRIA 1 Joint
39 Board and Salmon Recovery Board. This organizational level interacts with federal,
40 state, and regional organizations at a policy-level to coordinate the implementation

1 and management of the WRIA 1 Watershed Management Plan – Phase 1, the WRIA
2 1 Salmonid Recovery Plan and other related activities.

3 *Local Integrating Organization (LIO)*

4 The Whatcom Local Integrating Organization (LIO) is a function of the WRIA 1
5 Watershed Joint Board and WRIA 1 Salmon Recovery Board (Joint Policy Boards).
6 Local integrating organizations are designated by the Puget Sound Partnership. The
7 two WRIA 1 Boards accepted the function of the Whatcom LIO in October 2010
8 under the integrated program structure, and was officially recognized by the Puget
9 Sound Partnership's Leadership Council in November 2010. The purpose of the
10 Whatcom LIO is to coordinate implementation of Puget Sound Action Agenda
11 priorities that are consistent with or complement local priorities. One of its functions
12 is to provide a local update to the Action Agenda for Puget Sound. Local updates
13 are intended to identify local priorities in the form of near-term actions (NTAs),
14 which are priority actions with measurable outcomes that can be implemented in
15 the next two years and that align with strategies in the Action Agenda for Puget
16 Sound.

17 *WRIA 1 Planning Unit*

18 The Initiating Governments established the Planning Unit to ensure representation
19 of a broad range of water resource interests. The Planning Unit's role is to
20 recommend actions for a Watershed Plan and to contribute knowledge, interests,
21 technical expertise, and other resources to its development. The Planning Unit is
22 made up of representatives from the Initiating Governments, other governments,
23 and various caucuses. There are 16 total caucuses on the WRIA 1 Planning Unit.

24 *Organizational Update (2016)*

25 Through an interlocal agreement entered into in 2016, the Watershed Management
26 Project Joint Board and the WRIA 1 Salmon Recovery Board were dissolved and the
27 duties and functions of those boards were assumed by the new WRIA 1 Watershed
28 Management Board, consisting of one representative from the Lummi Nation, the
29 Nooksack Tribe, the Washington State Department of Fish and Wildlife, Whatcom
30 County, Whatcom County PUD No. 1, and the cities of Bellingham, Blaine, Everson,
31 Ferndale, Lynden, Nooksack, and Sumas.

32 The primary functions of the WRIA 1 Watershed Management Board are to:

- 33 • Facilitate implementation and adaptive management of the WRIA 1
34 Watershed Management Plan-Phase 1 as currently constituted or
35 subsequently amended;
- 36 • Coordinate the implementation and adaptive management of the WRIA 1
37 Salmonid Recovery Plan and associated implementation documents,
- 38 • Serve as the WRIA 1 Salmon Recovery Lead Entity pursuant to RCW 77.85,
- 39 • Coordinate participation in Puget Sound salmon recovery efforts,
- 40 • Coordinate the development, implementation and adaptive management of
41 WRIA 1 watershed chapters of recovery plans for ESA listed salmonids and
42 other salmonid species as warranted;

- Coordinate planning, implementation, monitoring and adaptive management of ecosystem recovery actions in WRIA 1 consistent with agreed local goals and objectives,
- Serve as the WRIA 1 Local Integrating Organization and a partner in the Puget Sound Partnership in representing WRIA 1 goals and priorities; and
- Participate in other related activities as agreed to by the Board.

The roles of the Local Integrating Organization and Planning Unit did not change.

2005 WRIA 1 Watershed Management Plan – Phase 1

The 2005 WRIA 1 Watershed Management Plan was approved in 2005 by the Joint Administrative Board, Planning Unit (by consensus), and the County Council. Pursuant to subsequent state requirements, a WRIA 1 Watershed Detailed Implementation Plan was approved by the Joint Administrative Board, Planning Unit, and County Council in 2007. It provides a roadmap for addressing water quantity, water quality, instream flow, and fish habitat challenges. The goals of the WRIA 1 Watershed Management Project are: water of sufficient quantity and quality to meet the needs of current and future human generations; restoration of salmon, steelhead, and trout populations to healthy harvestable levels; and the improvement of habitats on which fish and shellfish rely. These goals are addressed more specifically below:

- **Water Quantity** – To assess water supply and use, and develop strategies to meet current and future needs. The strategies should retain or provide adequate amounts of water to protect and restore fish habitat, provide water for future out-of-stream-uses, and ensure adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state's Growth Management Act.
- **Water Quality** – To ensure the quality of our water is sufficient for current and future uses, including restoring and protecting water quality to meet the needs of salmon and shellfish, recreational uses, cultural uses, protection of wildlife, providing affordable and safe domestic water supplies, and other beneficial uses. The initial objectives of the water quality management strategy will be to meet the water quality standards.
- **Instream Flow** – To supply water in sufficient quantities to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.
- **Fish Habitat** – To protect or enhance fish habitat in the management area and to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve habitats on which fish rely.

In 2010, the WRIA 1 Joint Board adopted a work plan, budget, and financing strategy, called the Lower Nooksack Strategy, to advance a negotiated settlement of Tribal and state instream flow water rights on the mainstem of the Nooksack River, while maximizing the economic and environmental benefits of out-of-stream water use in the Lower Nooksack sub-basin. The Joint Board adopted the Lower Nooksack Strategy consistent with WRIA 1 Watershed Management Plan priorities.

- 1 Lower Nooksack Strategy Objectives:
- 2 • Develop and implement a process for negotiating settlement of water rights
3 on the Mainstem Nooksack River.
 - 4 • Update and verify the Lower Nooksack River sub-basin water budget and
5 develop a groundwater model.
 - 6 • Determine out-of-stream water user needs:
 - 7 ○ Public water system needs determined by updated the Whatcom County
8 Coordinated Water System Plan (CWSP).
 - 9 ○ Other out-of-stream user needs (e.g., agriculture, private domestic wells,
10 industrial, etc.) determined through a regional water supply planning
11 process.
 - 12 • Continue and, if appropriate, enhance targeted streamflow and water quality
13 sampling.
 - 14 • Advance work on tools that foster water resource allocations consistent with
15 long-term economic and environmental land-use goals for implementation in
16 five years.

17 Streamflow Restoration Act (ESSB 6091)

18 The Streamflow Restoration Act (ESSB 6091), enacted by the Washington State
19 Legislature on January 18, 2018 and effective on January 19, 2018, directs the
20 Department of Ecology to work with the initiation governments (i.e., the WRIA 1
21 Watershed Management Board), in collaboration with the planning unit established
22 pursuant to chapter 90.82 RCW, on updating the WRIA 1 Watershed Management
23 Plan for approval by the Whatcom County Council by February 1, 2019.

24 The Act requires that the updated plan include recommendations for projects and
25 actions that will measure, protect, and enhance instream resources and improve
26 watershed functions that support the recovery of threatened and endangered
27 salmonids. Such recommendations may include, but are not limited to, acquiring
28 senior water rights, water conservation, water reuse, stream gaging, groundwater
29 monitoring, and developing natural and constructed infrastructure, which includes,
30 but is not limited to, such projects as floodplain restoration, off-channel storage,
31 and aquifer recharge. Qualifying projects must be specifically designed to enhance
32 streamflows and not result in negative impacts to ecological functions or critical
33 habitat.

34 At a minimum, the watershed plan must include those actions determined to be
35 necessary to offset potential impacts to instream flows associated with permit-
36 exempt domestic water use. The highest priority recommendations must include
37 replacing the quantity of consumptive water use during the same time as the
38 impact and in the same basin or tributary. Lower priority projects include projects
39 not in the same basin or tributary and projects that replace consumptive water
40 supply impacts only during critical flow periods. The watershed plan may include
41 projects that protect or improve instream resources without replacing the
42 consumptive quantity of water where such projects are in addition to those actions

1 determined to be necessary to offset potential consumptive impacts to instream
2 flows associated with permit-exempt domestic water use.

3 Until the updated watershed plan is approved and rules are adopted by the
4 Department of Ecology, the County, in issuing building permits under RCW
5 19.27.097(1)(c) or approving subdivisions under chapter 58.17 RCW in WRIA 1, will
6 comply with all of the specific requirements of ESSB 6091.

7 **Lake Whatcom Watershed Management**

8 Lake Whatcom is a large multi-purpose reservoir that is the source of drinking
9 water for the City of Bellingham, Lake Whatcom Water and Sewer District, several
10 other smaller water districts/associations, and about 250 homes that draw water
11 directly from the lake. The lake provides water to about half the population of
12 Whatcom County.

13 Lake Whatcom is a multiple use lake and watershed. In addition to providing water
14 for drinking, commercial, and industrial uses, the lake is used for boating,
15 swimming, and fishing. The majority of the watershed is forested, mainly
16 surrounding the large southernmost portion of the lake. Other land uses include
17 residential development (approximately 5,300 homes are located within the
18 watershed), limited agriculture and commercial development, parks, and other
19 public facilities. The on-going management challenge is trying to determine the
20 extent to which these practices can occur while maintaining safe, clean drinking
21 water. The challenge is further complicated by possible requirements related to the
22 Endangered Species Act, tribal water rights, and the potential impact these issues
23 may have on how the City's diversion from the Nooksack River is operated.

24 The watershed contains four developed areas: the City of Bellingham, which
25 straddles the upper portion of the northern-most basin of the lake; Geneva, which
26 is immediately south and east of Bellingham's city limits and is part of the city's
27 urban growth area; Hillsdale, which is immediately north and east of Bellingham's
28 city limits and is also part of the city's urban growth areas; and the Sudden Valley
29 Rural Community. In addition, it includes a variety of other zones, including
30 resource, rural, and residential rural zones. Outside the Bellingham City limits,
31 approximately 70% of the watershed is in Forestry zoning and more than 75% of
32 the current land use is forestry.

33 Water and sewer service are provided by the Lake Whatcom Water and Sewer
34 District. Capacity problems in the district's sewer line, which serves Geneva and
35 Sudden Valley, have caused overflows into the lake in the past. An aggressive
36 program to preclude stormwater infiltration has reduced the overflow problems to a
37 large extent. In addition, the district has a contractually limited flow capacity to
38 Bellingham. The Lake Louise Road sewage interceptor was constructed in January
39 2003 to carry waste water from Sudden Valley and Geneva and serves as a
40 complement to the Lake Whatcom Boulevard trunk line. The interceptor was
41 designed to service full build-out of Sudden Valley and Geneva.

42 The City of Bellingham and Lake Whatcom Water and Sewer District are responsible
43 for ensuring drinking water standards are met for their customers. To date water
44 supplies have consistently met standards. The ability to continue to economically

1 meet drinking water standards requires maintaining source water that requires
2 minimal treatment. For this reason the City of Bellingham maintains an on-going
3 source water-monitoring program. Other agencies including Western Washington
4 University, Department of Natural Resources, Department of Fish and Wildlife,
5 Department of Ecology, Lake Whatcom Water and Sewer District, and Whatcom
6 County, have also conducted monitoring, studies, and/or evaluations of the lake
7 and watershed.

8 Studies on Lake Whatcom conducted over a number of years indicate water quality
9 in the lake has declined. In 1998, the Washington State Department of Ecology
10 listed Lake Whatcom as an impaired water body and placed Lake Whatcom on the
11 Federal Clean Water Act 303(d) list because of low oxygen levels in the Lake and
12 high bacteria levels in streams that flow into the Lake. The 303(d) listing requires
13 the establishment of a Total Maximum Daily Loads (TMDLs). The Department of
14 Ecology issued the "Lake Whatcom Watershed Total Phosphorus and Bacteria Total
15 Maximum Daily Loads: Volume 1, Water Quality Study Findings" in 2008. This study
16 documented Lake Whatcom is impaired for dissolved oxygen due to phosphorus
17 loading and that streams flowing into Lake Whatcom do not meet fecal coliform
18 bacteria standards. Loading capacities for total phosphorus and bacteria reduction
19 targets were set forth in this document. In 2013 The Department of Ecology issued
20 a draft "Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum
21 Daily Loads: Volume 2, Water Quality Improvement Report and Implementation
22 Strategy." This report identifies how much phosphorus can be discharged to the
23 Lake and identifies how the bacteria load should be allocated between the County
24 and City of Bellingham, in order to meet water quality standards.

25 A significant cause of declining oxygen levels has been from residential
26 development in the watershed. Past development permitted by the City of
27 Bellingham and Whatcom County has led to increased phosphorus loading into the
28 lake, which stimulates algae growth. Bacteria that consume the dying algae deplete
29 the dissolved oxygen, leading to lower oxygen levels in the lake. Past poorly
30 managed forest practices may have led to significant increases in phosphorus
31 loading to the lake.

32 Whatcom County has taken a number of actions to reduce phosphorus and
33 otherwise address Lake Whatcom water quality. These include rezoning land to
34 allow less development in the watershed, adoption of the Lake Whatcom
35 Comprehensive Stormwater Management Plan, revising stormwater management
36 standards for private development to significantly reduce potential phosphorus
37 runoff, construction of stormwater capital improvement projects and adoption of
38 regulations that restrict the application of commercial fertilizers.

39 In 2014, approximately 8,800 acres of forest lands around Lake Whatcom were
40 transferred to Whatcom County from the Washington Department of Natural
41 Resources through reconveyance. These lands will provide passive recreation
42 opportunities with hiking and biking trails connecting various communities,
43 neighborhoods, and parks throughout the watershed. Under County ownership, the
44 forests will be allowed to mature to an older growth environment benefiting the
45 watershed and helping to stabilize steep slopes that surround the lake.

1 In 2004, the Department of Natural Resources (DNR) Board on Natural Resources
2 adopted the Lake Whatcom Landscape Plan. This plan provides additional
3 protections on remaining state managed lands within the Lake Whatcom watershed.
4 The plan provides additional protections on streams and potentially unstable slopes
5 not normally included in forest practices in Washington State.

6 Lake Whatcom Watershed Management Program

7 A variety of agencies, organizations, and individuals play a role in managing and
8 protecting Lake Whatcom. In an effort to coordinate efforts of these various
9 players, in 1990, the City of Bellingham, Whatcom County, and Water District 10
10 (now known as the Lake Whatcom Water and Sewer District) began meeting to
11 develop a joint management strategy for the Lake Whatcom watershed.

12 In November/December 1992, a joint resolution was passed by the Bellingham City
13 Council, Whatcom County Council, and the Lake Whatcom Water and Sewer District
14 (formerly Water District 10) Commissioners, which reaffirmed this position with six
15 general goal statements and a set of specific goal statements in various categories.
16 The specific goal statements for urbanization were the following:

- 17 • Prevent water quality degradation associated with development within the
18 watershed.
- 19 • Review and recommend changes in zoning and development potential that
20 are compatible with a drinking-water reservoir environment.
- 21 • In addition to zoning, identify and promote other actions to minimize
22 potential for increased development in the watershed (i.e. land trust,
23 development rights, cost incentives, etc.).
- 24 • Develop specific standards which reduce the impacts of urbanization, such as
25 minimal lot clearing; clustered development to reduce infrastructure;
26 collection and treatment of stormwater before entering the lake.
- 27 • Develop appropriate interlocal agreements with governing agencies to
28 prohibit the potential for additional development once an agreed upon level is
29 set.

30 The joint resolution included goals for watershed management that extended
31 beyond urbanization. Goals were included for stormwater management, on-site
32 waste systems, conservation, forest management, spill response, hazardous
33 materials transport and handling, data/information management, education/public
34 involvement, and other topics. A joint strategy was approved for developing specific
35 plans to meet the adopted goals. Eight high priority goals were selected first and
36 plans have been completed and jointly adopted for each of the goals.

37 In 1998, the City, County, and District 10 formalized their joint commitment to
38 protect and manage the lake through the joint adoption of an interlocal agreement
39 and allocation of funding toward protection and management efforts in the
40 watershed. A five-year program plan was developed for ten program areas. Specific
41 priority was placed on activities related to watershed ownership, stormwater
42 management, and urbanization/land development.

1 The resulting Lake Whatcom Management Program guides actions to protect Lake
2 Whatcom as a long-term supply of drinking water for the City of Bellingham and
3 portions of Whatcom County. The program emphasizes protection over treatment in
4 managing Lake Whatcom and its watershed. The structure of the Lake Whatcom
5 Management Program includes legislative bodies, a management team, an
6 interjurisdictional coordinating team, agency staff, and advisory committees.

7 The Lake Whatcom Watershed Management Program website
8 (<http://www.lakewhatcom.whatcomcounty.org/resources>) contains the management
9 plans, reports, and work programs, as well as the jurisdictions' pertinent
10 regulations and brochures on the different programs aimed at the various efforts to
11 improve water quality.

12 Sudden Valley

13 Sudden Valley is a community within the Lake Whatcom Watershed. It was
14 established in the early 1970s as a recreation/resort area but over the last thirty
15 years has developed into a significant residential area.

16 Since 1985, Sudden Valley has mandated the use of appropriate stormwater best
17 management practices through standards for individual stormwater detention for all
18 new construction. Any new building permits on existing lots must be able to
19 demonstrate that stormwater detention is included in the plan as a precondition to
20 issuance of a permit. Sudden Valley is also subject to additional regulatory
21 protections that apply to the Lake Whatcom Watershed under the Water Resource
22 Protection Overlay District, Stormwater Special District, and Water Resource Special
23 Management Area requirements. Under the provisions of these special districts,
24 potential impacts from impervious surfaces, stormwater runoff, and clearing
25 activities are required to be addressed either on-site or through a community-wide
26 process.

27 **Groundwater Protection & Management**

28 Groundwater is contained in aquifers, which are subterranean layers of porous rock
29 or soil. Most aquifers are replenished by rainwater, though some may contain water
30 trapped during glacial periods. Aquifers are often integrally linked with surface
31 water systems and are essential for meeting instream and out-of-stream water
32 needs, such as for drinking water, agriculture, and industry. Whatcom County
33 residents rely heavily on groundwater for drinking water, agriculture, and
34 commercial and industrial needs. Groundwater also plays an important role in
35 maintaining stream flows.

36 Many studies have been conducted related to groundwater quality in Whatcom
37 County documenting water quality issues, such as exceedances of standards for
38 nitrate, ethylene dibromide (EDB) and 1,2-dichloropropane (1,2-D), pesticides, iron
39 and other agricultural-related contaminants, particularly in the northern portion of
40 the County. In general, groundwater in Whatcom County is very vulnerable to
41 contamination because much of the County's groundwater lies within a shallow
42 unconfined aquifer. Activities that occur on the surface of the ground directly affect
43 groundwater quality. Shallow wells that draw water from unconfined water table
44 aquifers are at highest risk.

1 Whatcom County's Critical Areas Regulations protect Critical Aquifer Recharge Areas
2 (CARAs) during the development process, by precluding certain uses in CARAs
3 and/or requiring certain precautions be taken in handling certain chemicals.

4 **Flood Hazard Management**

5 A comprehensive approach to flood hazard management planning provides a better
6 understanding of the river and floodplain system. It also ensures flooding and
7 channel morphology problems are not simply transferred to another location within
8 the basin, but are addressed in a comprehensive, basinwide manner. This approach
9 directs future flood hazard management expenditures in the most efficient and cost
10 effective manner.

11 Whatcom County Public Works coordinates with the Flood Control Zone District
12 Advisory Committee (FCZDAC) to identify and characterize flooding problems and
13 provide recommendations for achieving consistent, long-term flood hazard
14 reduction strategies. Some activities typically involved in developing a
15 Comprehensive Flood Hazard Management Plan (CFHMP) include data collection,
16 hydraulic modeling, alternatives analysis, floodplain mapping, and meander limit
17 identification. In addition to the technical components in comprehensive flood
18 planning, extensive coordination with the public and other agencies is required
19 throughout the planning process.

20 Other County flood management programs include:

21 **Early Flood Warning** –Work with the United States Geological Survey (USGS)
22 to maintain a network of early flood warning stations to help citizens prepare and
23 take appropriate measures to protect lives and property from flood damages.

24 **Flood Hazard Reduction Program** – Implement projects to reduce future
25 flood damages and public expenditures to repair damaged areas. Examples include
26 construction of setback levees and overflow spillways, and designation of overflow
27 corridors in overbank areas. Two alluvial fan studies have been completed for Jones
28 Creek and Canyon Creek. For Jones Creek, review of potential mitigation measures
29 and concept design of a preferred approach has also been completed.

30 **Comprehensive Flood Hazard Management Planning** – Identify flooding
31 problems and provide recommendations for achieving long-term flood hazard
32 reduction strategies. The Lower Nooksack River Comprehensive Flood Hazard
33 Management Plan was adopted in 1999. Implementation of the plan is ongoing.

34 **Preparedness and Response** – Plan for and implement a coordinated
35 response during flood events to ensure public safety and minimize flood damages.

36 **National Flood Insurance Program** – Participate in the Congress-initiated
37 National Flood Insurance Program (NFIP) of 1968, to make affordable flood
38 insurance available to citizens of communities that adopt approved flood
39 management regulations.

40 **Repair and Maintenance Program** – Address problem areas with rivers,
41 streams, and coastlines of Whatcom County, and mitigate future flood damages in a
42 proactive and cost-effective manner.

1 **Technical Assistance** – Provide technical assistance regarding drainage and
2 flood issues to private citizens and businesses located along the many waterbodies
3 within Whatcom County.

4 **Organization**

5 Flood Control Zone District (FCZD)

6 Following the severe floods of 1989 and 1990, in 1992 Whatcom County created
7 the countywide Flood Control Zone District (FCZD), including both incorporated and
8 unincorporated areas of the County. The FCZD is a quasi-municipal corporation that
9 is a separate legal entity from Whatcom County government. Even though this legal
10 separation exists, the Whatcom County Council and the County Executive (Board of
11 Supervisors) and the Public Works Department (staff) perform the governance and
12 administrative support for the district.

13 The primary purpose of the FCZD is flood hazard management. Revenue generated
14 to for this purpose is accomplished in two ways: (1) a county-wide uniformly
15 applied tax; and, (2) supplemental revenue generated within localized Diking
16 Districts and Sub-Flood Districts where specific local project activity is planned.

17 While the primary purpose of the FCZD is flood hazard management, the district is
18 allowed to address a wide variety of water resource issues. Due to this ability,
19 revenue generated by the district is currently used to finance additional water
20 supply and water quality related improvement projects.

21 **Pertinent Documents**

22 Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP)

23 In 1999, the county adopted the Lower Nooksack River Comprehensive Flood
24 Hazard Management Plan (CFHMP). The CFHMP identifies projects, programs, and
25 other recommendations aimed at reducing future flood damages along the Lower
26 Nooksack River.

27 Critical Areas Regulations (WCC 16.16)

28 Whatcom County's Critical Areas Regulations aim to protect people and property in
29 Frequently Flooded Area (FFAs) by requiring development in these areas conforms
30 to WCC Title 17, Flood Damage Prevention.

31 **Stormwater Management**

32 Stormwater runoff occurs when precipitation from rain or snowmelt flows over the
33 land surface. The addition of roads, driveways, parking lots, rooftops, and other
34 surfaces that prevent water from soaking into the ground greatly increases the
35 runoff volume created during storms. This runoff is swiftly carried to our local
36 streams, lakes, wetlands and rivers and can cause flooding and erosion.
37 Stormwater runoff also picks up and carries with it many different pollutants that
38 are found on paved surfaces, such as sediment, nitrogen, phosphorus, bacteria, oil
39 and grease, trash, pesticides, and metals.

1 **County Stormwater Management Programs**

2 National Pollutant Discharge and Elimination System (NPDES) Phase II Permit

3 Stormwater runoff picks up pollutants as it travels over our developed landscapes
4 and is a major source of water quality problems. In 1987, the Federal Clean Water
5 Act was amended to address stormwater pollution. As a result, the United States
6 Environmental Protection Agency (EPA) created the National Pollutant Discharge
7 Elimination System (NPDES) to address stormwater runoff. States are required to
8 administer permits to local jurisdictions to regulate runoff as part of the NPDES
9 Program. The Permit is referred to as the "NPDES Phase II Permit" or "Phase II
10 Municipal Stormwater Permit".

11 In February of 2007, the Washington State Department of Ecology issued Whatcom
12 County's Phase II Municipal Stormwater Permit. This permit regulates discharges
13 from Small Municipal Separate Storm Sewers, and is part of the National Pollutant
14 Discharge and Elimination System (NPDES) and State Waste Discharge General
15 Permit. It sets forth requirements of municipalities to address stormwater runoff in
16 areas determined to have population densities reaching urban standards. Whatcom
17 County is required to implement various stormwater management strategies to
18 comply with this State permit.

19 The current Permit boundary covers approximately 15,000 acres and generally
20 includes the following areas (Figure 1):

- 21 • Bellingham Urban Growth Area
- 22 • Sudden Valley
- 23 • Portions of the Hillsdale and Emerald Lake area
- 24 • Portions along North Shore Drive on Lake Whatcom and Lake Whatcom
25 Boulevard
- 26 • Ferndale Urban Growth Area
- 27 • Portions along Chuckanut Drive and Chuckanut Bay
- 28 • Birch Bay Urban Growth Area

29 Additionally, though not within the NPDES permit area, the County has made the
30 entire Lake Whatcom watershed is subject to the illicit discharge detection and
31 elimination requirements of the Permit through ordinance and agreement with the
32 Department of Ecology.

33 Jurisdictions are allowed to discharge runoff into waterbodies of the State (such as
34 rivers, lakes, and streams) as long as they implement programs that protect water
35 quality by reducing pollutants to the maximum extent possible through
36 requirements of the NPDES Phase II Permit. Those requirements are reported and
37 submitted to the Department of Ecology through the Stormwater Management
38 Program (SWMP) and the Annual Compliance Report.

39 The Western Washington Phase II Municipal Stormwater Permit is required by the
40 State of Washington Water Pollution Control Law Chapter 90.48 RCW, and the
41 Federal Water Pollution Control Act Title 33 United States Code (Clean Water Act).
42 The Permit is administered by the Washington State Department of Ecology.

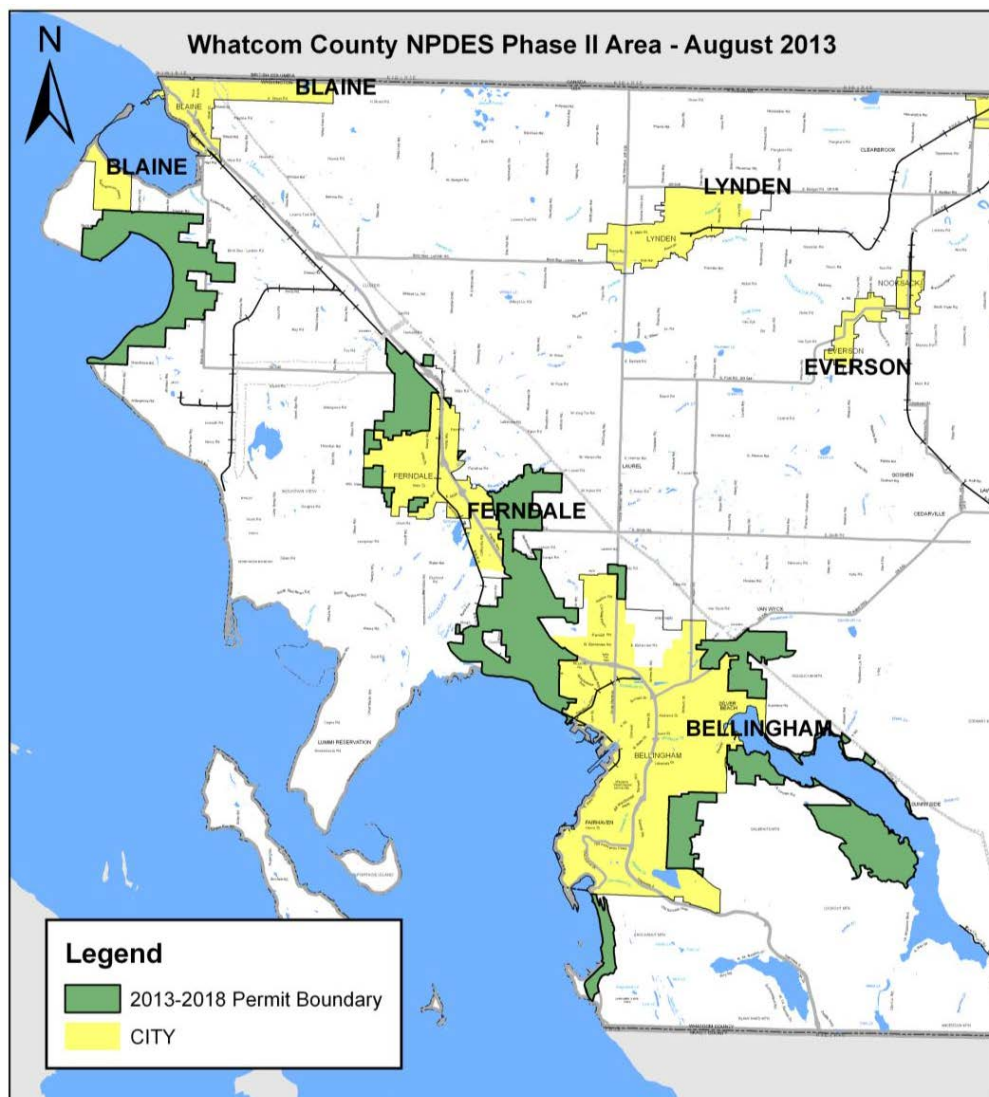


Figure 1. NPDES Phase II Boundaries

Pollution Identification and Correction (PIC) Program

Clean water supports healthy drinking water, safe recreational uses, quality water for irrigation and livestock, healthy fish, and shellfish that are safe to consume. Currently, many streams in Whatcom County do not meet water quality standards for fecal coliform bacteria. Fecal coliform bacteria are found in the intestinal tract of warm-blooded animals and when found in streams are an indicator of human or animal waste in the water. The higher the bacteria level, the greater the public health risk to people drinking water, wading, fishing, or consuming shellfish. The

1 Pollution Identification and Correction (PIC) Program was created to help implement
2 community solutions to clean water.

3 **Pollution** – The key potential sources of bacteria that have been identified in
4 Whatcom County coastal drainages are (1) **animal waste** from agricultural
5 operations, domestic pets, waterfowl, and wildlife, and (2) **human sewage** from
6 failing on-site sewage systems (OSS), leaking sewers, or cross-connections.

7 **Identification** – Whatcom County coordinates a routine water quality
8 monitoring program at approximately 90 stations in watersheds that discharge to
9 marine waters. Samples are collected on at least a monthly basis and analyzed for
10 fecal coliform bacteria. Results are evaluated annually to identify focus areas with
11 the largest bacteria problems. Within the focus areas, stream segments are
12 monitored and potential bacteria sources are identified.

13 **Correction** – Technical and financial resources are offered to landowners to
14 identify and implement solutions on their property. Residents can help improve the
15 community's water quality by inspecting and maintaining septic systems and by
16 fencing animals out of streams, ditches and swales. By actively managing pastures,
17 creating protected heavy use areas, and covering manure storage areas, residents
18 can prevent manure-contaminated mud from polluting surface water. Planting
19 shrubs and trees along stream banks and picking up after dogs also contributes to
20 better water quality.

21 **Issues, Goals, and Policies**

22 **Watershed Planning and Management**

23 **Goal 10F:** **Protect and enhance water quantity and quality and**
24 **promote sustainable and efficient use of water resources.**

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

27 Policy 10F-2: Actively participate in and support efforts to coordinate local,
28 federal, tribal, and state agencies to achieve integration and/or
29 consistency between the various levels of environmental
30 regulations relating to the County.

31 Policy 10F-3: Work cooperatively with Federal, State, and local jurisdictions,
32 Tribal governments, municipal corporations, and the public to
33 implement the goals and policies of the Comprehensive Plan as
34 well as state water resources and water quality laws.

35 Policy 10F-4: Participate in the coordination of all local water and land
36 management efforts, plans, and data to ensure adequate
37 oversight of water quantity and quality issues.

38 Policy 10F-5: Manage water resources for multiple instream and out-of-
39 stream beneficial uses, including instream flows set by the State
40 Department of Ecology.

41 Policy 10F-6: Actively promote and participate in education, research, and
42 information opportunities that improve our understanding of the

1 county's complex water resource systems. New information
2 should be considered in the development and evaluation of
3 management actions.

4 Policy 10F-7: Pursue the most effective methods for protecting water quantity
5 and quality, through both regulatory (e.g. zoning, enforcement,
6 fines) and non-regulatory approaches (education, incentives,
7 and technical/financial assistance). Emphasis shall be placed on
8 non-regulatory approaches where possible and effective.

9 Policy 10F-8: Track the development of policies and regulations at the local,
10 state, and federal level. Provide input to those regulations and
11 policies as necessary to ensure that the interests of Whatcom
12 County are considered.

13 Policy 10F-9: In conjunction with all jurisdictions, develop and adopt
14 programs to protect water quality and quantity within
15 watersheds, aquifers, and marine waterbodies that cross
16 jurisdictional boundaries.

17 Policy 10F-10: Promote awareness and participation in management and
18 protection efforts by individual citizens and the community as a
19 whole.

20 Policy 10F-11 Pursuant to ESSB 6091, Whatcom County will work through the
21 **Planning Unit and** WRIA 1 Watershed Management Board and its
22 established processes to update the WRIA 1 Watershed
23 Management Plan, consistent with ESSB 6091, for approval by
24 the Whatcom County Council by February 1, 2019. The updated
25 plan shall include recommendations for projects and actions that
26 will measure, protect, and enhance instream resources and
27 improve watershed functions that support the recovery of
28 threatened and endangered salmonids.

29 At a minimum, the watershed plan must include those actions
30 determined to be necessary to offset potential impacts to
31 instream flows associated with permit-exempt domestic water
32 use. The highest priority recommendations must include
33 replacing the quantity of consumptive water use during the
34 same time as the impact and in the same basin or tributary.
35 Lower priority projects include projects not in the same basin or
36 tributary and projects that replace consumptive water supply
37 impacts only during critical flow periods. The watershed plan
38 may include projects that protect or improve instream resources
39 without replacing the consumptive quantity of water where such
40 projects are in addition to those actions determined to be
41 necessary to offset potential consumptive impacts to instream
42 flows associated with permit-exempt domestic water use.

43 Watershed plan recommendations may include, but are not
44 limited to, acquiring senior water rights, water conservation,
45 water reuse, stream gaging, groundwater monitoring, and

developing natural and constructed infrastructure, which includes, but is not limited to, such projects as floodplain restoration, off-channel storage, and aquifer recharge. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to ecological functions or critical habitat.

Until the updated watershed plan is approved and rules are adopted, the County, in issuing building permits under RCW 19.27.097(1)(c) or approving subdivisions under chapter 58.17 RCW in WRIA 1 will comply with all of the specific requirements of ESSB 6091.

Surface Water and Groundwater

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

Policy 10G-1: Manage surface water systems on a watershed basis.

Policy 10-2G: Coordinate efforts to bring all water users in Whatcom County into compliance with state and federal water laws in a way that enhances stream flows, water quality, and fish and wildlife habitat while advocating for adequate water for existing agriculture.

Policy 10G-3: In conjunction with the public and appropriate local, state, Tribal, and federal jurisdictions, define, identify, and develop management strategies for watershed basins and subbasins that may require special protection. These areas may include aquifers, critical aquifer recharge areas as defined under the Growth Management Act, Groundwater Management Areas, wellhead protection areas, and high priority watersheds such as those specified under WAC 400 (Local Planning and Management of Non-point Source Pollution), WRIA Watershed Management Planning, and under legislative policy direction (e.g. Nooksack Basin, Lake Whatcom, Lake Samish and Drayton Harbor).

Policy 10G-4: Management efforts should consider both water quality and quantity. Water quality efforts should help reduce the likelihood that potential contaminant sources will pollute water supplies. Water quantity efforts should include consideration and protection of recharge areas and potential effects on stream flow.

Policy 10G-5: Support the implementation of local and state Watershed Management Plans, the Lower Nooksack Strategy, the Lake Whatcom Management Program, NPDES Phase II Permitting, and the WRIA Watershed Management Projects.

- 1 Policy 10G-6: Pursue the adoption and implementation of ground and/or
2 surface water management plans and their integration into local
3 comprehensive plans. Designate the Lake Whatcom and Lake
4 Samish Watersheds as high priorities in this effort.
- 5 Policy 10G-7: Oppose the use of hydraulic fracturing in oil and gas wells (also
6 known as “fracking”) to avoid the potential degradation of water
7 quality in aquifers and other groundwater.
- 8 Policy 10G-8: Monitor, prevent, and reduce the establishment of invasive
9 species in Whatcom County waterbodies.
- 10 Policy 10G-9: Identify and/or update wellhead protection areas and critical
11 aquifer recharge areas and incorporate into the Critical Areas
12 Ordinance. This information should be available to the public.

13 **Stormwater and Drainage**

14 **Goal 10H: Protect water resources and natural drainage systems by** 15 **controlling the quality and quantity of stormwater runoff.**

- 16 Policy 10H-1: Manage stormwater runoff to minimize surface water quality and
17 quantity impacts and downstream impacts on channel
18 morphology, property owners, and aquatic species and habitats.
- 19 Policy 10H-2: Maintain or enhance, when appropriate, natural drainage
20 systems and natural water storage sites in order to better
21 protect water quality, moderate water quantity, minimize
22 environmental degradation, and reduce public costs.
- 23 Policy 10H-3: Limit the alteration of natural drainage systems and natural
24 water storage sites without mitigating measures. Such
25 measures should not degrade water quality or fish and wildlife
26 habitat and should not increase hazards to the community.
- 27 Policy 10H-4: Support the use by resource industries—such as agriculture,
28 forestry, and mineral resource extraction—of management
29 practices that minimize erosion and sedimentation, and
30 significantly reduce pollutants.
- 31 Policy 10H-5: Evaluate the role of watersheds in the maintenance of water
32 quality and quantity and determine what cumulative impacts
33 development activity may have on watershed hydrology.
- 34 Policy 10H-6: Develop specific stormwater management programs for each
35 drainage basin within the county's jurisdiction that may be
36 impacted by urban levels of development. Recognize the Lake
37 Whatcom Watershed, Lake Samish, and Drayton Harbor as high
38 priorities in this effort. Coordinate efforts with the Lake
39 Whatcom Policy Group, the various shellfish protection districts,
40 and other watershed management entities.

1	Policy 10H-7:	Establish, as a high priority, a stormwater maintenance program
2		that ensures that stormwater systems are adequately
3		maintained and function at or near design capacity.
4	Policy 10H-8:	Strongly incentivize the use of low impact development
5		strategies. Minimize the amount of impervious surface whenever
6		practicable by using natural engineering design methods such as
7		the use of open, grassed, street swales and rain gardens instead
8		of curbs and gutters. Where feasible, encourage alternate
9		surfacing options and other techniques associated with low
10		impact development (see Glossary).
11	Policy 10H-9:	Develop and administer stormwater management standards as
12		required by the NPDES Phase II Permit.
13	Policy 10H-10:	Develop and administer regulations and incentives such that
14		there is no net loss of ecological functions and values of
15		regulated wetlands and fish and wildlife habitats.
16	Policy 10H-11:	Place a high priority on integrating impervious surface reduction
17		incentives into policies, regulations, and standards.
18	Policy 10H-12:	Develop and implement comprehensive stormwater
19		management programs and strategies designed to address
20		runoff from all private and public developments and facilities
21		within regulated and sensitive watersheds.
22		1. Implement the Western Washington Phase II Municipal
23		Stormwater Permit as part of the National Pollutant
24		Discharge Elimination System (NPDES) Program. Incorporate
25		watershed considerations into the development of a
26		comprehensive stormwater management strategy for
27		designated areas.
28		2. Review Stormwater Special Districts Standards, Watershed
29		Protection Districts, and other related codes that address
30		runoff treatment from potentially polluting surfaces for their
31		applicability to other sensitive watersheds with the Technical
32		Advisory Committee and other appropriate agencies.
33		Coordinate efforts for ongoing monitoring and evaluation
34		within the sensitive watersheds and NPDES areas.
35		3. Amend subdivision, zoning, and other land use regulations
36		and design standards to encourage that land use activities
37		minimize the amount of impervious surface.
38		4. Identify and implement a long-term funding source to
39		provide for water resource protection services, including non-
40		point source identification and enforcement of applicable
41		county regulations.
42		5. Focus on the Lake Whatcom watershed as a high priority in
43		developing a stormwater management program. Develop a

stormwater management plan that achieves a uniform level of protection throughout the Lake Whatcom watershed. Ensure coordination and communication with the public and affected jurisdictions, such as the Lake Whatcom Water and Sewer District, the Sudden Valley Community Association, and the City of Bellingham.

6. Ensure existing stormwater standards are adequately enforced within Stormwater Special Districts, Watershed Protection Districts, and the NPDES areas.
7. Prioritize stormwater polluting areas and develop retrofits for areas most likely to impact sensitive waters.

Water Conservation

Goal 10-I: Support water conservation, reclamation, reuse measures, and education as a means to ensure sufficient water supplies in the future.

Policy 10I-1: Support and assist water users in the development of cost-effective means of improving efficiency of water use.

Policy 10I-2: Support efforts to establish and protect sustainable water supplies to meet existing and future demands for water in the county.

Policy 10I-3: Develop and implement plans to comply with the Department of Ecology's instream flow and water management rules and water resources management programs.

Policy 10I-4: Coordinate local water and land management efforts, plans, and data to ensure adequate oversight of water quality and quantity issues.

Policy 10I-5: Quantify water use to promote conservation.

Policy 10I-6: Use water use data to encourage conservation and maintain availability of water for agriculture and instream flow.

Policy 10I-7: Encourage the Department of Ecology to provide flexibility in the application of the water relinquishment rule simultaneous with establishing a water bank/water exchange program in Whatcom County in cooperation with stakeholders.

Lake Whatcom Watershed

Goal 10-J: Prioritize the Lake Whatcom watershed as an area in which to minimize development, repair existing stormwater problems (specifically for phosphorus), and ensure forestry practices do not negatively impact water quality. Provide sufficient funding and support to be successful.

1	Policy 10J-1:	Work with property owners to find acceptable development
2		solutions at lower overall densities than the present zoning
3		allows.
4	Policy 10J-2:	Develop and implement the fair and equitable funding
5		mechanisms called for in the 2008 Lake Whatcom
6		Comprehensive Stormwater Plan to support lake water quality
7		protections by 2018.
8	Policy 10J-3:	Recognize that all users of Lake Whatcom water have an
9		interest in the resource and should share in the cost of its
10		protection.
11	Policy 10J-4:	Work cooperatively with the City of Bellingham, the Lake
12		Whatcom Water and Sewer District, and applicable associations
13		and organizations to identify, review, and, as appropriate,
14		recommend changes to existing monitoring programs to better
15		improve lake water quality.
16	Policy 10J-5:	Evaluate and pursue, as appropriate, the use of incentives to
17		encourage voluntary lot consolidation, transfer or purchase of
18		development rights, current use taxation, and participation in
19		open space conservation programs.
20	Policy 10J-6:	Do not allow density bonuses within the Lake Whatcom
21		Watershed.
22	Policy 10J-7:	Work cooperatively with the City of Bellingham and the Lake
23		Whatcom Water and Sewer District to develop and track
24		benchmarks to determine: the effectiveness of management
25		options; when goals have been achieved; and/or when
26		additional actions are necessary.
27	Policy 10J-8:	Continue to develop and refine structural and non-structural
28		best management practices (BMPs), both voluntary and
29		required, to minimize development impacts within the Lake
30		Whatcom watershed.
31	Policy 10J-9:	Work to keep publicly-owned forest lands within the Lake
32		Whatcom watershed in public ownership, and support managing
33		forestry on these lands in a manner that minimizes sediment
34		and phosphorus yields from streams, and is consistent with Best
35		Available Science (BAS) data, in order to protect and enhance
36		water quality.
37	Policy 10J-10:	Encourage the location of public services, such as schools,
38		libraries, parks/open space, and post offices within Sudden
39		Valley in an attempt to reduce the vehicle miles traveled within
40		the watershed.
41	Policy 10J-11:	Continue to work with Bellingham and Lake Whatcom Water and
42		Sewer District to protect and manage the Lake Whatcom
43		watershed in accordance with the 1998 jointly adopted interlocal

1 agreement. Focus on continued implementation of the 5-Year
2 Work Plans of the Lake Whatcom Management Program. In
3 addition, work with the affected jurisdictions and secure funding
4 for programs that protect and enhance water quality.

5 Policy 10J-12: Review and modify (as needed) the current development review
6 process for projects in the Lake Whatcom Watershed to ensure
7 coordination with other jurisdictions to streamline regulations
8 that improve and protect water quality.

9 Policy 10J-13: The existence of sewer lines in the Rural and Rural Forestry
10 comprehensive plan designations will not be used to justify
11 rezoning property in the Lake Whatcom watershed to allow
12 higher density land uses.

13 Policy 10J-14: Existing Urban Growth Areas shall not be ~~designated or~~
14 expanded nor new Urban Growth Areas designated within the
15 Lake Whatcom Watershed, and rezones that allow greater
16 residential densities will not be allowed.

Comment [P/C3]: P/C struck

17 Ecosystems

18 Introduction

19 Ecological systems, or ecosystems, refer to the natural systems that have
20 developed within the geologic and geographic setting of Whatcom County.
21 Whatcom County contains a significant number of distinct ecosystem types, with
22 associated fish, wildlife, and plant species, as well as many other living organisms.
23 This biodiversity has evolved and adapted according to the specific physical and
24 climatic conditions of the county (Map 10-2, Map 10-3). Ecosystem goals and
25 policies are intended to provide guidance to county government as it assists people
26 to manage and protect these ecosystems. Additionally they ensure other benefits
27 are maintained far into the future.

28 Background Summary

29 Whatcom County provides a wide variety of natural habitats that support and
30 shelter a diverse array of fish and wildlife species. The county's wildlife is
31 particularly varied and abundant when compared to many other areas of
32 Washington State. There are a number of factors that have contributed to this:
33 abundant water resources, rich soils, mild climate conditions, and a moderate
34 degree of urbanization are among the most important. Among the habitats of
35 importance to fish and wildlife are the following:

- 36 • wetlands, lakes, and streams;
- 37 • nearshore, intertidal, estuarine habitats, and marine habitats including,
38 but not limited to, kelp and eelgrass beds;
- 39 • riparian areas and other travel corridors;
- 40 • snags and downed logs;
- 41 • forested habitats in a variety of successional stages;

- caves, cliffs, rocky balds, and talus slopes;
- grasslands and cultivated fields; and,
- thickets and fence rows.

Aquatic habitats include rivers, streams, ponds, lakes, and their riparian borders. Together, these habitats are essential to Whatcom County's fish and wildlife. Twenty-six species of fish—including twelve economically important stocks of salmon and trout—inhabit fresh water in Whatcom County for all or part of their life cycles. Healthy flowing streams and rivers, as well as off-channel wetland habitats, are essential to the survival of the majority of these fish. Wetland ponds, especially beaver ponds, provide optimal habitats for rearing and over-wintering of young fish, particularly Coho salmon and cutthroat trout juveniles.

Most wildlife species regularly use aquatic and riparian habitats for breeding, feeding, shelter, and migratory activities. Of this large grouping, over half are dependent upon wetland habitats at some point in their life cycles, and would decline or disappear in the absence of wetlands. Wetlands also contain unique vegetative communities that harbor many species of rare and unusual plants.

Fish and Wildlife Populations and Habitat

Optimum habitat for Pacific Northwest salmon and other fish is one that resembles the riparian landscape of pre-settlement times: braided streams wandering freely through nearly continuous forest; trees overhanging and partly fallen into streams; stream beds with abundant logs, step waterfalls, pools, and cutbanks; and vegetated marine and estuarine communities. In most cases, it is not realistic to return to that state. However, measures can be taken to retain or regain those features that provide the minimum requirements of a viable fishery.

The best habitat for native wildlife includes native plants, which are more closely matched to local soils, climate, and wildlife. They provide the right kinds of food, shelter, and diversity needed by wildlife. Native plants frequently need less watering, spraying, pruning, fertilizing, or other maintenance than do exotic or imported plants. Loss of native vegetation through conversion to ornamental vegetation and non-native species can result in loss of wildlife habitat, increased competition to native wildlife from introduced species, such as starlings, and increased maintenance needs. Loss of native vegetation also can occur through invasions of non-native species, such as the spread of *Spartina*, which can drastically displace important native eelgrass and mudflat communities.

Salmon Recovery Program

The decline of salmonids throughout Washington and the Pacific Northwest over the past century is well established. Since 1991, numerous evolutionarily significant units (ESUs) of Pacific salmonids have been listed as endangered or threatened under the Endangered Species Act (ESA), including those of chinook, coho, chum, sockeye, and steelhead. Decline in wild salmonid abundances have been attributed to widespread loss and degradation of habitat, due to hydropower, residential and urban development, agriculture, forestry, and fishing and hatchery production.

1 In the Nooksack basin, abundances of several salmonid stocks have diminished
2 substantially from historical levels. The declines in local salmonid stocks, especially
3 Chinook salmon, have had profound economic, cultural, and social impacts on the
4 greater WRIA 1 community. Direct impacts include reduced jobs and income for
5 commercial fisherman, severe curtailment of tribal and subsistence catch, and loss
6 of tourism associated with recreational fishing. In addition, ESA listings impose
7 constraints on the activities of local and tribal governments, businesses, the
8 agricultural community, and citizens, who must seek to avoid or minimize take of
9 listed species. Nonetheless, salmon remain an integral part of the natural and social
10 landscape of Whatcom County and the Nooksack River Watershed. Recent
11 watershed recovery planning and restoration efforts by federal, state, local, and
12 tribal governments, non-profit organizations, businesses, and private citizens
13 demonstrate a commitment to salmon recovery in WRIA 1.

14 The WRIA 1 Salmon Recovery Program is a multi-government planning effort with a
15 WRIA-wide scope to address salmon recovery and protection of ESA and non-ESA
16 listed salmonids.

17 WRIA 1 Salmon Recovery Strategy

18 The ultimate goal for salmon recovery in WRIA 1 is to recover self-sustaining
19 salmonid runs to harvestable levels through the restoration of healthy rivers and
20 natural stream, river, estuarine, and nearshore marine processes; careful use of
21 hatcheries; and responsible harvest, with the active participation and support of
22 local landowners, businesses, and the larger community. The purpose of the *WRIA*
23 *1 Salmonid Recovery Plan* is to identify the actions necessary to recover WRIA 1
24 salmonid populations, especially listed species, and to outline the framework for
25 implementation of recommended actions that have been agreed to by local, state,
26 tribal, and federal governments and stakeholders in WRIA 1. In the near term, the
27 objectives are to:

- 28 1. Focus and prioritize salmon recovery efforts to maximize benefit to the
29 two Nooksack early chinook populations;
- 30 2. Address late-timed Chinook through adaptive management, focusing in
31 the near-term on identifying hatchery versus naturally-produced
32 population components;
- 33 3. Facilitate recovery of WRIA 1 bull trout and steelhead by implementing
34 actions with mutual benefit to early chinook, bull trout, and steelhead, by
35 removing fish passage barriers in presumed bull trout and steelhead
36 spawning and rearing habitats in the upper Nooksack River watershed;
37 and
- 38 4. Address other salmonid populations by (a) protecting and restoring WRIA
39 1 salmonid habitats and habitat-forming processes through regulatory and
40 incentive based programs; and (b) encouraging and supporting voluntary
41 actions that benefit other WRIA 1 salmonid populations without diverting
42 attention from early chinook recovery.

43 Focusing efforts on early chinook is consistent with regional salmon recovery,
44 current abundance and productivity for the two populations is very low and

1 recovery of both populations is critical to delisting and recovery of the Puget Sound
2 Evolutionarily Significant Unit (ESU) for Chinook salmon.

3 *Salmon Recovery Board (SRB)*

4 WRIA 1 Salmon Recovery Board membership includes the County Executive,
5 Bellingham Mayor, Mayors of the Small Cities of Whatcom County, the regional
6 director of the Washington Department of Fish and Wildlife, and policy
7 representatives from Lummi Nation and Nooksack Indian Tribe.

8 The WRIA 1 Salmonid Recovery Plan (2005), a chapter of the Puget Sound Salmon
9 Recovery Plan, guides restoration in the Nooksack River and adjacent watersheds.
10 This plan was developed in partnership with Nooksack Tribe, Lummi Nation,
11 Washington Department of Fish and Wildlife, Bellingham, Whatcom County
12 Government, and the small cities of Whatcom County. Chinook salmon populations
13 (listed as threatened with extinction under the Federal Endangered Species Act) are
14 prioritized, yet the plan also provides the template for recovery of threatened
15 steelhead and bull trout and the other salmon and trout populations native to
16 Whatcom County.

17 The salmon plan was developed in parallel with the WRIA 1 Watershed Management
18 Plan. Salmon habitat is intricately linked to watershed management; salmon
19 recovery will be most successful when fish habitat objectives are carefully
20 coordinated with watershed management objectives. Integrating salmon recovery
21 with flood hazard management and restoring fish passage under County roads are
22 two primary areas of focus.

23 **Marine Resources Management**

24 Marine habitats include all saltwater bodies and their shorelines, kelp and macro
25 algae beds, eelgrass meadows, salt marshes, beaches, and mudflats. These
26 habitats play a vital role in the health of the local environment, as well as of the
27 broader Puget Sound region. They provide spawning, rearing, and feeding grounds
28 for a wide variety of marine life, as well as refuge for juvenile and adult fish, birds,
29 and shellfish. The vegetation on back-shore marshes and within estuaries buffers
30 adjacent upland areas by absorbing wave energy and slowing erosion.

31 Symptoms of ecosystem stress include: declining stocks of salmon, bottomfish, and
32 forage fish; closures of recreational and commercial shellfish beds; degradation and
33 losses of eelgrass beds, kelp forests, and other marine habitats; and dwindling
34 populations of seabirds and marine mammals.

35 The Northwest Straits Marine Conservation Initiative was authorized by Congress in
36 1998. The Initiative established the Northwest Straits Commission and Marine
37 Resources Committees (MRCs) in seven western Washington counties, including
38 Whatcom County. The MRCs' main purpose is to guide local communities, using up-
39 to-date information and scientific expertise, to achieve the important goals of
40 resource conservation and habitat protection within the Northwest Straits. The
41 Whatcom County MRC acts as an advisory committee to the Whatcom County
42 Council.

Shellfish Recovery

Many of the marine waterbodies in Whatcom County support natural and cultured bivalve shellfish, including oysters and many species of clams. The warm, nutrient-rich tide flats in and around Lummi, Portage, and Birch Bays; Drayton Harbor; and Eliza and Lummi Islands represent unique water resources in this regard. Commercial shellfish growers, recreational clam and oyster harvesters, and Native Americans have used this resource for many years. It is an important part of our community's heritage.

Our ability to grow and harvest shellfish that is safe for human consumption is directly linked to surface water quality and the influence it has on marine waters. The primary measure of water quality for shellfish harvesting is bacterial contamination. There are many potential sources of fecal bacteria, such as municipal sewage treatment plants, on-site sewage systems, boat waste, farm animals, pets, and wildlife. Since 1995, valuable shellfish beds in Portage Bay and Drayton Harbor have been downgraded (harvest prohibited) due to non-point pollution impacting recreational, tribal, and commercial harvesting. In 2014, Portage Bay was identified as a threatened Shellfish Growing Area by the Washington Department of Health. (Washington Department of Health, 2014)

Shellfish Protection Advisory Boards

Whatcom County has three Shellfish Protection District Advisory Committees, one for each of the Shellfish Protection Districts: Birch Bay, Drayton Harbor, and Portage Bay. Each advises the County Council on proposed actions and operations relating to the restoration of water quality in their respective watersheds.

Shellfish Recovery Plans

Shellfish Recovery Plans have been created for each of three districts. The plans outline the primary sources of bacteria and actions to improve water quality:

- Drayton Harbor Shellfish Recovery Plan (2007)
- Portage Bay Shellfish Recovery Plan (2014), Portage Bay Initial Closure Response Strategy (1998)
- Birch Bay Initial Closure Response Strategy (2009)

Pertinent Documents

- Whatcom Marine Resources Committee 2011 - 2015 Strategic Plan (2010)

This document outlines the MRC's mission, vision, values, goals, objectives, and strategies for achieving them.

Shoreline Management Program

~~The State Legislature passed the Washington State Shoreline Management Act (SMA) in June 1971. The SMA was overwhelmingly passed by public initiative in 1972. Under the SMA, each county and city was required to prepare a shoreline "master program" in accordance with the shoreline guidelines issued by the State Department of Ecology in 1972.~~

~~The Whatcom County Shoreline Management Program (SMP), WCC Title 23, is the document that implements the goals and policies of the SMA at the local level. It was adopted in 1976 in accordance with RCW 90.58. The goals and policies of the~~

Comment [CES4]: Moved to Ch. 11.

~~Whatcom County Shoreline Management Program also constitute the shoreline component of the Whatcom County Comprehensive Plan.~~

~~Under the provisions of the SMA, all development along shorelines of the state is required to comply with the provisions of local shoreline master programs. The Whatcom County Shoreline Management Program works with other chapters of the Whatcom County Code to protect and preserve saltwater and freshwater shorelines throughout the county by managing natural resources and directing development and land use suitable for the shoreline environment.~~

~~The Whatcom County Shoreline Management Program jurisdiction includes:-~~

- ~~• More than 130 miles of marine shoreline;~~
- ~~• More than 60 miles of lake shoreline;~~
- ~~• More than 220 miles of stream channels; and,~~
- ~~• All wetlands and floodways associated with the above shorelines, together with all upland areas within 200 feet of the Ordinary High Water Mark (OHWM).~~

~~Whatcom County and the Washington State Department of Ecology (DOE) share joint authority and responsibility for the Whatcom County SMP. Whatcom County Planning and Development Services is the primary agency responsible for implementation of the Whatcom County Shoreline Management Program.~~

Issues, Goals, and Policies

General – Ecosystems

Development and urbanization of the land base have and may continue to result in the degradation and reduction of ecosystem functions. Wetlands and estuaries continue to be lost incrementally. Streams and their adjacent riparian habitat are affected by land clearing, ditching, erosion, and road building. Lakeshore development degrades the foreshore environment for waterfowl and other species, as well as negatively affecting water quality. It is estimated that Washington has also lost approximately one-third of its historic eelgrass beds from a variety of causes, including dredging, shading, and filling. Large-diameter snags and downed logs, an essential feature for dozens of wildlife species, are lost during clearing or intensive forest management. Forested habitats are lost to a number of development processes including urbanization, agriculture, increased rural/suburban housing density, and timber harvesting. The delicate environment of cliffs and caves may be affected by housing development, mining, and other activities. Conversely, grasslands, thickets, fields, and fence rows are habitats largely provided and enhanced by human activities, and are thus fairly abundant and stable within the developing county. The existence of farms, in particular, has contributed to an abundance of these more open, pastoral habitats.

Many stream systems in Whatcom County have been altered by agriculture, forestry, development, and flood control practices, contributing to low stream flows, fisheries loss, water pollution, sedimentation and other problems. These impacts can directly affect the fisheries resources by depositing silt and debris into spawning beds, by removing trees that shade and cool the water, bank armoring,

1 interfering with the recruitment and establishment of large woody debris (LWD), by
2 obstructing fish passage with culverts and roads, by altering natural channels
3 through filling, bank hardening, and channelizing. In addition, the physical
4 processes that create functional habitats for fish life stages are altered by
5 increasing flows through stormwater runoff or consuming water volume for other
6 out-of-stream uses.

7 Finally, a healthy and functioning ecosystem, including forests, wetlands, fish,
8 wildlife, and native plants they harbor, is an identified resource. A healthy
9 ecosystem supports diverse and abundant wildlife, fish, and plant populations, and
10 is necessary. The gathering of fish, game, and other natural resources forms a
11 central aspect of many cultures in Whatcom County. The mere presence of these
12 natural resources constitutes a community amenity that is a substantial part of our
13 local economic base.

14 **Goal 10K: Protect and enhance ecosystems, which provide**
15 **economic, ecological, aesthetic, and cultural benefit.**

16 Policy 10K-1: Define and identify species, habitats, and habitat features
17 important to a balanced and sustainable web of life, biodiversity,
18 and especially important to fish, native plants, and wildlife.
19 Create, and regularly update an Ecosystem Report.

20 Policy 10K-2: Develop and adopt programs that protect habitats essential to
21 the conservation of species that have been identified as
22 endangered, threatened, or sensitive by the state or federal
23 government as well as habitats identified as necessary in the
24 Ecosystem Report. These programs should maintain and
25 encourage restoration of habitat conditions for listed species of
26 concern, as well as habitats identified as having significant
27 biodiversity, connectivity, and other important features and
28 functions.

29 Policy 10K-3: Develop incentives for protection of environmentally fragile
30 areas or critical plant and wildlife habitats as well as habitats
31 that provide connectivity (corridors).

32 Policy 10K-4: Where feasible, incorporate fish and wildlife habitats into public
33 capital improvement projects.

34 Policy 10K-5: Provide measures to mitigate negative water quality and
35 quantity impacts from both public and private alterations of
36 natural drainage systems.

37 Policy 10K-6: Consider sensitive fish, shellfish, and wildlife species and their
38 habitats when establishing zoning densities and patterns.

39 Policy 10K-7: Promote voluntary fish and wildlife habitat enhancement
40 projects through educational and incentive programs, such as
41 purchase of development rights or habitat conservation
42 easements. These projects, which can be done by individuals,
43 organizations, and businesses, will buffer and expand fish,
44 plant, and wildlife habitat.

1	Policy 10K-8:	Give careful consideration to the siting of industrial, commercial,
2		residential, and other land use designations when located near
3		important marine, terrestrial, or other critical habitats.
4	Policy 10K-9:	Protect, retain, and enhance the beneficial uses and functions of
5		streams and rivers. Define and identify the beneficial uses and
6		functions of streams and rivers, including wildlife and fisheries
7		habitat, water quality, open space, aesthetics, and recreation.
8	Policy 10K-10:	Protect and enhance ecosystem functions when flood hazard
9		management measures are used.
10	Policy 10K-11:	Regulate the operation of river gravel extraction activities in
11		such a manner so as to provide long-term protection of fish and
12		wildlife habitat and water quality.
13	Policy 10K-12:	Ensure design and development of residential and industrial
14		development minimizes disturbance to rivers, streams, and
15		functioning riparian areas.
16	Policy 10K-13:	Evaluate the full value of the fishery; including its cultural and
17		economic value; in land use decisions that may impact that
18		fishery. Unavoidable impacts to an individual habitat or fishery
19		shall be mitigated.
20	Policy 10K-14:	Continue to consider the value of wildlife populations for which
21		habitat conservation areas have been identified in PDS's wildlife
22		habitat mapping, their associated habitats, and connectivity in
23		land use planning that may impact them. This is not intended to
24		require landowners to pay for any additional studies.
25	Policy 10K-15:	Mitigation to Habitat Conservation Areas should be tracked and
26		monitored to ensure no net loss to natural area.
27	Policy 10K-16:	Monitor Habitat Conservation Areas to obtain a baseline of
28		current conditions and to ensure no net loss and avoidance of
29		cumulative impacts.
30	Fish and Wildlife Populations and Habitat	
31	Goal 10L:	Protect and enhance ecosystems that support native fish
32		and wildlife populations and habitat.
33	Policy 10L-1:	Strongly discourage any activity that might cause significant
34		degradation of the fishery resource or habitat.
35	Policy 10L-2:	Support the protection and enhancement of significant fish
36		spawning and rearing habitat, food resources, refugia (shelter),
37		and travel passages.
38	Policy 10L-3:	Establish non-regulatory mechanisms and incentives for
39		development that accommodates the habitat needs of fish and
40		wildlife and encourages good stewardship practices.

1	Policy 10L-4:	Support protection and enhancement of fish and wildlife habitat
2		through site design in new development.
3	Policy 10L-5:	Native vegetation and soils on streambanks and shorelines
4		should be disturbed as little as possible. In situations where re-
5		vegetation is necessary to restore streambank or shoreline
6		stability and provide shading, site-specific native plants should
7		be used. Retention of vegetated riparian areas on all lake and
8		marine shorelines shall also be encouraged.
9	Policy 10L-6:	Discourage shoreline armoring. Instead, encourage natural or
10		bio-engineering solutions such as planting native vegetation,
11		engineered log jams/LWD, and beach nourishment along
12		eroding banks to address stream and shoreline bank erosion
13		problems. Riparian buffers should be replanted with suitable
14		native vegetation as a part of all bank stabilization projects.
15	Policy 10L-7:	Encourage native vegetation and soil retention and plantings
16		that provide or maintain the beneficial uses and functions of
17		streams, rivers, lakes, and marine shorelines.
18	Policy 10L-8:	Maintain and encourage restoration of habitat functions for
19		threatened and endangered fish species.
20	Policy 10L-9:	Use Best Available Science to inform the creation of regulations
21		to mitigate adverse impacts of development adjacent to rivers,
22		streams, and marine shorelines.
23	Policy 10L-10:	Encourage landowners to voluntarily protect surface water
24		quality with filter strips or other appropriate water cleansing
25		mechanisms installed between lawns, landscaping, livestock
26		pens, or agricultural fields and waterbodies.
27	Policy 10L-11:	Formulate and implement a comprehensive, landscape-based,
28		environmental management program to protect fish and wildlife.
29		The program should include the following:
30		1. Formulate an administrative approach to the review of
31		development and planning proposals that consider natural
32		system policies;
33		2. Investigate and develop programs for acquisition and
34		restoration of important fish and wildlife habitat areas;
35		3. Develop and enter into cooperative agreements with State
36		and Federal agencies and neighboring jurisdictions to identify
37		and protect ecosystems;
38		4. Identify and map important habitat corridors and
39		connectivity throughout the county; and,
40		5. Support the development of educational materials which list,
41		describe, and characterize the appropriate use of native
42		vegetation to enhance ecosystem functions in Whatcom
43		County.

- 1 Policy 10L-12: Consider establishing formal meander limits for the Nooksack
2 River, precluding additional development within this zone, and
3 promote the River and Flood property acquisition program
4 within these areas.
- 5 Policy 10L-13: Diligently work to prevent and/or reduce the establishment
6 and/or spread of invasive species.
- 7 Policy 10L-14: Actively participate in and support WRIA 1 Salmon Recovery
8 efforts to return self-sustaining salmonid runs to harvestable
9 levels through: the restoration of healthy rivers, marine
10 shorelines, and natural processes; the careful use of hatcheries;
11 and responsible harvest.
- 12 Policy 10L-15: Participate in protection and improvement of biodiversity.
- 13 Policy 10L-16: Consider establishing important habitat areas as sending
14 areas after creating a voluntary, workable transfer of
15 development rights (TDR) program.
- 16 Policy 10L-17: Mitigation of wetlands should be reviewed and tracked over time
17 to ensure no net loss of wetland function.
- 18 Policy 10L-18: A baseline of wetland identification and function should be made
19 to track and prevent net loss and avoid cumulative impacts.
- 20 Policy 10L-19: The County will support the work of the Fisheries Co-managers
21 (Lummi Nation, Nooksack Tribe, and the State Department of
22 Fish and Wildlife) and stakeholders to establish a sustainable
23 salmon harvest goal for the Nooksack Basin.

Comment [P/C5]: This proposed amendment is not part of the SMP Update. Rather, it is a policy the Council expressed in interest in adding in support of the fisheries co-manager's Sustainable Salmon Harvest Goal. Adding such a policy was placed on the docket by Council in 2018 (#PLN2018-00010).

24 **Wetlands**

25 Wetlands are crucial environmental features in Whatcom County. Wetlands provide
26 invaluable functions in aquifer recharge, groundwater storage, floodwater
27 detention, pollutant removal and purification of water supplies, as well as provision
28 of fish and wildlife habitat. Loss of wetlands has been due to many factors,
29 including urbanization, agricultural development, and drainage projects.

30 A plethora of complex and often confusing laws govern the definition, delineation,
31 and protection of wetlands. These laws originate at national, state, and county
32 levels. Land managers and private citizens often experience difficulty in
33 interpreting, synthesizing, and applying wetland regulations. In general, however,
34 state regulations must comply with federal standards and local regulations must
35 comply with both federal and state standards.

36 **Goal 10M: Conserve and enhance regulated wetlands.**

37 Policy 10M-1: Recognize natural wetlands such as swamps, bogs, saltwater
38 marshes, and ponds for their value in cleaning water, reducing
39 flood damage, providing valuable habitat for plants, fish and
40 wildlife, and as sites for groundwater recharge.

1	Policy 10M-2:	Develop and adopt criteria to identify and evaluate wetland
2		functions that meet the Best Available Science standard and
3		that are consistent with state and federal guidelines.
4	Policy 10M-3:	Biological functions of wetlands are complex and interwoven.
5		Evaluate the full range of potential and immediate economic
6		impacts in land use decisions relating to wetlands, including
7		fisheries, wildlife, recreation, farmlands, sustainable resources,
8		air and water quality, flood hazard management, real estate,
9		cultural attributes, and other uses.
10	Policy 10M-4:	Encourage land development to avoid wetland impacts. Impacts
11		to regulated wetlands should be contingent upon full mitigation
12		measures that equitably compensate for wetlands impacts, on a
13		case-by-case basis. Approved mitigation measures shall include
14		resources for long-term monitoring and adaptive management
15		of mitigation outcomes to assure effectiveness. Strongly
16		discourage alteration of land that results in the degradation of
17		type 1 and 2 wetlands.
18	Policy 10M-5:	Property rights and public services are essential components of
19		our political and economic system. Where such rights and public
20		services are significantly compromised by the goal of wetland
21		preservation, adverse wetland impacts may be permitted
22		through standardized mitigation. This may include avoidance,
23		impact minimization, restoration, enhancement, creation, or off-
24		site compensation for loss of wetland functions in accordance
25		with mitigation sequencing.
26	Policy 10M-6:	Recognize beneficial wetland uses, functions, and values.
27		Support protection of fish and wildlife habitat, water quality,
28		plant diversity, flood attenuation and low-flow contribution, and
29		water storage through planning, acquisition, incentive programs,
30		and mitigation.
31	Policy 10M-7:	Development applications should be assessed on a case-by-case
32		basis so that marginal wetlands are not preserved at the
33		expense of upland areas with higher habitat value.
34	Marine Habitat	
35	Goal 10N:	Protect and enhance marine ecosystems and resources in
36		Whatcom County.
37	Policy 10N-1:	Support the Whatcom County Marine Resources Committee in
38		its pursuit of the Northwest Straits Commission benchmarks as
39		follows:
40		▪ Broad county participation in MRCs;
41		▪ A net gain in high-value habitat and ecosystem functions;
42		▪ A net reduction in shellfish bed closures;

1		▪ Measurable increases in factors supporting bottomfish recovery;
2		
3		▪ Population increases in other key indicator species;
4		▪ Coordination of scientific data;
5		▪ Successful public education and outreach efforts; and,
6		▪ The establishment of a regional system of Marine Protected Areas (MPA's).
7		
8	Policy 10N-2:	Promote naturalized shoreline buffers and restoration of riparian vegetation.
9		
10	Goal 10P:	Protect and enhance shellfish habitat in commercial and recreational areas to ensure a productive resource base for long-term use.
11		
12		
13	Policy 10P-1:	Identify and designate marine shellfish habitat for commercial and recreational uses.
14		
15	Policy 10P-2:	Restore degraded waters within the drainage basins of shellfish growing areas to a level that allows/supports shellfish harvesting by work with the Department of Ecology, Tribes, Department of Health, Department of Fish and Wildlife, and affected property owners to improve water quality.
16		
17		
18		
19		
20	Policy 10P-3:	Protect shellfish resources by means of pollution prevention and enforcement when necessary. This should include surface and groundwater monitoring for early detection of pollution to minimize the damage and cost of resource restoration.
21		
22		
23		
24	Policy 10P-4:	Improve knowledge of the importance of protecting, preserving, and improving the quality of shellfish habitat within the County. Seek out valuable partnerships that will raise awareness, provide education, and enhance shellfish habitat.
25		
26		
27		
28	Policy 10P-5:	Develop Low Impact Development standards in shellfish habitat areas.
29		
30	Policy 10P-6:	Identify and encourage the use of stormwater treatment systems and Best Management Practices to reduce fecal coliform bacteria levels in stormwater discharging directly into shellfish habitat areas.
31		
32		
33		
34	Policy 10P-7:	Solicit input from the Shellfish Protection District advisory committees and appropriate state, federal, and tribal agencies when considering updates to the Comprehensive Plan that relate to shellfish protection.
35		
36		
37		
38	Policy 10P-8:	Identify and restore functions, selected through best available landscape-based science, of key wetland areas.
39		
40	Policy 10P-9:	Modify county roadside ditch maintenance procedures to protect water quality.
41		

- 1 Policy 10P-10: Continue to partner with jurisdictions in British Columbia to
2 minimize impacts on water quality, including what affects
3 shellfish habitat.
- 4 Policy 10P-11: Work within the structure of County programs such as the WRIA
5 Watershed Management Planning process to achieve
6 improvements in land use Best Management Practices that will
7 positively affect change in marine water quality.
- 8 Policy 10P-12: Continue to develop programs that identify potential pollution
9 sources and ensure timely and science-based approaches are
10 used in response to problems as they arise.
- 11 Policy 10P-13: Develop educational tools and opportunities to raise public
12 awareness of marine issues and to inform them of how they can
13 have a positive impact by helping preserve these marine
14 resources.
- 15 Policy 10P-14: Identify areas (such as wetlands and the nearshore
16 environment) that are important to shellfish habitat
17 preservation. Also identify river and stream processes that
18 adversely impact shellfish habitat. Use this information when
19 making land use management and preservation decisions.
- 20 Policy 10P-15: Create a tracking mechanism to document progress made
21 toward improving downgraded shellfish areas. This information
22 will be useful not only in supporting an upgrade when water
23 quality shows improvement, but also in preventing degradation
24 in currently approved shellfish areas.
- 25 Policy 10P-16: Work with the County Shellfish Advisory Committees, Marine
26 Resources Committee, Salmon Recovery Fund Board, WRIA
27 Watershed Management Board, and other local, state, federal,
28 and tribal agencies to address issues associated with shellfish,
29 shellfish area closures, and shellfish habitat.
- 30 Policy 10P-17: Consider establishing the Drayton Harbor Watershed as a
31 sending area when considering a transfer of development rights
32 (TDR) program in.
- 33 Policy 10P-18 Support the Department of Health's On-Site Sewage System
34 (OSS) Program as a means to lower degradation of our
35 waterways.

36 **Other Marine and Marine Dependent Organisms and Systems**

37 Our Marine system supports not only local, critical, and global fisheries resources,
38 but also a myriad of interdependent organisms, the importance of which we lack
39 the capacity to fully grasp. The Marine ecosystem is a complex web of life that is
40 increasingly affected by anthropogenic impacts. Toxics, hormones, heavy metals,
41 and other harmful substances flushed into nearshore and marine environments with
42 stormwater have been shown to have deleterious cumulative impacts on a range of
43 aquatic and marine dependent organisms. Whatcom County will take steps to halt

1 the practice of treating its streams and rivers as a storm sewer and the marine
2 system as a water treatment facility.

3 Policy 10P-19: Promote Best Management Practices, land use, and stormwater
4 policies that result in a minimal release of harmful chemicals
5 and metallic substances into surface water and the marine
6 environment.

Chapter Eleven Shorelines

Introduction

The State Legislature passed the Washington State Shoreline Management Act (SMA) in June 1971. The SMA was overwhelmingly passed by public initiative in 1972. Under the SMA, each county and city was required to prepare a shoreline “master program” in accordance with the shoreline guidelines issued by the State Department of Ecology in 1972.

The Whatcom County Shoreline Management Program (SMP), ~~WCC Title 23~~, is the set of policies and regulations document that implements the goals and policies of the SMA at the local level. It was first adopted in 1976 in accordance with RCW 90.58. The goals and policies of the Whatcom County ~~Shoreline Management Program SMP~~ also constitute the shoreline component of the Whatcom County Comprehensive Plan.

The Whatcom County Shoreline Management Program jurisdiction includes:

- More than 130 miles of marine shoreline;
- More than 60 miles of lake shoreline;
- More than 220 miles of stream channels; and,
- All wetlands and floodways associated with the above shorelines, together with all upland areas within 200-feet of the Ordinary High Water Mark (OHWM).

Whatcom County and the Washington State Department of Ecology (DOE) share joint authority and responsibility for the Whatcom County SMP. Whatcom County Planning and Development Services is the primary agency responsible for its implementation ~~of the Whatcom County Shoreline Management Program~~.

Chapter Organization

This chapter is composed of an introduction and five sections organized by topic heading. The first section, entitled "Overall SMP Goals and Objectives," addresses general shoreline goals and objectives. The next provides the purposes, designation criteria, and policies for the County's various shoreline area designations. The third section contains the County's policies for Shorelines of Statewide Significance. The fourth section provides the general policies that apply to all area designations. And the fifth section provides the policies specific to the type of use proposed. Together with the regulations of WCC Title 23, the sections of this chapter provide the direction necessary to ensure and promote long-term sustainability of the shorelines in Whatcom County.

Purpose

This chapter together with WCC Title 23 comprises Whatcom County's Shoreline Management Program. This chapter contains the SMP's goals, objectives, and policies, while its regulations are found in WCC Title 23. All development proposed

Comment [CES1]: The P/C reviewed this version at their 11.12/20 mtg but didn't quite finish with it. Does include some of their changes.

Moved to tentatively approve for public hearing at their 12/10/20 mtg. Passed 8-0-1

Comment [CES2]: Much of text was moved from either C/P Ch. 10 or Title 23, and is not shown as being new. Proposed amendments to the existing text are shown as strikeout/underline.

1 within jurisdictional shorelines must be consistent with both the policies of this
2 chapter and the regulations of WCC Title 23.

3 The Shoreline Management Act (SMA) was developed and adopted to protect “the
4 most valuable and fragile of [the state’s] natural resources from the “inherent harm
5 in uncoordinated and piecemeal development of the state’s shorelines” (quotes
6 from RCW 90.58.020). The SMA in Chapter 90.58 RCW contains three distinct but
7 related priorities:

8 1. The promotion of shoreline uses that are both water-oriented and
9 appropriate for the broader environmental context. Developments such as
10 single family residences, recreational areas, and water-dependent businesses
11 such as marinas are considered priority uses provided they are constructed in
12 a manner “consistent with control of pollution and prevention of damage to
13 the environment” (quote from RCW 90.58.020).

14 2. The SMA requires local governments to take an active role in protecting the
15 shoreline ecology: the water, the land, the vegetation and the wildlife. The
16 state guidelines are explicit: “Local master programs shall include regulations
17 and mitigation standards ensuring that each permitted development will not
18 cause a net loss of ecological functions of the shoreline.” (WAC 173-26-
19 186(8)(b)(i).)

20 3. The SMA also promotes public access to the shoreline by requiring protection
21 of existing public access features and requiring certain types of new
22 development to include public access.

23 The SMP regulations (WCC Title 23) apply to individual projects, and impacts of
24 shoreline development are evaluated on a project-by-project basis. However, the
25 SMP goals and policies, shoreline designations, regulations, and the restoration plan
26 are comprehensively structured to achieve no net loss of shoreline ecological
27 functions as a whole in Whatcom County.

28 **GMA Goals and Countywide Planning Policies**

29 First adopted in 1990, The Growth Management Act (GMA) is a series of state
30 statutes that requires fast-growing cities and counties to develop a comprehensive
31 plan to manage their population growth. It is primarily codified under Chapter
32 36.70A RCW, although it has been amended and added to in several other parts of
33 the RCW. Under RCW 36.70A.020, the GMA established a series of 13 goals that
34 should act as the basis of all comprehensive plans. In 2003, the legislature added
35 the goals and policies of the Shoreline Management Act as the fourteenth GMA goal
36 (RCW 36.70A.480). The shoreline goals may be found at RCW 90.58.020.

37 As of this time, there are no Countywide Planning Policies that address
38 development in the shoreline.

39 **~~GMA-SMA~~ Requirements**

40 Under the provisions of the SMA, all development along shorelines of the state is
41 required to comply with the provisions of local shoreline master programs. The
42 | Whatcom County ~~Shoreline Management Program~~SMP works with other chapters of

the Whatcom County Code to protect and preserve saltwater and freshwater shorelines throughout the county by managing natural resources and directing development and land use suitable for the shoreline environment.

~~23.10.030~~ Governing Principles

The following principles, along with the policy statements of RCW 90.58.020 and the principles of Chapter 173-26 WAC, establish basic concepts that underpin the goals, policies, and regulations of the SMPShoreline Management Plan (SMP) ~~this program~~:

- A. Any inconsistencies between the SMPthis program and the Shoreline Management Act (SMAAct) must be resolved in accordance with the SMAAct.
- B. The policies of the SMPthis program may be achieved by diverse means, one of which is regulation. Other means, authorized by the SMAAct, include, but are not limited to: acquisition of lands and/or easements by purchase or gift, incentive programs, and implementation of capital facility and/or nonstructural programs.
- C. Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. Permitted and/or exempt development, actions taken prior to the SMAAct's adoption, and/or unregulated activities can impair shoreline ecological processes and functions. The SMPThis program protects shoreline ecology from such impairments in the following ways:
 1. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.
 2. By including policies and regulations that require mitigation of significant adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in WCC 23-~~90.030~~ and the Whatcom County Critical Areas Ordinance (CAO, Chapter 16.16 WCC). The SMPThis program and any future amendment thereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the date of adoption of the comprehensive SMP update ~~this program~~, February 27, 2007.
 3. By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.
 4. By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the

Comment [CES3]: These principles have been moved from 23.10.030.

Comment [MD4]: Deleting "significant," as there is no such threshold under SMA.

Shoreline Management Program Restoration Plan developed by Whatcom County.

- D. Regulation of private property to implement ~~SMP~~program goals such as public access and protection of ecological functions and processes must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and state Constitutions, ~~recent-pertinent~~ federal and state case law, and state statutes, such as RCW 34.05.328 and 43.21C.060 and Chapter 82.02 RCW.
- E. Regulatory or administrative actions ~~contained herein~~ must be implemented consistent with the public trust doctrine and other applicable legal principles as appropriate and must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- F. The regulatory provisions of ~~the SMP~~this program are limited to ~~jurisdictional shorelines~~shorelines of the state, whereas the planning functions of ~~the SMP~~this program may extend beyond the designated shoreline boundaries.
- G. The policies and regulations established by the ~~SMP~~program must be integrated and coordinated with those policies and rules of the ~~Whatcom County~~ Comprehensive Plan and development regulations adopted under the ~~Growth Management Act (GMA)~~ and RCW 34.05.328.
- H. Consistent with the policy and use preferences of RCW 90.58.020, Whatcom County should balance the various policy goals of ~~the SMP~~this program giving consideration to other relevant local, state, and federal regulatory and non-regulatory programs.

~~Chapter 23.20~~ Overall ~~SMP~~Shoreline Management Program Goals and Objectives

~~23.20.005~~ Generally.

This ~~section~~chapter ~~describes~~contains overall ~~program~~SMP goals and objectives. They provide the ~~comprehensive~~ foundation and framework upon which the shoreline area designations, policies, regulations, and administrative procedures are based.

The general policies and regulations ~~(in a later section of this chapter and in Chapter Title 23.90 WCC, respectively)~~ and the specific use policies and regulations ~~(in a later section of this chapter and in WCC Chapter Title 23.100 WCC, respectively)~~ are the means by which these goals and objectives are implemented.

Comment [MD5]: Moved all policy content from Chapter 23.20. This section reviewed and coordinated with Title 23 updates.

1 **~~23.20.010 Adoption:~~**

2 In addition to the policy adopted in WCC 23.10.020(C), the following goals and
3 objectives relating to the program elements specified in RCW 90.58.100(2) are
4 hereby adopted. They provide the comprehensive foundation and framework upon
5 which the shoreline area designations, policies, regulations, and administrative
6 procedures are based.

Comment [MD6]: Moved up.

7 **~~23.20.020 Economic Development:~~**

8 The economic development element provides for the location and design of
9 industries, transportation facilities, port facilities, tourist facilities, commerce, and
10 other developments that are particularly dependent upon a shoreline location
11 and/or use of the shorelines of the state.

12 **Goal 11A:** **~~Goal. To create and maintain an economic environment~~**
13 **~~that can coexist harmoniously with the natural and~~**
14 **~~human environment.~~**

15 **~~B. Objectives:~~**

16 **11A-1:** Encourage economic development that has minimal adverse
17 effects and mitigates unavoidable impacts upon shoreline
18 ecological functions and processes and the built environment.

19 **11A-2:** Encourage shoreline development that has a positive effect upon
20 economic and social activities of value to the region.

21 **11A-3:** Encourage new water-dependent, water-related, and water-
22 enjoyment economic development in priority order.

23 **11A-4:** Encourage economic development that is consistent with the
24 adopted Comprehensive Economic Development Strategy
25 (CEDS) for Whatcom County.

26 **11A-5:** Implement economic development policies contained in other
27 chapters of the Whatcom County Comprehensive Plan in
28 shoreline areas consistent with this chapter, WCC Title 23
29 program and the SMA Act.

30 **11A-6:** Encourage new economic development to locate in areas that
31 are already developed with similar uses.

32 **11A-7:** Discourage expansion of existing development that is
33 incompatible with the Comprehensive Plan ~~this program~~, WCC
34 Title 23, or the character of the local area, or the Whatcom
35 County Comprehensive Plan.

36 **~~23.20.030 Public Access:~~**

37 The public access element provides for public access to publicly ~~owned~~ or privately
38 owned shoreline areas where the public is granted a right of use or access.

39 **Goal 11B:A:** **~~Goal. To increase the general public's ability of the~~**
40 **~~general public to reach, touch, and enjoy the water's~~**

edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations; provided, that private rights, ~~the~~ public safety, and shoreline ecological functions and processes are protected consistent with the U.S. and state Constitutions, state case law, and state statutes.

B. Objectives:

11B-1: Locate, design, manage, and maintain public access in a manner that protects shoreline ecological functions and processes and the public health and safety.

11B-2: Design and manage public access in a manner that ensures compatibility with water-dependent uses.

11B-3: Where appropriate, acquire access to publicly owned tidelands and shorelands. Encourage cooperation among the County, landowners, developers, and other agencies and organizations to enhance and increase public access to shorelines as specific opportunities arise.

11B-4: Provide and protect visual access to shorelines and tidelands.

11B-5: Require physical or visual access to shorelines as a condition of approval for shoreline development activities commensurate with the impacts of such development and the corresponding benefit to the public, ~~and~~ consistent with constitutional limitations.

11B-6: Develop and manage public access to prevent adverse impacts to adjacent private shoreline properties and developments.

~~23.20.040~~ Recreation:

The recreation element provides for the preservation and expansion of water-oriented recreational opportunities that facilitate the public's ability to enjoy the physical and aesthetic qualities of the shoreline through parks, public access to tidelands and beaches, bicycle and pedestrian paths, viewpoints, and other recreational amenities.

~~Goal 11C:A:~~ ~~Goal. To p~~ Provide opportunities and space for diverse forms of water-oriented recreation.

B. Objectives:

11C-1: Locate, develop, manage, and maintain recreation areas in a manner that protects shoreline ecological functions and processes.

11C-2: Provide a balanced choice of water-oriented public recreational opportunities regionally. Ensure that shoreline recreation facilities serve projected County growth in accordance with the level of service standards established in the ~~Whatcom County~~ Comprehensive Plan and related goals and policies; the

1		Comprehensive Park and Recreation Open Space Plan, the
2		Whatcom County Bicycle Plan, and the Natural Heritage Plan.
3	<u>11C-3:</u>	Acquire additional recreation areas and public access areas with
4		a high recreation value prior to demand to assure that sufficient
5		shoreline recreation opportunities are available to serve future
6		recreational needs.
7	<u>11C-4:</u>	Encourage cooperation among public agencies, nonprofit
8		groups, and private landowners, and developers to increase and
9		diversify recreational opportunities through a variety of means
10		including incorporating water-oriented recreational opportunities
11		into mixed use developments and other innovative techniques.
12	<u>11C-5:</u>	Recognize and protect the interest of all people of the state by
13		providing increased recreational opportunities within shorelines
14		of statewide significance and associated shorelands.
15	<u>11C-6:</u>	Encourage private and public investment in recreation facilities.
16	<u>11C-7:</u>	Locate, design, and operate recreational development in a
17		manner that minimizes adverse effects on adjacent properties
18		as well as other social, recreational, or economic activities.
19	23-20-050 Transportation and Essential Public Facilities:	
20		The transportation and essential public facilities element provides for the general
21		location and extent of existing and proposed public thoroughfares, transportation
22		routes, terminals, and other public utilities and facilities.
23	<u>Goal 11D:A:</u>	Goal. To provide transportation systems and essential
24		public facilities in shoreline areas without adverse effects
25		on existing shoreline use and development or shoreline
26		ecological functions and/or processes.
27	B. <u>Objectives:</u>	
28	<u>11D-1:</u>	Locate, develop, manage, and maintain transportation systems
29		and essential public facilities in a manner that protects shoreline
30		ecological functions and processes. Minimize and mitigate
31		unavoidable impacts.
32	<u>11D-2:</u>	Locate and design transportation systems and essential public
33		facilities to be harmonious with the existing and future economic
34		and social needs of the community.
35	<u>11D-3:</u>	Discourage the development of non-water-dependent
36		transportation systems and essential public facilities unless no
37		feasible alternatives exist. Devote roads within the shoreline
38		jurisdiction to low volume local access routes and shoreline
39		public access where feasible.
40	<u>11D-4:</u>	When appropriate, require adequate compensation
41		where transportation systems and essential public facilities
42		reduce the benefits people derive from their property.

1		<u>11D-5:</u>	Provide for alternate modes of travel, encourage freedom of
2			choice among travel modes, and provide multiple use
3			transportation corridors where compatible in association with
4			shoreline transportation development.
5		<u>11D-6:</u>	Require transportation system and essential public facility
6			development in shoreline areas to protect and enhance physical
7			and visual shoreline public access.
8		23-20-060 Shoreline <u>Use</u>:	
9			The shoreline use element considers <u>prioritizes</u> the use and development of
10			shorelines and adjacent land areas for housing, business, industry, transportation,
11			agriculture, forestry, natural resources, recreation, education, public institutions,
12			utilities, and other categories of public and private land use with respect to the
13			<u>type</u> , general distribution, location, and extent of such uses and developments.
14		Goal 11E:A:	Goal. To p Preserve and develop shorelines in a manner
15			that allows for an orderly balance of uses.
16		B.	Objectives:
17		<u>11E-1:</u>	Give preference to water-dependent and single-family
18			residential uses that are consistent with preservation of
19			shoreline ecological functions and processes. Give secondary
20			preference to water-related and water-enjoyment uses. Allow
21			non-water-oriented uses only when substantial public benefit is
22			provided with respect to the goals of the <u>SMAAct</u> for public
23			access and ecological restoration.
24		<u>11E-2:</u>	Designate and maintain appropriate areas for protecting and
25			restoring shoreline ecological functions and processes to control
26			pollution and prevent damage to the shoreline environment
27			and/or public health.
28		<u>11E-3:</u>	Ensure shoreline uses are consistent with the Whatcom County
29			Comprehensive Plan.
30		<u>11E-4:</u>	Balance the location, design, and management of shoreline uses
31			throughout the County to prevent a net loss of shoreline
32			ecological functions and processes over time.
33		<u>11E-5:</u>	Encourage mixed use developments that include and support
34			water-oriented uses and provide a substantial public benefit
35			consistent with the public access and ecological restoration
36			goals and policies of the <u>SMAAct</u> .
37		<u>11E-6:</u>	Encourage shoreline uses and development that enhance
38			shoreline ecological functions and/or processes or employ
39			innovative features that further the purposes of <u>the SMP</u>
40			this <u>program</u> .
41		<u>11E-7:</u>	Encourage shoreline uses and development that enhance and/or
42			increase public access to the shoreline.

1	23-20-070 Conservation-	
2	The shoreline conservation element provides for the protection of natural resources,	
3	and shoreline ecological functions and processes. Resources to be conserved and	
4	protected include, but are not limited to, wetlands; riparian, nearshore, and aquatic	
5	habitats; priority fish and wildlife habitats and species; floodplains; feeder bluffs	
6	and other geological features; cultural and historic resources; as well as scenic	
7	vistas and aesthetics.	
8	Goal 11F:A:	Goal. To c Conserve shoreline resources and important
9		shoreline features, and protect shoreline ecological
10		functions and the processes that sustain them to the
11		maximum extent practicable.
12	B.	Objectives:-
13	<u>11F-1:</u>	Develop <u>Maintain</u> regulations and mitigation standards that
14		ensure new shoreline developments prevent a net loss of
15		shoreline ecological functions and processes. Implement such
16		regulations and standards in a manner consistent with all
17		relevant constitutional and other legal limitations on the
18		regulation of private property.
19	<u>11F-2:</u>	Protect critical areas in accordance with the policies and
20		regulations in the County's critical areas regulations (WCC
21		Chapter 16.16), <u>as adopted by reference in the SMP.</u>
22	<u>11F-3:</u>	Manage renewable natural resources on a sustained yield basis.
23		Extract nonrenewable natural resources in a manner that
24		maintains the quality of other resources and shoreline ecological
25		functions and processes.
26	<u>11F-4:</u>	Prioritize protection and/or conservation of shoreline areas that
27		are ecologically intact and minimally developed or degraded.
28	23-20-080 Archaeological, historical and Cultural Resources	
29	The archaeological-historical -cultural <u>resource</u> element provides for protection,	
30	preservation and/or restoration of buildings, sites, and areas having archaeological,	
31	historical, cultural, or scientific value or significance. <u>"Cultural resource" refers to</u>	
32	<u>any archaeological, historic, cemetery, or other cultural sites or artifacts; as well as</u>	
33	<u>those traditional food, medicine, fibers, and objects that sustain the religious,</u>	
34	<u>ceremonial, and social activities of affected Native American tribes that may be</u>	
35	<u>regulated under state or federal laws administered by the Washington State</u>	
36	<u>Department of Archaeologic and Historic Preservation (DAHP).</u>	
37	Goal 11G:A:	Goal. Protect shoreline features of historic, cultural,
38		archeological, or scientific value or significance to
39		prevent damage or destruction through coordination and
40		consultation with the appropriate local, state and federal
41		authorities, including affected Indian tribes.
42	B.	Objectives:-

Comment [CES7]: DAHP definition.

- 1 11G-1: Protect ~~cultural resources sites~~ in collaboration with appropriate
2 tribal, state, federal, and local governments.
- 3 11G-2 ~~Engage in and~~ encourage public agencies and private parties to
4 cooperate in the identification, protection and management of
5 cultural resources.
- 6 11G-3: Consult with the Washington State Department of Archaeology
7 and Historic Preservation (DAHP) and affected Native American
8 tribes when developing local policies and regulations for
9 identifying, protecting, and preserving cultural resources.
- 10 11G-4: Where appropriate, restore unique resources that have cultural,
11 archaeological, historic, educational, or scientific value or
12 significance to further enhance the value of the shorelines.
- 13 11G-5: Where appropriate, ~~provide access to cultural resources in a~~
14 ~~manner that is culturally sensitive and does not degrade the~~
15 ~~resource or impact the quality of the environment, make access~~
16 ~~to such sites available to parties of interest, provided, that~~
17 ~~access to such sites must be designed and managed in a~~
18 ~~manner that gives maximum protection to the resource.~~
- 19 11G-3: Provide opportunities for education related to archaeological,
20 historical, and cultural features where appropriate and
21 incorporated into public and private programs and development.

Comment [CES8]: New proposed policies consistent with our MOU with DAHP and Lummi Nation.

22 ~~23-20-090~~ Views and ~~A~~aesthetics:

23 This element provides for preservation and/or protection of scenic vistas, views of
24 the water, and other aesthetic qualities of shorelines for public enjoyment.

25 Goal 11H:A: ~~Goal. To a~~Assure that the public's ability and opportunity
26 to enjoy shoreline views and aesthetics is protected.

27 B. Objectives:

28 11H-1: Identify and protect areas with scenic vistas and areas where
29 the shoreline has high aesthetic value.

30 11H-2: Design development to minimize adverse impacts on views from
31 public property or views enjoyed by a substantial number of
32 residences.

33 ~~23-20-100~~ Restoration and ~~e~~Enhancement:

34 This element provides for the timely restoration and enhancement of ecologically
35 impaired areas in a manner that achieves a net gain in shoreline ecological
36 functions and processes above baseline conditions ~~set as of the date of adoption of~~
37 ~~the comprehensive SMP update, February 27, 2007~~as of the adoption of this
38 program.

39 Goal 11I:A: ~~Goal. To r~~Reestablish, rehabilitate and/or otherwise
40 improve impaired shoreline ecological functions and/or
41 processes through voluntary and incentive-based public

and private programs and actions that are consistent with the Shoreline Management Program Restoration Plan ~~(County Resolution 2007-011)~~ and other approved restoration plans.

~~B.~~ Objectives:-

11I-1: Encourage and facilitate cooperative restoration and enhancement programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.

11I-2: Restore and enhance shoreline ecological functions, and processes, ~~and as well as shoreline~~ features through voluntary and incentive-based public and private programs, such as the Shore Friendly Program developed by the Washington State Department of Fish and Wildlife, Washington State Department of Natural Resources, and the Environmental Protection Agency.

11I-3: Target restoration and enhancement towards improving habitat requirements of priority and/or locally important wildlife species.

11I-4: Ensure restoration and enhancement is consistent with and, where practicable, prioritized based on the biological recovery goals for early Chinook and bull trout populations and other species and/or populations for which a recovery plan is available.

11I-5: Integrate restoration and enhancement with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan, Drayton Harbor and Portage Bay Shellfish Protection District Plans, WRIA 1 Watershed Management Plan, ~~Whatcom County Comprehensive Plan,~~ and the Puget Sound Salmon Recovery Draft Plan.

~~Chapter 23.30 Shoreline Jurisdiction and Area Environment Designations~~

~~23.30.022 Shoreline area designations.~~

~~A.~~ A set of 10 shoreline area designations has been developed as a part of the SMP~~this program~~. The purpose of the shoreline area designations is to provide a systematic, rational, and equitable basis upon which to guide and regulate development within specific shoreline reaches.

~~B.~~ Shoreline area designations have been determined after consideration of:

1. The ecological functions and processes that characterize the shoreline, together with the degree of human alteration; ~~and~~

Comment [AP9]: Draft revision per Scoping Document, Item #8a, Reference WDFW and DNR's Shore Friendly Program.

Comment [MD10]: Moved some content from Chapter 23.30. Section reviewed and coordinated with Title 23 updates.

2. Existing development patterns together with WCC Title 20~~7~~ Zoning~~7~~ designations, the ~~County~~ Comprehensive Plan designations~~7~~ and other officially adopted plans; ~~and~~
3. Federal and tribal ownership status; ~~and~~
4. The goals of Whatcom County citizens for their shorelines; ~~and~~
5. Pursuant to RCW 90.58.100(4), in designating state-owned shorelines, consideration has been given to public demand for wilderness beaches, ecological study areas, and other recreational activities; ~~and~~
6. Other state policies in the ~~SMA~~Aet and the ~~SMP~~Shoreline Master Program Guidelines (RCW 90.58.020 and Chapter 173-26 WAC, respectively).

~~23.30.030~~ Urban Shoreline Area

~~23.30.031~~ Urban shoreline area — Purpose

The purpose of the urban shoreline area is to provide for intensive development of water-oriented commercial, transportation, and industrial uses and accommodate mixed use developments such as those consisting of urban density residential, commercial, and industrial uses, while protecting existing shoreline ecological functions and processes and restoring shoreline ecological functions and/or processes in areas that have been previously degraded.

~~23.30.032~~ Urban shoreline area — Designation Criteria

The urban shoreline area is applied to shoreline areas zoned commercial, industrial, and urban density residential within urban growth areas and ~~limited~~ industrial or commercial areas ~~in Limited Areas~~ of More Intense Rural Development (~~LAMIRDs~~), if they:

- A. Are currently characterized by high intensity development and/or uses; are designated by the Comprehensive Plan for high intensity uses or intensive uses related to commerce, transportation or navigation; or are suitable and planned for high intensity mixed use; and
- B. Do not contain limitations to urban use such as geologic hazards, and have adequate utilities and access; and
- C. Do not provide important ecological functions that would be significantly compromised by high intensity residential, commercial, or industrial use.

~~23.30.033~~ Urban shoreline area — Policies

Development within urban shoreline areas shall be consistent with the following policies:

- ~~Policy 11J-1:A-~~ New urban character development should be directed toward already developed or developing areas where compatible.
- ~~Policy 11J-2:B-~~ First priority should be given to water-dependent uses. Second priority should be given to water-related and then water-enjoyment uses. Non-water-oriented uses should not be allowed

except as part of mixed use developments. Non-water-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline, or where the needs of existing and future water-dependent uses are met.

~~23.30.040~~ Urban Resort Shoreline Area

~~23.30.041~~ Urban resort shoreline area — Purpose

The purpose of the urban resort shoreline area is to provide for intensive residential and commercial uses geared to the needs of tourists and day visitors while protecting existing shoreline ecological functions and processes. Emphasis is on hotels, motels, shops, restaurants, commercial rental campgrounds, rental cabins, and shoreline-related recreation facilities.

~~23.30.042~~ Urban resort shoreline area — Designation Criteria

The urban resort shoreline area is applied to shoreline areas identified in the Comprehensive Plan as suitable for resort commercial development with substantial features that might reasonably attract resort development compatible with other development in the area, and which have existing and/or planned infrastructure sufficient to support such development.

~~23.30.043~~ Urban resort shoreline area — Policies

Development within urban resort shoreline areas shall be consistent with the following policies:

Policy 11K-1:A- Scale and design of resort development should assure compatibility with allowed uses of adjacent shoreline areas and shoreline ecological functions and processes.

Policy 11K-2:B- Buildings over 35 feet in height may be permitted if additional open space, view areas, public access and/or other amenities are provided.

~~23.30.050~~ Urban Conservancy Shoreline Area

~~23.30.051~~ Urban conservancy shoreline area — Purpose

The purpose of the urban conservancy shoreline area is to protect shoreline ecological functions and processes in urban growth areas and Limited Areas of More Intense Rural Development (LAMIRDs) that are not designated for high intensity residential use and are not generally suitable for water-dependent uses. The primary management goal is to preserve shoreline ecological functions and processes by avoiding forms of development that would be incompatible with existing functions and processes, as well as identify and focus restoration efforts in areas where benefits to overall functions and processes can be realized. This policy should be furthered by maintaining most of the area's natural character.

Comment [CES11]: Copied from Conservancy Shoreline Area, as these two are similar though intended for different areas with different levels of existing development.

1 | ~~23.30.052 Urban conservancy shoreline area~~ — Designation Criteria

2 | The urban conservancy shoreline area is applied to shoreline areas inside urban
3 | growth areas where any of the following characteristics apply:

- 4 | A. They support or retain important shoreline ecological functions and/or
5 | processes, even though partially developed.
- 6 | B. They have the potential for development at an intensity and character that is
7 | compatible with preserving and restoring ecological functions. They are
8 | generally not designated for high intensity residential use, commercial use,
9 | or industrial use.
- 10 | C. They are characterized by critical areas or ~~indicate~~ the presence of other
11 | valuable or sensitive ecological resources.

12 | ~~23.30.053 Urban conservancy shoreline area~~ — Policies

13 | Development within urban conservancy shoreline areas shall be consistent with the
14 | following policies:

15 | ~~Policy 11L-1:A-~~ Primary permitted uses should consist of low intensity
16 | residential uses or other low intensity uses that preserve the
17 | natural character of the area or promote preservation of open
18 | space and critical areas.

19 | ~~Policy 11L-2:B-~~ Moderate to high intensity residential use may be permitted if
20 | the proposed uses and design result in substantial open space,
21 | public access and/or restoration of shoreline ecological functions
22 | and/or processes, and if compatible with surrounding uses.

23 | ~~Policy 11L-3:C-~~ Public access and public recreation facilities are a preferred use
24 | if they will not cause substantial ecological impacts and when
25 | restoration of ecological functions is incorporated.

26 | ~~Policy 11L-4:D-~~ Low intensity commercial uses may be permitted if the specific
27 | uses and design result in substantial open space, public access,
28 | and/or restoration of ecological functions, and if compatible with
29 | surrounding uses.

30 | ~~23.30.060 Shoreline Residential Area~~

31 | ~~23.30.061 Shoreline residential area~~ — Purpose

32 | The shoreline residential shoreline area accommodates residential development and
33 | accessory structures that are consistent with this chapter.

34 | ~~23.30.062 Shoreline residential area~~ — Designation Criteria

35 | The shoreline residential shoreline area is applied to shorelines if they have been
36 | predominantly developed with single-family or multifamily residential uses or are
37 | planned and platted for residential development. The designation is generally
38 | applied to residential densities of greater than one unit per acre.

1 | ~~23.30.063 Shoreline residential area~~ — Policies

2 | Development within shoreline residential shoreline areas shall be consistent with
3 | the following policies:

4 | ~~Policy 11M-1:A:~~ The scale and density of new uses and development should be
5 | compatible with, and protect or enhance, the existing residential
6 | character of the area while sustaining shoreline ecological
7 | functions and processes.

8 | ~~Policy 11M-2:B:~~ Public or private outdoor recreation facilities should be
9 | encouraged if compatible with the character of the area.
10 | Preferred uses include water-dependent and water-enjoyment
11 | recreation facilities that provide opportunities for substantial
12 | numbers of people to access and enjoy the shoreline.

13 | ~~Policy 11M-3:C:~~ Commercial development should be limited to water-oriented
14 | uses. Non-water-oriented commercial uses may be permitted as
15 | part of mixed use developments where the primary use is
16 | residential; provided, that such uses ~~should~~ provide a
17 | substantial benefit with respect to the goals and policies of ~~the~~
18 | ~~SMP~~ ~~this program~~, such as providing public access or restoring
19 | degraded shorelines.

20 | ~~23.30.070 Rural Shoreline Area~~

21 | ~~23.30.071 Rural shoreline area~~ — Purpose

22 | The purpose of the rural shoreline area is to protect shoreline ecological functions in
23 | areas having a rural character characterized by open space and low density
24 | development including, but not limited to: residences, agriculture, forestry, and
25 | outdoor recreation. Uses should be compatible with the physical capabilities and
26 | limitations, natural resources, and shoreline ecological functions and processes of
27 | the area.

28 | ~~23.30.072 Rural shoreline area~~ — Designation Criteria

29 | The rural shoreline area is applied to shoreline areas outside urban growth areas,
30 | particularly areas designated as Rural in the ~~Whatcom County~~ Comprehensive Plan,
31 | and includes areas:

32 | A. Where the shoreline currently accommodates residential uses outside urban
33 | growth areas and is characterized by low density development, pasture,
34 | agriculture, woodlots, home occupations, and cottage industries. The
35 | distribution of rural land use is adjacent to agricultural, forestry, and urban
36 | land uses and often provides a transition between urban areas and
37 | commercial agriculture and forestry uses. Natural vegetative cover and
38 | topography have been altered in many rural areas, but substantial ecological
39 | functions, and/or the potential for restoration of ecological functions, are
40 | present.

41 | B. That are now used or potentially usable for a mix of agriculture, forestry, and
42 | residential use.

- C. Where residential development is or should be of low density, because of limitations by physical features, infrastructure, the presence of critical areas, and/or lack of utilities or access.
- D. That have high recreational value or unique historic or cultural resources.
- E. Where low intensity outdoor recreation use or development would be appropriate and compatible with other uses and the physical environment.
- F. Where the shoreline has been developed with low intensity water-dependent uses.

~~23.30.073 Rural shoreline area~~ — Policies

Development within rural shoreline areas shall be consistent with the following policies:

~~Policy 11N-1:A-~~ Uses in rural areas should protect or enhance the rural character of the shoreline and sustain the shoreline ecological functions and processes by limiting building density and height, and providing effective setbacks, buffers, and open space.

~~Policy 11N-2:B-~~ Residential development consistent with the rural character of the area is permitted, provided it includes measures to protect ecological functions and processes. Related uses consistent with the rural character of the area are permitted.

~~Policy 11N-3:C-~~ Public or private outdoor recreation facilities should be encouraged if compatible with the rural character of the area and developed in a manner that maintains shoreline ecological functions and processes. Preferred uses include water-oriented recreation facilities that do not deplete shoreline resources over time, such as boating facilities, angling, wildlife viewing trails, and swimming beaches.

~~Policy 11N-4:D-~~ Industrial or commercial development should be limited to water-oriented commercial and industrial uses in the limited locations where such uses have been established or at sites in rural communities that possess appropriate shoreline conditions and services sufficient to support such developments. Non-water-dependent uses should only be allowed when they provide a substantial benefit with respect to the goals and policies of the SMP~~this program~~, such as providing public access and/or restoring degraded shorelines.

~~Policy 11N-5:E-~~ Agriculture and forestry consistent with rural character and the maintenance of shoreline ecological functions and processes should be encouraged.

1 | ~~23.30.080~~ Resource Shoreline Area

2 | ~~23.30.081 Resource shoreline area~~ — Purpose

3 | The purpose of the resource shoreline area is to protect shoreline ecological
4 | functions and processes in areas designated in the ~~Whatcom County~~
5 | Comprehensive Plan as agriculture ~~resource lands~~, ~~rural forestry~~, ~~commercial~~
6 | forestry, and mineral resource lands and to protect the economic base of those
7 | lands and limit incompatible uses.

8 | ~~23.30.082 Resource shoreline area~~ — Designation Criteria

9 | The resource shoreline area is applied to shoreline areas designated as agriculture,
10 | rural forestry, commercial forestry, and mineral resource lands in the ~~Whatcom~~
11 | ~~County~~ Comprehensive Plan and includes areas where the shoreline currently
12 | accommodates ongoing resource management, where natural vegetation cover has
13 | been altered but substantial ecological functions, or the potential for restoring
14 | ecological functions, are present.

15 | ~~23.30.083 Resource shoreline area~~ — Policies

16 | Development within resource shoreline areas shall be consistent with the following
17 | policies:

18 | ~~Policy 110-1:A-~~ Uses in resource areas should protect the economic base of
19 | those lands, limit incompatible uses, and sustain the shoreline
20 | area ecological processes and functions by limiting uses and
21 | intensity. Residential use is generally limited to one dwelling per
22 | existing parcel. The dwelling may be located within the shoreline
23 | jurisdiction, only where no other building site is feasible on the
24 | parcel.

25 | ~~Policy 110-2:B-~~ Public or private outdoor recreation facilities should be
26 | permitted if they do not displace designated resource lands and
27 | if they are developed in a manner that maintains shoreline
28 | ecological functions. Preferred uses include water-dependent
29 | and water-enjoyment recreation facilities.

30 | ~~Policy 110-3:C-~~ Industrial or commercial use and development should be limited
31 | to uses that serve resource uses. Such uses may be located
32 | within the shoreline only if they are water-dependent, water-
33 | related, or if no other feasible location exists within the
34 | contiguous property.

35 | ~~23.30.090~~ Conservancy Shoreline Area

36 | ~~23.30.091 Conservancy shoreline area~~ — Purpose

37 | The purpose of the conservancy shoreline area is to retain shoreline ecological
38 | functions in areas ~~outside of urban growth areas and LAMIRDS~~ where important
39 | ecological processes have not been substantially degraded by human activities.
40 | ~~Conservancy areas are designated outside of urban growth areas.~~ The primary

Comment [CES12]: Clarification, as per the SMA, Conservancy is only to be applied outside of urban areas.

1 management goal is to preserve shoreline ecological functions and processes by
2 avoiding forms of development that would be incompatible with existing functions
3 and processes, as well as identify and focus restoration efforts in areas where
4 benefits to overall functions and processes can be realized. This policy should be
5 furthered by keeping overall intensity of development or use low, and by
6 maintaining most of the area's natural character.

7 ~~23.30.092 Conservancy shoreline area~~ — **Designation Criteria**

8 The conservancy shoreline area is applied to shoreline areas outside urban growth
9 areas [and LAMIRDs](#) that include areas:

- 10 A. Where development activities and uses are buffered from and do not
11 substantially degrade ecological processes and functions.
- 12 B. Where ecological functions are more intact than in areas designated rural or
13 resource.
- 14 C. Of outstanding scenic quality or other aesthetic qualities of high value to the
15 region, which would likely be diminished unless development is strictly
16 controlled.
- 17 D. Containing critical areas or other sensitive natural or cultural features that
18 require more than normal restrictions on development and use.
- 19 E. Having the potential to influence ecological processes in a manner that will
20 produce ecosystem-wide benefits upon restoration.
- 21 F. That contain valuable or sensitive natural or cultural features that preclude
22 more than a low overall density of residents, recreation use, structures, or
23 livestock, as well as extensive alterations to topography or other features.
- 24 G. Have recreational value to the region that would likely be diminished unless
25 development is strictly controlled.

26 ~~23.30.093 Conservancy shoreline area~~ — **Policies**

27 Development within conservancy shoreline areas shall be consistent with the
28 following policies:

29 [Policy 11P-1:A-](#) Natural ecological processes should be protected and renewable
30 resources managed so that ecological functions and the
31 resource base are maintained. Nonrenewable resources should
32 only be consumed in a manner compatible with conservation of
33 other resources and other appropriate uses.

34 [Policy 11P-2:B-](#) Permitted uses should be limited to those compatible with each
35 other and with conservation of shoreline ecological processes
36 and resources.

37 [Policy 11P-3:C-](#) Shorelines should be protected from ~~harmful~~ concentrations of
38 people, livestock, buildings, or structures [that would adversely](#)
39 [impact shoreline ecological functions and processes.](#)

Comment [AP13]: Revised for clarity and usability.

1 | ~~Policy 11P-4:D-~~ Opportunities for ecological restoration should be pursued,
2 prioritizing those areas with the greatest potential to restore
3 ecosystem-wide processes and functions.

4 | ~~Policy 11P-5:E-~~ Outstanding recreational or scenic values should be protected
5 from incompatible development.

6 | ~~23.30.100-Natural Shoreline Area~~

7 | ~~23.30.101-Natural shoreline area—Purpose~~

8 The purpose of the natural shoreline area is to ensure long-term preservation of
9 ecologically intact shorelines inside or outside urban growth areas ~~that are~~
10 ecologically intact.

11 | ~~23.30.102-Natural shoreline area—Designation Criteria~~

12 The natural shoreline area is applied to shoreline areas where any of the following
13 characteristics apply:

14 A. The majority of natural ecological shoreline functions and/or processes are
15 retained, often evidenced by the shoreline configuration and the presence of
16 native vegetation. Generally, but not necessarily, they include ecologically
17 intact shorelines that are free of structural shoreline modifications,
18 structures, and intensive human uses.

19 B. Forested areas that generally include native vegetation with diverse plant
20 communities, multiple canopy layers, and the presence of large woody debris
21 available for recruitment to adjacent water bodies.

22 C. Valuable functions are provided for the larger aquatic and terrestrial
23 environments, which could be lost or significantly reduced by human
24 development.

25 D. Ecosystems or geologic types that are of particular scientific and educational
26 interest are represented.

27 E. Largely undisturbed areas of wetlands, estuaries, unstable bluffs, coastal
28 dunes, and spits are present.

29 F. New development, extractive uses, or physical modifications cannot be
30 supported without significant adverse impacts to ecological functions and/or
31 processes or risk to human safety.

32 | ~~23.30.103-Natural shoreline area—Policies~~

33 Development within natural shoreline areas shall be consistent with the following
34 policies:

35 | ~~Policy 11Q-1:A-~~ Preservation of the area's ecological functions, natural features
36 and overall character must receive priority over any other
37 potential use. Uses should not degrade shoreline ecological
38 functions or processes or the natural character of the shoreline
39 area. New development or significant vegetation removal that

would reduce the capability of the shoreline to perform a full range of ecological functions or processes should not be permitted.

Policy 11Q-2:B-

Private and/or public enjoyment of natural shoreline areas should be encouraged and facilitated through low intensity recreational, scientific, historical, cultural, and educational research uses; provided, that no significant ecological impact on the area will result.

Policy 11Q-3:C-

Agricultural and forestry uses of a very low intensity nature may be consistent with the natural shoreline area when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

Policy 11Q-4:D-

The following uses should not be permitted in the natural shoreline area:

1. Commercial uses.
2. Industrial uses.
3. Non-water-oriented recreation.
4. Roads, utility corridors, and parking areas that can be located outside of natural shoreline areas.

23.30.110-Aquatic Shoreline Area

23.30.111-Aquatic shoreline area—Purpose

The purpose of the aquatic shoreline area is to protect, restore, and manage the characteristics and resources of the areas waterward of the ordinary high water mark.

23.30.112-Aquatic shoreline area—Designation Criteria

The aquatic shoreline area is defined as the area waterward of the ordinary high water mark of all streams, rivers, lakes, and marine water-bodies; ~~and lakes,~~ constituting shorelines of the state together with their underlying lands and their water column.

23.30.113-Aquatic shoreline area—Policies

Development within aquatic shoreline areas shall be consistent with the following policies:

Policy 11R-1:A-

New over-water structures should only be permitted for water-dependent uses, public access, or ecological restoration. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

- 1 | ~~Policy 11R-2:B-~~ All developments and uses on navigable waters or their beds
2 should be located and designed to minimize interference with
3 surface navigation, to consider impacts to public views, and to
4 allow for the safe, unobstructed passage of fish and wildlife,
5 particularly those species dependent on migration.
- 6 | ~~Policy 11R-3:C-~~ Uses that adversely impact the ecological functions of critical
7 saltwater and freshwater habitats should not be permitted
8 except where necessary to achieve the objectives of RCW
9 90.58.020, and then only when all potential impacts are
10 mitigated as necessary to assure maintenance of shoreline
11 ecological functions and processes.
- 12 | ~~Policy 11R-4:D-~~ Shoreline uses and modifications should be designed and
13 managed to prevent degradation of water quality and alteration
14 of natural conditions.

15 | ~~23.30.120~~ Cherry Point Management Area

16 | Purpose

17 | Washington State natural resource agencies and Whatcom County have identified
18 certain portions of the Cherry Point management area as providing herring
19 spawning habitat and other key habitat characteristics that warrant special
20 consideration due to their importance to regional fisheries and other elements of
21 the aquatic environment. The purpose of the Cherry Point management area is to
22 provide a regulatory framework that recognizes and balances the special port,
23 industrial, and natural resource needs associated with the development of this
24 marine resource.

Comment [P/C14]: Moved from Use & Modification section, CPMA, Policies 11TT-1 & 2, to fit the layout of other sections where in purpose is located in the Shoreline Environments section.

25 | Designation Criteria

26 | The Cherry Point Management Area is a geographic area lying between the eastern
27 property boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11,
28 Township 39 North, Range 1 West, as it existed on June 18, 1987, and the southern
29 boundary of Section 32, Township 39 North, Range 1 East, extending waterward a
30 distance of 5,000 feet and extending landward for 200 feet as measured on a
31 horizontal plane from the OHWM. This area shall have the Cherry Point
32 Management Area shoreline environment designation.

Comment [CES15]: Copied from original definition of the CPMA in Title 23

33 | Policies

34 | ~~The p~~Policies applicable to the Cherry Point Management Area are found in the
35 Shoreline Use and Modifications Policies section of this chapter; applicable ,
36 r~~regulations and standards, etc., applicable to the Cherry Point management area~~
37 are found in WCC Title 23.400.170, except as otherwise specified therein.

38 | Shorelines of Statewide Significance

39 | ~~23.40.010~~ Adoption of policy:

40 | In accordance with RCW 90.58.020, the following management and administrative
41 | policies are ~~hereby~~ adopted for all shorelines of statewide significance in
42 | unincorporated Whatcom County, as defined in RCW 90.58.030(2)(e) and identified

Comment [MD16]: Moved some content from Chapter 23.40. Section reviewed and coordinated with Title 23 updates.

1 | in WCC 23.~~2.06040-020~~. Consistent with the policy contained in RCW 90.58.020,
2 | preference shall be given to the uses that are consistent with the statewide interest
3 | in such shorelines. In the following order or preference, these are uses that:

Comment [CES17]: The language of WAC 173-26-181 recognizes an order of preference

- 4 | A. Recognize and protect the statewide interest over local interest.
- 5 | B. Preserve the natural character of the shoreline.
- 6 | C. Result in long-term over short-term benefit.
- 7 | D. Protect the resources and ecology of the shoreline.
- 8 | E. Increase public access to publicly owned areas of the shoreline.
- 9 | F. Increase recreational opportunities for the public in the shoreline.
- 10 | G. Provide for any other element as defined in RCW 90.58.100 deemed
- 11 | appropriate or necessary.

12 | Uses that are not consistent with these policies should not be permitted on
13 | shorelines of statewide significance.

14 | ~~23.40.030 Policies for Shorelines of Statewide Significance~~

15 | The statewide interest should be recognized and protected over the local interest in
16 | shorelines of statewide significance. To ensure that statewide interests are
17 | protected over local interests, the County shall review all development proposals
18 | within shorelines of statewide significance for consistency with RCW 90.58.030 and
19 | the following policies:

20 | Policy 11-1:A. Redevelopment of shorelines should be encouraged where it
21 | restores or enhances shoreline ecological functions and
22 | processes impaired by prior development activities.

23 | Policy 11S-2:B- The Washington Departments of Fish and Wildlife and Ecology,
24 | the Lummi Nation, the Nooksack Tribe, and other resources
25 | agencies should be consulted for development proposals that
26 | could affect anadromous fisheries.

27 | Policy 11S-3:G- Where commercial timber cutting takes place pursuant to WCC
28 | ~~23.40.11023-90.110~~ and RCW 90.58.150, reforestation should
29 | take place as soon as possible.

30 | Policy 11S-4:D- Activities that use shoreline resources on a sustained yield or
31 | non-consuming basis and that are compatible with other
32 | appropriate uses should be given priority over uses not meeting
33 | these criteria.

34 | Policy 11S-5:E- The range of options for shoreline use should be preserved to
35 | the maximum possible extent for succeeding generations.
36 | Development that consumes valuable, scarce, sensitive, or
37 | irreplaceable natural resources should be protected to the
38 | maximum extent feasible and should not be permitted if
39 | alternative sites are available.

- 1 | ~~Policy 11S-6:F-~~ Potential short-term economic gains or convenience should be
2 measured against potential long-term and/or costly impairment
3 of natural features.
- 4 | ~~Policy 11S-7:G-~~ Protection or enhancement of aesthetic values should be
5 actively promoted in design review of new or expanding
6 development.
- 7 | ~~Policy 11S-8:H-~~ Resources and ecological systems of shorelines of statewide
8 significance should be protected. Shorelands and submerged
9 lands should be protected to accommodate current and
10 projected demand for economic resources of statewide
11 importance, such as commercial shellfish beds.
- 12 | ~~Those limited shorelines containing unique, scarce and/or~~
13 ~~sensitive resources should be protected to the maximum extent~~
14 ~~feasible.~~
- 15 | ~~Policy 11S-9:J-~~ Erosion and sedimentation from development sites should be
16 controlled to minimize adverse impacts on ecosystem processes.
17 If site conditions preclude effective erosion and sediment
18 control, excavations, land clearing, or other activities likely to
19 result in significant erosion should be severely limited.
- 20 | ~~Policy 11S-10:K-~~ Public access development in extremely sensitive areas should
21 be restricted or prohibited. All forms of recreation or access
22 development should be designed to protect the resource base
23 upon which such uses in general depend.
- 24 | ~~Policy 11S-11:L-~~ Public and private developments should be encouraged to
25 provide trails, viewpoints, water access points and shoreline-
26 related recreation opportunities whenever possible. Such
27 development is recognized as a high priority use.
- 28 | ~~Policy 11S-12:M-~~ Development not requiring a ~~waterside or~~ shoreline location
29 should be located inland so that lawful public enjoyment of
30 shorelines is ~~enhanced~~ preserved.
- 31 | ~~Policy 11S-13:N-~~ Lodging and related facilities should be located inland and
32 provide for appropriate means of access to the shoreline.
- 33 | **~~Chapter 23.90 General Policies and Regulations~~**
- 34 | ~~The following general policies apply to all use and development activities on~~
35 ~~shorelines.~~
- 36 | **~~23.90.020 Land Use~~**
- 37 | ~~The following land use policies delineate the use preferences of the Act and this~~
38 ~~program and are intended to support the goals and objectives of the program:~~
- 39 | ~~A. Policies-~~
- 40 | ~~Policy 11T-1:~~ Single-family residences should be given preference for location
41 on shorelines in those limited instances when an alteration of

Comment [AP18]: Incorporated into Policy 11X-5 above to avoid redundancy.

Comment [MD19]: Moved most policy content from Chapter 23.90. Section reviewed and coordinated with Title 23 updates.

the shorelines is authorized (RCW 90.58.020). ~~Single-family residences occupied prior to January 1, 1992, and their appurtenant structures should be protected against damage or loss caused by shoreline erosion; provided, that measures to protect single-family residences should be designed to minimize harm to the shoreline environment. However, After that date, all new single-family residences permitted after January 1, 1992, and their appurtenant structures should be built in a manner so as to not need protective structures.~~

Comment [CES20]: Moved to Shoreline Stabilization section at P/C's request, as it's a separate concept from the 1st sentence.

Policy 11T-2:

Shoreline uses that are water-dependent or water-related should be given preference (RCW 90.58.020). Such uses should be located, designed, and maintained in a manner that minimizes adverse impacts to shoreline ecological functions and/or processes. Non-water-oriented development may be allowed; provided, that existing water-dependent uses are not displaced and the future supply of sites for water-dependent or water-related uses is not compromised.

Policy 11T-3:

Adequate space should be reserved on shorelines to meet the current and projected demand for water-dependent uses, in conjunction with areas provided in cities, towns and areas under tribal jurisdiction.

~~23.90.030~~ Ecological Protection and Critical Areas

~~A. Policies:~~

Policy 11U-1:

Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC Chapter 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, insofar as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

Policy 11U-2:

In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.

1 | Policy 11U-3: Development standards for density, frontage, setbacks,
2 | impervious surface, shoreline stabilization, vegetation
3 | conservation, buffers, critical areas, and water quality should
4 | protect existing shoreline ecological functions and processes.
5 | During permit review, the administrator should consider the
6 | expected impacts associated with proposed shoreline
7 | development when assessing compliance with this policy.

8 | ~~23.90.040~~ Water Quality and Quantity

9 | ~~A. Policies:~~

10 | Policy 11V-1: The location, construction, operation, and maintenance of all
11 | shoreline uses and developments should maintain ~~or enhance~~
12 | the quantity and maintain or enhance the quality of surface and
13 | ground-water over the long term.

14 | Policy 11V-2: Shoreline use and development should minimize the need for
15 | chemical fertilizers, pesticides, or other similar chemical
16 | treatments to prevent contamination of surface and ground
17 | water and/or soils, and adverse effects on shoreline ecological
18 | functions and values.

19 | Policy 11V-3: Appropriate buffers along all wetlands, streams, lakes, and
20 | marine water bodies should be provided and maintained in a
21 | manner that avoids the need for chemical treatment.

22 | ~~23.90.050~~ Views and Aesthetics

23 | ~~A. Policies:~~

24 | Policy 11W-1: Shoreline use and development activities should be designed
25 | and operated to minimize obstructions of the public's visual
26 | access to the water and shoreline.

27 | Policy 11W-2: Shoreline use and development should not significantly detract
28 | from shoreline scenic and aesthetic qualities that are derived
29 | from natural or cultural features, such as shoreforms, vegetative
30 | cover and historic sites/structures.

31 | Policy 11W-3: Aesthetic objectives should be implemented through regulations
32 | and criteria for site planning, maximum height, setbacks, siting
33 | of buildings and accessories, screening, vegetation
34 | conservation, architectural standards, sign control regulations,
35 | appropriate development siting, designation of view corridors,
36 | and maintenance of natural vegetative buffers.

37 | Policy 11W-4: To protect shoreline ecological functions and aesthetics,
38 | vegetation conservation should be preferred over the creation or
39 | maintenance of views from shoreline properties. Clearing,
40 | thinning, and/or limbing for limited view corridors should only
41 | be allowed where it does not adversely impact ecological and/or
42 | aesthetic values, and/or slope stability. Vegetation conservation

Comment [CES21]: Development shouldn't enhance the quantity of surface water. We're not supposed to *increase* stormwater runoff.

1 ~~should be preferred over the creation or maintenance of views~~
2 ~~from property on the shoreline to protect shoreline ecological~~
3 ~~functions and aesthetics.~~

4 ~~23.90.060~~ Vegetation Conservation

5 ~~A. Policies.~~

6 Policy 11X-1: Where new developments and/or uses are proposed, native
7 shoreline vegetation should be conserved to maintain shoreline
8 ecological functions and/or processes and mitigate the direct,
9 indirect and/or cumulative impacts of shoreline development,
10 wherever feasible. ~~Important functions of shoreline vegetation~~
11 ~~include, but are not limited to:~~

12 ~~Providing shade necessary to maintain water temperatures~~
13 ~~required by salmonids, forage fish, and other aquatic biota.~~

14 ~~Regulating microclimate in riparian and nearshore areas.~~

15 ~~Providing organic inputs necessary for aquatic life, including~~
16 ~~providing food in the form of various insects and other benthic~~
17 ~~macroinvertebrates.~~

18 ~~Stabilizing banks, minimizing erosion and sedimentation, and~~
19 ~~reducing the occurrence/severity of landslides.~~

20 ~~Reducing fine sediment input into the aquatic environment by~~
21 ~~minimizing erosion, aiding infiltration, and retaining runoff.~~

22 ~~Improving water quality through filtration and vegetative uptake~~
23 ~~of nutrients and pollutants.~~

24 ~~Providing a source of large woody debris to moderate flows,~~
25 ~~create hydraulic roughness, form pools, and increase aquatic~~
26 ~~diversity for salmonids and other species.~~

27 ~~Providing habitat for wildlife, including connectivity for travel~~
28 ~~and migration corridors.~~

29 ~~23.90.070~~ Archaeological, Historic and Cultural Resources

30 The following policies apply to cultural resources that are (a) listed on the national,
31 state, or local registers of historic places; (b) recorded by the Washington State
32 Department of Archaeology and Historic Preservation (DAHP), a Native American
33 tribe, and/or a local jurisdiction; or (c) undiscovered, inadvertently uncovered, or
34 yet unrecorded.

35 Archaeological sites located in (as well as outside of) shoreline jurisdiction are
36 subject to RCW Chapter 27.44 (Indian graves and records) and RCW Chapter 27.53
37 (Archaeological sites and records). Shoreline uses or development that may impact
38 such sites shall comply with WAC Chapter 25-48 as well as the provisions of this
39 Shoreline Master Program.

Comment [MD22]: Importance of veg has been established; don't need to repeat in a policy.

- 1 Pursuant to RCW 27.53.070, information and documents pertaining to the location
2 of archaeological sites or resources are confidential and not considered public
3 records that require disclosure.
- 4 ~~A.~~ Policies:
- 5 Policy 11X-1: The County should work with tribal, state, federal, and local
6 governments as appropriate to maintain an inventory of all
7 known significant ~~local historic, cultural and archaeological sites~~
8 resources in observance of applicable state and federal laws
9 protecting such information from general public disclosure. As
10 appropriate, such sites should be protected, preserved and/or
11 restored for study, education, and/or public enjoyment to the
12 maximum possible extent.
- 13 Policy 11X-2: Site development plans should incorporate provisions for
14 ~~historic, cultural and archaeological sites~~ resource preservation,
15 restoration, and education with open space or recreation areas
16 whenever compatible and possible.
- 17 ~~3.~~ Cooperation among involved private and public parties is
18 encouraged to achieve the archaeological, historical and cultural
19 element goals and objectives of this program.
- 20 Policy 11X-3:4- Owners of property containing ~~identified historic, cultural or~~
21 ~~archaeological sites~~ resources are encouraged to make
22 development plans known well in advance of application, so that
23 appropriate agencies such as the Lummi Nation, Nooksack
24 Tribe, Washington State Department of Archaeology and Historic
25 Preservation, and others may have ~~ample~~ adequate time to
26 assess the site and make arrangements to preserve ~~historical,~~
27 cultural ~~and archaeological~~ values as applicable.
- 28 Policy 11X-4:5- Private and public owners of historic sites should be encouraged
29 to provide public access and educational opportunities in a
30 manner consistent with long-term protection of both historic
31 values and shoreline ecological functions.
- 32 Policy 11X-5:6- ~~Historic, cultural, and archaeological site-d~~ Development on sites
33 containing cultural resources should be planned and carried out
34 so as to prevent impacts to the resource. Impacts to
35 neighboring properties and other shore uses should be limited to
36 temporary or reasonable levels.
- 37 Policy 11X-6:7- If development is proposed adjacent to an identified ~~historic,~~
38 cultural ~~or archaeological sites~~ resource, then the proposed
39 development should be designed and operated so as to be
40 compatible with continued protection of ~~the historic, cultural or~~
41 ~~archaeological~~ that site resource.
- 42 Policy 11X-7:8- The cultural resource provisions of this program are consistent
43 with Chapters 27.44 and 27.53 RCW and WAC 25-48-060. In

Comment [AP23]: This is captured in policies #1 and #4 (revised to #3).

accordance with state law, all applicants are subject to these requirements.

Policy 11X-8: The County shall consult with DAHP and affected Native American tribes as appropriate in implementing the cultural ~~archaeological, and historic resources~~ goals, objectives, policies, and regulations of this ~~program-SMP~~.

Policy 11X-9: In reviewing development proposals, the County shall take, or cause project applicants to take, all required actions to:

1. Minimize the risk of disturbing cultural resources within Whatcom County shorelines.
2. Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Tribes and the DAHP.
3. Consult with professional archaeologists, DAHP, and affected Tribes before permitting or otherwise approving the use or development of shoreline areas containing cultural resources. This consultation shall be accomplished through the regulations and procedures provided in WCC Title 23.
4. Consult with DAHP and affected Tribes and coordinate with project archaeologists to establish site- and project-specific procedures for protection and management of cultural resources.
5. Make informed specific land use decisions based upon information provided by DAHP and Tribes.
6. Ensure the use of the best available information, technology, and techniques in identifying, protecting, preserving, and restoring cultural resources.

Comment [CES24]: New policy based on language of our MOU with DAHP and Lummi Nation.

~~23.90.080~~ Public Access

~~A. Policies-~~

Policy 11Y-1: Use and development that provide an opportunity for substantial numbers of ~~the~~ people to enjoy the shorelines of the state are a preferred use.

Policy 11Y-2: Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. ~~Public health and safety concerns should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured.~~ As required by the governing principles, all such conditions should be consistent

Comment [MD25]: Addressed in #6 below.

with all relevant constitutional and other legal limitations on regulation of private property.

Policy 11Y-3:

Public access should be provided for water-oriented uses and non-water-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing, legal access opportunities.

Policy 11Y-4:

Non-water-related uses or activities located on the shoreline should provide public access as a public benefit.

Policy 11Y-5:

Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective, and fair to all affected parties including but not limited to the land-owner and the public.

Policy 11Y-6:

Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.

Policy 11Y-7:

Shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, should provide public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline.

~~23.90.090~~ **Site Planning**

~~A. Policies:~~

Policy 11Z-1:

Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic, and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering, and other appropriate design approaches.

Policy 11Z-2:

To maintain shoreline ecological functions and processes, low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including, but not limited to, porous paving blocks, porous concrete, and other similar materials, should be incorporated in developments where site conditions allow ~~to maintain shoreline ecological functions and processes~~. Topographic modification, vegetation clearing, use of impervious surfaces, and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering

geologist should be consulted prior to using infiltration practices on shore bluffs.

Policy 11Z-3:

Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within shoreline jurisdiction, uses and/or developments such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials should be located inland away from the land/water interface and landward of water-oriented developments and/or other approved uses.

Policy 11Z-4:

Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.

Policy 11Z-5:

Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and other water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

Climate Change/Sea Level Rise

Policy 11AA-1: Coordinate with Tribal, Federal, State, and local agencies to address issues related to climate change and sea level rise as related to shoreline management.

Policy 11AA-2: Whatcom County should plan and prepare for the likely impacts of climate change on County-owned facilities, infrastructure, and natural resources and ensure that projects for major maintenance or replacement of utilities, roads, and other public infrastructure consider the impacts of sea-level rise in the location, design, and operation of the projects.

Policy 11AA-3: Whatcom County should strive to increase resident and business resiliency to the anticipated impacts of climate change by implementing land use regulations based on best available science, such as sea level rise, changes in rainfall patterns, changes in flood volumes and frequencies, and changes in average and extreme temperatures.

Policy 11AA-4: Habitat protection and restoration projects in shoreline jurisdiction should consider implications of sea-level rise and other climate change impacts to promote resiliency of habitats and species. Those that promote climate change and sea-level rise resiliency should be considered priority actions.

Comment [CES26]: New policies based on Scoping Document Topic #6a, *Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations.*

1 Policy 11AA-5: Whatcom County should monitor the impacts of climate change
2 on Whatcom County's shorelands, the shoreline master
3 program's ability to adapt to sea level rise and other aspects of
4 climate change at least every periodic update, and revise the
5 shoreline master program as needed. Whatcom County should
6 periodically assess the best available sea level rise projections
7 and other science related to climate change within shoreline
8 jurisdiction and incorporate them into future program updates,
9 as relevant.

Comment [P/C27]: P/C approved 9-0-0

10 Policy 11AA-6: Public infrastructure—such as transportation systems, utilities,
11 flood hazard control, and instream structures—and essential
12 public facilities in shoreline areas should be built in a manner
13 that accounts for increased sea level rise and storm surge, and
14 the flooding that may accompany it.

15 Policy 11AA-7: Whatcom County should evaluate opportunities to protect
16 shoreline investments and infrastructure from the impacts of
17 climate change, as necessary and feasible. Specifically, the
18 County should maintain shoreline protection and erosion control
19 by:

- 20 • Facilitating the installation and maintenance of native
- 21 vegetation along appropriate areas of shoreline;
- 22 • Revisiting development policies with the objective of
- 23 providing additional shoreline buffer area between developed
- 24 areas and the shoreline; and
- 25 • Only consider structural shoreline stabilization structures
- 26 when alternative options are unavailable.

27 ~~Chapter 23.100~~ **Shoreline Use and Modification Policies and** 28 **Regulations**

29 The following shoreline use and modification policies apply to specific development
30 activities on shorelines.

31 ~~23.100.020~~ **Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open** 32 **Space and Impervious Surface Coverage**

33 Policy 11BB-1: A. Policies: Standards for density, setbacks, height, and other
34 provisions should ensure no net loss of shoreline ecological
35 functions and/or processes and preserve the existing character
36 of the shoreline consistent with the purpose of the shoreline
37 area designation.

38 ~~23.100.030~~ **Agriculture**

39 A. Policies:

40 Policy 11BB-1: ~~This program~~The SMP recognizes the importance of agriculture
41 in Whatcom County and supports its continued economic
42 viability. ~~The SMP~~This program It allows for ongoing agricultural

1		activities and should protect agricultural lands from conflicting
2		uses such as intensive or unrelated residential, industrial, or
3		commercial uses, while also maintaining shoreline ecological
4		functions and processes.
5	<u>Policy 11BB-2:</u>	Agricultural uses and development in support of agricultural
6		uses should be conducted in such a manner as to assure no net
7		loss of shoreline ecological functions and processes and avoid
8		substantial adverse impacts on other shoreline resources and
9		values.
10	<u>Policy 11BB-3:</u>	Conversion of agricultural uses to other uses should comply with
11		all policies and regulations for nonagricultural uses.
12	23.100.040 Aquaculture	
13	A. Policies:	
14	<u>Policy 11CC-1:</u>	Aquaculture is a water-dependent use and, when consistent with
15		control of pollution, and avoidance of adverse impacts to the
16		environment, and preservation of habitat for resident native
17		species, is a preferred use of the shoreline (WAC 173-26-
18		241(3)(b)).
19	<u>Policy 11CC-2:</u>	Potential locations for aquaculture activities are relatively
20		restricted because of specific requirements related to water
21		quality, temperature, oxygen content, currents, adjacent land
22		use, wind protection, commercial navigation, and salinity. The
23		technology associated with some forms of aquaculture is still
24		experimental and in formative states. Therefore, some latitude
25		should be given when implementing the <u>policies of this</u>
26		<u>subsection and the regulations in of this section WCC</u>
27		<u>ChapterTitle 23.100 WCC</u> ; provided, that potential impacts on
28		existing uses and shoreline ecological functions and processes
29		should be given due consideration.
30	<u>Policy 11CC-3:</u>	Preference should be given to those forms of aquaculture that
31		involve lesser environmental and visual impacts and lesser
32		impacts to native plant and animal species. In general, projects
33		that require no structures , submerged, structures or intertidal,
34		<u>or no</u> structures are preferred over those that involve
35		substantial floating structures. Projects that involve little or no
36		substrate modification are preferred over those that involve
37		substantial modification. Projects that involve little or no
38		supplemental food sources, pesticides, herbicides, or antibiotic
39		application are preferred over those that involve such practices.
40	Policy 11-4. Community restoration projects associated with aquaculture	
41	should be reviewed and permitted in a timely manner.	
42	<u>Policy 11CC-54:</u>	Aquaculture activities should be designed, located and operated
43		in a manner that supports long-term beneficial use of the

Comment [AP28]: Don't need, as *all* projects should be reviewed and permitted in a timely manner. Furthermore, we don't really know what a "community restoration project associated with aquaculture" is.

shoreline and protects and maintains shoreline ecological functions and processes. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species, including eelgrass, kelp, and other macroalgae; adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses.

Policy 11CC-65: Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations through potential contribution of antibiotic resistant bacteria, or escapement of nonnative species, or other adverse effects on ESA-listed species should not be permitted.

Policy 11CC-76: The County should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate federal, state, and local agencies; the Lummi Nation, Nooksack Tribe, and other affected tribes; and the general public regarding potential adverse impacts. Comments of nearby residents or property owners directly affected by a proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.

Policy 11CC-87: The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed through the permit review process. Direct coordination between the applicant/proponent and the tribe should be encouraged.

Policy 11CC-98: Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; and on the aesthetic qualities of a project area.

Policy 11CC-109: Legally established aquaculture enterprises, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Use or developments that have a high probability of damaging or destroying an existing aquaculture operation may be denied.

Policy 11CC-110: Experimental aquaculture projects in water bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the state of Washington.

~~23.100.050 Boating Facilities~~ —Marinas and Launch Ramps

~~Boating facilities, including mMarinas and launch ramp development, are subject to the following policies. DecksMoorage structures serving four or fewer single-~~

~~family residences~~ users are only subject to the policies in Moorage Structures—
~~Docks, Piers, and Mooring Buoys.~~

~~A. Policies.~~

Policy 11DD-1: Boating facilities, including marinas and launch ramps, are water-dependent uses and should be given priority for shoreline location. Boating facilities should also contribute to public access and enjoyment of waters of the state. Shorelines particularly suitable for marinas and launch ramps are limited, and should be identified and reserved to prevent irreversible commitment for other uses having less stringent site requirements.

Policy 11DD-2: Regional needs for marina and boat launch facilities should be carefully considered in reviewing new proposals as well as in allocating shorelines for such development. Such facilities should be coordinated with park and recreation plans and, where feasible, collocated with port or other compatible water-dependent uses. Review of such facilities should be coordinated with recreation providers, including cities, adjacent counties, port districts, the Whatcom County Parks and Recreation department, the Washington State Parks and Recreation Commission, and the Washington State Department of Natural Resources to avoid unnecessary duplication and to efficiently provide recreational resources while minimizing adverse impacts to shoreline ecological functions and processes.

Policy 11DD-3: Upland boat storage is preferred over new in-water moorage. Mooring buoys are preferred over docks and piers. Boating facilities that minimize the amount of shoreline modification are preferred.

Policy 11DD-4: Boating facilities should provide physical and visual public shoreline access and provide for multiple uses, including water-related use, to the extent compatible with shoreline ecological functions and processes and adjacent shoreline use.

Policy 11DD-5: Accessory uses at marinas or launch ramps should be limited to water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public.

Policy 11DD-6: New or expanding boating facilities including marinas, launch ramps, and accessory uses should only be sited where suitable environmental conditions are present and should avoid critical saltwater habitat including kelp beds, and eelgrass beds, and spawning and holding areas for forage fish (such as herring, surf smelt and sand lance); subsistence, commercial, and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.

- 1 | Policy 11DD-7: Boating facilities should be located and designed to avoid
2 | adverse effects upon coastal, riverine, and nearshore processes
3 | such as erosion, littoral or riparian transport, and accretion, and
4 | should, where feasible, enhance degraded, scarce, and/or
5 | valuable shore features including accretion shoreforms.
- 6 | Policy 11DD-8: Launch ramps are preferred over marinas on accretion shores
7 | because associated impacts are often reversible and such
8 | structures will not normally interfere with littoral drift and
9 | accretion unless offshore defense structures or dredging are also
10 | required.
- 11 | Policy 11DD-9: Nonregulatory methods to protect, enhance, and restore
12 | shoreline ecological functions and processes and other shoreline
13 | resources should be encouraged during the design,
14 | development, and operation of boating facilities. Nonregulatory
15 | methods may include public facility and resource planning,
16 | education, voluntary protection and enhancement projects, or
17 | incentive programs.
- 18 | Policy 11DD-10: Boating facilities should be located, designed, and operated so
19 | that other appropriate water-dependent uses are not adversely
20 | affected.
- 21 | Policy 11DD-11: Location and design of boating facilities should not unduly
22 | obstruct navigable waters and should avoid adverse effects to
23 | recreational opportunities such as fishing, shellfish gathering,
24 | pleasure boating, commercial aquaculture, swimming, beach
25 | walking, picnicking, and shoreline viewing.
- 26 | Policy 11DD-12: Boating facilities should be located, designed, constructed, and
27 | maintained, and operated to avoid adverse proximity impacts
28 | such as noise, light and glare; aesthetic impacts to adjacent
29 | land uses; and impacts to public visual access to the shoreline.
- 30 | Policy 11DD-13: Live-aboards should be regulated so as to prevent adverse
31 | impacts to public health and safety.
- 32 | **~~23.100.060~~ Commercial Use**
- 33 | ~~Commercial development in shoreline areas shall be subject to the policies and~~
34 | ~~regulations of this section and Chapter 23.90 WCC.~~
- 35 | ~~A. Policies:~~
- 36 | Policy 11EE-1: In securing shoreline locations for commercial uses, preference
37 | should be given first to water-dependent commercial uses, then
38 | to water-related and water-enjoyment commercial uses.
- 39 | Policy 11EE-2: Restoration of impaired shoreline ecological functions and
40 | processes should be encouraged as part of commercial
41 | development.

Comment [CES29]: New policy added to support regulating live-aboards, per #17, "Add standards for live-aboards in marinas."

- 1 | Policy 11EE-3: Commercial development should ensure visual compatibility with
2 | adjacent noncommercial properties.
- 3 | Policy 11EE-4: Commercial uses located in the shoreline should provide public
4 | access in accordance with constitutional or other legal
5 | limitations unless such improvements are demonstrated to be
6 | infeasible or present hazards to life and property.
- 7 | ~~23.100.070~~ **Dredging**
- 8 | ~~A. Policies:~~
- 9 | Policy 11FF-1: Dredging should be permitted for water-dependent uses of
10 | economic importance to the region and/or essential public
11 | facilities only when necessary and when alternatives are
12 | infeasible or less consistent with the SMP~~this program~~.
- 13 | Policy 11FF-2: Dredging to provide water-oriented recreation should not be
14 | permitted.
- 15 | Policy 11FF-3: Minor dredging as part of ecological restoration or enhancement,
16 | beach enhancement~~nourishment~~, public access, or public
17 | recreation should be permitted if consistent with the SMP~~this~~
18 | ~~program~~.
- 19 | Policy 11FF-4: New development should be sited and designed to avoid or,
20 | where avoidance is not possible, to minimize the need for new
21 | maintenance dredging.
- 22 | Policy 11FF-5: Dredging of bottom materials for the primary purpose of
23 | obtaining material for landfill, construction, or beach
24 | enhancement~~nourishment~~ should not be permitted.
- 25 | Policy 11FF-6: Spoil disposal on land away from the shoreline is generally
26 | preferred over open water disposal.
- 27 | Policy 11FF-7: Long-term cooperative management programs that rely
28 | primarily on natural processes, and involve land
29 | ~~owners~~landowners and applicable local, state, and federal
30 | agencies and tribes, should be pursued to prevent or minimize
31 | conditions which make dredging necessary.
- 32 | ~~23.100.080~~ **Flood ~~Control Works~~ Hazard Reduction and Instream Structures**
- 33 | ~~A. Policies:~~
- 34 | Policy 11GG-1: ~~Purpose and Need:~~
- 35 | ~~a.~~ New or expanding development or uses in the shoreline,
36 | including subdivision of land, that would likely require structural
37 | flood hazard reduction control~~control~~ works within a stream, channel
38 | migration zone, or floodway should not be allowed.
- 39 | Policy 11GG-2: Flood hazard reduction control~~control~~ works and instream structures
40 | should be planned and designed to be compatible with

appropriate multiple uses of stream resources over the long term, especially in shorelines of statewide significance.

Policy 11GG-3: Flood ~~hazard reduction control~~ works should only be allowed in the shoreline if they are necessary to protect existing development and where nonstructural flood hazard reduction measures are infeasible.

Policy 11GG-4: Flood ~~hazard reduction control~~ works to protect existing development should be permitted only when the primary use being protected is consistent with ~~the SMP~~ this program, and the works can be developed in a manner that is compatible with multiple use of streams and associated resources for the long term, including shoreline ecological functions, fish and wildlife management, and recreation.

~~23-100-090~~ Forest Practices

~~A.~~ Policies:

Policy 11HH-1: Forest lands should be reserved for long-term forest management and such other uses as are compatible with the ~~dominant~~ primary use. Other more intensive and incompatible uses tending to impair the ~~dominant~~ primary use should be discouraged from locating on forest lands.

Policy 11HH-2: Forest practices should maintain high levels of water quality, as well as surface and ground-water movement patterns.

Policy 11HH-3: Forest practices should minimize damage to wetlands, fish and wildlife species, and habitats, especially aquatic habitats.

~~4. Extreme caution must be observed whenever chemicals are to be used along shorelines; such use should be avoided altogether if possible.~~

Policy 11HH-4:5: Forest practices should maintain or improve the quality of soils and minimize erosion.

Policy 11HH-5:6: Where slopes are extremely steep or soils are subject to sliding, rapid erosion, or high water table, special practices should be employed to minimize damage to shoreland and water features, and adjacent properties.

~~23-100-100~~ Industrial and Port Development

The following policies apply to industrial and port development in shoreline areas.

~~A.~~ Policies:

Policy 11II-1: Shoreline sites particularly suitable for development such as deep-water harbors with access to adequate rail, highway, and utility systems should be reserved for water-dependent or water-related industrial and port development.

Comment [MD30]: Addressed by existing policy #2 in Water Quality and Quantity.

- 1 | Policy 11III-2: In order to provide adequate shoreline for future water-
2 | dependent and water-related uses, industrial or port
3 | development at deep-water sites should be limited to those uses
4 | that produce the greatest long-term economic base. Industrial
5 | and port development that is consistent with ~~this program~~ the
6 | SMP should be protected from encroachment or interference by
7 | incompatible uses with less stringent siting requirements, such
8 | as residential or commercial uses. Mixed use development,
9 | including non-water-dependent uses, should only be allowed
10 | when they include and support water-dependent uses.
- 11 | Policy 11III-3: Regional needs for port facilities should be carefully considered
12 | in reviewing new port proposals and in allocating shorelines for
13 | such development. Such reviews or allocations should be
14 | coordinated with port districts, adjacent counties and cities, and
15 | the state. Existing, officially designated State Harbor Areas
16 | should be used for new port development to the maximum
17 | extent whenever possible.
- 18 | Policy 11III-4: Multiple use of industrial and port facilities is encouraged to limit
19 | duplicative facilities and reduce adverse impacts. Multiple use
20 | should be implemented in the following manner:
- 21 | a. Cooperative use of piers, cargo handling, storage, parking
22 | and other accessory facilities among private or public entities
23 | should be required in industrial or port facilities whenever
24 | feasible. New facilities for water-dependent uses should be
25 | allowed only after assessment of the potential for shared use
26 | of existing facilities.
- 27 | b. Industrial and port developments should provide
28 | opportunities for physical and/or visual public shoreline
29 | access in accordance with the public access policies,
30 | including recreational use of undeveloped shorelines not
31 | needed for port or industry operations; provided, that such
32 | uses are safely compatible with facility operations.
- 33 | Policy 11III-5: Industrial and port development in the shoreline should be
34 | located and designed to avoid significant adverse impacts to
35 | other shoreline uses, resources, and values, including shoreline
36 | geomorphic processes, water quality, fish and wildlife habitat,
37 | commercial aquaculture, and the aquatic food chain.
- 38 | Policy 11III-6: Restoration of impaired shoreline ecological functions and
39 | processes should be encouraged as part of industrial and port
40 | development.

41 | ~~23.100.210~~ **Cherry Point Management Area**

42 | ~~A.~~ Policies:

43 | Policy 11TT-1: Purpose and Intent:

Comment [CES31]: These policies amended per Council's pending draft fossil fuel amendments.

a. ~~The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and balances the special port, industrial and natural resource needs associated with the development of this marine resource. This subsection and WCC 23.100.21040.125 (Cherry Point Management Area) identifies policies and regulations, respectively, for water-dependent industrial activities that apply in addition to specific other elements of the SMPthis program as referenced herein.~~

b. ~~Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry Point management area as providing herring spawning habitat and other key habitat characteristics that warrant special consideration due to their importance to regional fisheries and other elements of the aquatic environment.~~

Policy 11JJ-1: Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require marine access for marine cargo transfer, ~~including oil and other materials. For this reason, w~~

a. Water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management area. ~~Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.~~

b. Existing legal fossil fuel refineries should be allowed to continue and maintain their operations with limited expansions subject to environmental review, greenhouse gas emission mitigation, and conformance with the Shoreline Master Program and other applicable land use designation.

c. It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers in operation or approved as of January 1, 1998, taking into account the need to:

- Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point herring stock and Southern Resident Orcas;
- Optimally implement the Shoreline Master Program policy regarding shorelines of statewide significance per WCC 23.40;
- Encourage the continued County use of best available science;

Comment [CES32]: Moved to the Shoreline Environment Designations, CPMA section, as they address the purpose of this environment designation.

- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing; and
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

~~e. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic lands within the Cherry Point management area. The development of such a plan could provide a forum and process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future amendments to this program as appropriate.~~

Policy 11JJ-2: Whatcom County should ensure that shoreline development applicants demonstrate conformance consistency with the State of Washington Department of Natural Resources' Cherry Point Aquatic Reserve Management Plan.

~~All development that is to be located within the Cherry Point Management Area, as defined identified in WCC 23.20.020(F) Chapter 23.110 WCC, shall be subject to the policies in this subsection and the regulations found in WCC 23.40.125 23.100.210. Development that is to be located within the Cherry Point Management Area this section, and shall not be subject to: the General Policies of this chapter; the Shoreline Use and Modification Policies of this chapter, except for those in the Cherry Point Management Area subsection; policies and the regulations found in WCC Chapter 23.930 and WCC Chapter 23.40.23.100.010 through 23.100.160 except WCC 23.40.125, nor Chapter 23.90 WCC, unless otherwise referenced in this subsection. The policies and regulations found in this subsection are applicable only within the geographic boundaries of the Cherry Point management area and do not apply elsewhere in the County. In the event that the provisions of this subsection conflict with other applicable referenced provisions of the SMP this program, the policies and regulations that are most protective of shoreline resources shall prevail.~~

Policy 11JJ-2: Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial facilities should be

Comment [P/C33]: P/C Motion to change.
Passes 7-0-1-1

Comment [P/C34]: P/C Motion to delete.
Passes 8-0-1. This policy makes no sense. Other than updating the references, staff has not changed it. It basically says that any development in the CPMA only has to comply with the policies in this section of Ch. 11 and the regulations of WCC 23.40.125, and specifically says such development doesn't have to comply with any other policies or regulations. But there are many other policies and regulations that should apply, such as ecological protection, cultural resources, vegetation management, moorage facilities, etc. Staff believes this policy ought to be deleted.

1 allowed in the Cherry Point management area. Industry within
2 the major port/industrial urban growth area, as designated in
3 the ~~County~~ Comprehensive Plan, which is not water-dependent
4 should locate away from shoreline jurisdiction.

5 | Policy 11JJ-3: Multiple Use Facilities. Facilities that allow for multiple use of
6 piers, cargo handling, storage, parking and other accessory
7 facilities are encouraged.

8 | Policy 11JJ-4: Public Access.

9 a. Where appropriate, industrial and port development within
10 the Cherry Point management area should provide public
11 beach and shoreline access in a manner that does not cause
12 interference with facility operations or present hazards to life
13 and property. This may be accomplished through individual
14 action or by joint, coordinated action with other developers
15 and landowners, for example, by setting aside a common
16 public access area.

17 b. Special emphasis should be given to providing public beach
18 and shoreline access for recreational opportunities including
19 but not limited to crabbing, small craft launching, surf
20 fishing, picnicking, clamming, and beach walking.

21 c. Public access within the Cherry Point management area
22 should be consistent with the Whatcom County Parks and
23 Recreation Open Space Plan.

24 | Policy 11JJ-5: Shoreline Ecological Functions and Processes. In recognition of
25 the diverse and vital ecological resources in the Cherry Point
26 management area, consideration of probable effects of all
27 development proposals on shoreline ecological functions and
28 processes should be assessed with the other long-term
29 statewide interests. New port development that requires dredge
30 and fill should not be permitted in the Cherry Point management
31 area due to potential adverse effects on ecological functions,
32 including fish and shellfish habitat and geohydraulic processes.

33 | Policy 11JJ-6: Aesthetics. All development should be designed to avoid or
34 minimize negative visual impacts on the scenic character of the
35 area and to ensure visual compatibility with adjacent
36 nonindustrial zoned properties.

37 | Policy 11JJ-7: Site Development. All development should be constructed and
38 operated in a manner that, while permitting water-dependent
39 uses, also protects shoreline resources, their ecological
40 functions and processes, and that incorporates the following:

41 a. Low impact development approaches to avoid or minimize
42 adverse impact to topography, vegetation, water quality, fish
43 and wildlife habitat, and other natural site conditions;

- b. Adequate temporary and permanent management measures to control erosion and sediment impacts during construction and operation; and
- c. Adequate stormwater management facilities.

~~23.100.110~~ Landfill and Excavation

~~A. Policies:~~

Policy 11KK-1: Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.

Policy 11KK-2: Landfill in water-bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with the SMP~~this program~~.

Policy 11KK-3: Fill should not be allowed where shore stabilization works would be required to maintain the materials placed.

Policy 11KK-4: Landfills and excavation should be located and developed so that water quality, hydrology~~ie.~~, and runoff patterns are not altered.

Policy 11KK-5: The predicted economic benefits of landfills and excavation should be weighed against long-term cumulative impacts on ecological processes and functions.

~~23.100.120~~ Mining

~~A. Policies:~~

Policy 11LL-1: Mining should not be located on shorelines where unavoidable adverse impacts on other users or resources together equal or outweigh the benefits from mining.

Policy 11LL-2: Mining should not interfere with public recreation on the shoreline.

Policy 11LL-3: Mining should be located and operated so as to provide long-term protection of water quality, fish and wildlife, and fish and wildlife habitat.

- 1 | [Policy 11LL-4:](#) Mining, particularly surface or strip mining, should provide for
2 | timely restoration of disturbed areas to a biologically productive,
3 | semi-natural, or other useful condition through a reclamation
4 | process consistent with regulations administered by the
5 | Department of Natural Resources and other applicable county
6 | standards.
- 7 | [Policy 11LL-5:](#) Mining of marine and lake shores or accretional shoreforms,
8 | such as point bars, that have a high value for recreation or as
9 | fish or wildlife habitat should generally not be permitted.
- 10 | [Policy 11LL-6:](#) Mining should only be permitted on accretion point and channel
11 | bars where appropriate studies and detailed operation plans
12 | demonstrate that:
13 | a. Fish habitat, upland habitat and water quality will not be
14 | significantly impacted; and
15 | b. The operation will not adversely affect geohydraulic
16 | processes, channel alignment, nor increase bank erosion or
17 | flood damages.
- 18 | [Policy 11LL-7:](#) Mining operations should be located, designed, and managed so
19 | that other appropriate uses are not subjected to substantial or
20 | unnecessary adverse impacts from noise, dust, or other effects
21 | of the operation. The operator may be required to implement
22 | measures such as buffers, limited hours, or other mitigating
23 | measures for the purpose of minimizing adverse proximity
24 | impacts.
- 25 | ~~23-100-130~~ **Moorage Structures —Docks, Piers and Mooring Buoys**
26 | ~~Moorage—including docks, piers and mooring buoys—~~ in shoreline areas are subject
27 | to the following policies. ~~Shared m~~Moorage structures serving with more than four
28 | ~~berths~~users and boat launching facilities are also subject to the policies in ~~Boating~~
29 | ~~facilities—Marinas and Launch Ramps.~~
- 30 | ~~A.—Policies:~~
- 31 | [Policy 11MM-1:](#) Moorage associated with a single-family residence is considered
32 | a water-dependent use; provided, that it is designed and used
33 | as a facility to access watercraft, and other moorage facilities
34 | are not available or feasible. Moorage for water-related and
35 | water-enjoyment uses or shared moorage for multifamily use
36 | should be allowed as part of a mixed use development or where
37 | it provides public access.
- 38 | [Policy 11MM-2:](#) New moorage, excluding docks accessory to single-family
39 | residences, should be permitted only when the applicant/
40 | proponent has demonstrated that a specific need exists to
41 | support the intended water-dependent or public access use.
- 42 | [Policy 11MM-3:](#) As an alternative to continued proliferation of individual private
43 | moorage, mooring buoys are preferred over docks or floats.

Shared moorage facilities are preferred over single-user moorage where feasible, especially where water use conflicts exist or are predictable. New subdivisions of more than two lots and new multifamily development of more than two dwelling units should provide shared moorage.

Policy 11MM-4:

Docks, piers and mooring buoys, including those accessory to single-family residences, should avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift, and critical saltwater habitat including kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sandlance); subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.

Comment [AP35]: Draft revision per Scoping Document, Item #8c, "Consider ways to improve protections for salmon and forage fish habitat,"

Policy 11MM-5:

Moorage should be spaced and oriented in a manner that minimizes hazards and obstructions to public navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming, and pleasure boating, as well as private riparian rights of adjacent land-owners.

Policy 11MM-6:

Moorage should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and heightsize of piers and docks should be no greater than that required for safety and practicality for the primary use.

Comment [AP36]: Simplify to "size" for consistency with updated approach to dock standards, which include an overall square footage requirement, rather than prescriptive dimensional standards.

Policy 11MM-7:

Pile supports are preferred over fills because piles do not displace water surface and intertidal or aquatic habitat and are removable and thus more flexible in terms of long-term use patterns. Floats may be less desirable than pile structures where aquatic habitat or littoral drift are significant.

Policy 11MM-8:

The use of buoys for small craft moorage is preferred over pile or float structures because of lesser long-term impact on shore features and users; moorage buoys should be placed as close to shore as possible to minimize obstruction to navigation.

Policy 11MM-9:

Shoreline resources and water quality should be protected from overuse by boaters living on vessels (live boards). Boaters living on vessels are restricted to established marinas with facilities to address waste handling and other sanitary services.

Policy 11MM-10:

Vessels should be restricted from extended mooring on waters of the state unless authorization is obtained from the DNR and impacts to navigation and public access are mitigated.

Policy 11MM-11:

Piers and docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.

Policy 11MM-12:

New pier and dock development should be designed so as not to interfere with lawful public access to or use of shorelines.

Developers of new piers and shared moorage should be encouraged to provide physical or visual public access to shorelines whenever safe and compatible with the primary use and shore features.

~~23.100.140~~ Recreation

~~A. Policies:~~

Policy 11NN-1: Shoreline recreational development should be given priority for shoreline location to the extent that the use facilitates the public's ability to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline. Where appropriate, such facilities should be dispersed along the shoreline in a manner that supports more frequent recreational access and aesthetic enjoyment of the shoreline for a substantial number of people.

Policy 11NN-2: Recreational developments should facilitate appropriate use of shoreline resources while conserving them. These resources include, but are not limited to: accretion shoreforms, wetlands, soils, ground-water, surface water, native plant and animal life, and shore processes.

~~3. Recreational development requiring extensive structures, utilities and roads and/or substantial modifications of topography or vegetation removal should not be located or expanded in areas where damage to persons, property, and/or shoreline functions and processes is likely to occur.~~

Comment [AP37]: Captured in policy #8 below.

Policy 11NN-3: Recreational developments and plans should provide the regional population a varied and balanced choice of recreation experiences in appropriate locations. Public agencies and private developers should coordinate their plans and activities to provide a wide variety of recreational opportunities without needlessly duplicating facilities.

Policy 11NN-4: Trail links between shoreline parks and public access points should be encouraged for walking, horseback or bicycle riding, and other non-motorized vehicle access where appropriate. The Whatcom County Comprehensive Park and Recreation Open Space Plan should be considered in design and approval of public trail systems.

Policy 11NN-5: Access to natural character recreational areas, including but not limited to beaches and fishing streams, should be a combination of linear shoreline trails or easements and small parking or access tracts to minimize user concentration on small portions of the shoreline.

Policy 11NN-6: Recreation facilities should incorporate public education regarding shoreline ecological functions and processes, the role

of human actions on the environment, and the importance of public involvement in shorelines management. Opportunities incorporating educational and interpretive information should be pursued in design and operation of recreation facilities and nature trails.

Policy 11NN-7:

Reasonable physical or visual public access to shorelines should be provided and integrated with recreational developments in accordance with WCC ~~23.90.080~~ 23.30.070 (Public Access).

Policy 11NN-8:

Recreation development should be located only where utility and road capability ~~is~~are adequate, or may be provided without significant damage to shore features commensurate with the number and concentration of anticipated users.

Policy 11NN-9:

Cooperative efforts among public and private persons toward the acquisition and/or development of suitable recreation sites or facilities should be explored to assure long-term availability of sufficient public sites to meet local recreation needs.

~~23.100.150~~ **Residential**

~~A.-Policies:~~

Policy 11OO-1:

Single-family residences are designated in Chapter 90.58 RCW as a priority use in those limited instances when authorization is given for alterations of the natural condition of shorelines of the state.

Policy 11OO-2:

New residential development is encouraged to cluster dwelling units together to reduce physical and visual impacts on shorelines and to reduce utility and road costs. Planned unit developments that include common open space and recreation facilities, or a variety of dwelling sizes and types, are encouraged at suitable locations as a preferable alternative to extensive single-lot subdivisions on shorelines. Planned unit developments (Chapter 20.85 WCC) may also include a limited number of neighborhood commercial business uses where consistent with the applicable zoning regulations.

Policy 11OO-3:

Allowable density of new residential development should comply with applicable Comprehensive Plan goals and policies, zoning restrictions, and shoreline area designation standards. The density ~~per acre~~ of development should be appropriate to local natural and cultural features.

Policy 11OO-4:

Structures or development for uses accessory to residential use should preserve shoreline open space, be visually and physically compatible with adjacent cultural and shoreline features, be reasonable in size and purpose, and result in no net loss of shoreline ecological functions and processes.

- 1 | Policy 1100-5: Buildings greater than 35 feet above average grade level that
2 | will obstruct the views of a substantial number of residences on
3 | areas adjoining such shorelines are limited by the SMAAet
4 | (RCW 90.58.320) to those cases where the SMPthis program
5 | does not prohibit such development and then only when
6 | overriding considerations of the public interest will be served.
7 | The SMPThis program provides opportunities for buildings
8 | greater than 35 feet in height in limited areas where consistent
9 | with development objectives and the goals and polices of this
10 | chapterprogram.
- 11 | Policy 1100-6: New residential development should be planned and built in
12 | accordance with the policies and regulations in
13 | WCC 23.90.030and to minimize the need for shoreline
14 | stabilization and flood hazard reduction measures.
- 15 | Policy 1100-7: Measures to conserve native vegetation along shorelines should
16 | be required for all residential development. Vegetation
17 | conservation may include avoidance or minimization of clearing
18 | or grading, restoration of areas of native vegetation, and/or
19 | control of invasive or nonnative vegetation.
- 20 | Policy 1100-8: Whenever possible, nonregulatory methods to protect, enhance,
21 | and restore shoreline ecological functions and other shoreline
22 | resources should be encouraged for residential development.
23 | Such methods may include resource management planning, low
24 | impact development techniques, voluntary protection and
25 | enhancement projects, education, or incentive programs.
- 26 | Policy 1100-9: New multiunit residential development, including subdivision of
27 | land for more than four parcels, should provide substantial
28 | shore space—recreational opportunities for development
29 | residents and the public, unless public access is infeasible due to
30 | incompatible uses, safety, impacts to shoreline ecology, or legal
31 | limitations. Developments of four or fewer units should provide
32 | private access to the shore for those living in the development
33 | (non-public).
- 34 | Policy 1100-10: Development should provide open space corridors between
35 | structures, and along site boundaries, so as to provide space for
36 | outdoor recreation, preserve views, and minimize use conflicts.
- 37 | Policy 1100-11: Recreation-oriented residential development in the shoreline
38 | should be located only where substantial recreation
39 | opportunities are provided on site, and where nearby property
40 | owners and other appropriate uses will not be adversely
41 | affected.

Comment [MD38]: Deleted for brevity as already required.

Comment [CES39]: Amended, as all shoreline development is supposed to provide access, though it need not be public for small developments.

42 | **23.100.160 Restoration and Enhancement**
43 | **A. Policies.**

- 1 | Policy 11PP-1: ~~The SMP~~This program recognizes the importance of restoration
2 | of shoreline ecological functions and processes and encourages
3 | cooperative restoration efforts and programs between local,
4 | state, and federal public agencies, tribes, nonprofit
5 | organizations, and landowners to address shorelines with
6 | impaired ecological functions and/or processes.
- 7 | Policy 11PP-2: Restoration actions should restore shoreline ecological functions
8 | and processes as well as shoreline features and should be
9 | targeted towards meeting the needs of sensitive and/or locally
10 | important plant, fish and wildlife species, ~~as well as~~ the
11 | biological recovery goals for early Chinook and bull trout
12 | populations, and other salmonid species and populations.
- 13 | Policy 11PP-3: Restoration should be integrated with other parallel natural
14 | resource management efforts such as the WRIA 1 Salmonid
15 | Recovery Plan and the WRIA 1 Watershed Management Plan.
- 16 | Policy 11PP-4: Priority should be given to restoration actions that:
17 | a. Create dynamic and sustainable ecosystems.
18 | b. Restore connectivity between stream/river channels,
19 | floodplains and hyporheic zones.
20 | c. Restore natural channel-forming geomorphologic processes.
21 | d. Mitigate peak flows and associated impacts caused by high
22 | stormwater runoff volume.
23 | e. Reduce sediment input to streams and rivers and associated
24 | impacts.
25 | f. Improve water quality.
26 | g. Restore native vegetation and natural hydrologic functions of
27 | degraded and former wetlands.
28 | h. Replant native vegetation in riparian areas to restore
29 | functions.
30 | i. Restore nearshore ecosystem processes, such as sediment
31 | transport and delivery and tidal currents that create and
32 | sustain habitat.
33 | j. Restore pocket estuaries that support salmon life histories,
34 | including feeding and growth, refuge, osmoregulation, and
35 | migration.
36 | k. Address contamination along industrial shoreline regions.

37 | ~~23-100-170~~ Shoreline Stabilization

38 | ~~Shore stabilization in shoreline areas shall be subject to the policies and regulations~~
39 | ~~of this section and Chapter 23.90 WCC.~~

40 | ~~A.-Policies-~~

- 1 | Policy 11QQ-1: Alternatives to structures for shore protection should be used
2 whenever possible. Such alternatives may include no action
3 (allow the shoreline to retreat naturally), increased building
4 setbacks, building relocation, drainage controls, and
5 bioengineering, including vegetative stabilization, and beach
6 enhancement~~nourishment~~.
- 7 | Policy 11QQ-2: Single-family residences occupied prior to January 1, 1992, and
8 their appurtenant structures should be protected against
9 damage or loss caused by shoreline erosion; provided, that
10 measures to protect single-family residences should be designed
11 to minimize harm to the shoreline environment. After that date,
12 all new single-family residences and their appurtenant
13 structures should be built in a manner so as to not need
14 protective measures.
- 15 | Policy 11QQ-3: New or expanded structural shore stabilization for new primary
16 structures should be avoided. Instead, structures should be
17 located and designed to avoid the need for future shoreline
18 stabilization where feasible. Land subdivisions should be
19 designed to assure that future development of the created lots
20 will not require structural shore stabilization for reasonable
21 development to occur.
- 22 | Policy 11QQ-3: New or expanded structural shore stabilization should only be
23 permitted where demonstrated to be necessary to protect an
24 existing primary structure that is in danger of loss or substantial
25 damage, and where mitigation of impacts would not cause a net
26 loss of shoreline ecological functions and processes.
- 27 | Policy 11QQ-4: New or expanded structural shore stabilization for enhancement,
28 restoration, or hazardous substance remediation projects should
29 only be allowed when nonstructural measures, vegetation
30 planting, or on-site drainage improvements would be insufficient
31 to achieve enhancement, restoration, or remediation objectives.
- 32 | Policy 11QQ-5: Shore stabilization on streams should be located and designed
33 to fit the physical character and hydraulic energy potential of a
34 specific shoreline reach, which may differ substantially from
35 adjacent reaches.
- 36 | Policy 11QQ-6: Shore stabilization should not be permitted to unnecessarily
37 interfere with public access to public shorelines, nor with other
38 appropriate shoreline uses including, but not limited to,
39 navigation, seafood harvest, or ~~private~~ recreation.
- 40 | Policy 11QQ-7: Provisions for multiple use, restoration, and/or public shore
41 access should be incorporated into the location, design, and
42 maintenance of shore stabilization for public or quasi-public
43 developments whenever safely compatible with the primary
44 purpose. Shore stabilization on publicly owned shorelines should

Comment [CES40]: Moved from Policy 11T-1 as
it contained 2 different concepts.

not be allowed to decrease long-term public use of the shoreline.

Policy 11QQ-8: Shore stabilization should be developed in a coordinated manner among affected property owners and public agencies for a whole drift sector (net shore-drift cell) or reach where feasible, particularly those that cross jurisdictional boundaries, to address ecological and geohydraulic processes, sediment conveyance and beach management issues. Where beach erosion threatens existing development, a comprehensive program for shoreline management should be established.

Policy 11QQ-9: In addition to conformance with the regulations in ~~this section~~the SMP, nonregulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for shore stabilization. Nonregulatory methods may include public facility and resource planning, technical assistance, education, voluntary enhancement and restoration projects, or other incentive programs.

Policy 11QQ-10: Shore stabilization should be located, designed, and maintained to protect and maintain shoreline ecological functions, ongoing shore processes, and the integrity of shore features. Ongoing stream, lake, or marine processes and the probable effects of proposed shore stabilization on other properties and shore features should be considered. Shore stabilization should not be developed for the purpose of filling shorelines.

Policy 11QQ-11: Failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological functions and processes should be restored using nonstructural methods or less harmful long-term stabilization measures.

Policy 11QQ-12: Structural shoreline stabilization measures should only be used when more natural, flexible, sustainable nonstructural methods such as vegetative stabilization, beach enhancement ~~nourishment~~, and bioengineering have been determined infeasible. Alternatives for shoreline stabilization should be based on the following hierarchy of preference:

- a. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
- b. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach enhancement~~nourishment~~, protective berms, or vegetative stabilization.
- c. Rigid works constructed of artificial materials such as riprap or concrete.

Materials used for construction of shoreline stabilization should be selected for long-term durability, ease of maintenance, compatibility with local shore features, including aesthetic values, and flexibility for future uses.

Policy 11QQ-13: Larger works such as jetties, breakwaters, weirs, or groin systems should be permitted only for water-dependent uses when the benefits to the region outweigh resource losses from such works, and only where mitigated to provide no net loss of shoreline ecological functions and processes.

Policy 11QQ-14: Alternative structures, including floating, portable or submerged breakwater structures, or several smaller discontinuous structures, should be considered where physical conditions make such alternatives with less impact feasible.

~~23.100.100~~ Signs

~~A. Policies:~~

Policy 11RR-1: Whatcom County recognizes the constitutional right for property owners to communicate using signs on their property. These policies are intended to ensure that signage within shoreline areas is consistent with the purpose and intent of the SMAAet and the SMPthis program by addressing impacts to ecological functions, public safety, and visual aesthetics.

Policy 11RR-2: Signs should be located, designed, and maintained to be visually compatible with local shoreline scenery as seen from both land and water, especially on shorelines of statewide significance.

Policy 11RR-3: Sign location and design should not significantly impair shoreline views.

Policy 11RR-4: As a preferable alternative to continued proliferation of single-purpose signs, communities, districts, and/or multiuse or multitenant commercial developments are encouraged to erect single, common use gateway signs to identify and give directions to local premises and public facilities.

Policy 11RR-5: Signs of a commercial or industrial nature should be limited to those areas or premises to which the sign messages refer.

Policy 11RR-6: Billboards and other off-premises signs are not water-dependent, they reduce public enjoyment of or access to shorelines, and they often lower values of nearby properties. ~~Such signs should not be located on shorelines e~~ Except for approved community gateway or directional signs, such signs should not be located on shorelines.

Policy 11RR-7: Signs near scenic vistas and viewpoints should be restricted in number, location, and height so that enjoyment of these limited and scarce areas is not impaired.

1		<u>Policy 11 RR-8:</u>	Freestanding signs should be located to avoid blocking scenic
2			views and be located on the landward side of public
3			transportation routes, which generally parallel the shoreline.
4		<u>Policy 11 RR-9:</u>	To minimize negative visual impacts and obstructions to
5			shoreline access and use, low profile, on-premises wall signs are
6			strongly preferred over freestanding signs or off-premises wall
7			signs.
8		<u>Policy 11 RR-10:</u>	Signs should be designed mainly to identify the premises and
9			nature of enterprise without unduly distracting uninterested
10			passersby. Moving or flashing signs should be prohibited on
11			shorelines.
12		23.100.190 Transportation	
13		A. Policies:	
14		<u>Policy 11 SS-1:</u>	New public or private transportation facilities should be located
15			inland from the land/water interface, preferably out of the
16			shoreline, unless:
17			a. Perpendicular water crossings are required for access to
18			authorized uses consistent with the SMP <u>this program</u> ; or
19			b. Facilities are primarily oriented to pedestrian and non-
20			motorized use and provide an opportunity for a substantial
21			number of people to enjoy shoreline areas, and are
22			consistent with <u>the</u> policies and regulations for ecological
23			protection in <u>the General Policies section of this chapter and</u>
24			<u>in WCC 23.30.010 (Ecological Protection)</u> 23.90.030 ,
25			<u>respectively</u> .
26		<u>Policy 11 SS-2:</u>	Transportation facilities should be located and designed to avoid
27			public recreation and public access areas and significant natural,
28			historic, archaeological, or cultural sites.
29		<u>Policy 11 SS-3:</u>	Parking is not a preferred use in shorelines and should only be
30			allowed to support authorized uses where no feasible
31			alternatives exist.
32		<u>Policy 11 SS-4:</u>	New or expanded public transportation facility route selection
33			and development should be coordinated with related local and
34			state government land use and circulation planning.
35		<u>Policy 11 SS-5:</u>	Transportation system route planning, acquisition, and design in
36			the shoreline should provide space wherever possible for
37			compatible multiple uses such as utility lines, pedestrian shore
38			access or viewpoints, or recreational trails.
39		<u>Policy 11 SS-6:</u>	Transportation system plans and transportation projects within
40			shorelines should provide safe trail space for non-motorized
41			traffic such as pedestrians, bicyclists, or equestrians. Space for
42			such uses should be required along roads on shorelines, where

appropriate, and should be considered when rights-of-way are being vacated or abandoned.

Policy 11SS-7:

Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails, and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.

Policy 11SS-8:

Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.

~~23.100.200~~ Utilities

~~A. Policies:~~

Policy 11TT-1:

New public or private utilities should be located inland from the land/water interface, preferably out of the shoreline jurisdiction, unless:

- a. Perpendicular water crossings are unavoidable; or
- b. Utilities are required for authorized shoreline uses consistent with ~~the SMP~~ this program.

Policy 11TT-2:

Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological, or cultural resources.

Policy 11TT-3:

Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in 23.30.010 (Ecological Protection) ~~WCC 23.90.030~~.

Policy 11TT-4:

All utility development should be consistent ~~with~~—and coordinated with all local government and state planning, including comprehensive plans and single purpose plans to meet the needs of future populations in areas planned to accommodate growth. Site planning and rights-of-way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of-way acquisition should also be coordinated with transportation and recreation planning.

Policy 11TT-5:

Utilities should be located in existing rights-of-way and corridors whenever possible.

- 1 | Policy 11TT-6: Utilities serving new development should be located
2 | underground, wherever possible.
- 3 | Policy 11TT-7: Development of pipelines and cables on aquatic lands and
4 | tidelands, particularly those running roughly parallel to the
5 | shoreline, and development of facilities that may require
6 | periodic maintenance ~~which~~that would disrupt shoreline
7 | ecological functions should be discouraged except where no
8 | other feasible alternative exists. When permitted, provisions
9 | shall assure that the facilities do not result in a net loss of
10 | shoreline ecological functions or significant impacts to other
11 | shoreline resources and values.
- 12 | Policy 11TT-8: Given the different scales of regional, local, and accessory
13 | utilities and their potential impacts, the County may establish
14 | different regulations regarding each.

Comment [CES41]: New policy to allow for different regulations regarding the different types of utilities in support of Scope issue #7b, "Add definitions for regional, local, and accessory utilities."

Proposed Amendment to Chapter 8 of the Comprehensive Plan

Marine Resource Lands Working Group's Recommendation

Note: This text is shown as proposed to accomplish Scoping Report issue #21a: Consider adding a Marine Resource Lands policy section as developed by the Marine Resources Committee.

Chapter Eight Resource Lands

Marine Resource Lands

Introduction

Purpose

Marine resource lands, for the purpose of this plan, are defined as those marine areas waterward of the ordinary high water mark, together with their underlying lands and their water column, within the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23). Marine resource lands have the physical conditions and habitat required to generate and maintain fisheries of all types, including the commercial and recreational harvest of finfish, shellfish, algae, and other invertebrates including but not limited to mollusks, crab, and shrimp, etc. This section is intended to guide Whatcom County in the conservation of functioning marine resource lands of long-term commercial, ecological, cultural, and recreational significance, and to ensure that all water-dependent, water-related, and water-enjoyment uses requiring use or access to marine resource lands thrive in the years to come.

GMA Requirements

Goal 8 of the GMA (RCW 36.70A.020) guides the County to “**Maintain and enhance natural resource based industries, including productive timber, agricultural, and fisheries industries.**” While the GMA does not specifically require the designation of marine resource lands that support aquatic-based uses and industries, functioning marine resource lands are so intrinsically necessary for the creation and sustainability of historical fish and wildlife production that Whatcom County wishes to acknowledge them here.

Process

Per County Council direction, staff convened a working group comprised of members of the Marine Resource Committee, the Shellfish Protection Advisory Committee, and other local marine land experts. This working group developed a draft of this section of the Comprehensive Plan, as well as drafts of the goals and policies contained herein. The draft was then presented to the full membership of the Marine Resource Committee and Shellfish Protection Advisory Committees for review and recommendation to the County Planning Commission and Council.

Background Summary

The marine resource lands of Whatcom County have historically been one of the most important natural resources in the region. For thousands of years the shores of Whatcom County provided an important shellfish resource, sustaining our local tribes. More recently the tidelands of Drayton Harbor supported one of the earlier commercial oyster-farming businesses in the Salish Sea. The shore and nearshore lands of the County provided spawning, rearing, and forage areas for a diverse array of finfish and shellfish species which together formed an incredible food web for ancestral tribes and early commercial fisheries. The County's marine resource lands are located along the coastal areas bordering the Salish Sea fed by the rivers, streams, and lakes that drain the upland areas of western Whatcom County. Marine resource lands include more than 130 miles of marine shoreline.

Marine resource lands in the area of Cherry Point are designated in the Shoreline Management Program as the Cherry Point Management Area to support adjacent Heavy Impact Industrial (HII) zoned industrial uses that require deep water access, such as the two existing refineries and an aluminum smelter. The harbor area and waterways in Bellingham Bay are designated for preservation of commerce and navigation along the Bellingham shoreline. The tidelands of Drayton Harbor are designated to support a small commercial wharf, marinas, residential shoreline development, shellfish production, and natural areas.

The majority of marine resource lands in Whatcom County are owned by the State of Washington (managed by Department of Natural Resources [DNR]), the Lummi Nation, and the Port of Bellingham (via a Port Management Agreement with DNR). These include many of the tidelands and subtidal lands in the County. Marine resource landowners also include some private entities that were sold tidelands prior to 1971, and who manage their marine resource lands for a variety of uses, including recreational, commercial, and industrial.

Historically, marine resource lands have been managed for natural and farmed shellfish production and harvest, fishing, transportation, utility corridors (oil/gas/natural gas pipelines; sewer and stormwater outfall pipes; communication lines (phone/fiber optic); power (electric) lines, and commercial, recreational and subsistence/cultural fishing and food gathering. Historic uses also included commercial and industrial uses, marinas (Bellingham, Blaine), municipal garbage dumps, public parks, etc.

With a growing population, there is increasing interest in improving public access to marine resource lands through the addition of boat ramps and access points for motor, wind, and human-powered craft. Over the last 20 years the desire to harvest more diverse aquatic resources, particularly from tidelands, has driven a number of significant efforts to improve water quality as well as innovative culturing techniques such as intertidal geoduck seeding, nori farming, etc.

Conservation efforts have resulted in protection of several areas including the Cherry Point Aquatic Reserve and two areas withdrawn from leasing in Bellingham Bay. These areas are valuable due to their high productivity of aquatic life that contributes to the economy and greater ecosystem of Whatcom County. Twenty years of effort and millions of dollars in public investment have kept Drayton Harbor

85 a viable commercial and recreational shellfish growing area for future generations
86 to enjoy.

87 Marine resource lands provide a huge economic benefit to the County, and the
88 health of our stream, river, and estuarine environments and marine resource lands
89 are the foundation of a critical tribal and non-tribal finfish and shellfish industry. In
90 2006, non-tribal commercial fish landings from Washington fisheries totaled nearly
91 109.4 million pounds, generating \$65.1-million in ex-vessel value (i.e., the price
92 received by commercial fishers for fish). Whatcom County was the State's second-
93 largest commercial port area that year (after Grays Harbor County), with an ex-
94 vessel value of commercial fish landings of more than \$13.5-million, accounting for
95 nearly 21% of the total value of landings from Washington fisheries. Additionally,
96 the North Puget Sound Region—which the Washington Department of Fish and
97 Wildlife defines as including San Juan, Skagit, Snohomish and Whatcom counties—
98 is also the most popular location for recreational shellfishing in the State. In 2006,
99 the combined recreational shellfish catch in those four counties included more than
100 3.3-million pounds of Dungeness crab, 23,520 pounds of shrimp, 93,038 pounds of
101 clams, and more than 19,000 individual oysters.¹ In 2016, the marine trades
102 provided 6,033 jobs, or 7% of the County's workforce.²

103 Whatcom County marine shorelines continue to provide income to over 250 Lummi
104 Nation registered shellfish harvesters. Many other Lummi and Nooksack tribal
105 members depend on finfish and crab harvest for a substantial part of their yearly
106 family income. The Lummi Nation shellfish enterprise is highly productive and
107 provides clam, oyster, and geoduck seed to a large part of the northwest shellfish
108 industry. To the extent that the environmental health of these lands impacts the
109 ability of Tribal Nations to practice fish and wildlife harvests and conduct ceremonial
110 activities for their cultural, economic, and spiritual welfare, protection of these
111 lands is a Treaty trust resource supporting Treaty reserved rights to take fish.

112 Other direct and indirect benefits to the County are even more substantial given the
113 multiplier effect from marina-related boat works, electronics, fuel and supplies,
114 charter and whale watching businesses, the Alaska Ferry service, sporting goods,
115 kayaking, rowing, sailing, wind surfing, power boating, and all the sales, repair,
116 maintenance, and provisioning that goes with these type of activities. Whatcom
117 County's marine resource areas are not only an international destination for water-
118 dependent, water-related, and water-enjoyment activities, such as bird and wildlife
119 watching, sailing and cruising, fishing and gathering, but they are also a gateway to
120 the San Juan Islands, Gulf Islands, the greater Salish Sea environs, and
121 international waters. Whatcom County's marine resource lands are a renewable and
122 sustainable economic driver that will serve this region well into the future.

¹ Whatcom County, March 2015. *Whatcom County Comprehensive Economic Development Strategy*, prepared by the Whatcom Council of Governments.

² Center of Economic and Business Research, Western Washington University, July 2016. *Whatcom County Marine Trades Impacts*.

Issues, Goals, and Policies

The following goals and policies apply to marine resource lands and address the issues of conserving productive aquatic land and meeting the goals of the Growth Management Act.

Marine Resource Land Base

Tidelands, marine waters, major lakes, and navigable rivers were owned by the State of Washington at the time of statehood unless reserved for other uses such as federal facilities or Indian reservations. Between 1889 and 1971, the State sold many of its tidelands to railroads, timber companies, and shellfish growers as a way to finance the State. As a result, the State owns only about 30% of the tidelands. The bulk of tidelands and many shoreland areas are owned or managed by ports, industries, tribes, and private property owners. The State retains ownership of most all of the subtidal lands which were not sold.

Since their adoption, the marine resource land base in Washington State and in Whatcom County has largely been protected by the Washington State Shoreline Management Act, as well as Whatcom County's Shoreline Management Program (SMP), Critical Areas Ordinance, and other land use regulations such as stormwater, land disturbance, zoning, and other regulations.

Historically, shoreline modification, including filling, hardening, and diking of many natural shorelines has resulted in a significant reduction in acreage of functioning marine resource lands in many areas of the County. These modifications came as a result of transportation improvements (roads, railroads, barge landings, and ferry terminals), utilities (electrical, communications, sewer, stormwater, etc.), hydropower, water-dependent uses (marinas, fish processing, ship yards), non-water dependent uses (large industrial facilities), flood control efforts, residential development (including bulkheading, armoring,³ and docks), and parks.

The Washington State Legislature passed the State Shoreline Management Act (SMA) in June 1971. Under the SMA, each county and city is required to adopt and administer a local shoreline management plan to carry out the provisions of the Act. The Whatcom County Shoreline Management Program (SMP) is the document that implements the goals and policies of the SMA at the local level. The SMP was originally adopted by the County Council in May 1976 in accordance with the SMA and the shoreline guidelines issued by the Washington Department of Ecology. The SMP is implemented in coordination with other chapters of the Comprehensive Plan and the Whatcom County Code to protect and manage shorelines throughout the county. It is important to note that Whatcom County and Ecology share joint authority and responsibility for the administration and enforcement of the SMP. In addition, numerous other local, state and federal regulations, permits, and approvals apply to development or use in, on or above the County's marine resource lands. Some of the most common permits and approvals include:

³ Since adoption of the SMP, shoreline armoring, filling, and bulkheading is only allowed for the purpose of protecting existing structures.

<u>Agency</u>	<u>Permit(s)</u>
<u>Whatcom County</u>	<ul style="list-style-type: none"> • <u>Shoreline statement of exemption</u> • <u>Substantial development permit</u> • <u>Shoreline conditional use permit</u> • <u>Shoreline variance</u> • <u>State Environmental Policy Act (SEPA) determination</u>
<u>Washington Department of Ecology</u>	<ul style="list-style-type: none"> • <u>Clean Water Act Section 401 Water Quality Certification</u> • <u>Coastal Zone Management Consistency Determination</u>
<u>Washington Department of Fish and Wildlife</u>	<ul style="list-style-type: none"> • <u>Hydraulic project approval (HPA)</u>
<u>Washington Department of Natural Resources</u>	<ul style="list-style-type: none"> • <u>Aquatic use authorization</u> • <u>Aquatic lands lease agreements</u>
<u>U.S. Army Corps of Engineers</u>	<ul style="list-style-type: none"> • <u>Clean Water Act Section 404 Permit</u> • <u>Rivers and Harbors Act Section 10 Permit</u>

Goal 8T: Conserve and enhance Whatcom County's marine land base for the long-term and sustainable use and operation of water-dependent, water-related and water-enjoyment activities.

Policy 8T-1: Coordinate with public agencies, tribal governments, landowners, and private organizations to protect and maintain an appropriate, productive, and sustainable marine resource land base adequate to support marine-dependent commercial, industrial, recreational, and cultural needs.

Aquaculture, Fishing, and other Marine Resource Lands Activities

Goal 8U: Support measures to increase the viability and sustainability of Whatcom County's aquatic biodiversity and production.

Policy 8U-1: Help improve the efficiency, and effectiveness, and flexibility of environmental regulations affecting marine resource lands in order to support environmental protection and improve predictability.

Policy 8U-2: Consider Developing a range of non-regulatory programs, options, and incentives that owners of marine resource lands can employ to meet or exceed County environmental goals.

Policy 8U-3: Support the efforts of people in Whatcom County to operate in a long-term, sustainable manner as part of a stable, broad-based economy.

Policy 8U-4: Work cooperatively with the Washington State Departments of Natural Resources, Ecology, and Fish and Wildlife to protect productive and appropriate use of State marine resource lands within Whatcom County.

Comment [P/C1]: P/C moved to amend; passed 8-0-1

191 Policy 8U-5 Continue cooperation and funding for a comprehensive Pollution
192 Identification and Correction (PIC) program as needed to reduce
193 bacterial pollution to levels that meet National Shellfish
194 Sanitation Program Growing waters criteria to allow reopening of
195 closed shellfish beds, and to maintain the operation of those
196 beds in a commercially viable manner.

197 **Reducing Land Use Impacts**

198 Different land owners have different goals for their property and employ different
199 practices when using it, whether it be for their business, home, recreation, or
200 personal enjoyment. But oft times, the practices one property owner employs can
201 have detrimental effects on another property owner's use or enjoyment of their
202 property, or the public when using public lands, which can lead to conflict amongst
203 users. One of the most cited is how poorly managed agriculture or failing septic
204 systems can cause bacterial pollution of rivers and streams, causing closure of
205 important shellfish production areas. Other adverse upstream inputs include, but
206 are not limited to, excess nutrients, heavy metals, and aromatic hydrocarbons. But
207 there have been other such actions as well, such as piers placed in fish habitat, use
208 of pesticides in shellfish farming, loading/unloading practices, etc. However, many
209 such users are employing new practices and technologies to alleviate such impacts,
210 yet the public many not be aware. Improved communication and education between
211 these groups would be beneficial for each to understand what the other is doing,
212 how their actions affect one another, and how they plan to avoid such impacts.

Comment [P/C2]: P/C moved to delete. Passed
8-0

213 **Goal 8V:** **Aim to reduce land use conflicts between Whatcom**
214 **County's Marine Resource Lands operations and upland**
215 **property owners.**

216 Policy 8V-1: Support improved communication and understanding between
217 aquatic land landowners and the public through such
218 mechanisms as community forums and educational programs.

219 Policy 8V-2: Work cooperatively with local, State, Federal and Tribal
220 agencies, adjacent upland property owners, and the general
221 public, as applicable, to address community concerns and land
222 use conflicts that may affect the productivity of marine resource
223 lands.

224 Policy 8V-3: Continue to implement land use, building, and transportation
225 planning policies, regulations, and practices that help minimize
226 adverse water quality inputs into waterbodies.

Comment [P/C3]: P/C moved to amend. Passes
8-0-1

227 Policy 8V-4 Support and participate in education efforts and programs that
228 emphasize the importance of and promote the benefits of
229 marine resource lands.

230 **Fish and Wildlife**

231 Land use practices on marine resource lands can impact tidelands and other shallow
232 and deepwater habitats that are important to a wide variety fish and wildlife.

233 Goal 8W: Ensure that operations associated with marine resource
234 lands strive to avoid adverse impacts to the survival and
235 habitat of aquatic species, particularly to threatened and
236 endangered fish and wildlife species and shellfish
237 resources.

238 Administration and Regulation

239

240 Goal 8X: Recognize the Shoreline Management Program (WCC Title
241 23) and Zoning Code (WCC Title 20) as the primary
242 regulations used to implement this section.

243 Policy 8X-1: Pursuant to RCW 36.70A.480 and Comprehensive Plan Policy
244 10B-8, the Whatcom County Shoreline Management Program is
245 an element of this Comprehensive Plan, and the goals and
246 policies therein are recognized as additional goals and policies of
247 this section.

248 Policy 8X-2: Those coastal aquatic lands waterward of the ordinary high
249 water mark are hereby designated as Marine Resource Lands, as
250 shown on Map 8-5.

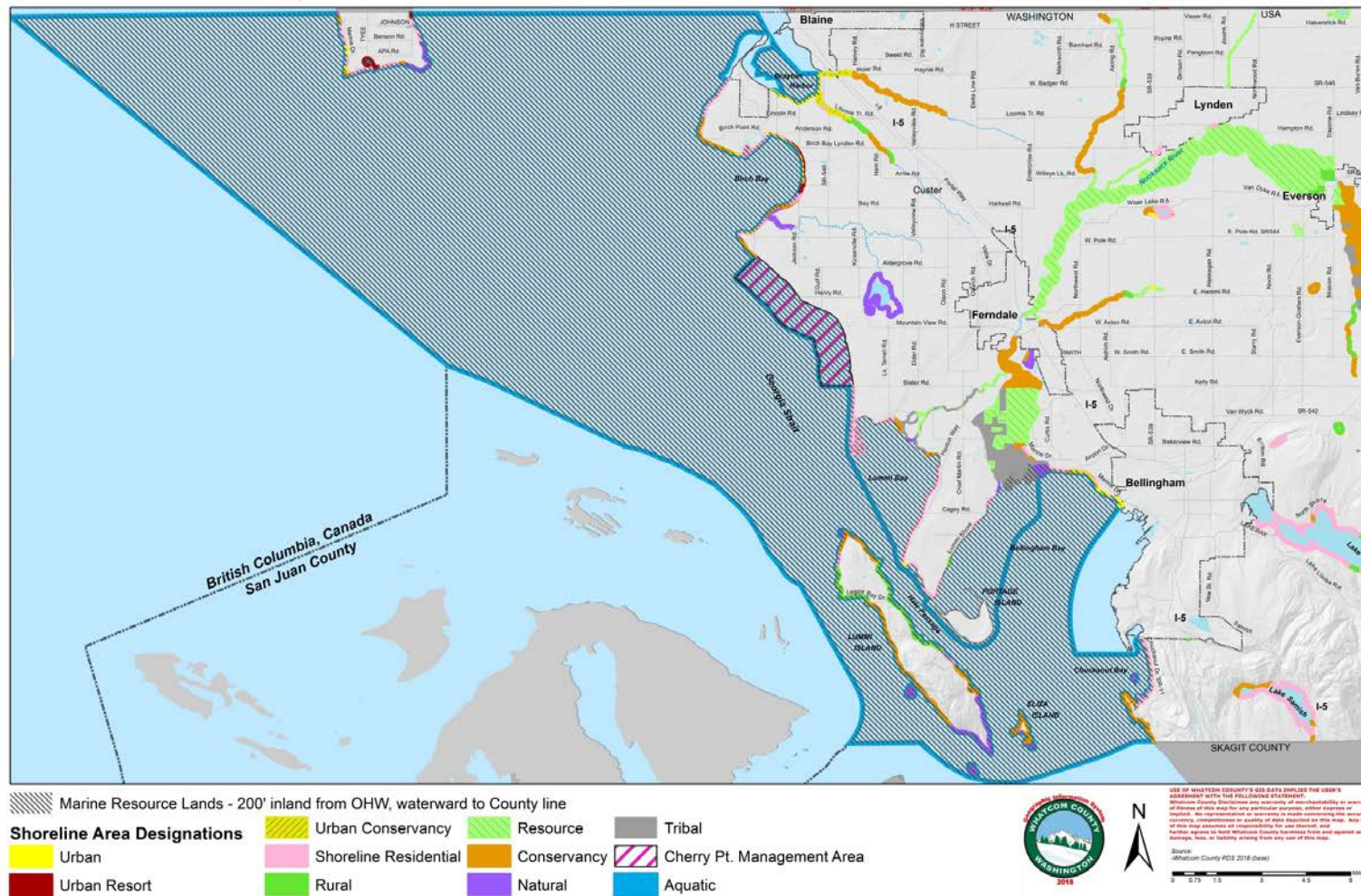
251 Policy 8X-3 Regulate land use on Marine Resource Lands within the County
252 through the Shoreline Management Program, Zoning Code, and
253 other appropriate means.

254 Policy 8X-4 When updating the Shoreline Management Program, consider
255 new or amended policies to further these goals.

256

257 ...

Map 8-5
Designation of Marine Resource Lands



SMP Periodic Update 2020

Exhibit H: Written Public Comments on the Draft Amendments received by staff (updated April 28, 2021)

(Note: Some section numbers in the draft documents have been revised after some of the earlier comments were received and may not be accurate anymore.)

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
BP01	Jeff Chalfant, BP	9/18/20	B	C/P Ch. 11	Removal of "policies" from code and moving it to the Comprehensive Plan – County staff confirmed that all language was transferred to Comp Plan without edits (except for grammatical corrections).	Correct.
BP02	Jeff Chalfant, BP	9/18/20	D	23.20.050(B)(10)	Adding Cherry Point Management Area as a new "Shoreline Environment" – County staff confirmed that this is a simplification step and that no changes to permitted uses or development were made.	Correct. While the CPMA was treated like an environment designation, it just wasn't called out as such.
BP03	Jeff Chalfant, BP	9/18/20	D	23.30.030(D), 23.40.125(E)(1)(e), 23.40.150(C)(2), 23.40.210(B)(8)	The use of galvanized steel appears to be a newly prohibited material for use in or above shoreline. While we understand the limitation for the use of such materials in water there are no feasible alternatives for use above the water on our pier for equipment and structural components. It is our understanding based on our discussion that our comment is consistent with feedback received from the Parks Department and was not the intent and that an adjustment to the language will be made to allow for use above the water.	We have removed the (newly added) prohibition on galvanized steel, as we could find no mention of it in state law or guidance.
BP04	Jeff Chalfant, BP	9/18/20	D	23.30.040(I) & 23.40.020(F)(4)	Fences and signs have specific limitations in terms of size, height, and setback that cannot be accommodated due to requirements of the Coast Guard and other Federal agencies associate with industrial security requirements. We recommend the addition of a provision that will allow for the construction of security fencing and signage required by such regulations including Chemical Facility Anti-Terrorism Standards (CFATS) codified a 6 CFR, Part 27.	Based on this comment we have added to 23.40.020(F)(9) (Shoreline Bulk Provisions) "provided, that the Director may exempt security fencing from this requirement as required by federal or state regulations" to acknowledge that in certain circumstances higher fences may be allowed. Additionally, we have added "Signage required by state or federal security requirements" as an exemption to 20.40.020(F)(10)(b)).
BP05	Jeff Chalfant, BP	9/18/20	D	23.40.010(B)	Table 1 – Shoreline uses for Cherry Point Environment Area Fill and Excavation activities are shown as a prohibited use.	The existing regulation in 23.40.125(E)(3) has always said that fill is prohibited in

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					However, there are development activities that are permitted within the Cherry Point Environment that require the use of fill and excavation. County staff acknowledged this discrepancy as unintentional and will amend the language to ensure that fill and grading activities are allowed as a part of approved use and development.	the CPMA, though provides an exception of "the minimum necessary to access piers or other structures that provide access to the water." We believe this covers your concern. We have, however, clarified that "fill or excavation waterward of the OHWM requires a shoreline conditional use permit," which is a requirement of the SMA. In the Use Table 1 we have also changed it to be "X/C*," meaning that fill and excavation is prohibited except as otherwise permitted by the specific regulations (i.e., 23.40.125(E)(3))
BP06	Jeff Chalfant, BP	9/18/20	D	23.40.010	<i>Table 1 – Shoreline uses for Cherry Point Environment Area, Shoreline Stabilization</i> Revetments are shown as a prohibited use; however, bulkheads are allowed as a conditional use. The definition of bulkheads indicates that revetments are sometimes bulkheads. We understand that this is an unintended circular reference and that the County will amend the definition of bulkhead to remove the reference to revetments and replace with a more appropriate reference to the use of rip rap.	We have struck "such as a revetment or seawall" from the definition of bulkhead (20.60.020(16)) to address this circular inconsistency.
BP07	Jeff Chalfant, BP	9/18/20	D	23.40.010	<i>Table 1 – Shoreline uses for Cherry Point Environment Area, Industrial Moorage</i> The heading of the table indicates industrial moorage includes piers, docks and buoys. The definition of pier indicates that it includes other structures not normally considered to fit Ecology's definition of a pier such as mooring buoys. County staff clarified that the intent was not to prohibit the installation of buoys and that the definition for piers will be amended to be consistent with the Ecology definition and that it will be clarified that buoys are permitted in the Cherry Point Management Area.	We have deleted the term "recreational" in reference to mooring buoys in Table 1 and added a P (permitted) in the Cherry Point Environment. Additionally, we have modified Table 1 to indicate that mooring buoys are not included as general public, commercial, or industrial moorage for the purposes of the table; the mooring buoys row does.
DOEWG01	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.630	We acknowledge and support the County's proposed adoption of buffer tables from Ecology's Wetland Guidance. This approach provides the most flexibility by basing the widths of buff-	Comment noted.

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					ers on three factors: the wetland category, the intensity of the impacts, and the functions or special characteristics of the wetland.	
DOEWG02	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.225(8)	<p>We are particularly concerned about the provision allowing alteration of “functionally disconnected”...wetlands. This term appears to be undefined in the CAO. In addition, there are no acreage thresholds for this provision. Nor is there apparent consideration that wetlands that are unconnected to larger undisturbed landscapes can still provide important functions, specifically water quality and hydrologic storage. Additionally, some Category III wetlands may provide high habitat functions, which warrant larger buffers, not weaker protections.</p> <p>We also note that this change does not appear to be supported by any findings in the Whatcom County Best Available Review: Addendum to the 2005 BAS Report. Nor does this approach align with the strategies detailed in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study: https://fortress.wa.gov/ecy/publications/documents/0706030.pdf.</p> <p>We offer the following questions in an attempt to better understand the County's rationale for this approach:</p> <ul style="list-style-type: none"> • What scientific basis is there for reducing protections on these wetlands? • Has any analysis been conducted to indicate these wetlands are not important resources in the UGA? • Has any analysis been conducted of how many wetlands would be affected and what the functions and values of those wetlands are? • Would mitigation be required to occur within the UGAs? If not, what are the cumulative effects of large-scale loss of wetlands in the UGAs in the County? <p>In the absence of this information it is unclear how implementation of this provision could achieve No Net Loss of ecological function. In addition, the concept of functional isolation cannot be applied in SMA jurisdiction since all wetlands within that area are considered associated wetlands, by definition.</p>	Deleted “functionally disconnected” and amended as per conversation with DOE staff.

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					We recommend the County either conduct a more refined analysis and resulting policy, informed by existing special studies, to develop a scientifically-based approach, or delete subsection (8) from the draft.	
DOEWG03	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.640(C)(1)	<p><i>Buffer width reduction</i></p> <p>We are concerned about the apparently redundant and potentially additive buffer reduction that is allowed by this section. We cannot determine whether subsection (C)(1) can be applied in addition to the Ecology-recommended buffer reduction strategy listed in subsection (C)(2).</p> <p>If they can both be applied to a single project then they would result in buffers that are well below what science says is necessary to protect wetland functions. For example, in the current draft, a 150-foot buffer for a Category 3 wetland that has moderate habitat function adjacent to high intensity land use. Allowing this buffer to be reduced to 75 feet through additive reductions in (1) and (2) will not provide a buffer adequate to protect the wetlands' habitat functions.</p> <p>We recommend that the language, with respect to these two reduction strategies, be clarified such that they cannot be applied to the same proposal.</p>	Amended as per conversation with DOE staff to clarify that buffer reductions are not additive.
DOEWG04	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.640(C)(2)	May allow High Impact uses to be reduced to Moderate buffer width if Ecology's minimizing measures are implemented. Per Ecology's CAO guidance, in addition to the minimizing measures, there must be a relatively intact corridor between the wetland and other wetland/priority habitat. Additionally, as worded in the draft regs, this provision does not imply how the applicant chooses which measures to incorporate into the proposal or how many. The wording should be modified to encourage all reasonable/applicable measures. As currently worded, an applicant may argue for the reduction based on minimal measures.	Amended as per conversation with DOE staff to meet DOE guidance.
DOEWG05	Nate Brown, DOE Wetlands Group	9/21/20	F	16.16.640(C)(3)	If a buffer width is reduced, then any remaining "substantial" (needs a definition) portion of the buffer that is degraded shall be replanted with native vegetation. It is unclear how this relates to buffer mitigation ratios described in 16.16.680(H). The addi-	Deleted "substantial" and amended as per conversation with DOE staff.

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					tion of a statement clarifying the applicability of buffer mitigation ratios is needed.	
FSJ01	Level Pratt, Friends of the San Juans	9/16/20	F	16.16.710(C)(2)	<p>In the Fish and Wildlife section of the CAO of the SMP (Ch. 16.16), the County mentions ESA-listed species managed by U.S. Fish and Wildlife, but makes no mention of NOAA Fisheries ESA involvement or authority. Further, the County fails to explicitly acknowledge that the marine nearshore is NOAA Fisheries designated critical habitat for Puget Sound Chinook salmon (Figure attached). Research has clearly demonstrated the importance of the marine and estuarine nearshore to the sustainability and recovery of Puget Sound Chinook.</p> <p>To more fully support Chinook and Southern Resident orca recovery, as well as meeting Goals 10A and 10K of the Shoreline Master Program (see also WAC 173-26-221(2)(C)(iii)), Friends of the San Juans recommends the following revision (new text underlined) in WCC §23.05.065(A):</p> <p>16.16.710(C)(2) Areas in which federally listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the U.S. Fish and Wildlife's Threatened and Endangered Species List or Critical Habitat List (http://ecos.fws.gov/ecp/) or the <u>National Marine Fisheries Service (NMFS)</u> (https://www.fisheries.noaa.gov/species-directory/threatened-endangered), as amended. <u>Note: As of September 2005, NMFS designated the estuarine and marine nearshore environment (extreme high water to a depth of approximately 30 meters mean lower low water, as Puget Sound Chinook Critical Habitat (see Federal Register / Vol. 70, No. 170, 9/2/05) that includes most of the Whatcom County estuarine and marine coastline.</u></p>	We have amended the section (though in practice we've always looked at both lists).
FSJ02	Level Pratt, Friends of the San Juans	9/16/20	F	16.16.225(B)(8)	We also have concerns about a provision in the CAO that is proposed to be incorporated into the SMP that allows for "Alteration of functionally disconnected Type III or IV wetlands when associated with an approved commercial development within an Urban Growth Area;" (WCC §16.16.225.B.8). There is no explanation or definition of a "functionally disconnected" wetland. It is	Based on this and discussions with DOE staff, we have deleted "functionally disconnected" from this provision. Additionally, based on communication with DOE staff, we have added that the wetlands have to have a habitat score of less than

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					our understanding that they do not exist in the shoreline jurisdiction. The fact they're in the shoreline assumes a functional relationship. We respectfully recommend that the County cite this CAO section as excepted (not included) in the SMP (WCC §23.05.065.A).	6 to qualify.
FW/WEC01	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	B	C/P Ch. 11	<p>We strongly support the Climate Change/Sea Level Rise policies with necessary improvements.[They go on to explain why addressing this is important, their interpretation of state requirements, and supporting material.]</p> <p>But more is needed. It is important that wetland and aquatic vegetation be allowed to occur to maintain shoreline functions and values. So we recommend the addition of the following policy on page 11-31 of the PDF version to read as follows.</p> <p><u>Policy 11AA-8: New lots and new and expanded development should be located so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises.</u></p>	This is a policy decision and all comments will be forwarded to the P/C and Council.
FW/WEC02	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	B	C/P Ch. 11	<p>We recommend that proposed Policy 11AA-5 be modified to read as follows:</p> <p>Policy 11AA-5: <u>Whatcom County shall monitor the impacts of climate change on Whatcom County's shorelands, the shoreline master program's ability to adapt to sea level rise, and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed.</u> Whatcom County shall <u>should</u> periodically assess the best available sea level rise projections <u>and other sciences related to climate change within shoreline jurisdiction</u>, and incorporate them into future program updates, as relevant.</p>	This is a policy decision and all comment will be forwarded to the P/C and Council.
FW/WEC03	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.05.130(A)	<p>Modify the property rights section so that it is consistent with state and federal law.</p> <p>Proposed 23.05.130(A) would provide that the regulation of private property must be consistent with all relevant constitutional and other legal limitations including local laws. This provision would allow W/C to adopt policies or regulations that override the Ecology's approved SMP. This violates the SMA and</p>	Our attorney believes that this language does not allow the County to override the SMP. It simply states a legal truth—that regulation of property must be consistent with other laws. This does not somehow give the County permission to amend the SMP without Ecology's approval.

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
					cannot be adopted.	
FW/WEC04	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.05.130(E)	Proposed 23.05.130(E) provides that this "program shall not be applied retroactively in a way that requires lawfully existing uses and developments (as of the original effective date of this program) to be removed." This provision will prevent the amortization of existing uses in hazardous areas, such as channel migration zones, frequently flooded areas, and areas subject to sea level rise. This would allow frequently flooded homes to always be rebuilt, no matter the hazard. This is poor policy and should not be adopted.	Our attorney agrees with the commenter on this matter; we have removed (E).
FW/WEC05	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.10.030(C)(2)	Proposed 23.10.030(C)(2) provides "that substantive amendments shall become effective immediately upon adoption by the Department of Ecology." But all SMP amendments must be approved by Ecology and become effective 14 days after Ecology adopts them. Proposed 23.10.030(C)(2) should be modified to reflect these requirements.	The commenter is correct. Though we'd amended similar language in 23.05.090 to meet this requirement, we missed it in this section. The section has now been revised.
FW/WEC06	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.10.030(C)(3)	Proposed 23.10.030(C)(3) provides that the County Council makes final decisions on shoreline conditional use permits and variances. Ecology must approve both conditional use permits and variances. So this section should provide that these are final County decisions, not final decisions on the permits.	The commenter is correct. Though proposed Ch. 22.07 correctly spells it out, we missed it in this section. The section has now been revised.
FW/WEC07	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.010(B)	<p>Modify so that it is consistent with the SMA and SMP Guidelines. The WA Court of Appeals has held that "reasonable and appropriate uses should be allowed on the shorelines <i>only if they will result in no net loss of shoreline ecological functions and systems</i>. See RCW 90.58.020; WAC 173-27-241(3)(j)."</p> <p>However proposed 23.30.010(B) exempts development, use, and activities within the shoreline jurisdiction and within "legally existing substantially developed areas" from the no net loss requirement. This violates the SMA and SMP Guidelines cited by the court of appeals. Proposed 23.30.010(B) also ignores avoidance and minimization and can be read to exempt development in critical areas from the no net loss standard. We recommend that proposed 23.30.010(B) be modified to read as follows:</p>	We have amended the text as the commenter has suggested.

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					B. Development, use, and activities within the shoreline jurisdiction and outside of critical areas and legally existing substantially developed areas shall avoid and minimize adverse impacts, and any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes pursuant to WAC 173-26-186.	
FW/WEC08	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.010(B)	The mitigation sequencing requirement in <i>existing</i> WCC 23.30.010(B) must be retained or included elsewhere in the SMP regulations. Mitigation sequencing applies to all development in shorelines jurisdiction, not just development that adversely impacts critical areas. Deleting existing WCC 23.30.010(B) and relying only on the critical areas regulations violates WAC 173-26-201(2)(e)(ii)(A) and other provisions of the SMP Guidelines.	WAC 173-26-201(2)(e)(ii)(A) seems to be addressing how one applies mitigation sequencing to mitigation applied through SEPA review for those types of impacts not regulated by the SMP (e.g., traffic impacts). The County has already adopted WAC 197-11-768 by reference in our SEPA regulations (WCC 16.08.175).
FW/WEC09	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.050 Ch. 16.16	We recommend that shoreline jurisdiction be expanded to include the 100-year floodplain and that the buffers for river and stream shoreline be increased to use the newly recommended 200-year SPTH of 204 feet and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider. This will help maintain shoreline functions and Chinook habitat.	Proposed WCC 23.20.010(B)(4 lists the shoreline jurisdiction as including "floodways and contiguous floodplain areas landward <i>two hundred feet from such floodways,</i> " straight from RCW 90.58.030. The 204 ft. referenced is not a hard SPTH; this is the weighted 3 rd Quantile. WDFW Vol 2 provides a step by step process to determine the Riparian Management Area for a parcel based on the ability of a given soil type to support tree growth. The 200 yr. index curve is variable, and as shown in Figure A2-33 the SPTH in Whatcom Co. ranges from 101' to 250'. The buffer on Type S Freshwater is proposed to be 200 feet (16.16.740(B), Table 4), measured, presumably, from the edge of the floodway.
FW/WEC10	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.060	We strongly support the amendments to 23.30.060 to require review of sites that may have cultural or archaeological resources but are concerned that the SMP update deletes the inadvertent discovery requirements in the existing SMP. Even	This section was developed in consultation with the Lummi Nation Tribal Historic Preservation Office and the WA State Dept. of Archaeology & Historic Preserva-

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					with predevelopment review, cultural resources can still be inadvertently discovered. Proposed WCC 23.30.606 provides that certain state and federal inadvertent discovery provisions apply, but they delete the County's provisions. This will prevent Whatcom County from requiring compliance with the inadvertent discovery requirements. So we recommend that the existing inadvertent discovery requirements in "B" be retained so the County can effectively address the inadvertent discovery of cultural resources.	tion, so we assume it meets all requirements. 23.30.060(B)(3)(a) still requires an inadvertent discovery plan conform to DAHP's most current management standards when warranted.
FW/WEC11	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.070(A)(3)	Proposed WCC 23.30.070(A)(3) must be deleted. WAC 173-26-221(4)(d)(iii) does not allow developments to not provide public access because "[o]ther reasonable and safe opportunities for public access to the shoreline are located within ¼-mile of the proposed development site" as the proposed amendments do.	WAC 173-26-221 applies to the establishment of environment designation boundaries and provisions, and there is no subsection (4)(d), so we're not clear as to what the commenter is referring.
FW/WEC12	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.30.080	<p>We recommend that the SMP require new lots and new buildings be located outside the area of likely sea level rise and if that is not possible, buildings should be elevated above the likely sea level rise. These requirements will provide better protection for buildings, property, and people and will also allow wetlands and marine vegetation to migrate as the sea level rises. We recommend the following new section be added to the SMP periodic update:</p> <p><u>23.30.080 Sea Level Rise.</u></p> <p>A. <u>New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>B. <u>Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>C. <u>New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</u></p>	<p>Before adopting specific regulations, we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.). The COB and WCPW are currently developing the CoSMoS model, which should provide the best data for Whatcom County. The policies being introduced would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>

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FW/WEC13	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.010	<i>Table 2, Shoreline Use.</i> We recommend that bulkheads and other forms of hard armoring should be shoreline conditional uses. This ensures that these damaging uses will get an appropriate level or review. The SMP should also provide that all property owners seeking to construct a bulkhead on the shoreline of their property must receive Hydraulic Project Approval (HPA) from the Washington Department of Fish & Wildlife per 2SHB 1579 starting on July 1, 2019.	Our code already allows requires staff to do the same level of review as a substantial or CUP and to condition administrative permits. It also requires a geotechnical analysis for all shoreline stabilization types to ensure the least impactful method is selected. Obtaining an HPA is already a state requirement for any work in waters of the state. WCC 23.05.040(C) reminds applicants that it's their duty to seek any other required permits from other agencies. Additionally, a standard condition on all of our permits is that one may need additional permits from other agencies. We do not believe that we should be listing every state and federal permit one may need in every section of code where such might apply.
FW/WEC14	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.90.130(C) (existing)	We oppose the elimination of environment specific impervious surface and open space requirements in current 23.90.130(C) Table 2, Buffer, Setbacks, Height, Open Space, and Impervious Surface Coverage Standards for Shoreline Development. WAC 173-26-211(5)(b)(ii)(D) requires rural conservancy shoreline environments to limit impervious surfaces to ten percent of the lot which Table 2 currently does. Research by the University of Washington in the Puget Sound lowlands has shown that when total impervious surfaces exceed 5 - to 10% and forest cover declines below 65% of the basin, then salmon habitat in streams and rivers is adversely affected. This science documents the need to retain the existing impervious surface limits and open space standards to achieve no net loss.	New Table 3. Bulk Regulations for Shoreline Development still contains impervious surface limits meeting this requirement. However, we did miss the open space requirements, and have added them back in as 23.40.020(E) and Table 3
FW/WEC15	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.125(B)(2)	We strongly support the fossil fuel use regulations in proposed 23.40.125(B)(2). The changing climate shows the need for a just transition away from fossil fuels. The proposed fossil fuel use regulations are an important step in this important transition. We	Comment noted.

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					support them.	
FW/WEC16	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.010	In the Cherry Point Aquatic Reserve we recommend that conditional use permits be required for changes of use, that existing uses be defined specifically, and that new piers, docks, wharfs, and wings be prohibited at Cherry Point. These measures are necessary to protect the valuable resources of the Cherry Point Aquatic Reserve.	The County Council is considering such regulations for Title 20 (Zoning), which would also apply. Staff doesn't believe they need to be repeated here. Nonetheless, we have incorporated their proposed use requirements into 23.40.010 Table 2 (Use Table).
FW/WEC17	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.140	<p>We oppose the amendments to 23.40.140 Mining policies and regulations and urge the County to retain the existing policies and regulations as they are needed to achieve no net loss.</p> <p>If mining is going to be allowed in floodplains, floodways, and channel migration zones, which the County is proposing to allow, then additional standards are needed. First, mines should be located outside the channel migration zone so that they do not increase the rate of channel migration. Second, mines should be no deeper than the bottom of the nearby streams and rivers so when the river moves into the mine, which is a certainty, the impacts will be reduced. Third, the mine reclamation plan should have a design so that when the river or stream moves into the mine, the mine workings are not so wide that the captured sediments destabilize the river or stream or increase erosion risks on upstream properties.</p> <p>We recommend that the following new regulation be added.</p> <p><u>D. Mining in the 100-year floodplain, floodway, or channel migration zones shall meet the following standards:</u></p> <p><u>i. Mines should be located outside the channel migration zone unless there is no feasible alternative site.</u></p> <p><u>ii. Mines shall be no deeper than the bottom of the nearby streams and rivers.</u></p> <p><u>iii. The mine reclamation plan shall have a design so that when the river or stream moves into the mine it is not so wide or deep that the captured sediments destabilize the river or stream or increase erosion risks on upstream properties.</u></p>	Such mining has always been allowed; we're not changing that. Nonetheless, all comments will be forwarded to the P/C and Council.

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FW/WEC18	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	23.40.140	<p>In 2020, the legislature adopted RCW 90.48.615(2) which prohibits “[m]otorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout. This includes all fresh waters with designated uses of: Salmonid spawning, rearing, and migration.”</p> <p>We recommend that the SMP Update prohibit motorized or gravity siphon aquatic mining and discharging effluent from this type of mining in shorelines that are the critical habitat for salmon, steelhead, or bull trout and that salmonids use for spawning, rearing, and migration.</p>	We have added a section regarding this.
FW/WEC19	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	(existing) 23.100.150	<p>We oppose the amendments to remove policies and regulations encouraging or requiring low-impact development.</p> <p>The update removes some policies and regulations that encouraged, allowed the County to require, or required low-impact development techniques. For example, former (C)(2) on page 156 provided that “[c]lustering and low impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines in accordance with policies and regulations of WCC 23.90.090.” This regulation has been deleted. While the subdivision regulations are now proposed to allow the County to require clustering, the requirement for low-impact development has been deleted. Low impact development is an important technique for reducing development’s water quality impacts on rivers, lakes, streams, wetlands, and Puget Sound. We urge the County to retain these policies and regulations; they needed to maintain no net loss of shoreline resources.</p>	Former 23.100.150 (C)(2) was moved to 23.40.130(A)(10), though without the reference to LID. At the time, we had been thinking about stormwater LID techniques, which is covered by a general regulation of meeting our Title 20 stormwater regulations; we had not been thinking about LID in terms of plat design. The term has now been reinstated. 23.40.130(A)(10).
FW/WEC20	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	D	(existing) 23.40.200(A)(10), (11), and (12)	<p>Do not delete existing 23.40.200(A)(10), (11), or (12) prohibiting freestanding signs between the right-of-way and buildings, the waterbodies, or placing them in critical areas buffers, or the sign limits in Table 2, Sign Area Limits.</p> <p>Existing WCC 23.40.200(A)(10), (11), and (12) currently prohibit</p>	The SMA, WAC, or DOE guidelines do not address signs. For simplicity’s sake we were proposing to just have our Title 20 sign regulations address signs. However, T-20 does not address these circumstances, so we have reinserted exist-

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					many freestanding signs between the right-of-way and buildings the waterbodies or placing them in critical area buffer. Signs are not a priority shoreline use, but the policy of the SMA calls on the County and Ecology to protect shoreline views. These existing regulations are necessary to implement the policy of the SMA and cannot be deleted. Existing Table 3 is also needed to limit the sizes of signs in shoreline jurisdiction to implement the policy of the SMA. Again, it cannot be legally deleted.	ing 23.40.200(A)(10), (11), & (12) as 23.40.200(A)(6), (7), & (8). Existing Table 3 does not address sign size.
FW/WEC21	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.265(A)(1)	<p>Require wider setbacks between development and shoreline and critical areas buffers to protect homes and property from wildfire danger.</p> <p>Whatcom County is susceptible to wildfires. Climate change has the potential to increase wildlife risk through changes in fire behavior, wildfire ignitions, fire management, and the vegetation that fuels wildfire.</p> <p>Setbacks from critical areas buffers provide an area in which buildings can be repaired and maintained without having to intrude into the buffer. It also allows for the creation of a Home Ignition Zone that can protect buildings from wildfires and allow firefighters to attempt to save the buildings during a wildfire. Since a 30-foot-wide Home Ignition Zone is important to protect buildings, we recommend that 16.16.265(A)(1) require a setback at least 30 feet wide adjacent to shoreline and critical area buffers. Combustible structures, such as decks, should not be allowed within this setback to protect the building from wildfires. This will increase protection for people and property.</p>	<p>This distance was established by Council and staff is not proposing to change it. However, all comments will be provided to them.</p> <p>(Note that this comment contradicts comments GCD12 and MES09.)</p>
FW/WEC22	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 3	<p>We strongly support updating the Geohazard Area standards in Article 3.</p> <p>Whatcom County is susceptible to landslides. The SMP Guidelines, in WAC 173-26-221(2)(c)(ii)(B), provide: "Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development." Landslides are a type of geological hazard that can result in major impacts to people and property.</p>	16.16.322(D) already precludes land divisions, and requires risk-reducing measures be taken for non-division development in geohazard areas. 16.16.310 also covers landslide deposits, scarps and flanks.

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					We strongly support designating the landslide deposits, scarps and flanks, and areas with susceptibility to deep and shallow landslides as geologically hazardous areas. This will better protect people and property.	
FW/WEC23	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 3	Landslides are capable of damaging commercial, residential, or industrial development at both the tops and toes of slopes due to the earth sliding and other geological events. So the areas at the top, toe, and sides of the slope are geological hazards. We recommend these areas be designated as landslide hazards.	CAO Article 3 already covers this.
FW/WEC24	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 3	Require the review of geologically hazardous areas capable of harming buildings or occupants on a development site. We recommend that the regulations require review of any landslide capable of damaging the proposed development. Geological hazards, such as landslides are capable of damaging property outside the hazard itself. The 2014 Oso slide ran out for over a mile (5,500 feet) even though the slope height was 600 feet. A 2006 landslide at Oso traveled over 300 feet. Recent research shows that long runout landslides are more common than had been realized. This research documents that over the past 2000 years, the average landslide frequency of long runout landslides in the area near the Oso landslide is one landslide every 140 years. The landslides ran out from 787 feet to the 2,000 feet of the 2014 landslide. So we recommend that Whatcom County require review of all geological hazards capable of harming a proposed lot or building site.	CAO Article 3 already covers this.
FW/WEC25	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.325(C)	We support WCC 16.16.325(C) which requires individualized setbacks from landslide hazard areas based on the actual hazard. WCC 16.16.325(C) will help protect people and property. Construction should not be allowed in these setbacks.	Comment noted.
FW/WEC26	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Article 5.5	To protect the coastal aquifers, we recommend that Article 5.5 apply to all areas subject to saltwater intrusion. All of the islands in the County and its marine shorelines have the potential for wells to be contaminated by salt water. WAC 173-26-221(2)(a) requires that shoreline master programs must provide for management of critical areas designated as such	To staff's knowledge, only Lummi Island has been designated as a vulnerable seawater intrusion areas by the County Council (which is why it has the rules in Art. 5.5).

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					<p>pursuant to RCW 36.70A.170(1)(d) located within the shorelines of the state with policies and regulations that ... [p]rovide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources." Critical areas include areas with a critical recharging effect on aquifers used for potable waters.</p> <p>Saltwater intrusion can worsen until wells "must be abandoned due to contaminated, unusable water." Saltwater intrusion is often worsened by over-pumping an aquifer. The Western Washington Growth Management Hearings Board has held that Growth Management Act requires counties to designate vulnerable seawater intrusion areas as critical aquifer recharge areas. The Board also held that counties must adopt development regulations "to protect aquifers used for potable water from further seawater degradation."</p>	
FW/WEC27	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	Table 1, Standard Wetland Buffer Widths	We support updating the buffer widths to conform to Ecology's most recent recommendations, as they are based on best available science	Comment noted.
FW/WEC28	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.640(B)	Buffer averaging should not allow widths less than 75% of the required buffer for all wetlands. Type IV wetlands have important functions and values. Allowing 50% buffer reductions for type IV wetlands is inconsistent with best available science and should not be allowed.	Based on this comment we have removed the allowance for Type IV wetlands in 16.16.640(B) and inserted the language from 2016 DOE Guidance (XX.040 Exemptions and Allowed Uses in Wetlands) providing exceptions to regulation of certain wetlands/buffers from regulation in a new section 16.16.612.
FW/WEC29	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.740(B)	<p>Retain using the PHS recommendations as the default for buffers and management recommendation priority habitats and species.</p> <p>Currently, Table 4, Buffer Requirements for Habitat Conservation Areas (HCAs), provides that for areas with which federally listed species have a primary association, state priority habitats, and areas with which priority species have a primary association the "[m]inimum buffers shall be based on recommendations</p>	While the text in the table is proposed for deletion, amended (B)(2) requires that minimum buffers be based on habitat a management plan prepared pursuant to WCC 16.16.750, subsection (B)(4) of which requires that assessment reports include Management recommendations developed by WDFW through its PHS

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					provided by the Washington State Department of Fish and Wildlife PHS Program; provided, that local and site-specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise." This requirement is being deleted and instead the buffers are based on a habitat a management plan. While we recognize the habitat management plan will include information on the PHS program recommendation and a survey of best available science related to the species or habitat, the current requirement is clearer that the default buffer should be the PHS recommendations. We think this is clearer and provides better protection for priority species and habitats and recommend it be retained.	program. Thus, the requirement is still there (and always was, as this section isn't proposed for modification).
FW/WEC30	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20	F	16.16.740(B)	We also recommend that the required consultation with Indian Tribes and Nations in Table 4 be retained. They have significant expertise on fish and wildlife and their habitat needs.	16.16.750(C) still allows for agency and tribal consultation.
FW/WEC31	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	9/16/20			We support preparing a No Net Loss technical memo. While WAC 173-26-090(2)(d)(ii) provides that "[t]he review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations," this provision does not excuse compliance with WAC 173-26-090(2)(d)(i) and cannot override RCW 90.58.080(4)(a) of the Shoreline Management Act. So, while SMPs must be brought into compliance with new laws and new SMP Guidelines, they must also comply with all current provisions of the SMA and the SMP Guidelines including the no net loss requirement. We urge Whatcom County to update the SMP to achieve no net loss.	A NNL technical memo will be prepared prior to the P/C making their recommendations to Council. We thought it more appropriate to do this task after the public comment period in case the proposals needed to be amended.
GCD01	Glyn & Carol Davies	9/23/20	D	23.10.160(C)	A penalty of double standard post development is excessive. Please consider reducing the penalty to the cost of mitigation plus a percentage penalty in the range of 15% - 25%.	This section doesn't say that penalties in the way of fines are doubled; it says that "corrective action, restoration, or mitigation" will be required at a double ratio

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						"when appropriate" as a way to discourage violations.
GCD02	Glyn & Carol Davies	9/23/20	D	23.30.040(C)	Please consider clarifying the planting of vegetation to minimize impacts to views from the water requirement in this provision. For example, views from the water are optimized by plants and shrubs that do not exceed 3' – 4' in height. Dense, forested vegetation on the shoreline is highly obstructive to views, so this provision should be clear regarding the type of vegetation that protects views.	This provision is aimed at protecting views from the water. The SMA requires protecting views to <i>and from</i> the water. (RCW 90.58.020))
GCD03	Glyn & Carol Davies	9/23/20	D	23.40.020(F)	Suggest adding a 15 th provision to this clause to conform to 16.16.720(G)(4) Accessory Uses. "When located in the shoreline jurisdiction, residential water-oriented accessory structures may be permitted in an HCA buffer; provided that the size shall be limited to 10% of the buffer's area or 500 square feet, whichever is less."	We have added a cross reference to that section.
GCD04	Glyn & Carol Davies	9/23/20	D	23.40.150(A)(2)	"No pier or dock shall be used for a residence." This provision should be deleted since it contradicts 23.40.150(A)(A) that allows moorage for single family residences.	23.40.150(A)(A) to which the commenter refers is proposed for deletion. Furthermore, it refers to "moorage associated with a SFR," which means a private dock at a private SFR (i.e., a personal dock), which is still allowed. The prohibition in 23.40.150(A)(2) refers to someone living on their boat or dock.
GCD05	Glyn & Carol Davies	9/23/20	D	23.40.150(A, B, & C)	<i>Dimensional Standards – Freshwater and Marine – tables</i> Please consider allowing ramps to be 6' wide rather than 4' wide as a safety measure when transporting kayaks, canoes, or boating provisions, equipment and supplies to the dock for launching (kayaks or canoes) or loading into a boat (ice chests, water skis, wakeboards, etc.). 4' is narrow when carrying bulky items to the float, and can be dangerous, particularly if the ramp or pier is high off the water due to the shoreline configuration relative to the float. This would also mean increasing the square footage for the individual use dock or pier to 520 sq. ft. to accommodate a 6' wide ramp, and increasing the added square footage if the dock has to be extended due to water depth to 6 sq. ft. rather than 4 sq. ft.	WDFW regulations in WAC 220-660-140 and 380 limit the width of residential dock ramps to 4' wide.

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GCD06	Glyn & Carol Davies	9/23/20	D	23.40.150(A, B, & C)	We also suggest changing the minimum water depth to either 10' measured below ordinary high water, or 6' measured over mean low low water. This is to allow adequate clearance for propellers to protect the sea floor or lake bed from turbulence when a boat is operating in shallow water	Changing to a 10' standard would essentially allow a doubling of the length of docks on our lakes, when we're required to minimize overwater structures. It would also interfere with public navigation.
GCD07	Glyn & Carol Davies	9/23/20	D	23.40.150(C)(8)	Please consider adding a qualifier to this provision stating "...unless shoreline constraints, and/or positioning of pilings make it infeasible to create sufficient buoyancy for the float without positioning flotation components under a portion of the grating."	This standard is from WDFW regulations in WAC 220-660-140 and 380.
GCD08	Glyn & Carol Davies	9/23/20	D	23.40.150(D)(6)	Please consider increasing the size of a covered moorage accessory for a single-family pier or dock to 500 sq. feet (25 x 20) and 20 ft. in height above OHWM to accommodate larger boats that are increasingly common on the lakes in Whatcom County. Also please consider deleting the requirement in this provision that the cover (the "roof materials") be "...translucent or at least 50% clear skylights." The purpose of a covered moorage is to protect the boat, principally from sunlight, which is not served by a translucent cover. Additionally, even if the cover is translucent, the boat under it is not, which defeats the purpose of a translucent cover in any case.	These standards are from DOE guidance.
GCD09	Glyn & Carol Davies	9/23/20	D	23.40.170(C)(3)	Please consider increasing the total allowed footprint of home, sidewalks and similar structures, parking areas and normal appurtenances to "the greater of 40% of the total area of the lot or 4,000 sq. ft." 2,500 sq. ft. is small for just the residence by today's standards, and is prohibitively small when it includes the garage, driveway, sidewalks, decks, patios, etc. in addition to the home.	This provision is existing and is for construction on constrained lots, which by definition cannot accommodate larger development; if one wants a larger home, one can buy an unconstrained lot.
GCD10	Glyn & Carol Davies	9/23/20	F	16.16.235(4)(b)(iii)	Why is tree replacement at a 3:1 ratio? Please consider a tree replacement ratio of 1:1.	A 3:1 ratio is based on DOE guidance, which recommends a ratio of 4:1 for mature trees and 2:1 for young trees. For simplicities sake, we averaged it. Additionally, this is the same replacement ratio in on Council's adopted tree protection regulations for Lake Whatcom and our other special watershed districts.

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GCD11	Glyn & Carol Davies	9/23/20	F	16.16.235(B)(5)(e)	Please consider a pruning height for shrubs on the order of 2' – 3' in order to minimize view obstruction.	We have now moved that provision from the view corridor section to the vegetation management section.
GCD12	Glyn & Carol Davies	9/23/20	F	16.16.265(A)(1)	Please consider eliminating the building setback. The purpose of the critical area buffer is to provide protection; with generous buffer requirements (100' for shoreline, 50' – 100' for critical areas, etc.) there is no need for an additional 10' building setback (or consider reducing the building setback to 5' from the buffer).	This setback was established by Council and staff is not proposing to change it. We have, however, amended the section to allow for a reduction where the setback isn't warranted, modeled on the COB's similar regulation. (Note that this comment contradicts comment FW/WEC21.)
GCD13	Glyn & Carol Davies	9/23/20	F	16.16.265(A)(1)(b)	Please consider allowing for a grade-level deck that is covered by a corresponding deck on the 2 nd floor, as well as the bottom of the stairs/staircase for access to a second level deck, if any.	Comment noted.
GCD14	Glyn & Carol Davies	9/23/20	F	16.16.270(C)(12)	Same comment as GCD08 above: Please consider increasing the total allowed footprint of home, garages/shops, decks, parking, and all lawn and nonnative landscaping to "the greater of 40% of the total area of the lot or 4,000 sq. ft." 2,500 sq. ft. is small for just the residence by today's standards, and is prohibitively small when it includes the garage, driveway, sidewalks, decks and patios and lawn in addition to the home. Also, 23.40.170.C.3 allows an additional 500 sq. ft. for landscaping, lawn, turf, ornamental vegetation, or garden. This provision should match and allow the same additional 500 sq. ft.	Reasonable use as proposed would now be the last effort to avoid a constitutional taking and allow development on very constrained lots and these cases should be rare. The new paradigm is to administratively allow up to 50% buffer reduction (with mitigation) through a minor variance (administrative) and a greater reduction with a public hearing (Hearing Examiner). This new approach should provide greater flexibility while cutting down on costs to applicants and cases going to the H/E. The shoreline code cited is what is allowed without a shoreline variance; an applicant always has the option to seek a larger footprint through a variance.
GCD15	Glyn & Carol Davies	9/23/20	F	16.16.620(F)	Please allow for a storage tank when a storage tank is mandated by County requirements for the well.	A storage tank is not required to be adjacent to a well, as is a pump(house); it could be placed elsewhere on a property, outside of critical areas/buffers.
GCD16	Glyn & Carol Davies	9/23/20	F	16.16.620(G)(2)(d)	Please consider allowing the dispersion outfall within the outer 50% of the buffer.	The 25% is existing language; however, we have proposed adding, "unless a

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						closer location is demonstrated to be the only feasible location" to account for odd circumstances.
GCD17	Glyn & Carol Davies	9/23/20	F	16.16.265(A)(1)	Please consider eliminating the building setback. The purpose of the critical area buffer is to provide protection; with generous buffer requirements (100' for shoreline, 50' – 100' for critical areas, etc.) there is no need for an additional 10' building setback (or consider reducing the building setback to 5' from the buffer).	We have added text to the section describing its purpose. However, this setback was established by Council and staff is not proposing to change it.
GCD18	Glyn & Carol Davies	9/23/20	F	16.16.680(F)	Please consider limiting the replacement ratio for preservation to 3 times the ratio for reestablishment or creation (in most cases, 1:1 ratio should be applicable, so a 3 times ratio is generous and should suffice).	Mitigation ratios for wetland impacts are taken verbatim from DOE guidance.
GCD19	Glyn & Carol Davies	9/23/20	F	16.16.720(A)	Since you are proposing eliminating provision "O" under this section that calls out residential, perhaps reference residential use in this provision: "...including, without limitation, residential uses."	We're not sure to what the commenter is referring.
GCD20	Glyn & Carol Davies	9/23/20	F	16.16.720(B)(3)	Please allow for a storage tank when a storage tank is mandated by County requirements for the well.	Tanks do not necessarily need to be next to a well, as a pump house does. Tanks could be located elsewhere on a property, outside of critical areas/buffers.
GCD21	Glyn & Carol Davies	9/23/20	F	16.16.720(G)(1)(d)	Please consider 6 foot width for private trails.	Comment noted.
GCD22	Glyn & Carol Davies	9/23/20	F	16.16.745(C)(1)(c)	Please consider allowing buffer reduction to 65% of the standard buffer specified in the table.	The amendments proposed are intended to meet DOE guidance. As such, we cannot vary without developing our own Best Available Science.
GCD23	Glyn & Carol Davies	9/23/20	F	16.16.760(8)	Please consider mitigation at 1:1 ratio regardless of whether placed before or after impact occurs. Sometimes mitigation must occur after the impact occurs for logistical reasons. This should not result in a 25% penalty.	This ratio is not proposed for amendment; Council approved it in 2017 to account for temporal loss.
LNTHPO01	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	9/15/20	D	23.60.030(18)	One of our primary concerns is the use of the term "significant" in regards to cultural resources. This term has a specific meaning under Federal law. The definition that is included for this term on page 227 is taken from the Federal process and it does not apply here. Under state law a different process is followed.	The term significant has been deleted from the definition of "cultural resource site" as it is no longer used in the regulations.

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MES01	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.255(B)	Subsection (5) was stricken, and a side bar note says this is addressed by (4). This does not appear to be the case as 4 is an allowance for water dependent use.	We think the commenter erred in his reference. Allowance for water dependent uses is subsection (3); (4) refers to uses allowed by Ch. 16.16, which includes activities allowed with or without notification.
MES02	Ed Miller, Miller Environmental Services	9/18/20	F	6.16.255(B)(8)	<i>Alteration of functionally disconnected Type III or IV wetlands with associated with an approved commercial development within an Urban Growth Area.</i> Please define "functionally disconnected". If this was intended to mean "isolated wetlands", this provision would exclude many wetlands that have seasonally flowing outlets within the Birch Bay area. Also, why doesn't this exemption apply to residential development in other UGAs?	The term "functionally disconnected" has been deleted.
MES03	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.225(C)	Please define "ecological connectivity" and "habitat corridors." It appears this section will grant the County the authority to protect/prohibit development over areas outside of defined critical areas and their buffers. The language is vague, which will create unpredictable review and requirements. A corridor could be 10 feet wide or >300 feet wide, depending on which species we are seeking to maintain a corridor for. Additionally, corridors are already covered in the CAO, as a WDFW priority habitat covered under the HCA section.	The commenter is correct. However, this verbiage was added in response to the Council's direction in the adopted scoping document.
MES04	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.225(D)	Was this section intended to apply to native plant communities within critical areas and buffers or within any native plant community "associated" with critical areas? What does "associated" mean? This could potentially imply that any native vegetation beyond the regulated buffer should be prioritized for protection. This new section seeks to extend authority over all vegetation (native and non-native) on a property.	The CAO only applies to critical areas and their buffers, and as adopted by reference in the SMP, only applies to the shoreline jurisdiction. This proposed language does not extend authority over all vegetation on a property.
MES05	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.230(B)	We noted the verbiage change from the prior "exempt activities" title. With this modification, no activities would be exempt from the critical areas ordinance. Additionally, under subsection B of this section, the language was modified to remove the allowance to prune or plant ornamental or native trees within critical areas or buffers. This would take away any rights to prune or plant native or non-native trees in lawfully established gardens	Per state law, <i>all</i> activities are subject to the CAO, including those listed here. They are not exempt; they just don't need a permit or review. We changed the title to make it clearer. Pruning (and all vegetation management)

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					or landscaped areas, including fruit trees? Why? This seems to be taking away some existing established rights. This section is inconsistent with 16.16.235.B.4.a.i.	still listed as an activity allowed in buffers with notification (16.16.230(B)(4)). We removed <i>planting</i> so people don't think they can plant new non-native trees in the buffer. However, one can still maintain existing vegetation.
MES06	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.235(B)(4)(b)(iv)(B)(2)	Evergreen trees may not be appropriate for all environments, particularly wetlands with high levels of seasonal ponding. We recommend removing the evergreen tree requirement.	This language is the same that is used in our tree protection regulations for our watersheds. Nonetheless, we agree that in certain circumstances evergreens may not be the best choice. Therefore we have added, "unless otherwise approved by the Director."
MES07	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.235(B)(5)	What is the time scale when referring to "one-time"? The life of the tree? The duration of property ownership? Please clarify.	This was unclear. We have removed "a one-time," but added "a cumulative total of." We were trying to limit the total amount of buffer that could be cleared.
MES08	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.255(C)(3)	"Habitat corridor" and "ecological connectivity" are general ecology terms, not defined in this code and not regulated as a critical area – unless they are a specific, identified HCA (such as old growth/mature forest, Oregon White Oak, etc.). Biodiversity areas and corridors are identified as a state "priority habitat" by Washington Department of Fish and Wildlife (WDFW)– with corridors defined as "relatively undisturbed and unbroken tracts of vegetation that connect fish and wildlife habitat conservation areas, priority habitat, areas identified as biologically diverse, or valuable habitat within a city or UGA." Critical areas reports are already required to cover biodiversity areas and corridors as an HCA. If the intent of this added section is to include other areas in addition to those currently regulated as critical areas, it seems to be an extension of and addition of a new regulated area.	The commenter is correct. However, this verbiage was added in response to the Council's direction in the adopted scoping document.
MES09	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.265(A)(1)	What is the intent of the building setback? If it is to protect tree root zones and allow for building access and maintenance, a building setback is not always needed. For example, a new building within a grass field would not disturb root zones within a buffer or result in significant disturbance by a homeowner walking around the house. Assuming this 10-foot building setback	This setback was established by Council and staff is not proposing to change it. We recognize, however, that there may be instances where the setback isn't warranted and have amended the section to allow for a reduction in such cases, mod-

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					area would or could be tabulated as impact, the setback will effectively reduce the allowed "reasonable use" footprint (which is proposed to be reduced back down to 2,500 square feet under this code). Forcing applicants to build smaller homes on reasonable use lots in order to accommodate a 10-foot building setback will significantly reduce the buildable area on a property. For example, a 50 x 50-foot building (2,500 SF) would have to shrink to 40 by 30-foot building (1,200 SF) if it is against a road setback in order to leave a 10-foot building setback around three sides of the structure.	eled on the COB's similar regulation.
MES10	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.265(B)(1)	Significant Trees" needs to be defined in the CAO.	The WCC has too many disparate definition sections, many of which define the same words differently. Staff is working toward ultimately having one definition chapter. But until that happens, we're trying not to add new definitions where words are already defined elsewhere, which is why we've added "Any words not defined herein shall be defined pursuant to Titles 20 (Zoning), 22 (Land Use and Development), 23 (Shoreline Management Program), or their common meanings when not defined in code" at the beginning of the definition section.
MES11	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.270(C)(12)	<i>Reasonable Use Exceptions. For single-family residences, the maximum impact area may be no larger than 2,500 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single-family residence. These appurtenant developments include garages/shops, decks, parking, and all lawn and nonnative landscaping.</i> Why is reasonable use reduced from 4,000 SF to 2,500 SF? The County Council previously approved the larger area so that property owners could use a reasonable portion of their 5, 10, 20-acre properties with a house, shop, garden, etc. If the intent is to make it the same as the SMP reasonable use allowance	Reasonable use as proposed would now be the last effort to avoid a constitutional taking and allow development on very constrained lots and these cases should be rare. The new paradigm is to administratively allow up to 50% buffer reduction (with mitigation) through a minor variance (administrative) and a greater reduction with a public hearing (Hearing Examiner). This new approach should provide greater flexibility while cutting down on costs to applicants and cases going to the H/E. The shoreline code cited is what is al-

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					<p>(2,500 square feet), please explain why they need to be the same. Shoreline lots fall within 200 feet of the shoreline, a more highly protected area designated by the Shoreline Management Act. Additionally, shoreline lots are often smaller-sized lots. A majority of non-shoreline lots in the County are at least five acres in size. No specific reasoning is given on why the reasonable use allowance is being lowered, despite the recent critical areas code update in 2017 which brought it to 4,000 square feet.</p> <p>This is particularly concerning if a 10-foot building setback is required to be included within the reasonable use allocation area, severely reducing building size. Potentially, a property owner with five acres or more could be limited to a 1,000 SF house with a required 10-foot building setback and max out the reasonable use allowance with a small house footprint.</p>	lowed without a shoreline variance; an applicant always has the option to seek a larger footprint through a variance.
MES12	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.630(C) & 16.16.740(A)(1)	<p>This section of code was revised to remove the provision that buffers do not extend across substantially developed areas and/or across legally established roads. The language was changed to only include "existing, legally established substantially developed surface". This change would allow larger buffers to include disconnected area on the opposite side of roads or developed surfaces (such as buildings). Please explain the reason for this change. We are not aware of any Department of Ecology guidance that proposes including disconnected portions of buffer across roads or developed areas.</p> <p>While some wildlife species may cross roads (e.g. birds, mammals), it seems unlikely that water-dependent species (e.g., amphibians) would regularly access buffers across roads and buildings. Since the intent of the buffer is to protect the functions of the wetland, perhaps the analysis should focus on what functions a disconnected buffer would provide to a wetland across a road or building. The disconnected buffer would not provide hydrologic or water quality functions for the wetland across the road.</p> <p>This change would substantially increase the amount of regulat-</p>	Hydrologic or water quality functions are not the only reason for buffers. While small water-dependent species (e.g., amphibians) may not cross roads, many others do, or they nest, roost, or any number of other activities. DOE guidance does not provide provisions for reducing buffers because of minor (e.g., dirt drive-ways) intrusions.

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					ed buffer areas in Whatcom County, particularly in conjunction with the larger buffers proposed under this code change. As such, it seems there should be some reasoning provided as to why this change is needed or even valid.	
MES13	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(A)	How will the Director determine what distance is necessary to increase the buffer if it's "poorly vegetated"? This appears subjective as there is no definitive science that provides clear buffer widths in these cases – they could vary depending on what function or which species you are seeking to protect. What would qualify as "poorly vegetated"? Bare dirt? Grass? Significant coverage of invasive species? This section of code could be interpreted and applied very differently among staff, decreasing predictability and consistency for landowners. The section has also been altered from the existing code to allow for buffer increases to "provide connectivity to other wetland and habitat areas". This seems to be an especially broad provision to increase buffers almost anywhere.	Staff is proposing amendments to this section to provide better rationale (based on DOE guidance) for an already existing section.
MES14	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(B)(2)	<i>Buffer Width Averaging. In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.</i> This section effectively eliminates the intent of buffer averaging and converts it to buffer reduction by requiring mitigation. Buffer averaging is an important and simple way to allow more flexibility for property owners that need to make minor buffer adjustments. This section will also reduce consistency and predictability (each staff member could apply this differently), and will increase the cost for simple projects by requiring plantings, monitoring, bonding, etc. by thousands of dollars.	The intent that if the remaining reduced buffer area is degraded, it is now narrower and lacks the vegetation to properly function. If it is well vegetated, enhancement would not be necessary (nor required).
MES15	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(C)(1)(c)	<i>Buffer Width Reduction. The buffer shall not be reduced to less than 75 percent of the standard buffer.</i> The existing code section allows for up to a 50 percent (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher category wetland are restricted to a 25 percent reduction. Why is this being changed? Is there guidance from the Depart-	We are responding to comments from DOE regarding having to meet their latest guidance.

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					ment of Ecology supporting the change or data from Whatcom County showing that the current allowed reduction up to 50 percent for Category IV wetlands is not working? Category IV wetlands are generally low functioning wetlands – why are we further restricting buffer flexibility here?	
MES16	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(C)(1)(e)(iii)	Does this mean the Director could require property owners to protect non-critical area and non-buffer areas with a conservation easement? This essentially gives the Director unlimited authority to restrict uses over non-protected uplands on properties, further limiting uses on properties without clear rationale, size limitations/restrictions, or predictability. Again, this section of code will create highly unpredictable review, requirements, and result in additional cost and critical areas assessment report revisions, depending on staff interpretations and personal beliefs. Additionally – allowed buffer reductions already require buffer mitigation to offset the impact. Please provide rationale for requiring additional mitigation that may include non-designated critical areas.	This is not intended to be in addition to mitigation, but one of the ways to achieve no net loss through the mitigation sequence while applying landscape ecology principals.
MES17	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.640(C)(1)(g) & 16.16.640(C)(3)	<i>Buffer Width Reduction. All buffer reduction impacts are mitigated and result in equal or greater protection of the wetland functions and values. This includes enhancement of existing degraded buffer area and provide mitigation for the disturbed buffer area.</i> Define “degraded”. This could result in the Director arbitrarily requiring acres of additional planting, above and beyond the 1:1 or 1.25:1 buffer mitigation. How is the amount of area determined? What if the area is an active hayfield or established pasture that is in use? The Director could remove the ability to use a legally established, non-conforming uses and require planting over such area. This again will add uncertainty, lack of predictability, and significantly increase costs without any clear limitations on how much planting could be required. Additionally, this sounds like two things are now required – enhancement of existing degraded buffer and conducting additional mitigation. Why are property owners penalized for the current condition of the property – that may have been in place for generations?	The planting of degraded buffers has been a part of our CAO since 2005 and is based on DOE guidance. Based on case history, we are only clarifying that the area that might be enhanced is limited to the specific portions of the buffer being reduced, not anywhere on the lot, and certainly not outside critical area buffers (and thus does not “grant unlimited potential for mitigation requirements”). Per DOE guidance, “degraded” is any portion of a buffer that is not in a densely vegetated community.

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					Also, it should be noted that buffers are not static, and have been increasing with every update and version of the CAO. As a result, areas which now may be considered "degraded buffer," potentially requiring additional enhancement (per the draft change), may not have even been regulated as buffer a few years ago.	
MES18	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.680(C)(4)	<p><i>Mitigation Ratios. For impacts to wetland buffers, mitigation shall be provided at the follow ratios... (1) Where the mitigation is placed after the impact occurs, at a 1.25:1 ratio (area or function); and (2) where the mitigation is in place and functional before the impact occurs (i.e. advanced mitigation), at a 1:1 ratio (area or function).</i></p> <p>Planting mitigation prior to project construction is complicated because of access for equipment, permit issuance, and seasonal constraints (plants generally must be planted in winter or spring) – which doesn't always coincide with project construction. At the stage when the mitigation is designed and the critical areas assessment report is submitted to the County for review with the site plan, we don't know when or if planting could occur prior to project construction. This makes it impossible to assume applicants could achieve a 1:1 mitigation ratio unless they are using an established mitigation bank to offset their impacts. Why is this being changed? Is there a directive from the Department of Ecology or data in Whatcom County supporting this, and the higher ratio?</p>	The amendments to this section are proposed to meet Best Available Science and DOE guidance to account for temporal loss, i.e., the time between impact and when mitigation is providing the same functions and values as to prior to the impact.
MES19	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.720(D)	<p><i>Private Access. Access to existing legal lots may be permitted to cross habitat conservation areas if there are no feasible alternative alignments.</i></p> <p>This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a habitat conservation area. This could include trumpeter swan loafing areas (which are roughly mapped on WDFW priority habitats and species maps), biodiversity corridors, bat habitat (which includes entire townships where bats are mapped), streams, Pileated woodpecker habitat (which is not mapped by WDFW and must be determined by the project biologist or</p>	We believe Mr. Miller was reviewing an older draft. We have since amended this subsection (and subsection (C) to clarify how subdivisions could still occur.

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					County staff), and many other priority habitats.	
MES20	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.630(F)	<p><i>Table 1 Standard Wetland Buffer Widths.</i></p> <p>Based on a sampling of numerous projects in Whatcom County, the most common wetland category is a Category III with a moderate habitat score (110 or 150-foot buffers for moderate or high intensity land uses respectively). However, we also find that Category III wetlands with a high habitat score occur. This could easily occur in a wetland of small to moderate size (5,000 to 10,000 square feet), and partially in a pasture. The updated buffer for this type of wetland would be 225 feet or 300 feet (for moderate or high intensity development respectively). A 225-foot buffer would result in over 3.6 acres of land that would be protected as buffer. On a five-acre property, with multiple wetlands, this could easily create many more reasonable use properties, resulting in many more variances.</p>	Based on conversations with DOE staff, Table 1 is proposed to be updated to be consistent with their latest guidance. Mr. Miller provides a good example as to why staff is proposing an (up to 50%) administratively approved minor variance.
MES21	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.740(A)	<p><i>Buffer Widths</i></p> <p>This is the same concern as comment MES12, and would allow for buffers to extend to areas across roads.</p>	Hydrologic or water quality functions are not the only reason for buffers. While small water-dependent species (e.g., amphibians) may not cross roads, many others do, or they nest, roost, or any number of other activities. DOE guidance does not provide provisions for reducing buffers because of minor (e.g., dirt driveways) intrusions.
MES22	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.740(B)	<p><i>Table 4. Buffer Widths.</i></p> <p>What is a Type O water? No definition is given and there is no other correlation with any other part of the HCA section or Washington State water typing.</p> <p>The buffer provision for natural ponds and lakes under 20 acres was previously 50 feet, but was removed. What are the buffers for small lakes and natural ponds? The added water typing buffers in the table include a 100-foot buffer for lakes. Assumedly natural ponds and small lakes would not be required to have the same buffer as large lakes in the County. Currently artificially created ponds (created prior to 2005) do not require a buffer, is</p>	<p>A definition of Type O waters is provided in §16.16.710(C)(1)(a)(v).</p> <p>Natural ponds and lakes under 20 acres fall into one of the five listed types, which are generally based on size, permanence, and presence of fish.</p>

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					this still the case?	
MES23	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.745(A)	<p><i>Buffer Width Increasing.</i></p> <p>There is a new provision to this section that allows the Director to extend Type S or F buffers to resources within 300 feet – including Category III wetlands, other HCA's or other waters. Again, this is an exceptionally broad provision to add in additional regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. There is also no clear guidance on how this would be done. The amount of additional area in Whatcom County this could include is hard to imagine. The extension of every fish stream or lake buffer to another resource within 300 feet is essentially extending most of the buffer areas to 300 feet.</p>	This provision has been borrowed from Skagit County as a way to provide inter-jurisdictional consistency, making it easier for our consultants working in multiple jurisdictions.
MES24	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.745(B)	<p><i>Buffer Averaging.</i></p> <p>Same concern as comment MES14.</p>	The intent is that if the remaining reduced buffer area is degraded, it is now narrower and lacks the vegetation to properly function. If it is well vegetated, enhancement would not be necessary (nor required).
MES25	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.745(C)	<p><i>Buffer Reduction.</i></p> <p>Same concern as comment MES17 and MES18.</p>	<p>Planting of degraded buffer has been a part of our CAO since 2005 and based on DOE guidance. We have only tried to clarify based on case history; we are clarifying that the area that might be enhanced is limited to the specific location being reduced.</p> <p>Per DOE guidance, degraded is any portion of a buffer that is not in a densely vegetated community.</p>
MES26	Ed Miller, Miller Environmental Services	9/18/20	F	16.16.760(B)	<p><i>Buffer Mitigation.</i></p> <p>Same concern as comment MES18.</p>	It is being amended to meet DOE guidance.
NES01	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.270(C)(12)	Please provide additional clarification on what is included in the maximum allowed 2,500 sq. ft. impact area to provide consistency in application. The text states driveways shall be the minimum necessary but does not specify if any of this square	Whatever fits in 2,500 sq. ft. We could set specific numbers, but that would provide less flexibility to a homeowner.

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					footage shall be included in the allowed 2,500 sq. ft. impact area. Is there a minimum square footage of parking area that is required to be included? Is the 10-foot building setback counted towards this allowance?	
NES02	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.270(C)(12)	<p>For projects that require a critical area buffer impact, it appears these will be reviewed in the following order: reduction of up to 25% administered by the Director; a minor variance (buffer reduction of 25-50%) administered by the Director; a major variance (buffer reduction beyond 50%) administered by the Director; and last, if major variance is denied or if all other code requirements including mitigation cannot be met, a reasonable use application is administered by the Hearing Examiner. A flow chart similar to Table 1. Project Permit Processing Table in 22.05, may be helpful to describe this process and requirements associated with each.</p> <p>Please clarify if there are any specific criteria for minor and minor variances in regards to total allowed impact area. It appears variances have no maximum allowable footprint and can be permitted as long as mitigation sequencing is applied and impacts can be mitigated.</p>	The commenter is correct; and a flow chart might be helpful; we'll try to develop one. As to variance criteria, see WCC 22.07.050. There are no criteria in regards to total allowed impact area (though one would have to mitigate).
NES04	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.640(C)(1)(g) & 16.16.640(C)(3)	Both sections appear to require mitigation, as well as additional enhancement of 'existing degraded buffer area' to provide mitigation for the 'disturbed buffer area.' Please define 'degraded buffer area' and 'disturbed buffer area,' and provide additional clarity on how much additional enhancement may be required beyond the standard 1:1 and 1.25:1 mitigation ratios. Further defining these terms and the amount of enhancement that is expected will help clarify the application of this code section to specific projects.	Per DOE guidance "degraded" is the difference between existing conditions and a densely vegetated community. As each site is different, it would be difficult to have a code that accounts for every variation. We are trying to balance having a code that is a "cookbook" verses providing flexibility to homeowners and their consultants.
NES05	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.640(B)(1)(a) & (C)(1)(a)	Buffer averaging is preferred to buffer reduction [16.16.640(C)(1)(b)]. Sections 16.16.640(B)(1)(a) and (C)(1)(a) imply a development proposal cannot use a combination of buffer averaging in one area and buffer reduction in another. Clarification could be added to state buffer averaging is not allowed if the portion of impacted buffer has already been reduced. This would allow mitigation plans to use buffer averaging	Clarification has been added.

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					where feasible (preferred) and buffer enhancement to compensate for the remainder of buffer reduction.	
NES06	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.740, Table 4	Provide definition of a Type O stream. This stream type does not appear to be defined in the Washington Administrative Code (WAC 222.16.030), Washington Department of Natural Resources (WDNR) water typing system, or anywhere in the Code update.	A definition of the water types has been added.
NES07	Molly Porter, Northwest Ecological Services	9/14/20	F	16.16.710(C)(1)(b)(i)	Throughout 16.16.710(C)(1) the term "natural streams" has been revised to "natural waters." The term "waters" leaves ambiguity which could be interpreted to mean wetlands or water flowing out of wetlands. Under this definition, 16.16.710(C)(1)(b) would regulate any artificial man-made ditch that receives water from a wetland and categorize the ditch as a stream that would require a stream buffer. Many ditches, including roadside ditches, receive water from wetlands and could be regulated as streams. Is this the intent of this change? If not, for clarity, the term "natural waters" could be replaced "waters of the state" which is defined in (16.16.900).	Based on this comment we have amended the section to say "waters of the state" rather than "natural waters."
NWC01	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.680	As written, it isn't clear that the area of substantial surface and the area beyond the substantial surface are no longer functioning as a part of the buffer protection. As I read it, the provision only seems to address the substantial surface itself.	Correct.
NWC02	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.273	Can we presume that the minor variance is in addition to the standard buffer reduction? Otherwise the minor variance would force many more projects to the Hearing Examiner than under the current reasonable use. For example a 100' buffer would go to 75' minimum; then with minor variance the buffer could then be modified to 25% to 50% of that number or 56.25 or 37.5. When the 10' building setback is added, the relief is no way near what reasonable use is allowing currently especially on smaller lots where the separation is many times only 10' to 20' between the wetland and the foundation. As I describe the minor variance would still require a 66.25 foot to 47.5 foot separation between the foundation and the wetland. It is our belief that even a variance on the standard buffer reduction would overburden the Hearing Examiner if rea-	The proposed new approach would allow the applicant to request, and the County to vary, any numerical or dimensional standard to provide reasonable development. It would be the duty of the Hearing Examiner to determine if a legally permissible project has been recommended.

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					sonable use would under the revisions be required to go to the hearing examiner. You state "They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number cases having to go to the Hearing Examiner." Perhaps you have better statistic than I do about the narrow buffers we have needed under reasonable use. I do a lot of work in Sudden Valley and for the most part many of the projects can stay about 35 feet from a critical area, but those would under the revisions be moved to the hearing examiner.	
NWC03	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.265(B)(4)	<p>Is the intent that the conservation easement shall only apply to the specific altered buffer on properties containing critical areas and/or associated buffers? If so then it should so state. It seems since Notice on title is expected for properties that have critical areas and/or assoc. buffers that are not altered. My thoughts go to the properties that have an established house, want to put a shop in one corner and may need to alter a buffer to do so, but the permittee should not be asked to then identify all of the non-altered wetlands or buffers on the rest of the acreage. So then the applicant would do a conservation easement for the altered buffers and or wetlands, and then also a notice on title to cover any of the other critical areas that are unaltered. If all wetlands and buffer on the property are required to be placed in a CE when only one wetland and/or wetland buffer is altered, this would result in excessive wetland delineation, surveying of wetland boundaries, and reporting costs.</p> <p>Also alteration to buffers on a property should be allowed in the future modified to the full extent of the code provisions and not forced locked into a conservation easement when the first project might only be a minor modification.</p>	<p>The commenter raises a good point. We have revised the section to refer to the "review area."</p> <p>As to the 2nd point, our conservation easements do allow for future development as permitted by code.</p>
NWC04	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16.680	It seems that some effort has been made in part of the code to use the label of compensatory mitigation. Thank you. When a violation occurs clearing or overlayment, once repaired the reparation area should not be then placed in a conservation ease-	Comment noted.

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					ment. Because the word mitigation is still somewhat interchangeable in the code or in the minds of those enforcing the code, it needs to be clear that only compensatory mitigation areas are to be placed in conservation easements.	
NWC05	Katrina Jackson, Northwest Wetlands Consulting	9/9/20	F	16.16	Administratively, through reasonable use, wetlands are being filled. This action does not show up as an administrative option under minor variance. As written it looks like wetland fill would need to go to hearing examiners as well. This again would send several more of the single family small residential lots to the hearing examiner. Basically I like the idea of administrative variance or minor variance, but with changes it looks significantly more restrictive than the current practices for what can be handled without going to the hearing examiner. You might also talk with the City of Bellingham. I was working on a stream buffer reduction below minimum standards, very soon after the hearing examiner had told the City to start handling these as an administrative variance and to quit sending them to the hearing examiner. I found this interesting.	Staff's recollection is that staff has only been approving wetland fill for a SFR through administratively processed reasonable use exceptions (RUE) for the last 2 years, and that has only happened once. However, we do not believe that wetland fill (or other uses approve through an RUE ought to be approved by staff; thus the reason for the proposed change.
PA01	Paul Anderson	9/18/20	F	16.16.225(B)(8)	I recommend that this provision be listed "as excepted in WCC § 23.05.065," since it is not applicable for shoreline associated wetlands. Interpretation and enforcement of this section within shoreline jurisdiction is problematic as shoreline associated wetlands by definition (WAC 173-22-030(1)) have proximity and influence with the shoreline water and therefore, are not "functionally disconnected".	Based on this and discussions with DOE staff, we have deleted "functionally disconnected" from this provision. Additionally, based on communication with DOE staff, we have added that the wetlands have to have a habitat score of less than 6 to qualify.
PA02	Paul Anderson	9/18/20	F	16.16.260(G)(1)	Three years is not adequate to establish whether a mitigation site will successfully compensate for lost critical area functions, especially where that mitigation includes the planting of shrubs and trees. In terms of wetland mitigation, state and federal agencies have required a minimum of five years monitoring for several years and I recommend that five years be the minimum monitoring required in the SMP.	Though staff had not proposed to amend this section, based on this comment we realized that the existing code does not reflect current practices. We have updated this section to do so, and to address Mr. Anderson's comment.
PA03	Paul Anderson	9/18/20	F	16.16.640(C) & 16.16.720(D)	<i>[Wetland] Buffer Width Reduction</i> Allowing an outright reduction in buffer width will not protect critical area (wetland or fish and wildlife habitat) functions or	We have added language to this section from DOE guidance, clarifying that buffer reductions are not allowed outright, but

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					shoreline ecological functions. The only time a reduction in adopted buffer widths should be allowed (no > than a 25% reduction) is when it is used with buffer averaging (see Buntin et al. 2016). To ensure that there is no net loss of shoreline ecological functions, I recommend that this provision be stricken within shoreline jurisdiction. This same concern and recommendation applies to 16.16.720.D. (Buffer Width Variance).	only under certain (DOE approved) circumstances.
PA04	Paul Anderson	9/18/20	F	16.16.710(C)(2)	<p><i>Habitat Conservation Areas – Designation, Mapping, and Classification: "Areas in which federally listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the U.S. Fish and Wildlife's Threatened and Endangered Species List or Critical Habitat List..."</i></p> <p>Within shoreline jurisdiction, this section needs to be edited to also include the National Marine Fisheries Service (NMFS), the federal agency responsible for managing marine species listed under the Endangered Species Act that includes Puget Sound Chinook salmon (<i>Oncorhynchus tshawytscha</i>) and Southern Resident killer whales (<i>Orcinus orca</i>). These two iconic species are of significant cultural, commercial and recreational importance for the Pacific Northwest and not acknowledging their importance and presence within the SMP is a substantial oversight. Due to its critical importance for Chinook salmon rearing and migration, NMFS designated the marine and estuarine nearshore (extreme high water to approx. 30 meters depth), including most of the Whatcom County coast, as critical habitat for the recovery of Puget Sound Chinook in September 2005 (see Federal Register, Vol. 70, No. 170, 9/2/05). NMFS is acknowledged as a regulatory agency in WCC §16.16.900 (Definitions; "Critical habitat").</p> <p>The marine and estuarine nearshore within the County meets the definition of a Fish and Wildlife Habitat Conservation Area in WAC 365-190-130 and, more importantly for the SMP, the definition of Critical Saltwater Habitat in WAC 173-26-221(2)(C). I respectfully recommend that the County include reference to NMFS-managed listed species in the SMP and that the marine</p>	We have amended 16.16.710(C)(2) to include NMFS listings and critical habitat.

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					and estuarine nearshore is designated critical habitat for Puget Sound Chinook. To simplify the permitting process and assist staff and applicants in understanding this update, I would also recommend that the salmonid habitat maps be updated to show the marine and estuarine nearshore as a regulated critical area.	
PA05	Paul Anderson	9/18/20	F	16.16.720 & 16.16.740	<p><i>Habitat Conservation Areas – Use and Modification and Habitat Conservation Area Buffers</i></p> <p>Since shorelines and shorelands (associated wetlands) include more than just streams and the SMP protective standards apply to those other waters, I recommend changing “stream(s)” to “water(s)” in Table 3 (§16.16.720) and in §16.16.740. Also, since tidal waters include a number of species and habitats of cultural, commercial and recreational importance (e.g., shellfish areas; Chinook salmon), what is the rationale and science to support requiring a wider buffer on marine versus freshwater habitats; 150 and 200 feet, respectively? To ensure no net loss of ecological function, I recommend that the upland buffer on marine habitats be increased to 200 feet, which is well within the buffer range reported in the scientific literature (see Protecting Nearshore Habitat and Functions in Puget Sound; Protection of Marine Riparian Functions In Puget Sound, Washington; available from WDFW: https://wdfw.wa.gov/).</p>	<p>Amended per this suggestion (though in Table 3 only for the performance standards that apply to all waters.)</p> <p>And while the buffer is proposed to be 150' in the marine areas, we are still managing for NNL in the entire shoreline jurisdiction.</p>
WCPW01	Atina Casas, W/C Public Works	9/18/20	E	22.05.020	Shoreline Substantial is included in both the Type II and Type III sections of the table. The footnote (c) in the Type II section explains the circumstances when a Shoreline Substantial will be processed as a Type III. This footnote should also be in the Type III section for further clarity.	Comment noted.
WCPW02	Atina Casas, W/C Public Works	9/18/20	E	22.07.020(B)(1)	How will the applicant know what the dollar amount is when OFM changes it every 5 years? Will updated values be shown on the permit application form so applicants know if their project qualifies based on the current value at the time of application submittal?	Correct, the application is changed when OFM updates the amount.
WCPW03	Atina Casas, W/C Public Works	9/18/20	E	22.07.030(A)	<i>A. Shoreline substantial development permits are considered Type II applications pursuant to WCC 24 22.05.020 (Project Permit Processing Table).</i>	We have modified the sections to clarify.

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					For clarity, add a sentence that this permit could be considered a Type III application pursuant to 22.05.090(2) (Open Record Public Hearing).	
WCPW04	Atina Casas, W/C Public Works	9/18/20	F	16.16.680(H)(1)	Consider keeping the wetland buffer impact mitigation ratio 1:1 for public road and bridge projects. Mitigation is not possible before impacts. And between clear zone requirements for vehicle safety and limited right-of-way, there often isn't onsite area available to accommodate a 1.25:1 mitigation ratio.	The mitigation ratios are proposed to be amended to meet DOE guidance. Nonetheless, Public Works could choose to enhance publicly owned property now and apply the mitigation to future projects (i.e., advance mitigation).
WCPW05	Atina Casas, W/C Public Works	9/18/20	F	16.16.760(B)(8)	Consider an HCA buffer impact mitigation ratio of 1:1 for public road and bridge projects. Mitigation is not possible before impacts. And between clear zone requirements for vehicle safety and limited right-of-way, there often isn't onsite area available to accommodate a 1.25:1 mitigation ratio.	The mitigation ratios are proposed to be amended to meet DOE guidance. Nonetheless, Public Works could choose to enhance publicly owned property now and apply the mitigation to future projects (i.e., advance mitigation).
WCPW06	Atina Casas, W/C Public Works	9/18/20	F	16.16.900	Add a definition for Critical Facilities, which is referenced in 16.16.322.	A definition has been added.
WCPW07	Chris Elder, W/C Public Works	9/18/20	B	C/P Ch. 11	Under the Council approved scope of possible amendments, topic #6 highlights Climate Change/Sea Level Rise with the recommended action of "Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations". The proposed amendments to the Shoreline Master Program have not sufficiently addressed this topic based on available data including projected impacts of climate change and have not incorporated best management practices developed to address the projected impacts of climate change.	Policies regarding climate change/ sea level rise have been developed and/or strengthened and are proposed to be included in Chapter 11 of the CompPlan (pg. 11-30).
WCPW08	Chris Elder, W/C Public Works	9/18/20			Related to climate change, the most significant projected climate impacts related to the SMP update include sea level rise and increases in coastal and riverine flooding, both in magnitude and frequency. I have included the several regional and state scientific climate data reports and data informed recommendations on how to incorporate projected climate change impacts such as sea level rise and increased coastal and riverine flooding into planning processes. The list of resources supplied is located at	Before adopting specific regulations, it seems like we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.) and anticipate the development of the CoSMoS model (on which the COB and WCPW are working), which should provide the best data for Whatcom County. The policies being introduced

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					<p>the end of this memo.</p> <p>It should be noted that Whatcom County is currently participating in development of a local Coastal Storm Modeling System (CoSMoS) which will further inform the extent of potential impacts of sea level rise combined with storm surge, wind currents, barometric pressure, and other environmental factors. Data from this effort will inform the magnitude and area of impact and will support selection of an actual sea level rise elevation and/or shoreline impact zone, but existing data already highlights that sea level rise has occurred and will continue to occur at an increasing rate.</p>	<p>would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>
WCPW09	Chris Elder, W/C Public Works	9/18/20			<p>While this periodic update to the Shoreline Master Program may not spur development or adoption of an actual sea level rise projection for Whatcom County shorelines, staff recommends developing new code language that clearly identifies the projected impacts of sea level rise and increased impacts of riverine and coastal flooding within Title 23. Furthermore code improvement must require applicants pursuing development within the shoreline jurisdiction to perform a climate vulnerability assessment for the proposed action and highlight mitigation measures proposed to address projected climate impacts. This language will support applicants in mitigating climate risk to their private investment and will support local government in protecting public safety, private property, and environmental health.</p>	<p>Your comments will be forwarded to the P/C & Co/C for their consideration.</p>
WCPW10	Chris Elder, W/C Public Works	9/18/20			<p>The resources described below have been attached to this comment letter to support the above comments and recommendations:</p> <ul style="list-style-type: none"> • The University of Washington's Climate Impacts Group Shifting Snowlines and Shorelines (2020) highlights this significant climate changes occurring within our region and does provide summary projections of potential changes in sea level. • The Extreme Coastal Water Level in Washington State (Guidelines to Support Sea Level Rise Planning) (2019) provides valuable guidance regarding incorporation of sea level rise projections into local planning. 	<p>Thank you.</p>

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					<ul style="list-style-type: none"> • Maps of Climate and Hydrologic Change for the Nooksack River Watershed (2017) highlights the projected changes in seasonal precipitation in the Nooksack River which projects an increase in winter precipitation over the next 30 years of between 9.5% and 20.8% which will contribute to increased magnitude and frequency of flooding. • Incorporating Sea Level Change in Civil Works Programs is a US Army Corps of Engineers regulation requiring consideration of sea level impacts on all coastal projects as far inland as the extent of estimated tidal influence and providing guidance for incorporating the direct and indirect physical effects of projected future sea level change across the project life cycle in managing, planning, engineering, designing, constructing, operating, and maintaining projects and systems of projects. • Integrating Climate Resilience into Flood Risk Management (2010) provides significant policy guidance and considerations. <p>Additional online resources that may support development of climate change related improvements can be found at the following sites.</p> <ul style="list-style-type: none"> • https://toolkit.climate.gov/ • https://toolkit.climate.gov/tool/adaptation-tool-kit-sea-level-rise-and-coastal-land-use 	
RES01	Ander Russell, Re-Sources	9/17/20	D	23.30.020	<p><i>SMP Scoping Document Item 5 : Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173- 26)</i> – Thank you for adding language referencing WCC Title 23 Shoreline Regulations 23.30.020 as it pertains to mitigation. We feel that in order to adequately address item 5b from the Scoping Document further clarification is needed on exactly what mitigation actions are needed for development. Please add clarification and reference WCC 16.16.</p>	<p>5b from the scoping document is “Clarify development mitigation requirements.” We feel we have done this in many sections of both Title 23 & WCC 16.16. While most of the “clarifying” has been done to the text of WCC 16.16, it pertains to shoreline permits since the CAO is adopted as part of the SMP.</p>
RES02	Ander Russell, Re-Sources	9/17/20	D	23.40.020(G)	<p><i>Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage</i> – Thank you for adding in language about the need for mitigation under G (Development activities allowed in buffers and setbacks). Please clarify</p>	<p>The text of that section clearly states, “provided...that they comply with all the applicable regulations in WCC Chapter 16.16, including mitigation.” Please note</p>

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					and strengthen that language. Any impacts from activities happening within the critical area buffer must be mitigated please show how this will be done.	that mitigation requirements are in WCC 16.16, a part of the SMP, and that both need to be read together.
RES03	Ander Russell, Re-Sources	9/17/20	B & D	C/P Ch. 11 & Title 23	<p><i>Climate Change/Sea Level Rise</i> – Thank you for the updated language concerning climate change and sea level rise that was added to the Chapter 11 of the CompPlan (Exhibit B). We strongly support the recommended changes outlined by Futurewise and WEC for this scoping item. A comprehensive approach to addressing the impacts of climate change by protecting natural shorelines and other natural systems will help our community withstand and recover from the increase in those impacts over time.</p> <p>Please add language to reflect a focus on climate change and sea level rise impacts to Exhibit D. The SMP and CompPlan must do a better job at addressing sea level rise and other climate change impacts. We understand that the bulk of the revisions in this area have been added to Exhibit B. However, the words climate change and sea level rise do not appear at all in Exhibit D.</p> <p>Climate change impacts on sea levels, storm surges and riverine and marine flooding are extensively documented and must be planned for and addressed in all County regulations and planning documents. The County need not look any further than its own report on climate change impacts to have the data needed to develop and strengthen policies around climate change, flooding and sea level rise. Just this past winter Whatcom County was inundated with unprecedented flooding from heavy rains that breached dikes and submerged houses. The cost of the damage from the flooding between late January through early February was over \$4 million, \$2.5 million of which was related to road and infrastructure damage.</p> <p>Further recommendations on how to incorporate climate change impacts on rising sea levels, storm surges, and riverine and marine flooding in to Exhibits B and D:</p> <ul style="list-style-type: none"> • Make the changes recommended by Futurewise/WEC to 	<p>Before adopting specific regulations, it seems like we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.) and anticipate the development of the CoSMoS model (on which the COB and WCPW are working), which should provide the best data for Whatcom County. The policies being introduced would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>

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					<p>Exhibit B, policy 11 AA-5 and include new policy 11 AA-8 outlined in their letter.</p> <ul style="list-style-type: none"> • We strongly support the addition of a Sea Level Rise section to Exhibit D. We support the language proposed for a new Section 23.30.080 by Futurewise and WEC in their letter. • Shoreline maps should be updated to include Best Available Science (BAS) and reflect any additional areas that are now considered within the 200' of the OHWM as a matter of shoreline jurisdiction. • Given the impacts of sea level rise on property and life, please prevent construction in areas that will be underwater in the next 30 years. The Washington Coastal Hazards Resilience Network has the best available science on this with various sea level rise projections depending on various greenhouse gas scenarios. • Whatcom County has over 50 Toxic Cleanup Sites in marine shoreline areas.³ Please add language about what steps can be taken to plan for Sea Level Rise impacts on those sites. Proactive steps to protect communities, water and habitat now will prevent high costs down the road. • Science around climate change, sea level rise, storm surges and their impacts is dynamic and evolving - often at a faster pace than required SMP update timelines. Strengthen the language around assessing and incorporating Best Available Science. Be specific about the intervals at which BAS will be assessed and what the process for incorporating BAS will look like. <ul style="list-style-type: none"> ○ Examples from local jurisdiction that incorporate climate impacts: <ul style="list-style-type: none"> ▪ The City of Tacoma has included many updates in their 2019 Periodic Update regarding climate change impacts. Below are the additions they are proposing which Whatcom County could incorporate: ▪ A new general policy of "Evaluate sea level rise data and consider sea level rise risks and impli- 	

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					<p>cations in the development of regulations, plans, and programs." (p. 66)</p> <ul style="list-style-type: none"> ▪ New site planning policies: <ul style="list-style-type: none"> ○ "Development should be located, designed, and managed both to minimize potential impacts from sea level rise and to promote resilience in the face of those impacts, by such actions as protecting wetland and shoreline natural functions, incorporating green infrastructure, retaining mature vegetation, and considering soft-shore armoring wherever possible." (p. 69) ○ "Assess the risks and potential impacts on both City government operations and on the community due to climate change and sea level rise, with special regard for social equity." (p. 70) ○ "Promote community resilience through the development of climate change adaptation strategies. Strategies should be used by both the public and private sectors to help minimize the potential impacts of climate change on new and existing development and operations, including programs that encourage retrofitting of existing development and infrastructure to adapt to the effects of climate change." (p. 70) ▪ A new general policy for Critical Areas and Marine Shoreline Protection: "Protect natural processes and functions of Tacoma's environmental assets (wetlands, streams, lakes, and marine shorelines) in anticipation of climate change impacts, including sea level rise." 	
RES04	Ander Russell, Re-Sources	9/17/20	B	C/P Ch. 11	Scoping Document Item 8: <i>Habitat</i> – Please address Scoping Document item 8a. We understand it is not necessary to have	8a is, "Reference WDFW and DNR's Shore Friendly Program." And you're

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					references to the WDFW and DNR Shore Friendly Program in the code in order for the County to mirror the program but referring to it adds weight and legitimacy for the use of practices outlined in the WDFW and DNR Shore Friendly Program.	right; the code need not reference all the helpful programs the state (or feds or County) manages. However, we have added reference to that program in C/P policy 111-2, and we do provide such references to applicants here at PDS.
RES05	Ander Russell, Re-Sources	9/17/20	F	16.16.225(C)	Please make the following changes to strengthen weak language: <u>Development proposals shall seek to maintain ecological connectivity and habitat corridors whenever possible.</u> <u>Restoration of ecological connectivity and habitat corridors shall be considered a priority restoration and mitigation action.</u>	See response to RES07. Further, until actual wildlife corridors are identified, mapped, and adopted, trying to maintain a variable corridor width dependent on the species one's trying to manage would not be possible through piecemeal development review.
RES06	Ander Russell, Re-Sources	9/17/20	F	16.16.255(B)(3) & (5)	We support the addition of 16.16.255 B #'s 3 and 5	Comment noted.
RES07	Ander Russell, Re-Sources	9/17/20	D		Please add a wildlife corridor overlay to shoreline maps in Exhibit D or wherever else is relevant.	The only wildlife corridor that the Council has adopted is the Chuckanut Wildlife Corridor, which is shown on our critical areas maps. Our understanding is that the Council's Wildlife Advisory Committee is looking into recommending others (based on a scientific review), but until the Council acts to adopt any new ones we have nothing to map.
RES08	Ander Russell, Re-Sources	9/17/20	D		We are generally opposed to expansions of nonconforming overwater structures, and will make recommendations to P/C & Co/C on revisions to Chapter 23.50.	Comment noted (however, the code does not allow this).
RES09	Ander Russell, Re-Sources	9/17/20	D	23.40.160	<i>Recreation</i> – Item 13d: The language around trails within critical area buffers must be strengthened. Any impacts to any portion of the critical area buffer from recreational trails must comply with all applicable regulations in WCC 16.16 and be mitigated.	In general we have tried not to repeat every requirement of one code in another (i.e., those of 16.16 in T-23, and vice versa), as there is a general rule that shoreline permits are subject to 16.16. Nonetheless, we have added subsection 23.40.160(A)(6) to remind folks.
RES10	Ander Russell, Re-Sources	9/17/20			<i>Cherry Point Management Area and heavy impact industrial zone</i> – We support the Aug 17 th draft revisions to the Cherry	Comment noted.

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					Point Management Area section of Chapter 11. Going further, to fully implement the Comprehensive Plan policy amendments for the Cherry Point industrial zone adopted by the County in May 2017, and to maintain consistency with the proposed Cherry Point Amendments—if adopted—additional amendments to other sections of the SMP are warranted. We intend to propose additional revisions, and will seek feedback from PDS and stakeholders before submitting specific language for consideration by the P/C this Fall. Particularly, specifications for where shoreline conditional use permits are required and conditional criteria should be updated further.	
RES11	Ander Russell, Re-Sources	9/17/20	F	16.16.745	<i>Scoping Document Item 18: Shoreline Setbacks/Riparian Management</i> – We were unable to see where language around Scoping Document item 18b had been added. Please provide specific language to show what incentives will be provided to enhance Fish and Wildlife Habitat Conservation Areas.	18(b) reads, “Provide incentives to enhance Fish and Wildlife Habitat Conservation Areas (FWHCA). Staff had added this to the scope as we had originally considered developing a site-specific shoreline buffer program wherein incentives to enhance would allow buildings be built closer to the shoreline. However, while exploring this option we determined that additional analyses of shoreline characterization would be required, and doing so was not part of the overall scope of a periodic update.
RES12	Ander Russell, Re-Sources	9/17/20	A & B		<i>Scoping Document Item 19: Water Quality</i> – Lake Whatcom is the drinking water source for 100,000 Whatcom County residents. Scoping Document item number 19 addresses Lake Whatcom water quality. However, no recommendations about Lake Whatcom have been added to this or any section in Exhibits A or B. Please add policy language about the importance of Lake Whatcom as the source of drinking water for most County residents and about the current water quality improvement plan (TMDL). We understand that this language is referenced in Exhibit A, however that language is only in the narrative. Please add policy language (in Exhibit A and Exhibit B) about how the	Ch. 10 of the CompPlan already contains an entire narrative regarding this (pg. 10-22), as well as multiple policies (Goal 10-J and its policies, pg. 10-36, as well as multiple other policies throughout). We didn't think this all needed to be repeated.

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					County will improve water quality specific to the TMDL for Lake Whatcom.	
RES13	Ander Russell, Re-Sources	9/17/20			<p><i>Scoping Document Item 22: No Net Loss</i> – Thank you for providing clarification in the Guide to Reviewing Draft SMP Amendments document, about the creation of a Not Net Loss Technical (NNL) memo. We support the creation of the memo and understand that it will be completed at an unspecified date after, “public review of draft amendments,” is completed.</p> <p>We agree with the statements made by Futurewise and WEC in their letter. It is very likely that until the County can show that it achieves NNL of shoreline ecological functions it may not be in compliance with the Shoreline Management Act and the Shoreline Master Guidelines.⁴</p> <p>Throughout the update clarification is needed on how no net loss (NNL) will be met and monitored. Please provide clarification in the memo of how the County will monitor activities such as forest practices, mining, construction of structures and trails, shoreline stabilization and all others in a way that will result in NNL of shoreline ecological functions.</p> <p>In order to restore salmon, orca and the shoreline ecological functions we all depend on we must think beyond bare minimum requirements. We know the NNL standard is not fully protecting shorelines and wetlands from degradation and we cannot afford to wait another 8 or 9 years for the next update.</p> <p>Please provide clarity on when the technical memo will be completed, allow for public input on the memo and if the memo or resulting actions, show that the SMP is not achieving NNL outline how NNL or net ecological gains, will be achieved and how those new standards will be incorporated in to the SMP, Comp-Plan and Critical Areas Ordinance.</p>	Comment noted. A draft will be provided to the P/C prior to their final action. The draft will need to be finalized once the Co/C has completed their review.
RES14	Ander Russell, Re-Sources	9/17/20	C	C/P Ch. 8	Thank you for including the new Whatcom County Comprehensive Plan Chapter 8: Mineral Resource Lands in this recommended update draft.	Comment noted (though we believe you’re referring to the <i>Marine</i> Resource Lands section).
RES15	Ander Russell, Re-Sources	9/17/20	D	23.30.050	<i>Vegetation Management</i> – Add language requiring the restoration of native vegetation and vegetation conservation standards	Thank you. We had inadvertently left out some of the existing language of the veg-

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					(lawns and turf are prohibited) for any new building permits, expansions or change of use in the following areas: within 50' of the OHWM for Lake Whatcom or impaired water bodies on the 303(d) list.	etation management section, but have now reinserted it.
RES16	Ander Russell, Re-Sources	9/17/20	D	23.30.060	<i>Cultural Resources</i> – We support the suggestions added by Lummi Nation. Accept and approve all changes added by Lummi Nation in this section.	Comment noted.
RES17	Ander Russell, Re-Sources	9/17/20	D	23.40.040	<i>Agriculture</i> – We support staff's recommendation during scoping around manure holding facilities. We plan to make comments to the P/C & Co/C during this update process to, again, request that requirements be added that any manure holding facility permitted within the shoreline jurisdiction be in the form of above ground tanks or towers instead of earthen lagoons. In order to be protective of our waterways and groundwater, please make manure holding facilities a shoreline conditional use.	Comment noted (though we believe you brought this issue up during scoping, staff did not).
RES18	Ander Russell, Re-Sources	9/17/20	D	23.40.040	<i>Agriculture</i> – Along the same lines, to reduce the risk of contaminant run-off from flooding and seepage, consider making it mandatory for any new or replaced manure lagoons to be above ground in tanks or towers.	Comment noted.
RES19	Ander Russell, Re-Sources	9/17/20	D	23.40.140	<i>Mining</i> – We oppose the amendments to WCC 23.40.140, Mining. We support the language proposed by Futurewise and WEC in their letter. Please update this section with their language for 23.40.140(D).	Comment noted.
RES20	Ander Russell, Re-Sources	9/17/20	D	23.40.140	<i>Mining</i> – We recommend that the SMP Update prohibit motorized or gravity siphon aquatic mining and discharging effluent from this type of mining in shorelines that are the critical habitat for salmon, steelhead, or bull trout and that salmonids use for spawning, rearing, and migration. This is necessary in order to follow RCW 90.48.615(2).	We have added such language.
RES21	Ander Russell, Re-Sources	9/17/20	D	23.40.150	<i>Docks, Piers and Mooring Buoys</i> – Overwater structures, including docks, cause direct and indirect impacts to shoreline functions and habitat for salmon and forage fish like Cherry Point herring during the construction process and over the useful life of the dock. The cumulative impacts of overwater structures are: <ul style="list-style-type: none"> • "Increase in pollutants and habitat disturbance associated with boat operations and dock and piling maintenance", • "Increased travel distance and time for juvenile salmon and 	Please review 23.40.150 again, as we believe we have accomplished these.

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					<p>extended time in deeper water, increasing predation risk",</p> <ul style="list-style-type: none"> • "Decrease in eelgrass and plant habitat and overall photosynthesis in intertidal zone", • "Alteration in juvenile salmon prey base and predation pressure", and • "Change in wave energy and longshore drift patterns, and resulting changes in upper intertidal sediment distribution" <p>Please make these changes concerning Overwater Structures:</p> <ul style="list-style-type: none"> • Add a clear preference for the use of mooring buoys. • Applicants must demonstrate conclusively that use of a moorage buoy, nearby marina, public boat ramp, or other existing shared facility is not possible. This includes providing evidence of contact with abutting property owners and evidence that they are not willing to share an existing dock or develop a shared moorage. For commercial/industrial facilities, this would include evidence that existing commercial facilities can't be shared or are inadequate for the proposed use. • Minimum grating requirements to allow for light. • Any dock, pier, and moorage pile must include an evaluation of the nearshore environment and the potential impact of the facility on the environment. 	
RES22	Ander Russell, Re-Sources	9/17/20	F	16.16.235(B)(4)	<i>Mitigation requirements for hazard trees</i> – Currently there's no requirement to mitigate, or replant, a hazard tree. We suggest adding a requirement to replant a native tree in an appropriate location on site for every hazard tree removed in the shoreline.	Please refer to 16.16.235(B)(4)
RES23	Ander Russell, Re-Sources	9/17/20	D	23.40.150	<i>Lake Whatcom</i> – The City of Bellingham's SMP (Title 22, BMC) makes many mentions of Lake Whatcom and discourages certain new uses and activities like docks (a whole section in BMC 22.09.060 "Piers, floats, pilings – Lake Whatcom and Lake Pad-den) and the spraying of herbicides (BMC 22.05.020(B)(1)(n)). Please consider mirroring the City's SMP regulations for Lake Whatcom.	We have reviewed Bellingham's sections of code that you reference and do not see any discouragement as you say; in fact, there's has the same components as ours.
RES24	Ander Russell, Re-Sources	9/17/20	D	23.40.190	<i>Bulkheads and Shoreline Armoring</i> – Bulkheads and other forms of hard armoring should be conditional uses because of their	Comment noted. Please note that in the use table most of the hard armoring

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					adverse impacts on the shoreline environment.	measures are either prohibited or require a CUP. For bulkheads specifically we did not change existing text. Furthermore, we did add text that prioritizes soft-stabilization measures, and that hard measures are of last resort.
PB01	Pam Borso	11/8/20	C	C/P Ch. 8	I would like to urge you to include the amendment to Whatcom County's comprehensive plan to include Marine Resource Lands as a way to recognize marine and tidal lands in Chapter 8 of the Comprehensive plan. Marine and tidal lands are as important as forestry, mining and agricultural lands. These lands are significant resources and along with the upland areas adjacent to them need to be protected for their cultural, social and economic values.	Your comments will be forwarded to the P/C for their consideration.
MS01	Mike Sennett	11/8/20	C	C/P Ch. 8	<p>Whatcom County's geography stretches from the coasts of the Salish Sea to the Cascades, and all the watersheds of the three forks of the Nooksack River are gathered and delivered to the Salish Sea. It seems to me that the unique areas where land and ocean meet have been undervalued by the settler culture. The original functioning ecosystems that supported the indigenous peoples have been severely degraded. Estuaries and wetlands have been filled in, and development has sprawled along the shores in Sandy Point, resulting in shoreline armoring. Birch Bay, Drayton Harbor and The Lummi Nation's tide flats have been contaminated by dairy industry pollution. The lack of protection for our coast has resulted from a lack of recognition of its singular importance by the various governments that have oversight over those i areas.</p> <p>It is time to correct that myopia, and to recognize the important status of our marine lands. By adding the :Marine Resources Lands Amendment to Chapter Eight of the Comprehensive Plan, joining Forestry, Agriculture, and Mining as codified land uses.</p>	Your comments will be forwarded to the P/C for their consideration.
KC01	Kim Clarkin	11/12/20	C	C/P Ch. 8	<p>I support calling out, recognizing and protecting Marine Resource Lands specifically in Ch. 8 of the Comprehensive Plan. I do not understand parts of the new section:</p> <p>a. p8-36, para 1 makes it sound like MRLs are only marine</p>	<p>a. Portions of other jurisdictions' shoreline jurisdiction are excluded; the County has no jurisdiction there.</p> <p>b. You would have to ask the MRC.</p>

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					<p>shorelines. According to the map they actually extend to the county line. It would be helpful to describe the extent and exclusions in this section. The map shows that part of Bellingham Bay, Drayton Harbor and the shoreline around Blaine are excluded for unexplained reasons. Some of these areas are in special designations but there is no explanation of what these designations mean. Perhaps this could be clarified.</p> <p>b. On p8-39, Policy 8U-3 seems unnecessary. If it is meant to convey a specific meaning, could that be stated clearly?</p> <p>c. Policy 8U-4 refers to State marine resource lands within Whatcom County. I think we may mean State aquatic lands within the county.</p> <p>d. On p 8-41, goal 8W includes no policies. Is this because specifics are listed in other areas of the CompPlan? It would seem useful to incorporate policies related to e.g., reducing shading of near-shore habitat by piers and docks; reducing hard shoreline stabilization methods and incentivizing soft ones; preventing oil spills; removing creosote; protecting kelp and eelgrass beds, etc. If this is done elsewhere in the Comp Plan perhaps reference to those sections here would help integrate the Plan.</p> <p>e. I suggest including the boundaries of the Cherry Point Aquatic Reserve on the map.</p>	<p>c. We believe the MRC chose the word "marine" instead of aquatic because they were focused on the <i>Marine</i> Resource Lands, not all aquatic lands.</p> <p>d. Goal 8W has no policies because the MRC did not propose any.</p> <p>e. Not a bad idea.</p>
CPAPCSC 01	Cherry Point Aquatic Reserve Citizen Stewardship Committee	11/11/20	C	C/P Ch. 8	The CPAR CSC supports policies and regulations that further protect and enhance marine shoreline areas, such as the Cherry Point Aquatic Reserve. Therefore, the CPAR CSC writes this letter to express support for the Chapter 8 Marine Resource Lands addition to the Whatcom County Comprehensive Plan. This addition to Chapter 8 recognizes marine resource lands and designates long overdue protection of these marine resource lands that are vital economically, culturally, recreationally and environmentally.	Your comments will be forwarded to the P/C for their consideration.
BIAWC01	Jacquelyn Stryna, BAIWC	11/5/20	D, F		Terminology – There is initial concern about terminology that requires clarification, including terms such as "Type O water," "functionally disconnected," "habitat corridors," and "ecological connectivity," among others. Please clarify and specify where	All terms are defined in Ch. 23. 60 (Definitions) of Title 23 or Article 9 (Definitions) of Ch. 16.16.

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					these terms are codified.	
BIAWC02	Jacquelyn Stryna, BAIWC	11/5/20	F	16.16.265(A)(1)	Building setbacks – It is unclear why there is a need for building setbacks to be a minimum of 10 feet from the edge of a CA buffer (WCC 16.16). As currently written, the building setbacks further reduce the “reasonable use” footprints from a mere 4,000 square feet to 2, 500 square feet.	The 10’ building setback from critical area buffers is an existing rule (only moved in the amended version). It was adopted by Council to minimize impacts when maintaining structures (e.g., when putting a ladder up against a 2-story structure the bottom would need to stick out 5-10 feet) and to provide a “fire safe” area where combustible materials can be removed.
BIAWC03	Jacquelyn Stryna, BAIWC	11/5/20	D, F		SMP and CAO changes lend increased authority to the County over development, which restricts the freedom and business autonomy of home builders and homeowners alike. Private property rights are infringed upon with less autonomy for land owners and more authority for County government to determine garden and landscape decisions. Restated, the SMP and CAO updates specifically narrow the choices of home builders and homeowners for no reasonable benefit. These proposed updates extend County authority.	Your comments will be forwarded to the P/C for their consideration.
BIAWC04	Jacquelyn Stryna, BAIWC	11/5/20	F	16.16.270(C)(12)	Reasonable Use Exceptions/Reduction: Why is the County proposing a reasonable use reduction to such a small footprint of 2,500 square feet?	Staff has proposed to go back to the 2,500 sq. ft. maximum impact area we had prior to the 2017 Critical Areas update, as under a reasonable use exception granted by the Hearing Examiner no mitigation would be required.
BIAWC05	Jacquelyn Stryna, BAIWC	11/5/20	F	16.16.630(E)	Increased Buffers only further restrict land availability and choke the potential for a home to be built.	Your comments will be forwarded to the P/C for their consideration.
BIAWC06	Jacquelyn Stryna, BAIWC	11/5/20	D, F		Mitigation requirements cost burden projects and mitigation ratio changes impede autonomy in the construction schedule.	Your comments will be forwarded to the P/C for their consideration.
BIAWC07	Jacquelyn Stryna, BAIWC	11/5/20	D, F		All of the proposed land use modifications add to the overall project cost of building a house. This type of over-regulation directly contributes to the high cost of housing Whatcom County is experiencing, plus constricts the availability of land supply.	Your comments will be forwarded to the P/C for their consideration.
LSK01	Lesa Starkenburg-Kroontje, on behalf of John and Leanne Olson, Larry and Bar-	11/19/20	G	Shoreline Environment Designation Map	This letter is written on behalf of John and Leanne Olson and Larry and Barbara Nims, the owners of APN 390302 428076 0000 and 390302 485039 0000, and on behalf of John and Gladys Van Boven, the owners of APN 390302 440200 0000.	Before a determination can be made, staff has requested of their attorney an approved reclamation plan.

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	bara Nims, and John and Gladys Van Boven				<p>Their property is located at the corner of East Pole Road and Everson Goshen Road and is depicted on the attached Assessor section map.</p> <p>My clients' property was designated as a shoreline of the state under the Shoreline Management Program during the 2008 Comprehensive Plan update. However, this entire property is part of the mineral resource overlay under the Whatcom County Code with permits to mine and the ability to change the configuration of the water body.</p> <p>In 2008 after the completion of the Shoreline Management Program update, the property owners were made aware of the designation. Whatcom County staff at the time believed that the owners had requested the designation. This was not the case. In fact, it was the Department of Ecology who mistakenly noted this area as requiring designation in their correspondence with Whatcom County in January of 2007. Had the property owner's been notified they would have explained the temporary configuration of the water body that is still actively mined.</p> <p>The property owners were told to correct the erroneous shoreline designation, they needed to wait until the next Shoreline Management Program Periodic Update. Since the periodic update time is upon us, it is now time to correct the designation. However, I see the error is continuing forward as the maps still note the area is designated as "shoreline".</p> <p>The Washington State Department of Ecology and Whatcom County have not made it a practice to designate mineral extraction sites as shorelines because the size and configuration of the shoreline is not certain until mineral extraction is complete and the mineral resource land zoning overlay removed from the property.</p> <p>In fact, as mineral extraction, and its accessory uses, are considered the highest and best use for the property within the mineral resource land overlay it is presumed that expansion and contraction of the water body will continue over the course of</p>	

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					<p>many decades. To create a nonconformity for the preferred zoning use and the existing permits for a waterbody that may to temporary in nature is not good planning.</p> <p>This situation has been discussed many times in different permit settings with the County with the understanding that at this time of this periodic update the error would be corrected.</p>	
RFW01	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	A, B, C, E, G	C/P Ch. 10, Ch. 11, Ch. 8 & Title 22, & Shoreline Environment Designation Map	<p>We recommend that the P/C tentatively approve all Comprehensive Plan amendments proposed in Exhibits A, B, and C, as well as all proposed amendments to WCC Title 22 shown in Exhibit E, as well as the Shoreline Environmental Designations map.</p> <p>However, as our previous comments stated, we are recommending additional policies be added into the Comprehensive Plan, with corresponding development regulations updated in Title 22.</p>	Your comments will be forwarded to the P/C for their consideration.
RFW02	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	B	C/P Ch. 10	<p>Modify Policy 11AA-5 be modified to read as follows:</p> <p>Policy 11AA-5: <u>Whatcom County shall monitor the impacts of climate change on Whatcom County's shorelands, the shoreline master program's ability to adapt to sea level rise and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed.</u> Whatcom County shall<u>should</u> periodically assess the best available sea level rise projections and other science related to climate change within shoreline jurisdiction and incorporate them into future program updates, as relevant.</p>	The P/C accepted this recommendation, though retained "should" (instead of "shall") in both the 1 st and 2 nd sentences.
RFW03	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	B	C/P Ch. 11	<p>Add a new Policy 11AA-8 reading: <u>New lots and new and expanded development should be located so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises.</u></p>	Your comments will be forwarded to the P/C for their consideration.
RFW04	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	A	C/P Ch. 8	<p>Add an additional policy, possibly under Goal 10D: <u>Protect natural processes and functions of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise.</u></p>	Your comments will be forwarded to the P/C for their consideration.

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RFW05	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	11/12/20	D, F	Title 23, Ch. 16.16	We recommend that the P/C table all changes to WCC 16.16 and WCC 23.40 until a No Net Loss memo is prepared.	A draft NNL addendum is anticipated in December 2020. The P/C will have it prior to any final action.
MM01	Mike MacKay	11/30/20	D	23.40.190(A)(8)	<p>1. When hard shoreline stabilization measures are demonstrated to be necessary, they must:</p> <ul style="list-style-type: none"> a. Limit the size of stabilization measures to the minimum necessary; and b. Assure no net loss of shoreline ecological functions, <u>including loss of substrate for forage fish spawning; and</u> c. <u>Regular beach nourishment must be provided to retain beach material with substrate size suitable for forage fish spawning; and,</u> d. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. 	<p>Though the commenter cited §23.4.180, the text to which he is referring is found in §23.40.190(A)(8).</p> <p>Though staff agrees with the sentiment, we don't believe the addition to (b) is necessary, as loss of substrate for forage fish spawning is just one of many shoreline ecological functions already addressed in Ch. 16.16. Thus, it is one of many specific aspects already addressed by the general rules. Additionally, such areas are already designated as critical saltwater habitat, which is designated a Habitat Conservation Area in Ch. 16.16.</p> <p>The addition of (c) is similar (one specific aspect already covered by the general). But furthermore, beach nourishment is not always the best solution for all habitats. Determining whether beach nourishment is necessary should be determined through the Critical Area Assessment Report process.</p>
MM02	Mike MacKay	11/30/20		23.50.020	<p>Nonconforming Structures</p> <p><u>H. Seasonal floating traps and weirs for enumerating salmon on streams and rivers are considered a legally nonconforming structures, provided they do not impede river vessel transport or otherwise affect the normal functions of river flow and sediment transport.</u></p>	Staff opposes this addition. We don't believe that we ought to blanket designate all seasonal traps and weirs as "legally nonconforming." To achieve this status, the structure has to have been in the same place prior to August 27, 1976—or permitted prior to being made non-permissible by a change in code—and remain in place without a gap of 18

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						months. The fact that they're seasonal and moved around makes that highly unlikely. Nonetheless, seasonal traps and weirs are considered a water-dependent use allowed in the aquatic environment and are permissible (though we can't recall when anyone's ever applied for a permit to install one).
MM03	Mike MacKay	11/30/20		23.060.060	"F" definitions <u>24. "Forage Fish" means a group of marine fishes such as surf smelt, sandlance, and herring which provide an important primary food sources for juvenile salmonids and other fish. Intertidal and subtidal gravel and sand sediments on many beaches provide the essential spawning and incubation habitat for surf smelt and sandlance.</u>	Staff isn't opposed to adding such a definition, but think it unnecessary as "spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sandlance" is already included in the definition of "Critical saltwater habitat." Nonetheless, were it to be added it should be added to Ch. 16.16, not Title 23. However, the second sentence isn't really part of a definition of what these fish are, just a statement of the importance of sediment to them. Staff suggests not including it.
MM04	Mike MacKay	11/30/20		23.40.090	Fill and Excavation <u>9. Marine fill or excavation shall not impede the normal movement of juvenile salmon to move along the intertidal shoreline (salmon migratory corridor) or to force them into deeper water where they are subject to increased predation.</u>	Similar to comment MM01, we find this a very specific issue already covered by the general rules. Subsection (A)(1) (and other sections of Title 23) already state that shoreline uses and modifications cannot impact shoreline ecological functions and ecosystem-wide processes. Part of our goal for this update was to reduce such redundancies and we don't think each section needs to list all the potential impacts a use or modification may have.
MM05	Mike MacKay	11/30/20		23.60.190	"S" definitions <u>1. "Salmon migratory corridor" means the intertidal path-</u>	Again, were such a definition added it should be added to Ch. 16.16, not Title

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					<u>way used by juvenile salmonids during the first few months of saltwater migration. This intertidal habitat provides protection from predators during initial entry into saltwater.</u>	23. Nonetheless, staff doesn't think this definition is needed as the term is not used in either Ch. 16.16 or Title 23.
NWSF01	Eleanor Hines, NW Surfrider Foundation	11/11/20	C	Marine Resource Lands	<p>Writing to express our strong support for the addition of marine resource lands in chapter 8 in the Comprehensive Plan.</p> <p>Agriculture, forest, and mineral lands are already recognized in the Whatcom County Comprehensive Plan, so the addition of Marine Resource Lands to Chapter 8 is fully supported by the Surfrider Northwest Straits Chapter. We only regret that Marine Resource Lands were not included sooner as they are extremely important economically, culturally, recreationally, and environmentally to Whatcom County. Marine resource lands deserve the same protection as our other resource lands and would add a unique protection from other current policies and regulations.</p> <p>We strongly support the inclusion of education and recreation in this section, and we ask that appropriate resources and capacity are allocated to ensure the Chapter 8 additions are fulfilled. We will continue to advocate for the effective and sustainable management of our marine resource lands so that future generations enjoy all the economic, cultural, recreational, and environmental benefits they provide.</p>	Your comments will be forwarded to the P/C for their consideration.
RFW06	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	B		Add new Policy 11AA-8: <u>New lots and new and expanded development along the marine shoreline should be located two feet above the OHWM so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises. Sea level rise elevation data shall be revised every eight years or when the SMP is updated.</u>	Your comments will be forwarded to the P/C for their consideration.
RFW07	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	Ch. 23.30	<p>Add new section:</p> <p><u>23.30.080 Sea Level Rise.</u></p> <p><u>A. New lots shall be designed and located a minimum of two feet above the OHWM so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p>	Your comments will be forwarded to the P/C & Co/C for their consideration.

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					<p>B. <u>Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>C. <u>New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</u></p>	
RFW08	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	23.40.010	Modify Table 1, Shoreline Use by Environment Designation: Change Liquid Manure Storage Facilities and Spreading from a Permitted use to a Conditional Use for the Rural, Resource, and Conservancy Shoreline environments.	
RFW09	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	23.40.040	<p>Agriculture – Add to subsection (A) General:</p> <p><u>6. Replacement manure storage facilities must be tanks or towers.</u></p> <p><u>7. All new manure storage facilities must be tanks or towers.</u></p>	Your comments will be forwarded to the P/C for their consideration.
RFW10	Ander Russell & Eddy Ury (ReSources), Rein Attemann (Washington Environmental Council), and Tim Trohimovich (Futurewise)	12/10/20	D	23.40.140	<p>Mining – Add:</p> <p><u>D. Mining in the 100-year floodplain, floodway, or channel migration zones shall meet the following standards:</u></p> <ul style="list-style-type: none"> i. <u>Mines should be located outside the channel migration zone unless there is no feasible alternative site.</u> ii. <u>Mines shall be no deeper than the bottom of the nearby streams and rivers.</u> iii. <u>The mine reclamation plan shall have a design so that when the river or stream moves into the mine it is not so wide or deep that the captured sediments destabilize the river or stream or increase erosion risks on upstream properties.</u> 	<p>Your comments will be forwarded to the P/C for their consideration.</p> <p>(Were this added it should probably be (B)(2), not (D).)</p>
RFW11	Karlee Deatherage (ReSources), Tim Trohimovich (Futurewise), & Rein Attemann (WEC)	1/12/21	B	11AA-8	<p>Add new policy:</p> <p><u>11AA-8: The buildable area of new lots and new and expanded development along the marine shoreline should be located two feet above the OHWM so they will be at a lower risk of damage and not interfere with the landward expansion and movement of</u></p>	This is a revised proposal after speaking with staff about our implementation concerns. Though staff still takes the position that we should await the CoSMoS model to be completed for Whatcom County,

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					<u>wetlands and aquatic vegetation as sea level rises. The part of the ownership waterward of the buildable area may be used as required open space. If new data is available, sea level rise elevation data shall be revised during the SMP periodic update.</u>	this policy is probably implementable.
RFW11	Karlee Deatherage (Re-Sources), Tim Trohimovich (Futurewise), & Rein Attemann (WEC)	1/12/21	D	23.30.080	<p>Add new section:</p> <p><u>23.30.080 Sea Level Rise.</u></p> <p>A. <u>The buildable portion of new lots shall be designed and located a minimum of two feet above the OHWM so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time. The part of the ownership waterward of the buildable portion may be used as required open space.</u></p> <p>B. <u>Where lots are large enough, new structures and buildings shall be located a minimum of two feet above the OHWM so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>C. <u>New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</u></p> <p>How the language will work in practice Currently new shoreline development must locate the ordinary high-water mark as part of the application for a shoreline exemption or shoreline permit. The proposed policy and regulations simply require the applicant to locate the buildable area for new lots or the new development two feet above the ordinary high-water mark. Where existing lots are not large enough to accommodate this requirement, the new structures or buildings can be elevated. Determining the location of the area two feet above the ordinary high-water mark will require little addition time or expense.</p> <p>Why two feet of elevation?</p>	<p>This is a revised proposal after speaking with staff about our implementation concerns. Though this tact may be implementable, staff still takes the position that we should await the CoSMoS model to be completed for Whatcom County.</p> <p>There isn't a requirement to address climate change/sea level rise in the SMA, though we could if Council desires. However, what we understand from the DOE is that any such regulations should be built on data, which is what PS-CoSMoS will be providing. Furthermore, once the data is available, we should perform vulnerability and risk assessments to see what kind and where the problems might be, and update our shoreline inventory and characterizations. Without such science, we would be open to challenges.</p>

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					<p>The two feet of elevation is based on the Projected Sea Level Rise for Washington State – A 2018 Assessment for Whatcom County. These science-based projections were prepared by a collaboration of Washington Sea Grant, the University of Washington Climate Impacts Group, Oregon State University, the University of Washington, and the US Geological Survey.³</p> <p>These projections incorporate:</p> <ul style="list-style-type: none"> • New science showing the potential for higher sea level rise in the 21st century. • The projections are “community-scale.” They were prepared for 171 locations distributed along Washington’s coastline including Puget Sound. The projections account for variations “in the rate of vertical land movement across the state.”⁵ That is: the projections include whether an area is uplifting or subsiding. • The report was peer-reviewed. <p>Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. The National Research Council concluded that global sea level had risen by about seven inches in the 20th century. A recent analysis of sea-level measurements for tide-gage stations, including the Astoria, Oregon and Seattle Washington tide-gauges, shows that sea level rise is accelerating. The Virginia Institute of Marine Science (VIMS) “emeritus professor John Boon, says ‘the key message from the 2019 report cards is a clear trend toward acceleration in rates of sea-level rise at 25 of our 32 tide-gauge stations. Acceleration can be a game changer in terms of impacts and planning, so we really need to pay heed to these patterns.’” We hope the P/C agrees that it is time to address this accelerating problem.</p>	
KC02	Kim Clarkin	1/10/21	D	23.50.010(E)	<p>I support the proposed changes to regulations of non-conforming uses, structures, etc. that are to be replaced.¹ I do not believe we should approve replacements that are non-conforming. We are attempting to improve--not just maintain--the habitat and other conditions of our shorelines. Replacement should be an opportunity to bring shorelines up to our current</p>	<p>Whatcom County has some of the most lenient nonconforming regulations around, and allowing a nonconforming use to switch to another type of nonconforming use is rather rare. Nonetheless, this is what our existing nonconforming</p>

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					standards and guidelines. Please vote to modify title 23 to accord with this goal. [¹ Note: Staff believes Ms. Clarkin is referring to Commissioner Hansen's proposal to delete the ability of a nonconforming use to change to another type of nonconforming use.]	use regulations in WCC Title 20 (Zoning) allow, so staff has prepared this section of the SMP to mimic those regulations.
PB02	Pam Borso	1/11/21	D	23.40.140	Please approve the following amendment to the Shoreline Management Act as presented by Jim Hansen: Chapter 23.40.140 Mining: Changes to Prohibit Commercial Gravel Bar Scalping	Gravel mining in our rivers is currently allowed. However, it is difficult to permit given other state and federal regulations, especially the Endangered Species Act (which is why we don't see much of this activity). However, Council has indicated a desire to allow some gravel mining. This desire is expressed in their docketed item PLN2019-00011: "Amend the Whatcom County Comprehensive Plan and Whatcom County Code to allow the seasonal extraction of sand and gravel from dry upland areas located within the 1,000 year meander zone of the Nooksack River, provided that such extraction has no negative impact on salmon spawning habitat. The intent is to (a) reduce the conversion of land currently used for farming, forestry and wildlife habitat into gravel pits, and (b) safely remove some of the significant sediment load that enters the Nooksack every year in an effort to reduce flooding and the need to build higher flood prevention berms along the river as the climate continues to change."
PB03	Pam Borso	1/11/21	D	23.50.010(E)	Please approve the following amendment to the Shoreline Management Act as presented by Jim Hansen:	See response to KC02

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					Nonconforming Uses: Jim will propose a change that will no longer allow the replacement of one shoreline nonconforming use (Grandfathered) with another different nonconforming use.	
MM06	Mike MacKay	1/1/21	D	23.40.140	<p>Please consider language which would prohibit mining (gravel scalping) in the Channel Migration Zone.</p> <p>I have firsthand experience how this activity can seriously impact endangered Chinook salmon in the Nooksack River. I was doing field surveys at the time as a fisheries biologist with the Lummi Tribe. These were spawner surveys documenting locations of Chinook and Chum redds (salmon nests). This took place in late September in the 1980s at a sandbar downstream of the Everson Bridge on the right bank (North side).</p> <p>At that time it was not widely known about Chinook spawning in that part of the lower river. I had talked to several gravel scalping company employees during this activity and they vehemently denied seeing any salmon spawning at these excavation sites. WA Fish and Wildlife had reluctantly issued permits for gravel scalping activities. Operators were required by WDFW to re-grade areas they excavated at the end of each day. Unfortunately this was routinely ignored.</p> <p>In this case of the Everson sandbar, the bar was dredged and the sand/silt/gravel material was stockpiled in large heaps immediately upstream of several active Chinook redds that I observed being constructed. A few days later there was a high flow event, as is common this time of year during rainstorms (late September). The stockpiled mounds were eroded away and essentially covered the redds downstream I had observed earlier. I carefully documented this with a report and photos which was sent to WDFW permit writers. Since this time WDFW has been reluctant to issue new permits for this activity on the Nooksack River.</p> <p>I have researched the effects of fine sediments on salmon redds in the literature. What occurs is that the fines less than 0.5 mm are driven down into the stream bed by the swift water into the</p>	See response to PB02

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					<p>newly built redd(s) and form a layer which effectively suffocates the eggs. This fine sediment impedes the flow of oxygenated water around the egg pockets. Adult female salmon are careful to remove fine sediments from the redd during their excavation and egg laying. While some natural occurring fines accumulate in the egg pockets as the result of high flow events, this amount usually doesn't restrict flows of circulating water to any large extent, and certainly not to the degree that an eroded nearby source of newly excavated sediment would.</p> <p>There are numerous sandy/gravel areas in the lowlands of Whatcom County not adjacent to the river available for gravel extraction. Gravel scalping should not be an allowed activity in the Channel Migration Zone or next to any flowing rivers or streams.</p>	
KC03	Kim Clarkin	1/12/21	D	23.30.080	I support the additional policy and regulation proposed by Futurewise, RE-Sources, and WEC regarding limiting new and expanded near-shore building to 2' above the OHWM. Given the projected sea levels in future, and the uncertainty surrounding the exact figure, 2' seems to me an excellent choice. We should definitely not permit people to build right at current OHWM if we want to protect their safety and investment. Please incorporate the additions to Chapter 11 of the Comprehensive Plan, and WCC 23.30.	See response to RFW11.
NTNR01	Michael Maudlin, Nooksack Tribe Natural Resources staff	1/13/21	D	23.30.070	<p>Public Access</p> <p>Trail construction within the shorelines buffer is a long-term, permanent impact to instream habitat. The loss of wood recruitment to the channel due to the removal of hazard trees and maintenance of downed wood across the trail needs to be considered in the assessment of trail impacts. The interruption of the process of natural wood delivery to the channel is largely responsible for the degraded instream habitat conditions for threatened fish stocks and has led to local salmon recovery partners spending millions of dollars installing artificial logjams to offset this impact. Where trails align with existing roads or levees that already receive maintenance this is less of an additional impact, but siting recreational development within the</p>	While the writer's point may be valid, the SMA identified public access to the shorelines as a preferred use (and one of the driving forces in its adoption). While WCC Ch. 16.16 contains numerous standards for where trails may be located in critical areas and how they're built, WCC 16.16 does not address maintenance. We suggest you work w/ Whatcom County Parks Department to address this issue.

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					shorelines buffer should be discouraged to be consistent with other general regulation sections.	
NTNR02	Michael Maudlin, Nooksack Tribe Natural Resources staff	1/13/21	D	23.40.140	Mining The Nooksack Natural Resources Department strongly opposes gravel mining in the active channel area and bars of the river. The history of instream habitat degradation associated with past mining operations has been well documented by the Lummi Nation and with the subsequent listing of fish stocks under the Endangered Species Act gravel removal from the channel is not a viable commercial activity. The disturbance from gravel mining can directly impact salmon habitat, disrupt the aquatic food web, degrade water quality, disturb emergent vegetation and alter the natural process of sediment transport and storage- all of which the SMP is designed to protect. It is simply not possible to design and conduct in-channel mining activities that will not lead to a loss of ecological function and natural process. Any sediment management activities in the river, including removal for flood management, need to maintain consistency with the WRIA 1 Salmon Recovery Plan and the on-going integrated floodplain management planning effort. This section should be edited to prohibit gravel mining from the river.	Your comments will be provided to the P/C & Co/C.
NTNR03	Michael Maudlin, Nooksack Tribe Natural Resources staff	1/13/21	D	23.40.160	Recreation As previously mentioned, trails can be a permanent impact to critical area buffers. It is important to make sure that trail location is not degrading riparian function. Limiting trails to the outer 25% of the buffer will help preserve potential wood recruitment to the channel. Ideally, recreational infrastructure would be cited outside of buffer areas to the fullest extent possible.	We agree, and WCC 16.16 does limit trail construction to the outer 25% of the buffer (except in certain limited circumstances) and mitigation is required.
MES27	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.225(D)	Replace "associated with marine, river, or lake shorelines and wetlands" with "within designated critical areas and/or buffers." The term "associated with marine, river or lake shorelines and wetlands" is vague. This could imply any native plant communities any distance from a marine area, river, lake or wetland. It seems the intent should be to prioritize native plant communities within designated critical areas and/or buffers – that are specifically covered within this chapter of the CAO. Otherwise, it seems the code would be directing applicants to design projects	This new section is intended to address the SMA's requirement to preserve native plant communities associated with shorelines. Though shorelines are considered critical areas pursuant to 16.16.710, staff thought it would be easier for people to understand this rule by if we just call them out. Thus, this wouldn't expand CAO requirements outside of intended areas.

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					based on plants and plant communities not covered by the CAO.	Though it could be changed to read as suggested, it wouldn't have any effect on the regulation. The term "associated" refers to associated with... shorelines, as detailed in the WAC.
MES28	Ed Miller, Miller Environmental Services	2/19/21	F	6.16.255(C)(3)	Strike the new added section "Critical areas assessment reports shall... identify impacts of the proposed use/development on habitat corridors, ecological connectivity, and habitat for salmon and forage fish." Currently, Biodiversity areas and corridors are a WA Fish and Wildlife (WDFW) Priority Habitat. All WDFW priority habitats are currently regulated as HCA's in the CAO. As such applicants are already required to address them. Additionally, habitat for salmon and forage fish are also HCA's covered in the code, as all streams and waters are included as HCA's. The term ecological connectivity is very general and could be widely interpreted to mean many different habitats not covered under the CAO. Otherwise, if that is not staff intent, it would appear this extends CAO jurisdiction over areas not designated as critical areas within the code.	This language, along with other additions, was added to address Council's direction in the Scoping Document to "Consider strengthening ecological connectivity and wildlife corridor requirements" and "Consider ways to improve protections for salmon and forage fish habitat" (Items #8b and 8c). Though, as Mr. Miller argues, Biodiversity areas, wildlife corridors, and WDFW Priority Habitats are designated as critical areas already, addressing them in critical areas assessments was often overlooked. The text was inserted as a reminder that – if there are any such features affected by a development proposal – they should be addressed in the assessment.
MES29	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.270	This section is a complete rewrite of reasonable use procedures and would require a variance (minor and major variance) before reasonable use would apply. Strike the proposed changes and return to the prior language.	The change better aligns with Department of Commerce and Department of Ecology guidance on Reasonable Use Exceptions. The current and previous CAO did not follow the guidance from State Agencies. The existing code does require a variance process to be completed before a reasonable use exception is granted. The Hearing Examiner has questioned why he isn't the final decision maker, as the current code allows an administrative determination to be made after a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust

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						<p>any administrative remedies before seeking a quasi-judicial decision. Thus, we have rewritten the processes and changed the order of the various mechanisms so that the more impactful cases are heard by the Hearing Examiner.</p> <p>Please see the staff report to the P/C dated 4/12/21 for a more detailed explanation as to why staff is proposing this new schema.</p>
MES30	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.270(j)	Add the italicized text at the end of the sentence, "The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter <i>or if the mitigation requirements cannot be met, to the maximum extent feasible on the property.</i>	The section to which Mr. Miller refers is language proposed for deletion. Nonetheless, under the proposed RUE rules, his suggestion would be already be the case.
MES31	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.270(C)(12)	<p>We also propose adding language for the reasonable use section to allow for a development footprint of up to 4,000 square feet for reasonable use single-family residential development. Buffer mitigation should be proposed to offset impacts from reasonable use development as much as possible, but development shall not be denied if the minimum 1:1 mitigation ratio cannot be achieved on the subject property. This would not apply to direct impacts to critical areas themselves, as is the case in the current code.</p> <p>The proposed change is a significant alteration to the code. A significant number of previously designated reasonable use projects, processed administratively, would need to go to the hearing examiner. This will significantly increase costs and time to applicants for simple single-family construction or projects with only buffer impacts – as the current code requires an open public hearing for anything more complex. The change to section j is included so that applicants aren't required to purchase another property for mitigation – which has been required in some cases, precluding any development at all (even for buffer impacts).</p>	<p>The P/C has already tentatively voted to leave the allowable disturbed area as 4,000 sf.</p> <p>Please see the staff report to the P/C dated 4/12/21 for a more detailed explanation as to why staff proposed to go back to the 2,500 sf under our proposed new schema.</p>

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MES32	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.620(D) & .720(D)	Strike the change to "existing legal lots" and keep the current language of "private development sites" in both wetland and HCA sections. This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a wetland or buffer or habitat conservation areas. Access to acres of unencumbered property could be restricted if one small wetland or its buffer would need to be impacted to access a development area.	We believe that Mr. Miller was reviewing an older draft, as this language has already changed. Furthermore, subsection (C) continues to allow for stream crossings to undeveloped land.
MES33	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.630(B) & 6.16.740(A)(1)	Retain the existing language stating that "buffers shall not include areas that are functionally and effectively disconnected from the wetland (or HCA) by an existing, legally established road or other substantial developed surface," rather than the proposed "buffers shall not include areas of existing, legally established substantially developed surface". The proposed change would allow buffers to include disconnected area on the opposite side of roads or developed surfaces (such as buildings).	The amendment is proposed so as to be completing consistent with DOE's guidance and not just the portion about functional disconnect. (See Ecology Wetland Science Volume 2.)
MES34	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(A)(5)	Regarding Buffer Width Increasing, strike this added section, which is not in the current code and allows staff to extend any Category II wetland buffers out to 300 feet if another wetland or HCA is within 300 feet. HCA's include mature forest, priority snags (logs on the ground, 20 feet long, 12 inches wide), streams, etc. The intent of this appears to be to increase buffers if adjacent critical areas are present. However, this is already accounted for in the wetland rating form. The habitat score, which drives the buffer width, is scored higher if habitat conservation areas are within 330 feet. The proposed draft change seems redundant when these factors are already utilized in determining the buffers in the current code - based on the wetland rating form.	The existing code already allows the Director to increase buffer widths, but with less guidance, which consultants are usually clamoring for. Thus, we "borrowed" language from Skagit County, which provides better detail on when the Director can do so. We don't see how this would result in a double counting towards buffer requirements
MES35	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(B)(2) & 16.16.745(B)(2)	Regarding Buffer Width Averaging, strike the proposed language "In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value." This new language effectively eliminates the intent of buffer	In 2005 the Department of Ecology released two volumes of Best Available Science: Volume 1 was a synthesis of knowledge to date, and Volume 2 addressed management recommendations. Ecology addresses buffer averaging in two locations, the first is in Volume 2

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					<p>averaging and converts it to buffer reduction by requiring mitigation. Buffer averaging is an important and simple way to allow more flexibility for property owners that need to make minor buffer adjustments. This section will also reduce consistency and predictability (each staff member could apply this differently), and will increase the cost for simple projects by requiring plantings, monitoring, bonding, etc. by thousands of dollars. Additionally, the Director already has the ability to require plantings in a wetland or HCA buffer where it lacks adequate vegetation under 16.16.630.D or 16.740.B.1 – making this code addition redundant.</p>	<p>section 8.3.8.3 (Buffer Averaging) and the second, in greater detail, in Appendix 8-C (Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System). In Volume 2, Section 8.3.8.3, Ecology explains three reasons why buffer averaging is in the tool kit for protection of wetlands. The first and typical reason is to allow development to occur closer than usual to the wetland in order to fit a particular development “footprint” onto a given site. The second reason is protect a natural feature (e.g., a stand of trees or snags) that otherwise would fall outside of the standard buffer. And the third reason is to provide connections with adjacent habitats or to address those situations where pre-existing development has reduced a buffer area to a width less than the required standard.</p> <p>In Appendix 8-C Ecology states “widths of buffers may be averaged if this will improve the protection of wetland functions or if it is the only way to allow for reasonable use of a parcel. There is no scientific information available to determine if averaging the widths of buffers actually protects functions of wetlands.” Ecology then proceeds to provide criteria for averaging a buffer: 1) It should not be reduced by more than ¼; 2) the area of the standard and averaged buffer are the same; and 3) the buffer is increased adjacent to the higher functioning buffer, and there is a distinct difference between the higher functioning and lower functioning buffers.</p>

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						<p>The requirement for a high function and lower function buffer eliminates the use of averaging when the buffer is entirely degraded.</p> <p>Thus, staff recommends that we amend the draft language to allow buffer averaging only when there is fully functioning and degraded habitat and add language that supports Ecology's Guidance for allowing averaging to protect ecologically significant areas outside of the buffer or habitat connectivity. Section (B)(2) would read:</p> <ol style="list-style-type: none"> 1. Averaging of required buffer widths will be allowed for the following when the dimensional standards of subsection (B)(1) are met: <ol style="list-style-type: none"> a. To protect a natural feature (e.g., a stand of trees or snags) that otherwise would fall outside of the standard buffer. b. To provide connections with adjacent habitats or to address those situations where pre-existing development has reduced a buffer area to a width less than the required standard.
MES36	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(C)(1)(c)	<p>Regarding Buffer Width Reduction, retain the existing language that allows for up to 50% reduction (or 25 feet) for Category IV wetlands, rather than the proposed "The buffer shall not be reduced to less than 75% of the standard buffer.</p> <p>The existing code section allows for up to a 50% (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher category wetlands are restricted to a 25% reduction. Under the</p>	The maximum reduction of 75% through buffer averaging is based on DOE guidance.

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					draft buffer averaging section, Category IV wetlands are still allowed up to a 50% reduction. This will just remove some flexibility for property owners for the lowest category of wetlands.	
MES37	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(C)(1)(e)(iii)	<p>Regarding Buffer Width Reduction, strike the new added section requiring "Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction."</p> <p>This added code section appears to increase CAO authority to other areas of the property and other project components outside of critical areas. Staff already has authority to deny proposed buffer reductions, under parts D, F and G of this code section. Part G of this section already requires mitigation for buffer reduction impacts and result in equal or greater protection for the wetland.</p>	This section does not expand CAO authority to areas outside of critical areas; it only provides a pathway to having narrower buffers (see response to item 5, above). The proposed subsections (e) & (f) provide three ways to for an applicant to minimize impacts and provide equivalent functions and values. Subsection (iii) of these subsections lists just one of the ways an applicant of a moderate impact land use project may apply low intensity buffer widths, which are narrower. An applicant need not do this if they don't want to reduce their buffers (the wider buffers would then apply).
MES38	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.640(C)(3) & 16.16.745(C)(2)	<p>Regarding Buffer Width Reduction, strike the draft added section "where a portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area."</p> <p>The new language appears to be redundant; C.2.g of the wetland section and C.1.g of the HCA section already requires mitigation and no net loss of function for any buffer reduction. Additionally, Section 16.16.630.D and 16.16.740.A.2 also gives the Director authority to require planting in degraded buffer if needed. The draft language implies any amount of degraded buffer could be required to be planted for buffer impacts, no matter how small. This would penalize applicants who own agricultural property and/or grass/hayfields.</p>	The planting of degraded buffers has been a part of our CAO since 2005 and is based on Best Available Science and DOE guidance. Based on case history, we are only clarifying that the area that might be enhanced is limited to the specific portions of the buffer being reduced, not anywhere on the lot, and certainly not outside critical area buffers (and thus does not "grant unlimited potential for mitigation requirements"). Per DOE guidance, "degraded" is any portion of a buffer that is not in a densely vegetated community. Ecology provides this requirement in Appendix 8C, Section 8C.2.5 to either increase the buffer or enhance with native vegetation. Ecology's guidance for buffer size is based on science with a densely planted vegetative

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						buffer.
MES39	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.680(H)	<p>Regarding Wetland Mitigation Ratios, maintain the existing language and strike the proposed language that requires a higher ratio of mitigation when it's done after the impact occurs.</p> <p>Generally, applicants do not conduct mitigation activities prior to permit approval, and generally go to construction as soon as permits are issued. Additionally, mitigation planting is often tied to the planting season – which is preferably fall through spring to increase survivability. This added code language would appear to add a year to applicants' timeline or penalize them with up to 25% more buffer mitigation. Additionally, no net loss of buffer function already required under 16.16.640(C)(2)(g).</p>	This proposed requirement comes from DOE guidance to account for temporal loss.
MES40	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.710(C)(1)(a)(vi) & 16.16.740(B)	<p>Strike this addition of Type O waters and associated 25-foot buffer. Return the prior designation of Natural Ponds to the buffer Table requiring a 50-foot buffer.</p> <p>The definition of Type O waters is vague and could potentially include ditches and artificial ponds. Type O waters do not correlate with Washington State water typing. If the intent is to include ponds as an HCA, we recommend restoring previous code language that included a 50-foot buffer for natural ponds and lakes under 20 acres in size and no buffer for artificial ponds.</p>	<p>The amendment to create Type O water is proposed so as to align Ch. 16.16 with the County's Manure and Agricultural Nutrient Management regulations (WCC Ch. 16.28), which prohibit "the spreading of manure within 50 feet of drainage ditches leading to rivers and streams."</p> <p>This is the code that our Pollution Identification and Correction (PIC) program uses to curtail the introduction of agricultural runoff into our waterways, thereby protecting our shellfish resources. Creating a Type O water with a 25-foot buffer was suggested by our PIC managers, the Whatcom Conservation District, the Department of Agriculture, and other partner agencies so that there's a buffer between where manure might be spread and our waterways. It was determined that 25-feet would be adequate for this function. Were we to revert to the existing code, then such waterways/ditches might be considered one of the other types with a larger buffer.</p>

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MES41	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.745(A)	Regarding Buffer Width Increasing, strike the new added section 16.16.745(A)(2), allowing the Director to increase HCA buffers under certain conditions. This is a new provision to the code that allows the Director to extend Type S or F buffers to resources within 300 feet – including Category III wetlands, other HCA's or other waters. Again, this is an exceptionally broad provision to add in additional regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. The extension of every fish stream or lake buffer to another resource within 300 feet is essentially extending most of the buffer areas to 300 feet.	The existing code already allows the Director to increase buffer widths, but with less guidance, which consultants are usually clamoring for. Thus, we "borrowed" language from Skagit County, which provides better detail on when the Director can do so. We don't see how this would result in a double counting towards buffer requirements
MES42	Ed Miller, Miller Environmental Services	2/19/21	F	16.16.760(B)(8)	Regarding HCA Buffer Mitigation Ratios, maintain the existing language and strike the proposed language that requires a higher ratio of mitigation when it's done after the impact occurs. Generally, applicants do not conduct mitigation activities prior to permit approval, and generally go to construction as soon as permits are issued. Additionally, mitigation planting is often tied to the planting season – which is preferably fall through spring to increase survivability. This added code language would appear to add a year to applicants' timeline or penalize them with up to 25% more buffer mitigation. Additionally, no net loss of buffer function already required under 16.16.760.	This proposed requirement comes from DOE guidance to account for temporal loss.
LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(2)	A Cultural Resources <u>survey and</u> report. The current language does not include the word survey.	"Survey and" has been added to this section.
LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(3)	The LNTHPO would like to be consulted whether or not cultural resources were encountered during the survey.	This section directs the County to provide the cultural resource report to DAHP—and if Native American cultural resources are addressed—to the Tribes. Staff isn't sure why such reports would need to be provided to the LNTHPO if N.A. resources aren't involved. Nonetheless your comment will be provided to the P/C and Co/C.

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LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(5)	<p>The LNTHPO recommends that the permit also be conditioned based on the County's consultation with the affected tribes and the Department of Archaeology and Historic Preservation.</p> <p>If no cultural resources are encountered and the consulting parties concur with the findings, the Whatcom County Inadvertent Discovery Plan for cultural resources should be on-site and followed if cultural resources or human remains are encountered.</p>	<p>This section states that "any permit issued shall be conditioned on meeting the approved report's management recommendations." Given that the report, including the management recommendations, would be approved by DAHP and the Tribe(s) through consultation, then this would already be the case.</p> <p>And subsection (6) already states that any activities would still subject to the state and federal regulations regarding inadvertent discoveries regardless of whether any cultural resources are identified or not, so this, too, would already be the case.</p>
LNTHPO02	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	3/1/21	D	23.30.060(A)(6)	The LNTHPO recommends that this point be made broader to state that any activities are still subject to state and federal laws and regulations regarding cultural resources and human remains.	Regardless of whether we state that any activities are still subject to the state and federal regulations, it would still be the case. Nonetheless, we have broadened the language as suggested.
RFW12	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.270	<p>Restore Reasonable Use language in Dec 4, 2020 draft. We urge the Commission to revisit their proposed change to expand the maximum impact area for single-family residences to be no larger than 2,500 square feet in 16.16.270.C.12. The purpose of the reasonable use provision is to allow only the minimal "reasonable" use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations. The courts generally decide the concept of reasonable; however, reasonable use is often interpreted as a modest single-family home. A home with a footprint 4,000 square feet is excessive. A median size house built in 2019 has 2,301 square feet of floor area. We can assume that to be less than footprint 1,500 square feet.</p> <p>Additionally, we strongly urge the Commission to maintain the new language in the code for the processing of reasonable use exceptions. We understand this is a departure from the current</p>	Your comment will be provided to the P/C & Co/C for consideration.

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					code which allows administrative approval of reasonable use exceptions; however, the way Whatcom County has been processing this is contrary to the intent of reasonable use. Quasi-Judicial bodies like the Hearing Examiner should be making the final call as opposed to staff. All feasible measures to derive use of the property must also be exhausted, which includes pursuing a variance. This mirrors language used in both Skagit County and Snohomish County.	
RFW13	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.640(A)(5) and 16.16.745(A)(2)	<p>Regarding Buffer Width Increasing, maintain staff proposed changes.</p> <p>The Commission received a suggestion from Miller Environmental Services, Inc. requesting this section to be removed. We disagree. The wetland rating form is not a part of the CAO and this language should be kept in code. Also, this decision could be made by the Director on a case by case basis to increase the size of the required buffer in specific instances. Striking this from the code could deprive the Director of an important tool to better protect the few remaining areas in the county that are vital for wildlife and water quality functions of wetlands and streams. The Department of Ecology's wetland guidance recommends this as an important tool as well: "Ecology's buffer recommendations are also based on the assumption that the buffer is well vegetated with native species appropriate to the ecoregion. If the buffer does not consist of vegetation adequate to provide the necessary protection, then either the buffer area should be planted or the buffer width should be increased."</p>	Your comment will be provided to the P/C & Co/C for consideration.
RFW14	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.640(C)(1)(e)(iii)	Regarding Buffer Width Reduction, maintain staff proposed changes. This change proposed by staff allows the Director to provide flexibility in making buffer reductions while still managing and protecting landscape-scale functions and values. We could see how this could benefit a parcel if buffer reduction is occurring in an area with older stands of native trees and there are other trees of similar age onsite that could be preserved and protected from unnecessary clearing. Mature trees serve critical habitat, stormwater control, and water quality functions even if they are not part of a formal buffer for a critical area.	Your comment will be provided to the P/C & Co/C for consideration.

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RFW15	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.710(C)(1)(a)(v) and 16.16.740(B)	Regarding Type O Waters and buffer, maintain staff proposed changes. Miller Environmental Services, Inc. proposes to delete the definition and buffer requirements for Type O waters which connect directly to either waters of the state (Type S waters) or fish habitat (Type F waters) via channel, pipe, culvert, stream, or wetland. We support the staff's proposal to include this because all waters are connected and we must be providing some level of protection from a water quality perspective. Ongoing Agriculture is exempt from this requirement.	Your comment will be provided to the P/C & Co/C for consideration.
RFW16	Karlee Deatherage (RE Sources), Danielle Shaw (WEC), and Tim Trohovich (Futurewise)	3/4/21	F	16.16.745(A)	Regarding Buffer Width Increasing, maintain staff proposed changes. Having the ability to increase fish and wildlife habitat conservation area buffers is crucial to lend more protection to areas that serve multiple ecosystem functions. This change may only apply to shorelines of the state (Type S waters), fish-bearing waters (Type F waters), or high value wetlands (Category I, II, or III). Again, this is a discretionary decision from the Director which means it may not always happen.	Your comment will be provided to the P/C & Co/C for consideration.
MES43	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.270 & 16.16.273	These sections are a complete rewrite of reasonable use procedures and would require a variance (minor and major variance) before reasonable use would apply. Current Code: Reasonable use provisions are currently considered prior to a variance application. A variance application is time-consuming, more expensive, and requires review/approval by the hearing examiner with a public hearing. Per 16.16.270.C.1 only reasonable use exceptions for single-family residential building or for other development proposals that would affect only buffers, but not critical areas themselves (e.g., wetlands and streams), shall be processed administratively. Other applications that directly impact critical areas, with the exception of single-family residential, currently have to apply for a variance application. If an applicant currently wants to propose a larger footprint than the allowed 4,000 square feet under reasonable use, they could also apply for a variance.	Our Hearing Examiner has questioned our current schema, in particular why he isn't the final decision maker, as the current code allows an administrative determination to be made after a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust any administrative remedies before seeking a quasi-judicial decision. Staff is proposing that reasonable use exceptions be the last method of altering standards to allow reasonable economic use of constrained property, and that they be decided upon by the Hearing Examiner (see 16.16.270 Reasonable Use Exceptions). In this schema, the degree to which one

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					<p><i>Suggested Change:</i> Strike the proposed changes to reasonable use and variance procedures. Return to the current language. Also, add bolded language to section 16.16.270.j. The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter – or if the mitigation requirements cannot be met, to the maximum extent feasible on the property.</p> <p><i>Rational for suggested change:</i> The proposed change is a significant alteration to the code and process. A significant number of previously designated reasonable use projects, processed administratively, would need to go to the hearing examiner. This will significantly increase costs and time to applicants for simple single-family construction or projects with only buffer impacts – as the current code requires an open public hearing for anything more complex. This will also create more uncertainty as to what will be allowed when a property is encumbered with critical areas and buffers. It should also be remembered, that reasonable use scenarios have increased significantly over the last four years as the result of larger buffers occurring on properties since 2017 – the result of utilization of updated Ecology wetland rating forms and guidance. Generally, critical areas, primarily wetlands, have not changed but buffers have become significantly larger.</p> <p>The change to section j is included so that applicants aren't required to purchase another property for mitigation – which has been required in some cases, precluding any development at all (even for buffer impacts).</p>	<p>can vary standards while providing the least amount of mitigation moves up a level at each step, with the Hearing Examiner making the tougher decisions through a quasi-judicial process. This would return the reasonable use exception to truly the last effort of avoiding a taking.</p> <p>However, to counter the additional time and cost of this process, staff is also proposing to create a new category of variances, called minor variances (16.16.273 Variances). They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number of cases having to go to the Hearing Examiner and cost less to the citizens of Whatcom County overall.</p>
MES44	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.620(D) & 16.16.720(D)	<p><i>Draft Code:</i> Private Access. Access to <u>existing legal lots</u> may be permitted to cross Category II, III or IV wetlands or their buffers, provided the access meets the following... And. Private Access. Access to existing legal lots may be permitted to cross habitat conservation areas if there are no feasible alternative alignments.</p> <p><i>Current Code:</i> <u>Access to private development sites</u> may be permitted to cross Category II, III or IV wetlands or their buffers,</p>	This formerly proposed language has already been stricken and reverted to the original language in the more recent versions of Exhibit F (4/5/21)

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					<p>provided...</p> <p><i>Suggested Change:</i> Strike the change and keep the current language, both wetland and HCA sections.</p> <p><i>Rationale for suggested change:</i> This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a wetland or buffer or habitat conservation areas. Access to large areas of unencumbered property could be restricted if one small wetland or its buffer would need to be impacted to access a development area. For example, creating new lots in unencumbered areas (no critical areas) per the underlying zoning might not be allowed on a 40 acre property if the crossing of a non-fish stream or the outer portion of a buffer was required.</p>	
MES45	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.640(A)(5)	<p><i>Draft Code:</i> Buffer Width Increasing: <u>The Director may require the standard buffer width to be increased by the distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following:</u></p> <p><u>(5) When a Category I or II wetland is located within 300 feet of:</u></p> <ul style="list-style-type: none"> a. <u>Another Category I, II or III wetland; or</u> b. <u>A fish and wildlife HCA; or</u> c. <u>A type S or F stream; or</u> d. <u>A high impact land use that is likely to have additional impacts.</u> <p><i>Suggested Change:</i> Strike the new, added section (5).</p> <p><i>Rationale for suggested change:</i> This added provision, not in the current code, allows staff to extend any Category II wetland buffers out to 300 feet – if another wetland or HCA is within 300 feet. HCA's include mature forest, priority snags (logs on the ground, 20 feet long, 12 inches wide), streams, etc.</p> <p>The intent of this appears to be to increase buffers if adjacent critical areas are present. However, this is already accounted for in the wetland rating form. The habitat score, which drives the buffer width, is scored higher if habitat conservation areas are within 330 feet. The proposed draft change seems redundant</p>	Staff believes this addition better reflects DOE guidance and Council's direction to improve connectivity.

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					when these factors are already utilized in determining the buffers in the current code - based on the wetland rating form. If the intent is also to protect habitat corridors, then it is also redundant, as these are already protected in the habitat conservation section of the code – State priority habitat “Biodiversity areas and corridors”.	
MES46	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.640(B)(2) & 16.16.745(B)(2)	<p><u>Draft code. Buffer Width Averaging: In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.</u></p> <p><i>Suggested Change:</i> Strike the proposed change.</p> <p><i>Rationale for Suggested Change:</i> This section effectively eliminates the intent of buffer averaging and converts it to buffer reduction by requiring mitigation in the form of added plantings. Buffer averaging is an important and simple way to allow more flexibility for property owners that need to make minor buffer adjustments. This section will also reduce consistency and predictability (each staff member could apply this differently), and will increase the cost for simple projects by requiring plantings, monitoring, bonding, etc. by thousands of dollars. Additionally, the Director already has the ability to require plantings in a wetland or HCA buffer where it lacks adequate vegetation under 16.16.630.D or 16.740.B.1, making this code addition redundant.</p>	This formerly proposed language has already been stricken and reverted to the original language in the most recent version of Exhibit F (4/5/21)
MES47	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.640(C)(1)(c)	<p><u>Buffer Width Reduction draft code: The buffer shall not be reduced to less than 75% of the standard buffer.</u></p> <p><i>Current Code:</i> Allows for a Category IV wetland buffer to be reduced by up to 50% or 25 feet, whichever is greater.</p> <p><i>Suggested Change:</i> Restore prior language to allow for up to 50% reduction (or 25 feet) for Category IV wetlands.</p> <p><i>Rationale for Suggested Change:</i> The existing code section allows for up to a 50% (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher category wetlands are restricted to a 25% reduction. Under the draft buffer averaging</p>	Staff believes this amendment better reflects DOE guidance.

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					section, Category IV wetlands are still allowed up to a 50% reduction. This proposed change will remove flexibility for property owners for the lowest category of wetlands.	
MES48	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.710(C)(1)(a)(v) & 16.16.740(B)	<p><i>Draft Code:</i> Type O waters include all segments of aquatic areas that are not type S, F, or N waters and that are physically connected to type S or F waters by an above-ground channel, system, pipe, culvert, stream or wetland. And 16.16.740.B. Type O Buffer = 25 feet.</p> <p><i>Current Code:</i> Not present in the current code.</p> <p><i>Suggested Change:</i> Strike this addition of Type O waters and associated 25-foot buffer. Return the prior designation of Natural Ponds to the buffer Table requiring a 50 foot buffer.</p> <p><i>Rationale for Suggested Change:</i> The definition of Type O waters will include ditches and artificial ponds that eventually drain to a fish stream. This will include most of the ditching and artificial ponds in Whatcom County. This will in effect place 25-foot buffers in any front yard along a road with a County ditch – creating protected critical areas buffers along most property road frontage. Any time the County public works excavated new ditching, or extended existing new ditching, they would also be creating new critical areas and encumbering adjacent properties with a buffer for a resource that the County created. This seems problematic and overreaching. Ditching provides a function to control and direct stormwater. The department of Ecology has no recommendations designating artificial ditches as critical areas or for placing buffers on artificial ditching. This would create a new critical area, most of which are within County rights-of-way. Additionally, most of the ditches outside of road right of ways are agricultural in nature and created prior to the growth management act and the clean water act. Additionally, Type O waters do not correlate with Washington State water typing.</p>	This formerly proposed language has already been stricken and amended in the most recent version of Exhibit F (4/5/21)
MES49	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.710(C)(b)(i)	<p><i>Draft Code:</i> Ditches or other artificial water courses are considered streams for the purposes of this chapter when: i. used to convey <u>waters of the state</u> existing prior to human alteration; and/or...</p>	Based on public comment and direction from the P/C, staff has rewritten this section to be clearer and allow lesser buffers on modified waterways that are not regu-

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					<p><i>Current Code:</i> Ditches or other artificial water courses are considered streams for the purposes of this chapter when: i. used to convey <u>natural streams</u> existing prior to human alteration; and/or...</p> <p><i>Suggested Change:</i> Strike the change and replace the current language.</p> <p><i>Rationale for suggested change:</i> This change seems to make the section more confusing. State definitions (italics added):</p> <p>"Waters of the state includes all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses located within the jurisdiction of the state of Washington (RCW 90.48.020)."</p> <p>"WAC 220-660-030(153) Watercourse, river or stream means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans."</p> <p>Per state definition, waters of the state (that might be found in a ditch) have an ordinary high water mark and are not artificial – essentially a "natural stream". It seems the current language is consistent with state definitions and is clearer.</p>	lated by WDFW. See 16.16.710(C) & (D)(2) in the most recent version of Exhibit F (4/5/21).
MES50	Ed Miller, Miller Environmental Services	4/12/21	F	16.16.745(A)(2)	<p><i>Draft Code:</i> Buffer Width Increasing. The Director may require the standard buffer width to be increased or to establish a non-riparian buffer, when such buffers are necessary for one of the</p>	Staff believes this addition better reflects DOE guidance and Council's direction to improve connectivity.

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					<p>following:</p> <ol style="list-style-type: none"> 1) To protect priority fish or wildlife using the HCA 2) To provide connectivity when a Type S or F water body is located within 300 feet of: <ol style="list-style-type: none"> a. Another Type S or F water body; or b. A fish and wildlife HCA; or c. A Category I, II or III wetland. <p><i>Current Code:</i> 16.16.745.A.2 - language added, not in the current code.</p> <p><i>Suggested Change:</i> strike the new added section 16.16.745.A.2.</p> <p><i>Rationale for suggested change:</i> This is a new provision to the code that allows the Director to extend Type S or F buffers to resources within 300 feet – including Category III wetlands, other HCA's or other waters. Again, this is an exceptionally broad provision to add in additional regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. The extension of every fish stream or lake buffer to another resource within 300 feet is essentially extending most of the buffer areas to 300 feet. If the intent is also to protect habitat corridors, then it is also redundant, as these are already protected in the habitat conservation section of the code – State priority habitat "Biodiversity areas and corridors".</p>	
RFW17	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21	D		<p>Incorporate regulations to prepare for accelerating sea level rise impacts.</p> <p>The SMA and SMP Guidelines require shoreline master programs to address the flooding that will be caused by sea level rise. RCW 90.58.100(2)(h) requires that shoreline master programs "shall include" "[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages ..." WAC 173-26-221(3)(b) provides in part that "[o]ver the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas ..." "Counties and cities should consider the following when designating and classifying frequently flooded areas ... [t]he</p>	There isn't a requirement to address climate change/sea level rise in the SMA, though we could if Council desires. However, what we understand from the DOE is that any such regulations should be built on data, which is what PS-CoSMoS will be providing. Furthermore, once the data is available, we should perform vulnerability and risk assessments to see what kind and where the problems might be, and update our shoreline inventory and characterizations. Without such sci-

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					<p>potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change" The areas subject to sea level rise are flood prone areas just the same as areas along bays, rivers, or streams that are within the 100-year flood plain. RCW 90.58.100(1) and WAC 173-26-201(2)(a) also require "that the 'most current, accurate, and complete scientific and technical information' and 'management recommendations' [shall to the extent feasible] form the basis of SMP provisions." This includes the current science on sea level rise.</p> <p>Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20th Century. A recent analysis of sea-level measurements for tide-gage stations, including the Seattle, Washington tide-gauge, shows that sea level rise is accelerating.⁵ Virginia Institute of Marine Science (VIMS) "emeritus professor John Boon, says 'The year-to-year trends are becoming very informative. The 2020 report cards continue a clear trend toward acceleration in rates of sea-level rise at 27 of our 28 tide-gauge stations along the continental U.S. coastline.'" "Acceleration can be a game changer in terms of impacts and planning, so we really need to pay heed to these patterns," says Boon." The Seattle tide gage was one of the 27 that had an accelerating rate of sea level rise. The report Projected Sea Level Rise for Washington State – A 2018 Assessment projects that for a low greenhouse gas emission scenario there is a 50 percent probability that sea level rise will reach or exceed 1.2 feet by 2100 around Sandy Point and the west side of the Lummi Peninsula. Projected Sea Level Rise for Washington State – A 2018 Assessment projects that for a higher emission scenario there is a 50 percent probability that sea level rise will reach or exceed 4.5 feet by 2100 for the same area. Projections are available for all of the marine shorelines in Whatcom County and Washington State.</p> <p>The extent of the sea level rise currently projected for Whatcom</p>	ence, we would be open to challenges.

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					<p>County can be seen on the NOAA Office for Coastal Management Digitalcoast Sea Level Rise Viewer available at: https://coast.noaa.gov/digitalcoast/tools/slr.html. Please see map images at the bottom of this letter detailing the changes in water elevation from the current mean higher high water (MHHW) to four feet of sea level rise.</p> <p>Projected sea level rise will substantially increase flooding. As Ecology writes, "[s]ea level rise and storm surge[s] will increase the frequency and severity of flooding, erosion, and seawater intrusion—thus increasing risks to vulnerable communities, infrastructure, and coastal ecosystems." Not only our marine shorelines will be impacted, as Ecology writes "[m]ore frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life."</p> <p>Zillow recently estimated that 31,235 homes in Washington State may be underwater by 2100, 1.32 percent of the state's total housing stock. The value of the submerged homes is an estimated \$13.7 billion. Zillow wrote:</p> <p>"It's important to note that 2100 is a long way off, and it's certainly possible that communities [may] take steps to mitigate these risks. Then again, given the enduring popularity of living near the sea despite its many dangers and drawbacks, it may be that even more homes will be located closer to the water in a century's time, and these estimates could turn out to be very conservative. Either way, left unchecked, it is clear the threats posed by climate change and rising sea levels have the potential to destroy housing values on an enormous scale."</p> <p>Sea level rise will have an impact beyond rising seas, floods, and storm surges. The National Research Council wrote that:</p> <p>"Rising sea levels and increasing wave heights will exacerbate coastal erosion and shoreline retreat in all geomorphic environments along the west coast. Projections of future cliff and bluff retreat are limited by sparse data in Oregon and Washington and by a high degree of geomorphic variability along the coast.</p>	

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					<p>Projections using only historic rates of cliff erosion predict 10–30 meters [33 to 98 feet] or more of retreat along the west coast by 2100. An increase in the rate of sea-level rise combined with larger waves could significantly increase these rates. Future retreat of beaches will depend on the rate of sea-level rise and, to a lesser extent, the amount of sediment input and loss.”</p> <p>These impacts are why the Washington State Department of Ecology recommends “[l]imiting new development in highly vulnerable areas.”</p> <p>Unless wetlands and shoreline vegetation can migrate landward, their area and ecological functions will decline. If development regulations are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. This loss of shoreline vegetation will harm the environment. It will also deprive marine shorelines of the vegetation that protects property from erosion and storm damage by modifying soils and accreting sediment. WEC and Futurewise’s Sept. 16, 2020 letter included maps that show the extent of this amount of sea level rise in Whatcom County and wetland migration in part of the County if the wetlands are not blocked by development. Additional maps are also enclosed with this letter.</p> <p>Flood plain regulations are not enough to address sea level rise for three reasons. Projected Sea Level Rise for Washington State – A 2018 Assessment explains two of them:</p> <p>“Finally, it is worth emphasizing that sea level rise projections are different from Federal Emergency Management Agency (FEMA) flood insurance studies, because (1) FEMA studies only consider past events, and (2) flood insurance studies only consider the 100-year event, whereas sea level rise affects coastal water elevations at all times.”</p> <p>The third reason is that floodplain regulations allow fills and pilings to elevate structures and also allow commercial buildings to be flood proofed in certain areas. While this affords some</p>	

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					<p>protection to the structure, it does not protect the marshes and wetlands that need to migrate.</p> <p>Because of these significant impacts on people, property, and the environment, "[n]early six in ten Americans supported prohibiting development in flood-prone areas (57%)." It is time for Washington state and local governments to follow the lead of the American people and adopt policies and regulations to protect people, property, and the environment from sea level rise. We recommend the addition of the following regulations as part of the shoreline master program periodic update:</p> <p>X. New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</p> <p>X2. Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</p> <p>X3. New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</p>	
RFW18	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21	F	16.16.270	<p>Restore Reasonable Use impact area language in the Dec 4, 2020 draft Exhibit F, WCC 16.16.270 Reasonable Use Exceptions.</p> <p>We urge Whatcom County to restore the proposed change from the P/C to expand the maximum impact area for single-family residences from 4,000 square feet to 2,500 square feet in 16.16.270.C.12. The purpose of the reasonable use provision is to allow only the minimal "reasonable" use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations.</p> <p>The courts generally decide the concept of reasonable; however, reasonable use is often interpreted as a modest single-family</p>	Your comment will be provided to the P/C & Co/C for consideration.

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					home. A home with a footprint of 4,000 square feet is excessive. A median size house built in 2019 has 2,301 square feet of floor area. We can assume that to be less than footprint 1,500 square feet.	
RFW19	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohovich (Futurewise)	4/12/21	F	16.16.730 , Table 4	<p>Incorporate the State of Washington Department of Fish & Wildlife's new riparian buffers guidance.</p> <p>As has been reported in media and scientific reports, the southern resident orcas, or killer whales, are threatened by (1) an inadequate availability of prey, the Chinook salmon, "(2) legacy and new toxic contaminants, and (3) disturbance from noise and vessel traffic." "Recent scientific studies indicate that reduced Chinook salmon runs undermine the potential for the southern resident population to successfully reproduce and recover." The shoreline master program update is an opportunity to take steps to help recover the southern resident orcas, the Chinook salmon, and the species and habitats on which they depend.</p> <p>The SMP Guidelines, in WAC 173-26-221(3)(c), provides in part that "[i]n establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and Management Recommendations for Washington's Priority Habitats, prepared by the Washington state department of fish and wildlife where applicable."</p> <p>The State of Washington Department of Fish and Wildlife has recently updated the Priority Habitat and Species recommendations for riparian areas. The updated management recommendations document that fish and wildlife depend on protecting riparian vegetation and the functions this vegetation performs such as maintaining a complex food web that supports salmon and maintaining temperature regimes to name just a few of the functions.</p> <p>The updated Riparian Ecosystems, Volume 1: Science synthesis and management implications scientific report concludes that</p>	<p>Pursuant to 23.230.010(B)(4) floodways and contiguous floodplain areas landward two hundred feet from such floodways are within the shoreline jurisdiction.</p> <p>And pursuant to 16.16.730 Table 4, Type S – Freshwater HCAs are proposed to have a 200-foot buffer based on National Wildlife Federation v. FEMA (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472)</p>

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					<p>the "[p]rotection and restoration of riparian ecosystems continues to be critically important because: a) they are disproportionately important, relative to area, for aquatic species, e.g., salmon, and terrestrial wildlife, b) they provide ecosystem services such as water purification and fisheries (Naiman and Bilby 2001; NRC 2002; Richardson et al. 2012), and c) by interacting with watershed-scale processes, they contribute to the creation and maintenance of aquatic habitats." The report states that "[t]he width of the riparian ecosystem is estimated by one 200-year site-potential tree height (SPTH) measured from the edge of the active channel or active floodplain. Protecting functions within at least one 200-year SPTH is a scientifically supported approach if the goal is to protect and maintain full function of the riparian ecosystem." These recommendations are explained further in Riparian Ecosystems, Volume 2: Management Recommendations A Priority Habitats and Species Document of The Washington Department of Fish and Wildlife.</p> <p>Based on these new scientific documents, we recommend that shoreline jurisdiction should include the 100-year floodplain and that the buffers for rivers and streams in shoreline jurisdiction be increased to use the newly recommended 200-year SPTH and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider. New development, except water dependent uses should not be allowed within this area. This will help maintain shoreline functions and Chinook habitat.</p>	
TSF01	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.010	<p>Table 1 of the draft proposes to revise the shoreline use table to prohibit general aquaculture (aquaculture other than commercial geoduck and salmon net pen facilities) in aquatic areas adjacent to the Natural shoreline environment designation (SED). This proposed revision should not be adopted. No scientific or technical information is identified in the Draft Amendment that would support this revision. As recognized by the GMHB, prohibiting aquaculture in the Natural SED absent such support is impermissible. Allowing aquaculture in the Natural SED is consistent with the purpose and policies of the Natural SED.</p>	<p>The purpose of the natural shoreline area is to "ensure long-term preservation of ecologically intact shorelines" and "preservation of the area's ecological functions, natural features and overall character must receive priority over any other potential use." The Natural SED is only applied in a few areas of the county, primarily the headwaters of the 3 upper Nooksack branches and around state or</p>

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						locally controlled nature preserves. None of these areas would likely be used for aquaculture.
TSF02	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(A)(1)	<p>Strike A.1. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is degree of proposed substrate modification is aquaculture operations at the site.</p> <p>The first sentence of this provision is unsuitable for a regulation, as it merely expresses a preference for certain activities over others. Moreover, it is inadequately defined and unsupported by scientific and technical information. To the extent that it would disfavor common shellfish aquaculture practices that have been proven to have insignificant impacts on species and habitat (e.g., those covered by the Programmatic Consultation or analyzed by Washington Sea Grant), it runs directly counter to such information in violation of the SMA and Guidelines. It would also fail to give preference to and foster shellfish aquaculture contrary to state law.</p> <p>The second sentence appears to impose a substantive requirement that any substrate modifications must be the minimum necessary for feasible operations. This restriction is similarly unsupported by scientific and technical information and fails to give preference to and foster shellfish aquaculture. In an analogous context, the GMHB held that an aquaculture regulation requiring gear use be limited to the minimum necessary for feasible operations violated state law and must be stricken.</p>	<p>Though the language is existing, the commenter may be correct regarding the 1st sentence, as it does read more like a policy rather than a regulation. And Policy 11CC-3 basically says the same thing, so that 1st sentence could be deleted (though it wouldn't have much effect on the regulation).</p> <p>Regarding the 2nd sentence (again, existing language), staff sees no legal issue in requiring methods used minimize impacts to shoreline functions. The regulation only states that the applicant demonstrate that the degree of proposed substrate modification is the minimum necessary. We would think that Taylor Shellfish Farms already uses the least impactful methods given how environmentally friendly they purport to be. Nonetheless, your comments will be provided to the P/C and Co/C for their consideration.</p>
TSF03	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(A)(2)	<p>Strike A.2 The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible.</p> <p>Similar to the previous provision, this provision is not only unsupported by scientific and technical information, but such information demonstrates aquaculture structures do not have</p>	Again, existing language, and it's only asking that the applicant demonstrate that any proposed structures be the least impactful to shoreline functions. Nonetheless, your comments will be provided to the P/C and Co/C for their consideration.

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					unacceptable impacts. This provision imposes unjustifiable use restrictions and fails to give preference to and foster aquaculture, and hence it should be deleted.	
TSF04	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(A)(3)	<p>Strike A.3 Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact critical saltwater habitat, or other fish and wildlife habitat conservation areas.</p> <p>This provision is insufficient in scope and detail to ensure proper implementation, as several key terms are undefined. Moreover, this regulation appears to articulate a zero-impact standard inconsistent with the SMA and the Guidelines, which acknowledge that activities will have some impacts and calls for those impacts to be minimized. This provision is particularly inappropriate given commercial shellfish beds are themselves critical saltwater habitat.</p>	Staff disagrees with the commenters conclusions. The key words are either defined or their common usage is understood, and the regulation does not articulate a zero-impact standard: It only limits certain types of practices that might have significant impacts on critical saltwater habitats.
TSF05	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(B)(9)	<p>"Where aquaculture activities are authorized to use <u>public County</u> facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities."</p> <p>This revision provides important clarification that the authority to require a project proponent pay a portion of maintenance costs and required improvements applies to County, rather than any public (e.g., state or federal), facilities. Use and maintenance of non-County public facilities are properly addressed by the entities or agencies that own or control those facilities.</p>	Staff agrees with the commenter and has made this suggested edit.
TSF06	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(F)(1)	<p>In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), applications for aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed aquaculture activity, including but not limited to the following, <u>if not already provided in other local, state, or federal permit applications or equivalent reports</u>:</p>	Staff agrees with the commenter, but none of the language prohibits the applicant from submitting materials used in or produced by other permitting processes. Regardless of whether another agency has made a decision on a permit, the County is still required to maintain a record of our decision making and would

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					Aquaculture operations are subject to numerous laws and regulatory programs. Applicants for new aquaculture projects must obtain several federal and state approvals in addition to shoreline permits. The County should allow aquaculture applicants to utilize information provided in other local, state, or federal permit applications or equivalent reports in order to satisfy shoreline permit application requirements. This allowance will not hinder the County's interest in ensuring it has all information necessary to conduct a thorough evaluation of aquaculture proposals, and it is critical to avoid unnecessary burdens on applicants and streamline permitting consistent with the laws and policies discussed above.	need copies of those materials to come to a rational conclusion.
TSF07	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(F)(2)	<p>Applications for aquaculture activities must demonstrate that the proposed activity will be compatible with surrounding existing and planned uses.</p> <ul style="list-style-type: none"> a. Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise. b. Aquaculture activities shall be restricted to reasonable hours and/or days of operation when necessary to minimize substantial, adverse impacts from noise, light, and/or glare on nearby residents, other sensitive uses or critical habitat. c. Aquaculture facilities shall not introduce incompatible visual elements or substantially degrade <u>significantly impact</u> the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials. <p>Taylor Shellfish, along with other responsible farmers, employ numerous practices to avoid and minimize potential noise and light impacts on other shoreline users. However, to help protect the safety of its crews and provide marketable products, shellfish operators frequently need to conduct activities during nights or on weekends when there are low tides. This is recognized in</p>	Staff agrees with the commenter and has amended this section as suggested.

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					<p>the Guidelines, which state: "Commercial geoduck aquaculture workers oftentimes need to accomplish on-site work during low tides, which may occur at night or on weekends. Local governments must allow work during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses." Restricting operations to certain hours or days may compromise the safety of farm crews and/or render operations infeasible. This requirement in 2.b is incompatible with the SMA and Guidelines, and it should be removed.</p> <p>The requirement in 2.c that aquaculture facilities not introduce incompatible visual elements or substantially degrade the aesthetic qualities of the shoreline is inconsistent with the Guidelines, which instead require that that aquaculture not significantly impact aesthetic qualities. The requirement that aquaculture activities not introduce incompatible visual elements is insufficient in scope and detail to ensure proper implementation. This subsection should be aligned with state law.</p>	
TSF08	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	D	23.40.050(H)(2)	<p>In the Natural shoreline environment, aquaculture activities that do not require structures, facilities, or mechanized harvest practices and that will not result in the alteration of substantially degrade natural systems or features are permitted.</p> <p>The prohibition on structures, facilities, or mechanized harvest in the Natural environment is unsupported by scientific and technical information and is accordingly inconsistent with the SMA and Guidelines. As discussed above, there is extensive scientific and technical information that demonstrates shellfish aquaculture activities, some of which include these proscribed items, have minimal impacts that are consistent with the Natural environment. The revised language shown here remedies these failures and aligns this regulation with the management policies in the Guidelines for the Natural environment.</p>	Staff disagrees with the commenter. The Natural SED is intended to remain natural and is the only SED where such structures are prohibited. It is not a general prohibition, just one for one certain SED. The Natural SED is only applied in a few areas of the county, primarily the headwaters of the 3 upper Nooksack branches and around state or locally controlled nature preserves. None of these areas would likely be used for aquaculture.
BIAWC08	Robert Lee, BIAWC	4/12/21	F	16.16.273	<p>Reasonable Use and Variances: Staff has proposed major changes to the procedures and criteria for both. The current 2017 CAO allows PDS staff to grant reasonable use (RU) permits for one single family house under very strict criteria if CAO rules alone would deny "all reasonable and economically viable</p>	Please see the responses provided for Comments GCD14, NES02, NWC02, NWC05, BIA04, MES11, MES29, MES31, MES43, RFW12, & RFW18.

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					<p>use" of the property.</p> <p>A. Variances: They now require a public hearing and approval by the Hearing Examiner (HE). The applicant must demonstrate "undue hardship" due to CAO "dimensional requirements". Frankly, it's not clear what the difference is between the scope of these and RU applications in current code.</p> <p>Per draft Section 16.16.270.A, p 30-31, Exh. F, if a person only needs a 25 to 50% CAO buffer reduction, they would apply for a Minor Variance, instead of a RU Exception per current code.</p> <p>The draft does not say whether this value is total area, width, or both. Staff decides these permits; notice to neighbors is required. We do appreciate the new minor variance idea allowing staff approval, but why they also have to provide notice to adjacent land owners?</p> <p>A Major Variance is required for any other CAO exceptions. See Section 16.16.273, p 34. Either level of variance will be a costly process; the fee is \$2750, plus critical area reports, possibly consultants and any legal costs.</p> <p>One could only apply for a Reasonable Use Exception RU if their variance app is denied. This means if you don't get adequate relief with a variance approval, one must repeat the permit process to apply for an RU, and pay double fees and costs. A person may also face an appeal to Superior Court from someone.</p>	<p>In addition, variances have always required a public hearing and approval by the H/E using the same criteria. We have now introduced a "minor" variance (the creation of which has already been approved by Co/C) for minor buffer reductions. An all variances always require public notice, as we're potentially letting applicants use lesser standards than what the code prescribes, which might have impacts on neighbors.</p> <p>We have also put in a request to have a much lower fee for minor variances.</p>
BIAWC09	Robert Lee, BIAWC	4/12/21	F	16.16.270(C)(12)	<p>B. Reasonable Use Exception (RU)</p> <p>1. Footprint Size:</p> <p>Re draft Sections 270, Item C, p 31, we support the increase in the allowed "impact area" for a house via the RU process to 4,000 sq. ft., from 2,500, recently accepted by the P/C. This limit is a minimally reasonable value when you consider most of the sites will be 2 acres or larger, and many rural land owners will want barns, corrals, shops, etc.</p> <p>Also, these and all other CAO rules apply in the county's two</p>	<p>Please see the responses provided for Comments BIA04, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.</p> <p>And remember, RUEs are for lots totally constrained by critical areas. Lots that aren't so constrained can build to whatever size the code allows for their zone. We would think that someone who wants barns, training rings, and other large</p>

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					<p>Urban Growth Areas: Birch Bay and Columbia Valley, where lot sizes are usually much smaller, and on public sewer and water systems.</p> <p>However, "impact area" is not defined in the draft CAO. We suggest this term be defined to include only artificial impervious surfaces. We support the driveway exception as written, and ask that drainfield areas be listed as excepted too.</p> <p>There appears to be no scientific basis for either value. The 4,000 sf value will often be generally reasonable in this context for smaller lots, e.g., 1 to 5 acres. But several large rural areas are zoned 10 acre minimum. We think consideration should be given to a "sliding scale" proposal, for parcels 5 acres and larger, based on zoning, platting options, availability of drinking water, soils for septic, etc.</p> <p>Many rural residents are horse enthusiasts, and want training rings, which will push the total footprint over the 4,000 sf limit.</p>	structures would choose a lot not so constrained.
BIAWC10	Robert Lee, BIAWC	4/12/21	E	22.05.020	<p>2. RU Process: We believe the RU decision should be made by staff instead of the Hearing Examiner (HE), a far less costly, time consuming and legalistic process.</p> <p>We believe these decisions should be based mainly on a scientific analysis of the particular situation; that is: the functions and values of the resource, and adjacent site character, mainly its natural features: e.g., soils and geology, topography, native vegetation etc.</p> <p>An important question: is there any state law, court decision or code that requires that RU's be decided by the HE, a quasi-judicial official? Or that bars professional and qualified staff from making these mainly technical and science kind of decisions?</p>	Please see the responses provided for Comments GCD14, NES02, NWC02, NWC05, BIA04, MES11, MES29, MES31, MES43, RFW12, & RFW18.
BIAWC11	Robert Lee, BIAWC	4/12/21	F	16.16.270(C)	<p>3. RU Criteria:</p> <p>a. We also have concerns over the fairness of some of the key words/phrases/values related in the RU code, such as:</p> <p>16.16.270 A, C.2, C.3, etc.: "all reasonable and economically viable use of a property".</p>	<p>The RUE criteria are basically the same as the existing criteria (old (B)(2)), which come from state law and courts cases on this matter.</p> <p>And if you're going to quote the CAO handbook, might as well quote more of it,</p>

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					<p>The words "all" and "viable" seem more arbitrary and subjective than logical and objective. Does staff have a reliable, credible source for this language?</p> <p>The current, 2018, State Department of Commerce guidance on critical areas and this topic states, in part:</p> <p style="padding-left: 40px;">The reasonable use permit criteria should allow for "reasonable" uses. If the criteria state that the applicant must demonstrate that no other use "is possible," or that there are "no feasible alternatives," it would conflict with the concept of a "reasonable" use as other "possible" alternatives may be so costly as to be unreasonable.</p> <p>Their 3-page excerpt on RU is attached, and a link to the complete report. The Department of Commerce has primary regulatory authority over all GMA elements, including all 5 critical areas.</p> <p>In reviewing the long list of complex criteria, all 12, for approval of a RU application (Section 270.C, almost all of p 31), we note the links in several of "reasonable" with "economics", and use of "all". Why is economics a critical factor here? The test is supposed to be "reasonable".</p> <p>See items C.2, 3, 4 and 5. It appears staff is trying to make it as difficult as possible for a person to obtain a RU exception, and obtain fair relief from the arbitrary buffers per Department of Ecology guidance on wetlands and habitat buffers.</p> <p>We say the buffers are arbitrary because they are not based on a staff accepted scientific assessment of a site's critical area resources and relevant local conditions.</p>	<p>for it also says, "Unlike variances, the purpose of a reasonable use exception permit is not to allow general development within critical areas, but to allow only the minimal "reasonable" use of the property so as to avoid a constitutional taking. Four scenarios are provided to illustrate situations where a reasonable use exception might or might not be applicable:</p> <p>A – No reasonable use exception would be granted because there is sufficient space outside the critical area clearing limits.</p> <p>B – A reasonable use exception might be granted since there is insufficient space for a reasonable use. The development area would need to be limited or scaled back in size and located where the impact is minimized. The jurisdiction might consider a variance to the required setback to minimize intrusion into the protection area.</p> <p>C – A reasonable use exception would be granted for a minimal development if the property is completely encumbered and mitigation methods are applied.</p> <p>D – The jurisdiction might consider modifications to the required setback to prevent intrusion into the protection area.</p> <p>The criteria for reasonable use permits need to be consistent with case law to reduce the potential for appeals and over-</p>

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						<p>turned decisions. Key to being consistent with case law is careful use of the term "reasonable." Generally, the concept of "reasonable" has been left to the courts to decide, thereby making it difficult for cities to rule on whether or not a project qualifies. A reasonable use is often thought to be a modest single-family home, although some other structure might be "reasonable" depending on zoning, adjacent uses, and the size of the property.</p> <p>Some jurisdictions have allowed a reasonable use exception in only those situations where <i>all</i> economic use of a property would be denied by the critical areas regulations. Criteria that might be used to allow approval of a reasonable use exception include:</p> <ul style="list-style-type: none"> • No other reasonable economic use of the property has less impact on the critical area; • The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property; • The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this regulation, or its predecessor; • The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; • The proposal will result in no net loss of critical area functions and values con-

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						<p>sistent with the best available science; or</p> <ul style="list-style-type: none"> • The proposal is consistent with other applicable regulations and standards."
BIAWC12	Robert Lee, BIAWC	4/12/21	F	Articles 6 and 7	<p>2. Wetland and Habitat Conservation Area Buffers:</p> <p>A. General Comments:</p> <p>Such buffers are usually the most constraining, and thus costly, elements of compliance with local CAOs for landowners and land users. They often end up consuming more usable land than the area of the wetland they are supposed to protect. We have seen many examples of this, large and small.</p> <p>We're familiar with many situations where buffer requirements appear arbitrary and excessive. In one situation, where a qualified private scientist classified a 6 acre area that has been hayed for at least 75 years a Category IV wetland, the lowest value. He used the 2014 DoE Rating form, 17 pages of detailed questions, some a bit subjective. The PDS staff person said he thought it was a Cat. III. This meant the buffer increased from 60 ft. to 110 ft. of hayfield, almost doubling!</p> <p>Per the draft, DoE and staff don't think that's enough. The new Wetland Buffer table, Sec. 630.E, p 67, based on DoE guidance, will require more than a doubling, from 110 to 225 ft., for a Cat. III of any size, whether the parcel is 10,000 sf or 100 acres. We think this is excessive regulation, and it's quite commonplace in the CAO.</p> <p>The County does not have to adopt DoE staff's arbitrary and excessive buffers. They are not based on the WACs. Remember, the state Department of Commerce is the only state agency with rule making authority on GMA obligations, including critical areas. DoE's main authority on wetlands is limited to controlling the filling or alterations of wetlands through the federal Clean Water Act.</p>	<p>In July 2018 the Washington Department of Ecology (DOE) modified the habitat score ranges and recommended buffer widths in their wetland buffer tables in the DOE guidance, with some minor text changes to ensure consistency. Some citizens, local environmental consulting firms, and <i>the Building Industry Association of Whatcom County</i> then requested that we amend our code to meet this new guidance, and it was docketed as PLN2019-00008.</p> <p>The project was brought before the Planning Commission on March 14, 2019. But there was confusion as to what we actually had to do at that time and what impacts it would have on development. DOE had informed staff that, while we didn't need to amend our code at that point (having just updated Ch. 16.16 (Critical Areas) (Exhibit F) that they would review our code for consistency with their guidance when Ch. 16.16 was opened for amendment again, noting that that would occur during the 2020 SMP Periodic Update.</p> <p>So at the Commission's request, staff worked with the local wetlands consultants to review the issue and try to determine what effects it might have. Three consulting firms provided analyses based on data from projects they had worked</p>

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						<p>on. From these analyses, it appears that many of Whatcom County's lower quality wetlands (e.g., small Category IV wetlands in agricultural fields) would end up with smaller buffers, but that our higher quality wetlands (Categories II and III) would end up with larger buffers. (But even this is speculation, as ATSI noted that the comparison results are not statistically significant.) Thus, farmers may benefit but developers/ builders may suffer, as many of our lower quality wetlands are those found in agriculture fields, while our higher quality wetlands are typically found in non-agriculture rural areas.</p> <p>Nonetheless, given the Department of Ecology's statements that they'll be monitoring the SMP Update to ensure that we meet their latest guidance (which is based on Best Available Science), and given that Comprehensive Plan Policy 10M-2 directs the County to "Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines," staff is proposing to amend §16.16.630 (Wetland Buffers) Table 1 (Standard Wetland Buffer Widths) to meet DOE guidance. As indicated, these changes would lessen buffers on lower quality wetlands, and increase them on higher quality ones.</p>
BIAWC13	Robert Lee, BIAWC	4/12/21	F	Articles 6 and 7	<p>B. Buffer Details in the Draft:</p> <p>We have reviewed the Wetland and Habitat drafts and the de-</p>	Your comment will be provided to the P/C and Co/C for consideration.

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					<p>tailed comments on them submitted February 19 and 25, 2019, for Jon Maberry by Ed Miller and Liliana Hansen, both Professional Wetland Scientists (PWS). GAC members discussed these issues with Ed recently.</p> <p>We firmly agree with the scope and substance of all 14 comments in their firm's 8-page February 19 letter, including its recommendation to delete 12 of the draft changes/additions (attached). The Miller firm is highly regarded by many BIAWC members for their professional approach to complex environmental issues.</p> <p>We also agree with the reasonable and constructive suggestions in Jon Maberry's Prepared Motions submitted to the Planning Committee February 25, attached.</p> <p>Finally, it appears to us there's a pattern in these and other parts of the draft CAO of making the rules more restrictive and less balanced between the government's legitimate police power authority and the constitutional rights of private land owners and land users.</p>	
P6601	David Klanica, Phillips 66	4/12/21	A	10D-11	<p>Policy 10D-11 was added that addresses climate change: "Protect ecological functions and ecosystem-wide processes of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise."</p> <p>Phillips 66 is requesting further explanation and clarification whether upland property owners who propose bulkheads, armoring, or bank stabilization to prevent shoreline erosion or sloughing due to sea level rise will be subject to new limitations or requirements that could affect the current or future use of their property.</p>	The amendments regarding shoreline stabilization regulations are found in Exhibit D (Title 23). You would want to look at both 23.40.010, Table 1, and 23.40.190.
P6602	David Klanica, Phillips 66	4/12/21	B	Governing Principle (C)(2)	<p>The Shoreline Management Act was adopted in 1971 to protect the shorelines of the state of Washington. Certain shorelines were designated as "shorelines of statewide significance" including those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide. The Act established a system where local governments would ensure that</p>	As explained in the comment bubble tagged on this change, the word "significant" is proposed for deletion as there is no such threshold under SMA. Under the SMA, all adverse impacts must be mitigated in order to help achieve NNL. (The term "significant impact" comes from

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					<p>certain developments in shoreline areas would be reviewed and protected. More specifically, these agencies would review "substantial developments" which were those that would have a "significant adverse" impact on the environment including, but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values.</p> <p>Whatcom County has proposed in its Governing Principles (GPC2)) that it will include "policies and regulations that require mitigation of adverse impact in a manner that ensures no net loss of shoreline ecological functions." Phillips 66 is concerned about how this revised policy will be implemented as a practical matter. First, it appears to go beyond the County's statutory authority outlined in the SMA. Second, Phillips 66 is concerned that, without further clarification, it may be used inconsistently across the County. For instance, what is meant by "adverse" versus the original "significant adverse"? Must all land use permits affecting the shoreline now indicate what, if any adverse impacts might occur? Phillips 66 requests that the P/C provide more information as to how the removal of the word "significant" will change day-to-day shoreline management activities.</p>	SEPA.)
P6603	David Klanica, Phillips 66	4/12/21	B	Policies 11G-3 & 11G-4	Regarding Policy 11G-3 and Policy 11G-4 addressing the County's MOU with DAHP and Lummi Nation require the County to consult with DAHP and the Tribes. Phillips 66 is requesting additional clarification for applicant/property owner responsibilities.	Please read 23.30.050 (Cultural Resources) in Exhibit D, as that should provide the additional clarification you seek.
P6604	David Klanica, Phillips 66	4/12/21	B	Overall Goals & Policies	<p>Regarding Overall SMP Goals and Objectives for the Restoration and Enhancement Element were revised as follows: "This element provides for the timely restoration and enhancement of ecologically impaired areas in a manner that achieves a net gain in shoreline ecological functions and processes above baseline conditions as of the adoption of this program."</p> <p>Phillips 66 requests additional clarification and definition for "baseline condition" (e.g. baseline conditions at the time of application?).</p>	<p>The baseline condition was set by the comprehensive update done in 2007. As part of that update the County developed:</p> <ul style="list-style-type: none"> • Vol. 1 - Inventory and Characterization Report • Vol. II - Scientific Literature Review • Vol. III - Restoration Plan • Vol. IV - Cumulative Effects Analysis <p>all of which can be found on our SMP Update webpage.</p>
P6605	David Klanica, Phillips 66	4/12/21	B	Policies 11AA -1 through 11AA-7	Regarding General Policies for Climate Change/Sea Level Rise (Policies 11AA -1 through 11AA-7): please explain/provide detail	These are only general policies; we are not developing CC/SLR regulations at this

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					for shoreline development applicant's responsibilities pertaining to climate change and sea level rise. Will development applications be required to address climate change and sea level rise as part of the SMP application or will there be separate analysis and document requirements (e.g. when will a study addressing sea level rise be required)?	time.
P6606	David Klanica, Phillips 66	4/12/21	C	Policy 8T-1	Regarding Policy 8T-1, Phillips 66 requests clarification of the methods by which the County will coordinate with landowners to protect marine resource lands.	Well, we generally do that through email, though sometimes letters, phone calls, or meetings.
P6607	David Klanica, Phillips 66	4/12/21	C	Policy 8U-2	Regarding Policy 8U-2, Phillips 66 requests clarification of the types of non-regulatory programs, options, and incentives that owners of marine resource lands can employ to meet or exceed County environmental goals.	We can't provide you a precise list, as they haven't been developed yet, but they could include tax incentives, educational programs, volunteer groups, etc.
P6608	David Klanica, Phillips 66	4/12/21	C	Policy 8V-2	Regarding Policy 8V-2, Phillips 66 requests clarification of the process by which the County will work cooperatively with local, State, Federal and Tribal agencies, adjacent upland property owners, and the general public, as applicable, to address community concerns and land use conflicts that may affect the productivity of marine resource lands.	How would we work cooperatively? Here are 10 simply ways from entrepreneur.com to cultivate team cohesion: <ul style="list-style-type: none"> • Create a clear and compelling cause • Communicate expectations • Establish team goals • Leverage team-member strengths • Foster cohesion between team members • Encourage innovation • Keep promises and honor requests • Recognize, reward and celebrate collaborative behavior
P6609	David Klanica, Phillips 66	4/12/21	D		The General Provisions of Title 23 indicate that shoreline development must be consistent with the SMA of 1971, the County's shoreline regulations and "other County land use regulations" (See Title 23 draft at lines 11-13). Title 23 then references certain requirements for "existing legal fossil-fuel refinery operations, existing legal transshipment facilities, expansions of these facilities, and new or expansions of renewable fuel refineries or transshipment facilities". Related definitions are also provided on page 241 at lines 20-36. Expansions of existing fossil fuel and renewable fuel facilities are required to obtain conditional	Yes, staff is well aware of this work and understands that changes have been made to Council's original proposal. However, at the time these documents were 1 st edited, their original proposal was all we had on which to rely, which is why the comment bubbles indicate that we will have to substitute in any changes based on Council's final adoption of the

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					<p>shoreline permits. (See Title 23, page 137 at lines 3-10).</p> <p>As the Planning Department is aware, industry, labor and environmental organization stakeholders have been working together to develop recommended changes to the County Council's October 2019 proposed Comprehensive Plan amendments. Many of the terms and definitions included in this proposal assume that the 2019 proposed Amendments will be adopted as is. Phillips 66 requests that terms borrowed from the 2019 proposal not be adopted at this time. Considerable progress has been made by the stakeholders and is being presented to the County Council for its consideration in the near future. We request that this proposal be delayed until the final work from the ongoing stakeholder effort is accepted or rejected and the "final" definitions and framework for when conditional use permits is finalized.</p>	Cherry Point fossil fuel amendments.
P6610	David Klanica, Phillips 66	4/12/21	F		Article 7 Fish and Wildlife Habitat Conservation Area was amended to now include Type O waters. Phillips 66 requests the addition of a definition of Type O waters in the Whatcom County guidance.	This proposal has already been dropped. We suggested you look at the most recent version of Exhibit F, dated 4/5/21.
WH01	Wendy Harris	4/13/21			<p>This is in response to the question that was asked at the last Planning Commission meeting regarding "waters of the state." That is not a term used in the Shoreline Management Act. Rather, it refers to all waters under its jurisdiction as "shorelines of the state" or "shorelands of the state" and these are the appropriate terms to use for waters and exposed land under SMA jurisdiction.</p> <p>Under RCW 90.58.030, "Shorelines" means all of the waters of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes. https://apps.leg.wa.gov/RCW/default.aspx?cite=90.58.030.</p>	The commenter is correct, and these are all laid out in 23.20.010 (Shoreline Jurisdiction).

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					<p>In other words, only waters with minimum quantifiable measurements (size, type, velocity, etc.) are a regulated state shoreline. This is often forgotten when we hear complaints about over-regulation and unreasonableness.</p> <p>Shorelines of the state are specifically set out in the WAC. In Whatcom County, all rivers and streams that are shorelines of the state are set out in WAC 173-18-410. https://apps.leg.wa.gov/WaC/default.aspx?cite=173-18-410.</p> <p>Lakes are listed in WAC 173-20-760 and 770. https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-770; https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-760.</p> <p>There are two kinds of shorelines of the state. The most common shoreline under SMA jurisdiction imposes a no net loss standard of review to prevent any degradation beyond baseline conditions, informed by review of best available science.</p> <p>However, particularly large and significant rivers and lakes, as well as marine waters, are designated "Shorelines of Statewide Significance" (SSWS). These have increased protection through a prioritized preference of use, similar to how we apply mitigation standards. These are set out in statute, with preferred use for natural conditions that support the long-term interests of all state residents. RCW 90.58.020(f); https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.020.</p> <p>The Whatcom County SSWS are the Nooksack River, Lake Whatcom, Baker Lake, and marine waters, including Birch Bay. R CW 90.58.030.</p> <p>The SMA also discusses "shorelands" or "shoreland areas", which includes lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of</p>	

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					<p>ecology.</p> <p>RCW 90.58.030(2)(d), https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.030.</p> <p>I recommend the SMP Handbook, which is linked on DOE's website and explains how the SMP process works. Specific issues and provisions are separate chapters in the Handbook. https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Shoreline-Master-Plan-handbook; https://apps.ecology.wa.gov/publications/SummaryPages/1106010.html.</p> <p>P.S. If you are wondering why I have written this, it is because I do not believe that the Planning Commission and citizen committees generally are being provided with relevant and timely information on the laws and policies they are asked to review and this fails to serve public needs and public input requirements. Unless citizen-appointed committees have a comprehensive and complete understanding of the purpose and intent of the policies and laws they are asked to review, they will remain tools of the Planning Department. Please continue to ask questions and ensure that you are provided with all the information you need upfront, before beginning a large review project.</p>	
PB04	Pam Borso	4/21/21	F	16.16.270	<p>Restore Reasonable Use impact area language in the Dec 4, 2020, draft Exhibit F, WCC 16.16.270 Reasonable Use Exceptions.</p> <p>I urge Whatcom County to reject the proposed change from the Planning Commission to expand the maximum impact area for single-family residences from 2,500 sf to 4,000 sf. The purpose of the reasonable use provision is to allow only the minimal "reasonable" use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations. A 4,000 sf home is excessive.</p>	Your comments will be forwarded to the P/C & Co/C for their consideration.
PB05	Pam Borso	4/21/21	F		Incorporate the State of Washington Department of Fish & Wildlife's new riparian buffers guidance. The buffer requirements	Please see the response to comment

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					contained in the SMP are less than adequate to ensure no net loss of riparian and stream functions vital to fish, wildlife and our water supply.	#FW/WEC09.
PB06	Pam Borso	4/21/21	F		Incorporate regulations to prepare for accelerating sea level rise impacts. Whatcom's SMP does not incorporate protections from this peril. Not only our marine shorelines will be impacted, as Ecology writes "more frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life." 31,235 homes in Washington State may be underwater by 2100; the value of the submerged homes is an estimated \$13.7 billion.	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21			The most recent staff memorandum contains several important explanations and clarifications regarding what is meant by the "baseline" condition upon which no net loss project mitigation requirements are measured and recognizes important distinctions between what is appropriate to require for project mitigation obligations and what must be voluntary or incentive-based for restoration. These principles should be built into the language of the code itself or, at a minimum, into the language of the adopting ordinance, so as not to disappear into history once the code amendments are adopted.	Staff doesn't feel this is necessary, as this explanation is based on DOE's guidance and explanatory handouts so it true throughout the state. Nonetheless, your comment will be provided to the P/C and Co/C for consideration.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21			The County Council is currently in the final stages of review of comprehensive plan and code amendments for fossil and renewable fuel facilities and expansions. This work is the result of many months of effort and good faith negotiations between the County and interested stakeholders, including WSPA. As noted by staff in several places in the draft shoreline master program amendments, it is imperative that these shoreline master program amendments be fully consistent with the outcome of that other County Council effort. WSPA asks for an additional opportunity to review and provide input on future revisions made by staff to achieve that consistency before these amendments to the shoreline master program are adopted.	Please refer to the response to comment P6609. The P/C's recommended amendments will be forwarded to the Co/C for their review, public hearing, and adoption (during which they may make their own amendments). We would urge you to pay attention to the SMP update page (or Council's agenda page), where new drafts are posted as decisions are made.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21		23.40.010	The Shoreline Use and Modification Use Table establishes a shoreline conditional use permit requirement for expansions of existing legal fossil fuel refinery and transshipment facilities and new or expansion of existing legal renewable fuel refinery op-	What is shown in the draft Title 23 regarding this issue is what staff was provided over a year ago. Once Council makes a final decision on their separate Cherry

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					erations or renewable fuel transshipment facilities. Conditional use permit review requirements for these facilities are being addressed in the zoning code amendments currently under review by the County Council. A separate, duplicative and potentially inconsistent shoreline conditional use permit review for the same facilities that will undergo thorough zoning code conditional use permit review is unnecessary and should be eliminated. In particular, it is not appropriate to apply shoreline conditional use permit requirements to upland activities that will be fully evaluated under the zoning code requirements applicable to those upland activities. At a minimum, this provision should clarify that such fossil fuel facilities located outside of the shoreline jurisdiction should be evaluated under the zoning code conditional use permit criteria and not pursuant to shoreline conditional use permit requirements.	Point amendments staff will rectify the differences. You should understand, though, that if both Title 20 and Title 23 require a CUP for a certain activity, the permits would be combined under WCC 22.05.030 (Consolidated Permit Review). Shoreline requirements would not be applied outside of the shoreline jurisdiction.
DK01	David Kershner	4/22/21	N/A	N/A	<p>I have served on the Whatcom County Climate Impact Advisory Committee since its inception in 2018. While I am not writing in my capacity as a committee member, I have familiarized myself with the research on sea level rise related to climate change. The financial costs to Whatcom County taxpayers and property owners of not adequately planning for sea level rise are likely to be substantial. As you may know, the real estate company Zillow estimates that nearly \$14 billion worth of housing in Washington State could be submerged in the next 80 years under some climate change scenarios. The ecological costs will also be substantial, if we plan to prevent flooding of structures but not to allow migration of shoreline habitat. That habitat not only supports wildlife populations, it also provides economic benefits, such as recreation and fisheries.</p> <p>To reduce the economic toll of sea level rise and truly protect shorelines consistent with the intent of the Shoreline Management Act, I urge you to recommend revising regulations to ensure that newly-created lots only allow construction in areas that are not likely to be inundated in this century. Where existing lots are large enough to still allow residential, commercial, or industrial uses compatible with the zoning, I urge you to recommend a similar revision. In addition, I support revising the regulations</p>	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.

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					<p>to ensure that new or substantially changed structures be elevated above the likely sea level rise elevation for the life of the structure.</p> <p>Waterfront property that I own on Lummi Island would likely be constrained in its use due to these regulations. Nevertheless, new protections are the only responsible approach to shoreline planning, given what we know about sea level rise.</p>	
DK01	David Kershner	4/22/21			As a former commercial salmon fisher, I also support strengthening riparian buffer restrictions consistent with recommendations of the Washington Department of Fish and Wildlife Riparian Ecosystems Volumes I and II. Salmon populations have declined in part due to riparian habitat degradation. We need to protect this habitat to restore healthy salmon populations.	Your comment will be forwarded to the P/C & Co/C for their consideration.
AC01	Alan Chapman	4/22/21			<p>I have been involved in fisheries management, and watershed resource issues in Whatcom County for over 30 years.</p> <p>Regardless of the level of belief one might have in projections of climate change and sea level rise and associated storm surges, it does not make sense to allow development in areas of high risk. I urge the county, in the interests in avoiding significant damage to life, property and natural resources to not allow creation of lots where reasonable use would be subject to a high risk of damage from climate change effects, sea level rise, or reduce public trust ecological benefits within the foreseeable future. Where existing lots are large enough to still allow residential, commercial, or industrial uses compatible with the zoning, I urge you to recommend or require a similar risk avoidance approach. In addition, I support revising the regulations to ensure that new or substantially changed structures be elevated above the likely sea level rise elevation for the life of the structure.</p>	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.
AC02	Alan Chapman	4/22/21			In the interest of protecting and achieving a net ecological gain of shoreline functions through consideration of locational relevant riparian buffer requirements that might be identified in the Washington State Department of Fish and Wildlife recent guidance on riparian guidance.	Your comment will be forwarded to the P/C & Co/C for their consideration.

Comment #	Commenter	Date	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
PR01	Paula Rotondi	4/22/21	F	16.16.270	<p>As you consider changes to the Shoreline Master Plan (SMP), I urge you to make decisions based upon what will be best for those living here twenty years from now – rather than what is best for corporations' short term profits. Please draft more stringent SMP standards.</p> <p>First, regarding Reasonable Use Exceptions, please reject the proposed change to expand the maximum impact area for single family residences from 2,500 square feet to 4,000 square feet. "Reasonable Use" means there must be some minimal use such as a 2,500 square foot house. If those living here twenty years from now are to have natural treasures such as salmon fishing, crabbing, the sight of Orcas, the SMP cannot afford extravagances such as a 4,000 square foot house that will do more damage to our already damaged shorelines.</p>	Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.
PR03	Paula Rotondi	4/22/21			<p>Second, the buffer requirements in the SMP do not adequately protect riparian and stream functions which are essential for sustaining fish, wildlife and protecting our water supply. If people living here twenty or more years from now are to have the fish and wildlife treasures we enjoy today and have adequate supplies of clean water, then the SMP must incorporate the State of Washington Department of Fish & Wildlife's new riparian buffers guidance.</p>	Please see the response to comment #FW/WEC09.
PR03	Paula Rotondi	4/22/21			<p>Third, please do not add to the challenges of those living here twenty years or more from today who will be dealing with increasingly severe ramifications of climate change. Climate change causes sea level to rise and also causes more extreme storms with tide surge coastal flooding and also river flooding. The Washington State Department of Ecology, the Federal Emergency Management Agency, private investment companies, insurance companies, and real estate companies (Redfin most recently) warn that many thousands of homes worth billions of dollars will be lost due to climate change exacerbated flooding. Please include regulations in the SMP to prepare for accelerating sea level rise.</p>	Please see the responses provided for Comments FW/WEC01, FW/WEC02, FW/WEC12, WCPW07, WCPW08, WCPW09, RES03, RFW02, RFW03, RFW04, RFW06, RFW07, RFW11, RFW17, & PB06.
P6611	Dave Klanica, Phillips 66	4/22/21	D		<p><i>Extent of Jurisdiction.</i> Given the recent Department of Ecology's revocation of the Port of Kalama and Northwest Innovation</p>	We are. Shoreline jurisdiction is addressed in §23.20.010.

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					Works Shoreline Conditional Use Permit, questions have been raised as to overall shoreline management authority. Whatcom County, as well as other Counties and Ecology must lawfully apply its shoreline management program requirements, particularly when seeking to require mitigation for activities that occur outside the jurisdictional shores of the State. It appears that Ecology unlawfully applied certain mitigations when the only activities within the shoreline were dredging for a new dock berth, portions of the security fence, an infiltration pond, a first-flush pond, fire suppression water storage and a containment berm for certain storage tanks. We ask that Whatcom County commit to act within its jurisdictional boundaries.	
P6612	Dave Klanica, Phillips 66	4/22/21			<i>Consistency with Ongoing Comprehensive Plan and Code Amendments.</i> Both WSPA and Phillip 66's previous comments request that the shoreline master program amendments be consistent with the outcome of the ongoing good faith negotiations between the County and interested stakeholders that has occurred over many months related to the Comprehensive Plan and Code Amendments. We request consistency primarily as to definitions as the development of the relevant definitions was a significant effort and even slight differences in wording across county programs could add uncertainty and confusion. Phillips 66 does not believe that all activities which will require a conditional use permit under the Code Amendments should also require a conditional use permit under the shoreline management act. The shoreline program only affects activities that are within the jurisdictional shores of the State. The Zoning requirements cover much broader non-shoreline areas. Additionally, shoreline conditional use permit requirements should not be applied to upland activities that will be fully evaluated under the zoning code requirements applicable to those upland activities. The programs also involve different decision makers and appeal paths. The differences can warrant different permitting approaches.	Please see the responses provided for Comments FW/WEC16, RES10, P6609, WSPA01
BH01	Bill Haynes, Ashton Engineering	4/22/21	D	23.50.140	Regarding the Table for Dimensional Standards (page 147), the minimum length required to reach a moorage depth of 5' below	We agree; our math was wrong. It has been amended to be 5.5 feet now.

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					<p>ordinary high water.</p> <p>Ordinary High Water (OHW) elevation 314.5' has been well established on the Lake Whatcom - at least for the multiple projects I've been involved with.</p> <p>The proposed change results in a low water depth at the outer end of the dock (float) of 2'. Design low water has been established at an elevation of 311.5'.</p> <p>In a Jan. 29, 1999 letter from the WA Dept. of Ecology (DOE) to WCPDS and the WC Hearing Examiner, the DOE determined "...an in-water depth of 2.5 feet at 311.5 feet MSL is the minimum necessary draft to accommodate a standard powerboat on Lake Whatcom."</p> <p>The proposed update lowers the design depth from 2.5' to 2.0'. That depth is at the watered end of the dock only. Presumably, depths towards shore are shallower and at low water level a power boat will have less than 2' to moor in. In addition, the landward end of the float may go aground depending on the bottom contours if the outer end is at 2'. If the site is exposed to waves, the dock/boat may be tossed up and down on the lake bed.</p> <p>Assuming a 6'x20' floating dock aligned with its approach ramp, I would propose the overall minimum length required to reach an inshore depth of 5' at OHW (2' depth at 311.5'). That assumes depths offshore increase.</p>	
KC04	Kim Clarkin	4/22/21			<p>I am concerned about the current document's lack of land use restrictions on areas that will be affected by sea level rise. I do not agree that waiting to strengthen regulations till more information is available is a good idea. In the meantime, many decisions will be made that may harm critical areas along the changing shoreline. Those decisions may also harm the people who invest in shoreline developments that storm surges could damage. This is the kind of foresight and protection citizens expect from their government—not a laissez-faire attitude such as led to the Oso disaster. Other commenters have given strong refer-</p>	<p>Please see the responses provided for Comments FW/WEC01, FW/WEC02, FW/WEC12, WCPW07, WCPW08, WCPW09, RES03, RFW02, RFW03, RFW04, RFW06, RFW07, RFW11, RFW17, & PB06.</p>

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					ences for up-to-date scientific information the Planning Dept. can use to write pertinent and reasonable rules to distance new developments from the shoreline.	
KC05	Kim Clarkin	4/22/21			I do not see a reason for expanding the reasonable use exception to 4,000 ft2 in critical areas. That is a trophy home, not a reasonable exception. Critical areas are critical to wildlife, water and other things that we are trying to protect. Let's actually protect them.	Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.
KC06	Kim Clarkin	4/22/21			<p>I strongly encourage you to use WDFW's most recent recommendations for riparian buffer widths for new developments. They are based on a thorough knowledge of rivers, valleys, and in-stream habitat development over the long term, and they should be incorporated in our long-term planning. No one is saying that existing developments have to be retired. New development should be completely different; recognizing our expanding understanding of the damage we wreak on ecosystems, we should aggressively seek to avoid that damage.</p> <p>I congratulate you and the Planning Department for making otherwise reasonable updates to a huge document and working toward making regulations more understandable. It has been a long slog for you, and I'm grateful for your attention to this extremely important roadmap to our future relationship with our environment. Please make it as strongly protective as you can.</p>	Please see the response to comment #FW/WEC09.
JM01	Janet Migaki	4/22/21			<p>The SMP, CAO, City and County Comprehensive Plans mention or refer to a quagmire of environmental agencies + regulations, as well as mention or refer to multiple intersecting jurisdictions, permits, ordinances, exemptions and waivers—all used for 'managing' waters of the State.</p> <p>Lake Whatcom, a significant water of the State, is not a healthy or protected source of water, yet it is used for Bellingham's drinking water. The Lake's well documented decline is troublesome since many of the lake's contaminants resist the treatment processes used by the City treatment plant and pass into public drinking water supplies.</p> <p>Where in the SMP and accompanying documents does it men-</p>	Lake Whatcom's water quality is managed through the Lake Whatcom Management Program, under the direction of the Lake Whatcom Policy Group. You can find what you're looking for at https://www.lakewhatcom.whatcomcounty.org/ .

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					<p>tion or discuss the primary and ultimate regulatory agency held fully accountable for protecting the water quality of Lake Whatcom water?</p> <p>The Lake is violating several water quality parameters +contaminants, and the water has not been tested for a full toxicology analysis since late 1990s.</p> <p>Does the SMP address protecting the Lake's total water quality? I know the 50-year TMDL tries to address low DO levels, with not encouraging reports to date. What about so many more lake water quality issues- who is accountable and responsible for protecting and keeping the lake healthy enough to be a drinking water source?</p>	
MRC01	Marine Resources Committee	4/22/21			<p>Thank you for taking the time to review the Whatcom County Marine Resources Committee's (WCMRC) comments on marine land protection. One role of the WCMRC is to work with county leadership and other key constituencies to help protect marine and enhance nearshore habitat through local and state ordinances and regulatory plans. The WCMRC supports regulations and policies that further protect and enhance marine shoreline areas that are vital economically, culturally, recreationally, and environmentally.</p> <p>The Whatcom County Marine Resources Committee supports the inclusion of the proposed amendment to Chapter 8: Marine Resources Lands policy section, as developed by the WCMRC, to the Comprehensive Plan.</p>	Your comment will be provided to the P/C and Co/C for consideration.
BIAWC14	Rob Lee, BIAWC Executive Officer	4/22/21	F		<p>We want to say thank you for:</p> <ul style="list-style-type: none"> recommending the 4,000 sq. ft. RU area, we request excluding septic systems from this square footage if covered with native landscaping. For creating the minor variance for buffer reduction of the 25% to 50%. We request that you lower the fee for minor variances. We request that any buffer reductions under Reasonable Use are decided administratively through a minor variance, Critical areas included. 	Your comment will be provided to the P/C and Co/C for consideration.

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BIAWC15	Rob Lee, BIAWC Executive Officer	4/22/21	F	16.16.270 & 16.16.273	<p>Reasonable Use and Variances: We will comment separately on the permit process, "impact area" size, and criteria issues.</p> <p>A. Permit Procedure:</p> <p>1) <i>Present Process</i>: PDS staff has proposed major changes to the procedures. The current 2017 CAO allows staff to grant reasonable use (RU) permits for one single family house under very strict criteria if CAO rules alone would deny "all reasonable and economically viable use" of the property. The next step is a variance requiring Hearing Examiner (HE) approval.</p> <p>We were surprised to learn recently that these RU permits have become a major part of local wetland scientist's workload. This is due mainly to high buffer standards and tight limits on adjustment options. These conflicts between strict environmental rules and permitted, customary land uses are obviously not unusual.</p> <p>2) <i>Staff Proposed Process</i>: As we understand it, the current draft Exh F/CAO proposal, dated 4/2/2021, offers a 3-level process:</p> <p>a) Minor Variance: if a person only needs a 25 to 50% CAO buffer reduction, they will apply for this approval. The draft does not say whether this value is total area, width, or both. Staff decides these permits; an application and notice to neighbors is required. We do appreciate this new minor variance idea allowing staff approval. The concept should be used for other CAO issues. No further CAO permits are needed. See Section 16.16.273, p 34.</p> <p>b) A Major Variance is required if the Minor Variance is denied. One would apply to PDS, and the H/E would decide after a hearing. This is an expensive and slow process; the fees are now \$2,750 each, plus critical area reports, probably consultants doing the applications, a consultant or attorney at the hearing, and possible legal costs if you or an opponent appeals the decision. Anyone testifying, or you, can appeal the decision to Superior Court, also costly and slow. See Section 16.16.273, p 34.</p>	<p>Regarding the commenter's point A.2.b: A major variance wouldn't be required if the minor variance is denied; a major variance would be applied for if one wants to reduce a buffer more than 50%. They're not sequential: one just applies for the permit one needs.</p> <p>Similarly, regarding the commenter's point A.2.b: With staff's assistance, an applicant should know whether a major variance is attainable, given the required findings (\$22.07.050). Thus, if one understood one's chances to be nil, one would just apply for an RUE; so again, they don't have to be sequential.</p> <p>The biggest difference is that through a variance, whether minor or major, one must still mitigate for impacts. Under an RUE the H/E can allow impacts without requiring mitigation. This would apply on a property that is so encumbered by critical areas that nothing could fit on the lot without causing impacts and there's no room to mitigate.</p>

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					<p>c). A Reasonable Use Exception is the last resort, virtually identical to the Major Variance process and possible outcomes. It would also be decided by the HE, with high similar costs, and potential litigation. See 16.16.270. A and B.</p> <p>One may apply for an RUE only if their Major Variance app is denied. If you do not get adequate relief with a major variance, you must repeat the process to apply for and hope to be granted an RUE by the HE, paying like fees and costs again. You or an opponent may appeal this decision too to Superior Court from someone, at either stage.</p> <p>3) BIAWC/GAC Proposal: a simpler, less costly, and more practical alternative for all sides:</p> <p>a) Minor Variance (informal staff decision): expand the options to allow buffer adjustments above 50%. This would be determined mainly on a valid scientific analysis of site and vicinity functions and values of the affected wetland(s) and/or habitat(s), acceptable to qualified staff. Also, adjustments should be possible in both total buffer area and width. Can be appealed via RU process.</p> <p>b) Major Variance (formal HE decision): eliminate it, as redundant with the RU option, adding unneeded costs, complexity and time demands on both public and private parties.</p> <p>c) RUE: Use the draft as written; consider simplifying criteria per comments, information, and proposal below, per Item C.</p>	
BIAWC16	Rob Lee, BIAWC Executive Officer	4/22/21	F	16.16.270(C)(12)	<p>B. <i>"Impact Area" size limit</i>: For reasons stated in our April 12 2021 letter, we support the 4,000 sq. ft. value for the "impact area" to be allowed as the upper limit for buildings and other impervious surfaces, except for a minimal standard driveway. We suggest "impact area" be defined for certainty, and exclude landscaped areas using native plants and water features, and septic mounds or areas. The term "footprint" has a different meaning in the construction and real estate worlds.</p> <p>Also, there is no scientific basis for any fixed value, 2,500 or</p>	<p>Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.</p> <p>And the commenter is correct about the impact area having no scientific basis; rather, it is a legal basis. The courts have consistently interpreted a reasonable use</p>

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					4,000. Also, some landowners who already have a "pre-CAO" house or other building on their parcel would be severely penalized by the 2,500 value.	(in SFR zones) to be an averaged sized house in that jurisdiction. In Whatcom County, PDS records indicate that an averaged sized house is 1,820 sf, meaning the footprint would be around 900-1,000 sf (2-story). We would expect that someone wanting a larger home or more appurtenant improvements wouldn't choose a lot that is so encumbered by critical areas that they couldn't fit it on the property.
BIAWC17	Rob Lee, BIAWC Executive Officer	4/22/21	F		<p>C. RU Criteria: In our April 12 2021 statement, we raised several substantive questions on the "reasonableness" of some of the many RU criteria (12! see p 2-3). And we attached the full text of guidance on Reasonable Use from the state Department of Commerce again. We did omit the small p1 diagram because it was not clear how it related to the text on it or overall context.</p> <p>In general, this guidance advises "careful use" of terms such as "alternative or possible uses, etc."; and care with "economic use" etc.; see p 2-3.</p> <p>In the Synopsis of Public Comments updated April 14, 2021, staff commented at length on this guidance (pp 110-113). We have no disagreement with most comments. But in D, p 111, if you as the government are going to say: "the criteria ... need to consistent with case law...", then you have an obligation to impacted citizens to cite at least the more recent and relevant cases and point out the claimed support.</p> <p>Somewhere in the Synopsis, staff also referred to Department of Ecology guidance on this topic. I searched their site and found: "Wetland Guidance for CAO Updates"; 65p, 2016 (attached). The subject is cited on 4 pages: 8, 13 and 31-32. This excerpt is the only substantive guidance in the document, p 8:</p> <p>"Exceptions are typically addressed in a CAO in the context of reasonable use of property. For more information about this</p>	Your comments will be provided to the P/C and Co/C.

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					<p>regulatory tool, see Section VII of the Critical Areas Assistance Handbook published by the Washington State Department of Commerce: http://www.commerce.wa.gov/Documents/GMSCritical-Areas-Assist-Handbook.pdf</p> <p>We think this is an important legal issue for many county landowners. We suggest you ask the PDS/Commissions' legal counsel to review these criteria and related resources and produce a memo with a recommended set of criteria for the record before you complete your recommendations on this important issue to the County Council. The adopted CAO definitions of Reasonable Use and RU Exception should be reviewed too; attached.</p>	
BIAWC18	Rob Lee, BIAWC Executive Officer	4/22/21	F		<p>2. Buffers for wetlands and Habitat (HCAs)</p> <p>Our April 12 testimony makes several comments on this important issue. In general, the buffers make more land unusable for all kinds of essential land uses than preserving the actual wetland.</p> <p>At this point, we have carefully reviewed the 3 most recent statements by Miller Environmental Services on the many changes proposed by staff re wetland and habitat buffer and related issues. We have discussed many with him and find that we agree in general with all the comments. A few other wetland scientists have also submitted valuable comments, e.g., NW Ecological Services and NW Wetlands Consulting.</p> <p>We respectfully recommend that Planning Commission members and staff review these comments carefully, and seriously consider acceptance. Almost all are opposed to new, more restrictive language, and do not propose new text or values.</p> <p>Many of staff's proposed changes, and opposed by Miller, would tip whatever balance the CAO now has toward preservation of more non-wetland areas, i.e., buffers. Other items objected to will make the process of obtaining some flexibility in the rules more difficult, or impossible in some cases.</p>	Your comments will be provided to the P/C and Co/C.

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					<p>We submitted two of the three Miller letters with our April 12 letter: the February 19, 2021 letter (8 pages; 14 comments, and the Jon Maberry Prepared Motions, one page, 12 issues, dated February 25 2021.</p> <p>We are attaching the firm's most recent April 12, 2021 letter to this statement, 8 issues and 6 p.</p> <p>We are taking this approach because no active members of our GAC or of the BIAWC have the scientific credentials or experience to do the kind of objective analysis of the draft changes that Miller and the other scientists have done.</p> <p>From reading all the Miller comments, we conclude that if the CAO draft is adopted as written today, the Whatcom CAO will be one of the restrictive in the state, if not the most!</p>	
BIAWC19	Rob Lee, BIAWC Executive Officer	4/22/21	F		We do ask that the Planning Commission hold the record open for written comments for at least 2 weeks. We will review the testimony after the hearing and may want to send additional comments.	The P/C considered this request at their 4/22 hearing and denied it.

Total # of comments: 270



Whatcom County

COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
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Agenda Bill Master Report

File Number: AB2021-525

File ID:	AB2021-525	Version:	1	Status:	Agenda Ready
File Created:	09/03/2021	Entered by:	CHalka@co.whatcom.wa.us		
Department:	Council Office	File Type:	Discussion		
Assigned to:	Council Committee of the Whole			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Discussion regarding request for proposals (RFP) for independent review of the response to the COVID-19 pandemic

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding request for proposals (RFP) for independent review of the response to the COVID-19 pandemic

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Memo, Draft Scope



MEMORANDUM

TO: Whatcom County Council

FROM: Cathy Halka, Legislative Analyst

RE: RFP for Independent Review of the Response to the COVID-19 Pandemic

DATE: September 7, 2021

On July 13, 2021, Council adopted Ordinance 2021-045 (AB2021-360) – Ordinance to establish an independent review of the community response to the COVID-19 Pandemic, which establishes a commission to examine the makeup of the County Health Board, Unified Command and designated senior county emergency advisory positions as well as examines policy related to open communications with the public. The ordinance specifies the work to be completed by March 31, 2022 and the findings to be incorporated into the County's existing emergency management plan.

A draft schedule to achieve this goal, may be as follows:

- September 2021 - Finalize RFP scope and budget amendment
- October 2021 – Process budget amendment, Release RFP
- November 2021 - Select contractor and execute contract
- December 2021 - Phase 1 – Data Gathering
- January 2022 - Phase 1 – Data Gathering (cont'd)
- February 2022 - Phase 2 – Preliminary Recommendations
- March 2022 - Phase 3 – Final report

For discussion and direction, Council staff requests the following from Council:

1. Feedback and edits to the draft RFP scope,
2. Determine amount of budget amendment to fund the RFP contract, and
3. Confirm members of an RFP Selection Committee.

Please contact Cathy Halka at extension 5019, if you have any questions or concerns.

DRAFT SCOPE

Whatcom County Council (County) invites consultants to submit a proposal for a review of the countywide pandemic response.

Project Background

On January 21, 2020, the Washington State Department of Health confirmed the first case of the novel coronavirus (COVID-19) in the United States in the State of Washington. COVID-19, a respiratory disease that can result in serious illness or death is caused by the SARS-CoV-2 virus, a new strain of coronavirus. A national public health emergency arising from COVID-19 was declared by United States Department of Health and Human Services secretary Alex Azar on January 31, 2020.

On March 10, 2020, Whatcom County Council voted to recommend activation of Whatcom Unified Command (WUC) in order to provide an integrated, coordinated, multi-jurisdictional response to the threat of COVID-19 locally. Staff and volunteers from county government, cities, local business, non-profits and other stepped forward to collectively fight the pandemic. Due to the nature of the emergency being global, the county could not rely on neighboring communities for support and had to rely on its own internal County-sources resources. The County believes it is prudent to anticipate a range of future widespread regional/national/global emergencies for which it needs to prepare to manage without assistance for some period of time, including but not limited to severe weather, cyber security attack, a catastrophic loss of the power or telecommunications grid.

Over 16 months, the WUC operated to address the needs of Whatcom County communities during the pandemic and was deactivated in July 2021. Emergency response efforts continued after the dissolution of the WUC via health department and emergency management services staff.

The global pandemic tested county preparedness, structures, and processes for dealing with disasters, and an opportunity exists to reflect on the County's response to the public emergency, to evaluate the systems in place to respond to the event, and identify opportunities to improve. Whatcom County Council wants to ensure the county is ready and even better prepared for the next global disaster, and on July 13, 2021, Council adopted Ordinance 2021-045 (see Exhibit A), establishing an independent commission to review our community's response to the COVID-19 pandemic. The purpose of the review is to understand how emergency operations worked and identify successes, lessons learned, and opportunities for improvement.

Further, the ordinance directs the County Council to hire an independent special commissioner with the requisite qualifications (ideally a retired senior lawyer familiar with the county) to conduct the inquiry. The Special Commissioner will be compensated at the normal market rate for such work and should arrange for any necessary resources, if needed, such as working space and any staff support person to manage meetings and documentation. It is important that the reviewer be independent, and therefore the Special Commissioner must not have a vested interest in the outcome of the report, nor have any direct relationships with any persons involved in the activities being reviewed.

A review of the pandemic response should evaluate all response activities and provide recommendations for improvement in all aspects, including the structures of authority, roles of leadership, access to information for decisionmakers, services and communication to businesses and members of the public. A completed report will include but not be limited to examining the makeup of the County Health Board, Unified Command, County policy related to open communications with the public, evaluating the designated senior county emergency advisory positions (i.e. manufacturing, logistics, communications) and the community sectors represented. The Special

Commissioner should include a thorough review and assessment of the County Emergency Management Plan, and other guiding documents used for emergency response activities to identify successes and areas for improvement. The review of the pandemic response should also identify a list of recommendations for improving the County's coordinated response for future widespread emergencies. Specific County agencies and departments such as the Health Department and the Sheriff's Office have completed their own post-event reviews, which are to be included in the data gathering phase of this project. Overall, this review aims to identify opportunities for better emergency preparedness, which includes the development of plans, resources, and capabilities to manage and recover from the effects of a variety of potential future emergencies of a regional/national/global scale.

Project Timeline

The County anticipates selecting the consultant and awarding the contract in the middle to end of November, 2021, with contract execution and work to begin by the first week in December, 2021. Phase 1 (Data Gathering) would take place during December, 2021 and January, 2022. Phase 2 (Preliminary Recommendations) would be underway in February, 2022. Phase 3 (Draft Findings and Report) would take place in March, with final work completed by the end of March, 2022.

Proposed Description of Services

The services to be provided may include, but not be limited to:

ENGAGEMENT

The consultant will engage government staff and community partners and stakeholders to receive feedback on the pandemic response. The target audience includes county and local government staff, health care providers, board and commission members, businesses, non-profits, residents, and people involved in the pandemic response.

- **Target Audience:** The consultant team will work with the following groups to receive information and feedback on the pandemic response:
 - a. Technical Advisory Committee (TAC): A core group of 7-8 County staff members and agency leaders will serve on the TAC. Their main role will be to provide information to facilitate the work of the consultant team (such as data, access to plans and reports, etc.) The TAC will meet as needed throughout the project (can meet virtually), or as needed to provide critical information to the consultant. Often times, the consultant will reach out to TAC members individually, rather than scheduling group meetings.
 - b. Boards and Commissions:
 - Health Board
 - Public Health Advisory Board
 - EMS Oversight Board (EOB)
 - EMS Technical Advisory Board (TAB)
 - Housing Advisory Committee of Whatcom County
 - Economic Development Investment Board (EDI Board)
 - Child and Family Well-Being Task Force
 - Business and Commerce Advisory Committee
 - Food System Committee
 - c. Community partners:
 - Bellingham Regional Chamber of Commerce
 - School Districts
 - Peace Health
 - Unity Care NW

- d. County Council: Project updates will be provided to the County Council. The consultant will present to the County Council at 3 key milestones of the project to provide updates on project progress and solicit feedback and direction.
 - (1) Results of data gathering
 - (2) Review of preliminary recommendations
 - (3) Draft findings and report
 - e. Bellingham City Council and Small Cities: The consultant will coordinate with the Bellingham City Council and the Small City Partnership to solicit feedback early in the process and again in Phase 2 after preliminary recommendations are developed.
- **Communications Tools:** The consultant team will use a variety of communications tools, including but not limited to the following:
 - a. Project Materials: The consultant and the County will work collaboratively on all public facing materials with the consultant drafting final versions and County staff reviewing and posting materials. Outreach materials may include:
 - Project webpage content, including FAQs, (hosted on County website)
 - Project fact sheet
 - Email content (distributed by the County)
 - Online survey content
 - Survey Results Summary Sheet
 - Press releases (drafted by consultant) approved/posted to project webpage
 - Presentations (3 presentations to Council)
 - b. 1-on-1 Interviews: The consultant will conduct 1-on-1 interviews with elected officials, staff, and other key community leaders to solicit feedback.
 - c. Online Survey: The consultant team will develop an online survey, hosted by the consultant team and distributed by County staff to persons participating in the emergency response activities. A summary document of survey responses will be posted on the project webpage and included in the final report.

Phase 1: Data Gathering

The Phase 1 Data Gathering will include a comprehensive review of the pandemic response, including the following areas of interest:

- Roles and responsibilities of county and local leaders (as per codes and in experience), including the makeup of Unified Command.
- Evaluate expanding the designated senior county emergency advisory positions (i.e. manufacturing, logistics, telecommunications, messaging/marketing/promotion) and the community sectors represented.
- Evaluate policy related to open communications to businesses and the public (reaching all and diverse demographics)
- Emergency/Event coordination among government leaders (Health Board/Council, Executive, Health Department Whatcom Unified Command, local jurisdictions)
- Expertise of staff working on pandemic response and how positions are filled
- Evaluate logistics related to the fulfillment of supplies including:
 - personal protective equipment for emergency response, local businesses, and medical facilities
 - food distribution
 - medical supplies
 - emergency shelters
- Alternative communications plans in the event most/all traditional methods become unavailable
- Availability of data to inform decision-making during the event

- Application of guidance from policy documents (e.g. Emergency Management Plan)
- Communications both within emergency management and to the public.

The Consultant will:

1. Work with Technical Advisory Committee members to gather information and data (quantitative and qualitative) on the aforementioned topics.
2. Work with the Technical Advisory Committee to receive all available data and reports, including:
 - (a) Situation Reports
 - (b) Results of any internal post-pandemic reviews completed (including Sheriff's Office and Health Department)
 - (c) Others as needed
3. Review and consider guidance provided to pandemic response staff in plans and reports, including:
 - (a) Emergency Management Plan
 - (b) NIMS Training
 - (c) Others as needed
4. Collect feedback from County leadership and staff as well as partner agencies through interviews and/or surveys
5. Review Phase 1 Data Report with County Leadership (Council/Executive/Sheriff)

Phase 2: Preliminary Recommendations

During Phase 2, the consultant will evaluate information collected in Phase 1 Data Gathering and identify preliminary recommendations for improvements to the pandemic response. Recommendations will consider not only the potential future event of another pandemic, but also emergency response procedures related to other potential future global emergencies (e.g. cybersecurity event, etc.). The Phase 2 Preliminary Recommendations will include the following:

1. Recommendations for code changes or regulations
2. Summary of recommended programmatic and staffing (e.g. expertise) needs to better prepare for the next global event
3. Recommended changes to decision-making structures (i.e. Health Board, Executive/Health Department, Public Health Advisory Board, Whatcom Unified Command, etc.)
4. Identify best practices from other jurisdictions that can be useful to address gaps and needs in our local pandemic response,
5. Create a concise list/chart of recommendations
6. Specific recommendations to be considered for incorporation into the next update of the Whatcom County Emergency Management Plan and any other County guiding documents.
7. Presentation of preliminary recommendations to County Leadership (Council/Executive/Sheriff).

Phase 3: Final Report

During the Phase 3 Final Report, the consultant will compile information from the previous two phases into a report document and presentation. This will include:

1. Final report with summary information from Phase 1 and Phase 2.
 - a. Full report with an executive summary, table of contents, appendices of data, chart of recommendations, and a 1-2-page highlights document for quick reference
2. A presentation of the final report to county leadership (Council/Executive/Sheriff)
3. A PDF document for posting online
4. 5 printed copies of the complete final report with appendices

Proposal Submittal Requirements

To be complete, the proposal must provide all the information requested in this RFP in the order that it is requested. Information must be organized and presented in the same order and sequence as presented below to facilitate the review by the RFP selection team. A response of “see enclosed brochure” will not be considered adequate. Proposals must contain the following sections in no more than twelve (12) single sided pages:

1. Executive Summary / Cover Letter (2 pages)
2. Consultant Overview and Information (2 pages)
3. Qualifications of Staff Assigned to the Project (3 pages)
5. Project Approach/Scope (2 pages)
6. Project Schedule (1 page)
7. Cost Estimate for Scope of Work (1 page)
8. List of Client References (1 page)

Executive Summary / Cover Letter (2 pages)

A cover letter shall be addressed to Dana Brown-Davis, Clerk of the Council, Whatcom County. The letter should communicate the Contractor’s particular strengths and why the Contractor should be chosen to provide the requested services. The letter must be signed by an individual who is authorized to commit the Contractor to a binding agreement.

Consultant Overview and Information (2 pages)

1. Provide name of consultant/firm and the principal place of business, number of years in business, size of firm, and the name, email address, and telephone number of the primary contact assigned to the project.
2. Provide a brief history and description of the consultant/firm. Include general information regarding organizational structure, size, capabilities, and the consultant/firm’s qualifications and experience.
3. Provide a description of the consultant’s/firm’s approach to this type of project including:
 - a. Consultant/Firm’s qualifications and ability to undertake this project
 - b. Methods and techniques the consultant/firm will employ
 - c. Experience with other public entities
 - d. Knowledge of, and experience in performance evaluations and recommendations
 - e. Description of similar projects performed
 - f. Description of project management experience
 - g. Description of procedures related to quality assurance

Qualifications of Staff Assigned to this Project (3 pages)

1. Include resumes for key personnel providing services, including those focused-on interviews, data collection, data evaluation, and surveys.
2. Identify the roles and tasks personnel will perform, including percentage of their time dedicated to this project.

3. Describe the experience of the lead consultant in working with clients of similar characteristics as Whatcom County.
4. Provide any additional information that specifically addresses the consultant's/firm's unique qualifications for the project.

Project Approach/Scope (2 pages)

Provide a description of the consultant's/firm's project approach by creating a well-developed scope (based on the County's goals described in this RFP) with descriptions of activities. Specifically call out any changes or additions to the work described in this RFP.

Project Schedule (1 page)

Provide a schedule for the study, keeping in mind that the County Council has identified a goal of no later than March 31, 2022 for completion of the project. Present the schedule in the form of a chart that breaks out the project into three Phases described above and shows the approximate times when key activities will occur and their general sequence. Please include the estimated number of hours each person will work per phase and task.

Cost Estimate for Scope of Work (1 page)

The budget proposal should be presented in a table format, showing line items for each phase of work identified, a brief description of services in each phase, and specifics line items for public engagement. The information should be presented in an easy to read table format. Extra lines should be added to the table as needed, such as to list the various consultants participating in each phase element. Provide a relevant narrative to explain the need for any items that are not immediately apparent in the budget table. Costs should be all inclusive of staff time, travel, and incidental expenses.

List of Client References (1 page)

Provide at least three (3) client references, outside of Whatcom County staff, who may be contacted and for whom similar work has been completed in the past five years. References should be entities for which your firm has performed similar projects in the public sector. Provide a contact name, title, organization, email, and telephone number, as well as a brief statement about previous work with the client.

PROPOSED BY: BROWNE
INTRODUCTION DATE: June 15, 2021

ORDINANCE NO. 2021-045

**ESTABLISHING AN INDEPENDENT REVIEW
OF THE COMMUNITY RESPONSE TO THE COVID-19 PANDEMIC**

WHEREAS on January 21, 2020, the Washington State Department of Health confirmed the first case of the novel coronavirus (COVID-19) in the United States in the State of Washington, and, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans, which easily spreads from person to person; and

WHEREAS on January 31, 2020, the United States Department of Health and Human Services secretary Alex Azar declared a national public health emergency arising from COVID-19; and

WHEREAS on March 11, 2020, the World Health Organization declared COVID-19 a pandemic with global spread, impacts, and health risks; and

WHEREAS in March 2020, Whatcom Unified Command (WUC) was activated to provide an integrated, coordinated, multi-jurisdictional response to the threat of COVID-19 locally, in partnership with the Whatcom County Health Department; and

WHEREAS the staff of Whatcom County Government; the cities of Bellingham, Lynden, Ferndale, Blaine, Nooksack, Everson, and Sumas; the Lummi and Nooksack Nations; PeaceHealth; medical providers; fire districts; businesses; non-profit and faith-based organizations; community groups; and countless citizens all stepped forward to collectively fight the pandemic; and

WHEREAS in all prior emergencies the County has faced, we could rely on neighboring communities or states to provide us with materials and skilled workers to help us cope – but as this was a truly global disaster, for a time we had to rely on our own internal County sourced resources to manufacture PPE, distribute food, etc.; and

WHEREAS Whatcom County can expect future emergencies to arise, of a yet unknown type, which could include future pandemics, floods, fire, earthquake, cyber-attack, widespread communications loss, and perhaps even things we have not yet imagined; and

WHEREAS in the book “The Great Influenza” the story of the Spanish Flu pandemic the author concludes:

“The final lesson of 1918, a simple one yet one most difficult to execute, is that...those in authority must retain the public's trust. The way to do that is to distort nothing, to put the best face on nothing, to try to manipulate no one. Lincoln said that first, and best. A leader must make whatever horror exists concrete. Only then will people be able to break it apart.”; and

WHEREAS this is not humanity's first pandemic, nor will it be our last; and

WHEREAS citizens will be less likely to blame their government for future disasters caused by factors outside our control, but will have good reason to be critical if their government fails to plan, prepare and learn from past experiences; and

WHEREAS the Pandemic has truly tested our structures and processes for dealing with disaster, and in doing so has provided us an ideal opportunity to evaluate, to recognize what we did well and where we have an opportunity to improve; and

EXHIBIT A: ORDINANCE 2021-045 (continued):

WHEREAS the Pandemic response has inspired various requests to review: the makeup of the County Health Board; Unified Command; the County Emergency Management Plan; and County policy related to communications with the public; and

WHEREAS the people most qualified to provide feedback on our response are those who actively worked on answering the needs of the community; and

WHEREAS this year we will have several key members of our community retiring and we would like to hear from them before they become unavailable; and

WHEREAS the best way to determine the lessons to be learned from the Pandemic is to appoint a Special Commissioner to interview the key participants, to document the lessons learned, to better inform the community on how we can ensure the things we did right, what will be likely to occur again, where we need to improve, and what to avoid next time.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council establishes a County Commission to review our community's response to the COVID-19 Pandemic; and

BE IT FURTHER ORDAINED that County Council shall select, and Whatcom County shall hire, an independent Special Commissioner with the requisite qualifications (ideally a retired senior lawyer familiar with the county) to conduct the inquiry; and

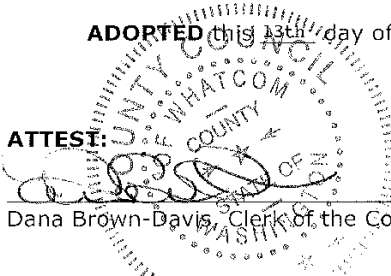
BE IT FURTHER ORDAINED that such Special Commissioner be compensated at the normal market rate for such work, and be provided the necessary resources including office space and one or more full-time support persons to manage meetings and documentation; and

BE IT FURTHER ORDAINED that they shall include, but not be limited to examining: the makeup of the County Health Board; Unified Command; County policy related to open communications with the public; expanding the designated senior county emergency advisory positions (i.e. manufacturing, logistics, communications) and the community sectors represented; and

BE IT FINALLY ORDAINED that the person shall complete and deliver their report to the County Council, County Executive and County Sherriff by March 31, 2022, to enable the county to incorporate their findings in future updates to the County's existing emergency response plan.

ADOPTED this 13th day of July, 2021.

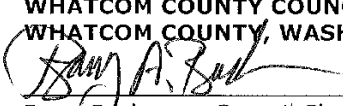
ATTEST:


Dana Brown-Davis, Clerk of the Council

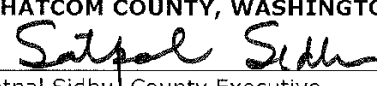
APPROVED AS TO FORM:

/s/ Karen Frakes Approved via E-mail/ JL
Civil Deputy Prosecutor

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**


Barry Buchanan, Council Chair

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**


Satpal Sidhu, County Executive
☒ Approved () Denied

Date Signed: 7/19/21



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
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:	09/14/2021			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 northerly bridge face 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
07/27/2021	Council Committee of the Whole	DISCUSSED	
07/27/2021	Council	WITHDRAWN	

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, Letter from Lummi Indian Business Council

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 ORDAINED that Tribal members 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



Bonnie Onyon, Mayor

ATTEST/AUTHENTICATE:



Samuel Crawford, City Clerk

Resolution 1765-19

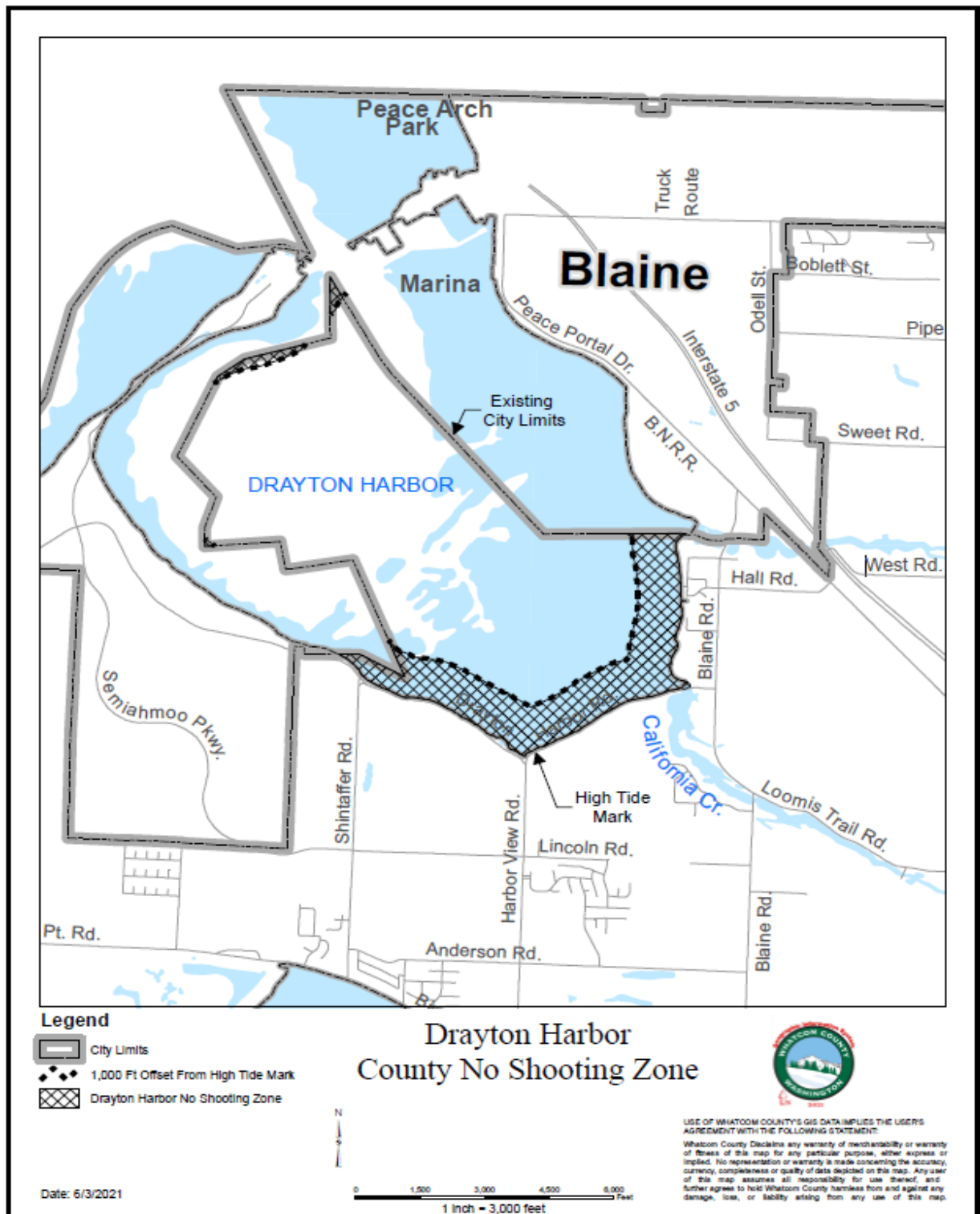
Page 1 of 1

Exhibit B
(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,

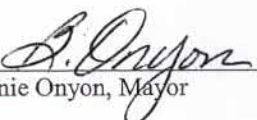
Whereas, the Revised Code of Washington (RCW 36.32.120) provides Whatcom County authority to designate no shooting zones, and

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,

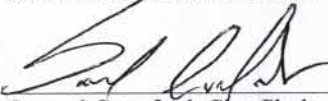
Now therefore, the City Council of the City of Blaine hereby resolves to seek designation of all the aquatic areas and tidelands within Drayton Harbor located within Whatcom County as a no shooting zone pursuant to Whatcom County Code Section 9.32.

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



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 9A.41.030 (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 jeopardized*; 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,

Fenner Yarborough

Fenner Yarborough
Washington Department of Fish and Wildlife
Wildlife Regional Program Manager

[Link to Drayton Harbor – Dearborn No Shooting Zone
Public Comments](#)



LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD BELLINGHAM, WASHINGTON 98226 (360) 312-2000

DEPARTMENT Lummi Indian Business Council DIRECT NO. (360) 312-2000

July 20, 2021

DISTRIBUTED TO

JUL 23 2021

Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225

**ALL COUNCIL MEMBERS
WHATCOM COUNTY COUNCIL**

RE: Response to Proposed City of Blaine 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".

Dear Whatcom County,

The Lummi Indian Business Council (LIBC), lawful representative of the Lummi Nation, a federally recognized Native American Tribe, understands the City of Blaine intends to enforce a no-shooting zone in a marine area in and around Drayton Harbor. Our document review indicates their reliance on the County's assistance, as well as the Revised Code of Washington (RCW), the Whatcom County Code, the resolutions of the City of Blaine, and statements made by the WDFW.

After investigation and consultation with representatives from various entities, the LIBC submits the following response.

Article 5 of the Point Elliott Treaty of 1855 recognizes the immemorial right of Lummi to take fish at all usual and accustomed grounds and stations. Although the continued recognition of usual and accustomed rights is fundamental, it is only material to this issue as an accepted recognition of Drayton Harbor as a Lummi usual and accustomed area.

The Lummi Nation (together with other Tribal Nations) and the United States were sole parties to the 1855 treaty; Washington state did not exist at that time. Furthermore, a treaty among nations is legislation agreed to and ratified by the United States Congress, and as such cannot be infringed upon by the actions or wishes of any state or subordinate entity. The Lummi Nation continues to uphold its secure and recognized sovereign rights in Drayton Harbor, and you are strongly advised not to infringe upon them.

The Drayton Harbor area lies in part within the territory of unincorporated county land and water. Blaine therefore cannot extend jurisdiction to the area and requests the actions of Whatcom County to achieve its goal. According to this theory, Blaine relies on state law which says, in part:

"The legislative authorities of the several counties shall: [m]ake and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law, and within the unincorporated area of the county may

adopt by reference Washington state statutes and recognized codes . . . and may adopt such codes and/or compilations or portions thereof, together with amendments thereto, or additions thereto.”

RCW 36.32.120 (7), Powers of Legislative Authorities.

Although a county may amend or add to existing statutes or codes to enforce police and sanitary regulations, they can neither enact nor enforce any regulation infringing upon sovereign rights and, in so doing, create superseding organic law. To do so would unravel the clearly understood and long upheld framework of the federalism inherent to the United States Constitution and the distinction between legislative and executive power.

Blaine also refers to state firearms law to support its theory that Whatcom County may restrict firearms discharge in its jurisdiction to avoid a reasonable likelihood of harm to humans, animals, or property. RCW 9.41.300 (2). The LIBC first questions the jurisdictional ability of Whatcom County to enact such a restriction for the reasons stated above, and secondly refers to state law which says, in part:

“The provisions of RCW 9.41.050 [carrying firearms] shall not apply to: [a]ny person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area.”

RCW 9.41.060 (8), Exception to Restrictions on Carrying Firearms.

Lummi fishing throughout Drayton Harbor is lawful according to Lummi, federal and state law and is further protected by valid licensure. Although this law does not address firearms discharge, it does indicate that exceptions apply to Lummi fishers and Tribal members.

Blaine has additionally claimed a Lummi restriction against Tribal members using firearms within 1,000 feet of an occupied house. Blaine does not cite any Lummi law or restriction to make this claim. The LIBC conducted its own research on this statement and discovered no reference in Lummi Code of Laws (LCL) Title 5, Criminal Offenses, or LCL Title 10, Natural Resources. At most, willful discharge of a firearm in a place where any person might be placed in danger may result in the unlawful discharge of a weapon. LCL 5.04.070.

Concerning the protection of human and animal life from dangerous firearms discharge, it is and has always been a priority of the Lummi Nation. That Blaine has chosen to frame its approach in terms of public safety is again concerning, especially given that WDFW has testified not to have received a single public safety call concerning firearms discharge in the Drayton Harbor area in nearly 25 years. The WDFW experience of this issue does not align with the public safety concerns relied on by the City of Blaine.

The LIBC is aware of this issue and invites further dialogue between our governments and the continued recognition of the right to Native self-determination. We await your response.

Sincerely,



Travis Brockie, Vice Chairman
Lummi Indian Business Council



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-482

File ID:	AB2021-482	Version:	1	Status:	Agenda Ready
File Created:	08/02/2021	Entered by:	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Discussion		
Assigned to:	Council Committee of the Whole				Final Action:
Agenda Date:	09/14/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Presentation/discussion regarding Whatcom County's proposed American Rescue Plan Act funding priorities

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Presentation/discussion regarding Whatcom County's proposed American Rescue Plan act funding priorities

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
08/10/2021	Council Committee of the Whole	PRESENTED AND DISCUSSED	

Attachments: ARPA Fund Priorities Memo July 20, 2021, Recover Funds Memo June 1, 2021, Draft ARPA Framework for Aug 10 Discussion.pdf, Draft Whatcom County ARPA Funds Projected Allocations.pdf



Satpal Singh Sidhu
Whatcom County Executive



MEMO

Date: July 20, 2021
To: Whatcom County Council
From: County Executive Satpal Sidhu
RE: Follow-up Discussion of ARPA Priorities

Satpal

This is a follow-up to Council to address some of the discussions which have taken place since my memo on May 28, 2021, discussing the deployment of American Rescue Plan funds allocated to Whatcom County.

The comment period for the Interim Final Rule (guidelines) concluded July 16 and many questions remain regarding eligible uses. To get a sense of the limitations and areas of concern with regard to the Interim Final Rule, I would suggest you read the comments submitted to the Treasury by NACo. It remains unclear when Treasury will issue a revised and definitive Final Rule.

Before looking ahead, I think it is helpful to reflect on our experience in the past year and how that might inform our approach going forward. The most valuable achievement of 2020 was creating a coalition of mayors from all 7 cities and the County. We pooled the CARES Act funding and planned together to deploy the funds for various programs through joint consultations. Altogether, we received approximately \$26 million in CARES Act allocation for the County and all cities. With County Council's guidance, input and approval, these funds were spent as follows:

- Over \$10 Million spent on Public Health Emergency Response (WCHD and WUC staffing, contact tracing, testing, Isolation/Quarantine, etc. (Some additional funds were allocated by State DOH to WCHD Dept directly and were used in the latter part of 2020 and early 2021 for Covid Response.)
- Almost \$12 million for Community programs, including:
 - Approximately \$5 million in small business support
 - \$2.6 million in school district
 - \$1 million for childcare support
 - Approximately \$1 million for social services
 - \$650K in food security
 - \$600K in homeless shelter / services
 - \$500K in Rental and Mortgage assistance

Today, we face the challenge of making prudent decisions to deploy the County's ARPA allocation of \$44.5 million. I would suggest we work cooperatively with Bellingham and the other cities to jointly deploy common community projects, where possible. The American Rescue Plan allows us a three-year window to plan and allocate funds, whereas we barely had 6 months to expend CARES Act Funding. I have articulated to the Council that this is a 'once-in-a-lifetime' occasion of receiving such financial assistance and we must make investments to achieve objectives which can benefit our community for many years into future.

With that strategy in mind, and expanding on previous discussions, I would like to share a draft outline of our investment strategy for Council's consideration.

Major tasks / projects facing the Administration and our community are varied and several require substantial funds. ARPA funds alone are not enough to meet all of the need. **Both the Administration and Council face the difficult task of determining priorities and levels of investment** in these various community needs:

We perceive the following as major Categories:

- A. Community Program Investments**
- B. County Infrastructure Investments**
- C. County Government Operations**

Further details on each category include:

Community Program Investments

- Child & Family – Childcare Facilities / Entrepreneurship Support / Workforce Development & Retention
- Affordable Housing – Capital Assistance for Low Income and Workforce Housing (to expand opportunities for use of 1590, 1406 and EDI Funds)
- Mental & Behavioral Health Services (startup investment in GRACE / LEAD)
- Housing Security – Rental / Utility Assistance, Shelter, Way Station, Outreach for Homeless population (we have received separate allocations for Rental and Utility Assistance needs)
- Food security needs, if any
- Economic Recovery needs, if any (e.g., Tourism, Small Business Assistance)

County Infrastructure Investments:

Collaborate with Cities / PUD / Port on Countywide Projects for

- Water, Sewer and Broadband Investments
- Industrial Park, Ready to Build Industrial Lands (Public Private Partnership)
- Affordable Housing

County Government Operations

- Public Health continued COVID Response (2021-24)
- Criminal Justice backlog clearing (2021-24)
- Cost of Administering ARPA Funds
- Frozen Positions 2021 (after 2021, this expense will move to general fund)
- County Revenue Loss recovery

Reimbursement for frozen positions and revenue loss creates a resource unhampered by ARPA eligibility restrictions, giving the Council broader flexibility to spend these funds. For transparency's sake, we suggest creating a sub-account of the General Fund which would hold ARPA reimbursements. to track these dollars.

Also, please note that we are continually monitoring other fund availability by allocation or grants for specific tasks under the ARPA legislation.

I would like to engage Councilmembers **to bring suggestions, ideas, and projects**, which meet the criteria of “long-term benefits to our community”. I look forward to a constructive discussion for a larger community benefit. Please note that the eligibility guidelines for ARPA funds are significantly more restrictive than for CARES Act funds. For example, there are hurdles to broadly implementing a capital projects program for childcare, as some Councilmembers have suggested (see May 28 memo for details).

At the same time, I would urge Council not to rush to allocate all the ARPA funds by end of this year at the time of mid-biennium budget adjustment. I suggest we should keep a portion of funds in reserve for allocation during the next Biennium (2023-24) Budget Development.

My team plans to present further details to Council at the August 10th Council Meeting.

Strategy to Work with City of Bellingham:

I believe County Council / Administration can take the lead to provide **leadership and establish overall goals / objectives** for American Rescue Plan investments. This will allow early planning and coordination with Bellingham City Council and Mayor’s Office to develop joint strategies for Community Programs in the areas of:

- Childcare
- Affordable Housing
- Mental and Behavioral Health Programs
- Housing Security and other initiatives

Working with Small Cities:

Once the County Council / Administration establish overall goals and objectives for the investments, we can reach out to all small cities and seek collaboration in their local priorities as those enhance the goals of County Government.

We are sharing our preliminary planning information with COB and small cities to ensure they are informed of County plans in a timely manner.

For a frame of reference, please consider these suggested Guiding Principles for Use of ARPA Funds:

- ARPA funds are **non-recurring**, so their use should be applied primarily to non-recurring expenditures.
- Care should be taken to **avoid creating new programs** or add-ons to existing programs that do not have a dedicated funding source upon the exhaustion of ARPA funds.
- **Investment in infrastructure** is a particularly well-suited use of ARPA funds because it is a one-time expenditure that can be targeted to strategically important long-term assets that **provide benefits over many years**.
- We should be aware of **plans for ARPA funding from the state and other jurisdictions** as well as other buckets of money allocated through ARPA in addition to the direct allocation of Fiscal Recovery Funds.

NACo has developed a [comprehensive overview of eligibility requirements](#), which may be helpful in informing your discussions. Please feel free to reach out to me or Tyler Schroeder for any specific inquiries or questions.



Satpal Singh Sidhu
Whatcom County Executive



MEMO

Date: June 1, 2021
To: County Council Members
From: Satpal Singh Sidhu, County Executive
RE: Discussion of Fiscal Recovery Funds

Whatcom County has been allocated \$44,528,542 of the Coronavirus State and Local Fiscal Recovery Funds authorized under the America Rescue Plan Act (ARPA). The first 50% installment has been deposited and the second is expected in approximately 12 months.

The purpose of this memo is to describe the framework of potential uses of these funds and begin discussions to establish priorities, identify opportunities and take the appropriate next steps.

General Framework

The Federal Government has identified four categories of expenses which are intended to be funded through the State and Local Fiscal Recovery Funds in ARPA.

1. Support urgent COVID-19 response efforts
2. Replace lost revenue for local governments to support vital public services and retain jobs
3. Support immediate economic stabilization
4. Address systemic public health and economic challenges

The Treasury provided both high-level (below) and more detailed elaboration (see Interim Final Rule) of eligible expenses.

- To support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- To address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
- To replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- To provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors;
- To invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

- The funds must be obligated by December 31, 2024, and must be expended with all work performed and completed by December 31, 2026.

Within the categories of eligible uses, Whatcom County has broad flexibility to decide how best to use this funding to meet the needs of our community.

Guiding Principles for Use of ARPA Funds

- ARPA funds are non-recurring, so their use should be applied primarily to non-recurring expenditures.
- Care should be taken to avoid creating new programs or add-ons to existing programs that do not have a dedicated funding source upon the exhaustion of ARPA funds.
- Investment in infrastructure is a particularly well-suited use of ARPA funds, because it is a one-time expenditure that can be targeted to strategically important long-term assets that provide benefits over many years.
- We should be aware of plans for ARPA funding from the state and other jurisdictions as well as other buckets of money allocated through ARPA in addition to the direct allocation of Fiscal Recovery Funds.

County Government and Community-wide Priorities

It is recommended that we consider utilization of the ARPA funds in a two-tiered approach. As has been the case with the distribution of CARES Act funding, this will require us to be strategic, flexible and adaptive. One main difference between the CARES Act funding and the ARPA funds is that the ARPA funds has an extended timeline and can be used through 2024. This allows time for thoughtful and deliberate decisions for the betterment of our organization and community to provide long-term resiliency.

First, the County intends to utilize these funds in 2021 to support the continued efforts of urgent COVID-19 Public Health response efforts, replace lost public sector revenue, and to rebuild and strengthen the County's vital public services by retaining, rehiring, and hiring for County jobs to sustain and improve the post-pandemic level of service provided to the constituents of Whatcom County. The County administration will be bringing forward budget supplementals between now and the end of the year to implement this to ensure the continuity of vital government services.

Second, the County Administration also intends to work with the community seeking ideas / projects for long-term resilient framework on how best to utilize this substantial infusion of resources to help turn the tide on the pandemic, strengthen the public health system, provide economic stabilization and lay the foundation for a strong and thriving economy. This process will be timed along with the upcoming mid-biennium budget process through the fall of 2021. It is envisioned that we will continue our collaboration between the public sector (Whatcom County, City of Bellingham, Small Cities, Port of Bellingham, etc.) and the non-profit sector (Food Security Taskforce, Childcare Taskforce, Child & Family Taskforce, housing and human services agencies, local foundations, etc.) to formulate and prioritize community wide programs for ARPA expenditures.

County Government Operations Priorities

The County Administration proposes some specific near-term actions related to supporting vital public services within County Government.

1. Calculation of Revenue Loss

Whatcom County will compute reduction in revenue by comparing actual revenue to an alternative representing what could have been expected to occur in the absence of the pandemic. Analysis of this expected trend begins with the last full fiscal year (2019) prior to the public health emergency and projects forward at 4.1% growth for next 3 years (Dec 31, 2024), which was the national average state and local revenue growth rate from 2015-18. The Treasury allows recipients to presume that any diminution in actual revenue relative to the expected trend is due to the COVID-19 public health emergency.

Based on the Interim Final Rule, it remains unclear whether capital grants are to be considered as revenue for the purpose of this calculation. In 2020, Whatcom County fell short of the financial benchmark (2019 revenues + 4.1%) and had a revenue reduction of approximately \$9 million excluding grants or by \$1 million including grants. Calculating capital grants (restricted revenue) into general revenue replacement does not seem to meet the intent of the revenue replacement section of the act and we are hopeful for additional direction and guidance on this topic.

Treasury's guidance gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue; the greater the revenue loss demonstrated, the larger the pot of money available with few eligibility constraints. This funding may not be used to directly or indirectly offset a reduction in net tax revenue. Additionally, the funds may not be placed in reserve or "rainy day" funds.

2. Public Health and Safety General Fund Positions.

A portion of personnel costs (namely, public health and safety staff dedicated to COVID response) typically funded through the General Fund can be covered by ARPA funds. This will result in a healthier balance in the General Fund, which can in turn be deployed more flexibly.

3. Frozen Positions and Workforce Support

As departments prepare to reopen for more in-person services, it is important to unfreeze unfilled positions. Additionally, due to financial projections at the onset of COVID, the County implemented financial austerity measures that impacted our employees. These measures included employee furloughs and a number of un-represented and represented employee groups did not get cost of living adjustments in 2020 and 2021. We believe that we need to support our valuable workforce to strengthen the County's vital public services by retaining and rehiring County jobs to sustain and improve the post-pandemic level of service provided to the constituents of Whatcom County.

4. Criminal and Civil Justice Backlog

The pausing of jury trials and other COVID-related limitations has created an unprecedented backlog of unresolved court cases. The cost of delayed access to justice is very high for our community. We propose funding temporary positions in the public defender's office, prosecutor's office and the courts until the backlog is addressed.

5. Economic Relief & Recovery – Grant Writing and Administration

An unprecedented amount of money has been allocated through ARPA in addition to the funds which the County receives directly. For perspective, allocations to county governments represented less than 3.5% of the American Rescue Plan. We also know that Congress is working on a sweeping infrastructure package. Access to these funds will be contingent on our ability to identify opportunities, align projects with funding eligibility requirements, and submit well-written and timely applications.

To accomplish this, Whatcom County needs both grant writing and grant administration capacity. We propose to establish a small Economic Relief & Recovery team working under Administrative Services and tasked with identifying opportunities, preparing and managing grant applications using ARPA funds. The goal of this team will be to improve efficacy of programs that help address negative economic impacts through: use of data analysis, consumer outreach, improvements to data or technology infrastructure and impact evaluations. This team's work would not be limited to County projects. It would also offer grant writing support services to the Small Cities and, where appropriate, non-profit organizations which serve the public benefit.

The team may include outside consultants and at least one FTE within Administrative Services. The team's performance and effectiveness would be reviewed after three years, with the expiration of ARPA funds, and a decision could be made regarding the program's future.

Community Funding Priorities

The County Administration wants to engage Council and the public in meaningful discussions about community-wide funding priorities. We want to recognize that Council has already been engaged in discussions about priorities, drawing attention to such issues as childcare, workforce housing, low-income housing and homeless services.

It is important to note that Treasury's guidance suggests there are eligibility hurdles for using ARPA funds directly on such projects. For instance, the guidance links funding eligibility for some categories; including but not limited to affordable housing, homeless services, childcare, early learning services, mental and behavioral health services, and more to recognized low-income census tracts (Qualified Census Tracts – QCTs - QCTs must have 50% of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more.) In 2021, four census tracts in Whatcom County are identified as QCTs, all in the City of Bellingham. However, there is a caveat. Whatcom County can provide this broader array of services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, we must be able to support that determination for how the pandemic disproportionately impacted the populations, households, or geographic areas to be served. For instance,

we know that some of our communities have been disproportionately impacted by the border travel restrictions. The closure of Intalco also disproportionately impacted a specific geographic area, but it would be challenging to link that event to the pandemic, which is key to eligibility.

We will be seeking more clarification / Guidance from Treasury (through State and NACO) for small Counties like ours, where it is difficult to use the established QCTs in this manner, like large metropolitan cities and counties of 1 million or higher population. We will propose such an amendment to the Interim Final Rule to allow more flexibility to rural counties like ours.

Below are some categories which have been flagged as potentially of interest.

1. Childcare – eligible for direct funding only in QCTs, indirect funding possible in other areas

If the County's ARPA funds are committed to invest in childcare, it would be important to ensure that either the investment is not a recurring expense or that a dedicated funding mechanism is established to sustain any recurring costs after ARPA funds are fully deployed. There have been discussions around the idea of committing some of the County's banked capacity to create a sustainable funding source for a countywide Child & Family program. We expect the Child & Family Taskforce to bring forward community-supported ideas and proposals as it proceeds with its work.¹

2. Affordable Housing – eligible for direct funding only in QCTs, indirect funding possible in other areas

Affordable housing projects may be an attractive, non-recurring investment for ARPA funds. However, the current guidance limits such investments to QCTs and any areas identified as being disproportionately impacted by the pandemic.

3. Behavioral Health Needs – eligible for direct funding

The guidance recognizes that government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. Eligible services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

4. Broadband – eligible for direct funding

To be eligible for funding, a broadband project must establish or improve broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school

1 A key challenge is identifying childcare investments that would not be covered by new state and federal childcare initiatives. The Fair Start for Kids Act passed in Olympia this past session provides more than \$400 million to increase subsidy rates, reduce copays and make capital investments in childcare facilities. Additionally, through ARPA, Washington State is receiving \$633 million for childcare. It remains unclear whether this level of spending by the state and federal governments will be sustained.

from home, and that are unlikely to be met with private sources of funds. The Port of Bellingham has already developed the Whatcom County Rural Broadband Project, which is shovel ready. The routes have been established and the cost estimates developed. However, the funding mechanism envisioned for this project already includes a mix of local, state and federal funds with specific matching requirements. Fiscal Recovery Funds are subject to pre-existing limitations in other federal statutes and regulations and may not be used as non-federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements.

5. Infrastructure, including County Capital Projects

Making necessary improvements to infrastructure, such as water, sewer and stormwater facilities are vital investments for the long-term. It is recommended that we work with the Cities (including COB) to establish infrastructure projects throughout the County that will provide for increased areas for long-term economic development, including commercial/industrial opportunities as well as potential affordable housing development.

Also, capital projects for County facilities are generally not eligible for ARPA funding. However, ARPA funds which cover revenue loss can be used for almost any government expense. The County can also use existing county revenue from CARES Act reimbursement for this purpose.

6. Other Economic Relief – eligible for direct funding

Treasury's guidance allows for small business support, aide to non-profit organizations, and aide to tourism, travel, hospitality, and other impacted industries. Providing utility, rental or other financial assistance to households negatively impacted by COVID is also an eligible expense. However, it is important to recognize that small grant programs typically come with a heavy administrative burden.

Next Steps

Following discussion with Council on June 1, the Administration will be drafting an ordinance with budget amendments enabling the County to move forward on the near-term actions outlined in this memo.

We will continue to explore eligibility criteria and develop investment options supporting economic relief and recovery with the Council's guidance and input. Our expectation is to have an ongoing discussion with Council and the public as part of the 2021-2022 Mid-Biennium Review process. This process will be further defined and will last through the fall of 2021. We encourage anyone who is interested in proposing possible uses of Fiscal Recovery Funds to read the Interim Final Rule, which lays out in detail the types of services and projects that are envisioned. A Quick Reference Guide is also available for a concise presentation of the guidance.

Based on past experience, we expect the guidance to evolve as the Treasury reviews and responds to feedback from local governments.

Next Biennium Budget 2023-24

We will start the next biennium budget process in June/July of 2022. We believe that by that time ARPA rules and guidance will be further clarified, and we will have some results from our 2021 initiatives. We expect the second installment of \$22.5 million in May of 2022. At that time, we will also know the outcome of two major Federal Initiatives currently being discussed, namely, the American Jobs Plan (transportation, digital infrastructure, electrical grid, climate resiliency, etc.) and the American Families Plan (childcare, pre-school, post-secondary education, tax relief, etc.). These are substantial outlays and could play a huge role in our local planning for future long-term community investments. This will provide the Council and the Administration additional opportunity to review and revise our plans for remaining APRA funds within the framework of our discussions for the next Biennium budget.

With all these points of consideration, the Administration proposes a collaborative and measured approach to ensure that we make well-informed budgeting decisions over the next couple of years.



THE AMERICAN RESCUE PLAN

Whatcom County Priorities and Policy Framework



Preliminary Discussion

Satpal S Sidhu, County Executive
Aug 10, 2021

Big picture

ARPA funds are intended to address the **health, social and economic** impacts of the pandemic.

These funds alone are **not enough** to meet all the need.

Council faces the **difficult task** of determining priorities and levels of investment.

Working cooperatively, we can build and implement a plan that maximizes the impact and value of our investments.



Core principles

Invest primarily in activities with long-term benefits or start-ups

Target investment toward highest community needs

Provide accountability / Identify measurable outcomes

Retain flexibility to adjust as conditions change

Collaborate with COB, Small Cities, Port and PUD

Provide transparency in the decision-making

Seek other grant funds from new Federal & State programs



Intent of Creating Buckets

Identify Council priorities and pathways for Administration to seek qualified projects

Council decides actual ARPA Fund allocations for qualified Projects

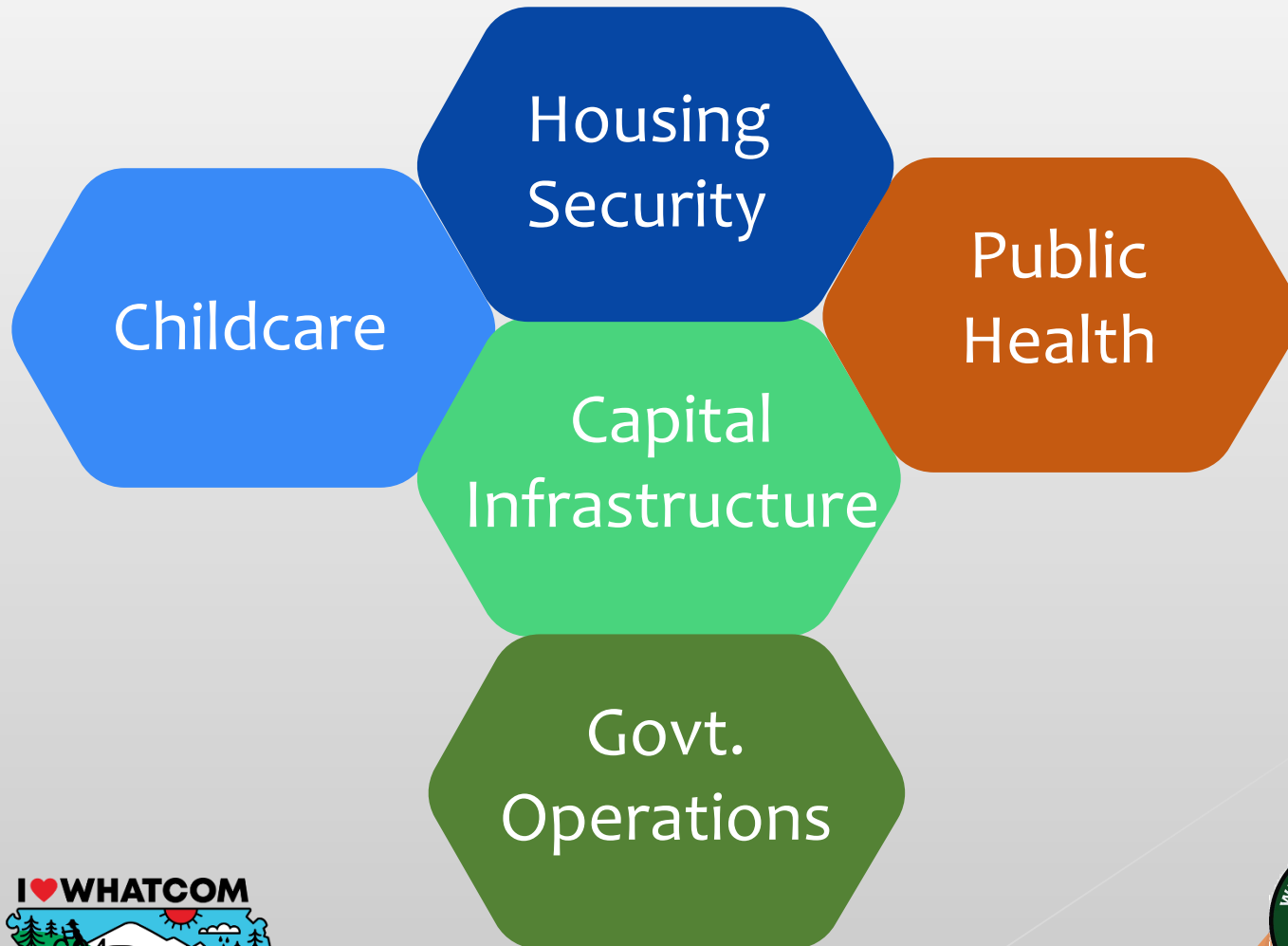
Each “Bucket” allocation shall be tracked by Finance

Council to retain flexibility to reallocate or create new “buckets” as we progress on use of ARPA Funds



DRAFT Framework – Buckets

Community needs for ARPA fund Investments



Additional Need – Buckets

Additional categories may need some ARPA Funds

Business
Support

Tourism

Food
Security

Rental
Assistance

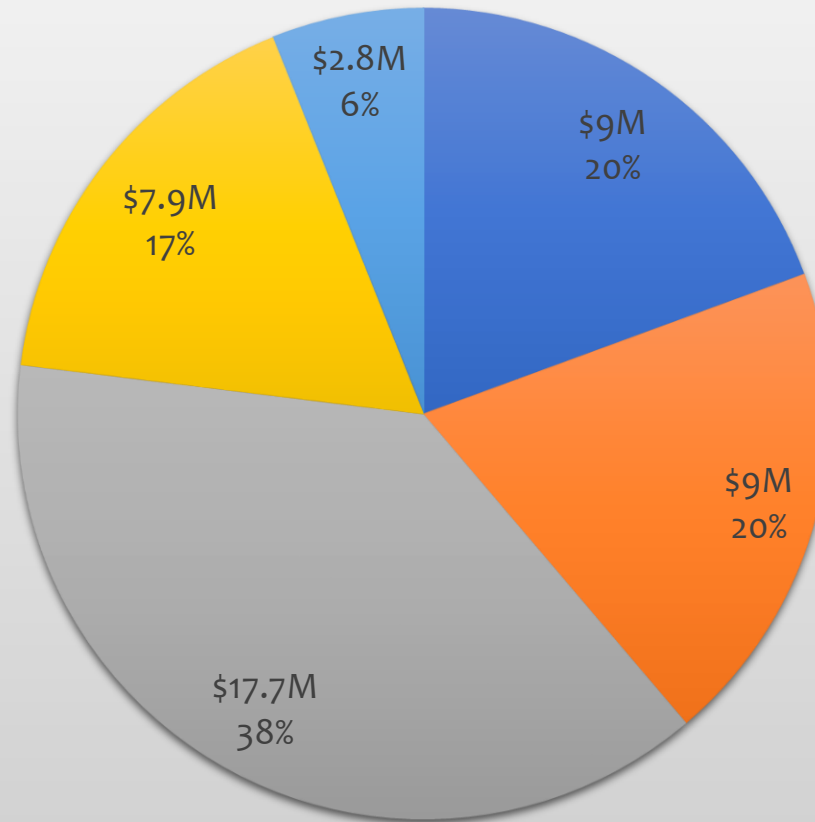
Homeless
Services

Continually monitor for changes in needs

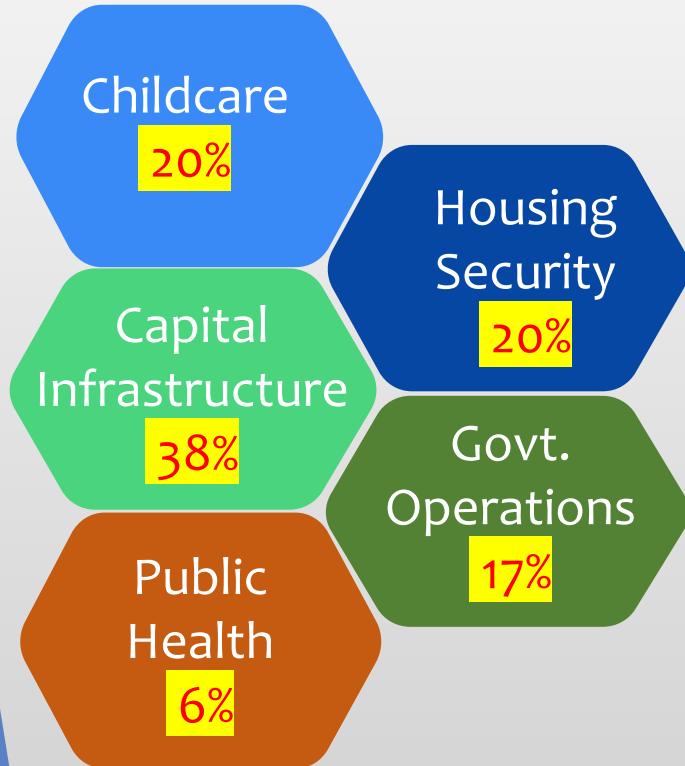


Bucket Allocations

- Housing Security
- Capital Infrastructure Projects
- Public Health
- Childcare
- Government Operations



Bucket Allocations – cont'd



*Mid-Biennium Budget
Adjustment at the end of 2021
and Next Biennium Budget
prep starting Mid 2022*

Budget Lapse Assumed at 4%

*Revenue Loss Provision of
ARPA not included at this time*



Priorities – Housing Security

Affordable Housing Projects – \$9M (proposed)

ARPA Funds expected to be leveraged with other sources

Affordable Housing Capital projects examples

Bellingham Housing Authority's Samish Commons*

Opportunity Council's Laurel / Forest project

Homeless Housing Shelters Capital projects examples

New Family / Child Shelter

Lighthouse Mission Project Family / Child shelter

Respite / Hygiene Shelter (Way Station)

*Already allocated \$525K



Priorities – Housing Security

Subcategories to monitor for possible need of ARPA funds, to augment other Federal / State sources

Rental assistance

Homeless outreach

Motel stays

Case management

Recurring programmatic expenses are best funded from other sources



Priorities – Childcare

Capital Projects – \$7M (proposed)

ARPA Funds expected to be leveraged with other sources

Large facility shells examples

Samish Commons

Millworks

YMCA Barkley facility

Opportunity Council Laurel / Forest project

Workforce Development – \$2M (proposed)

Whatcom Community College

Bellingham Technical College

Northwest Workforce Council



Priorities – Childcare

Additional potential subcategories

Retention incentives

Small facility acquisitions

Support hub and spoke model

Support OC's childcare expansion and retention program

Revolving loan fund

Input expected from Child & Family Task Force.



Priorities – Infrastructure

Several Initiatives – \$17.7M (proposed)

ARPA Funds expected to be leveraged with other sources

Countywide Infrastructure Projects – \$8.7M

Small Cities / Port / PUD / Water and Sewer Districts

Examples: Blaine Sewer, North Ferndale Utility Expansion,
Columbia Valley infrastructure

Cherry Point Business Park Initiative

Water Quality, Fish Habitat & Climate Resilience projects – \$3M

South Fork Valley Projects (Black Slough and Fish Camp)

Lynden Managed Aquifer Recharge project

Broadband – \$6M

Point Roberts / Deming-Glacier / Hwy 9

Leverage State and Federal Funds for Rural Broadband Initiative

Funding to follow once 'last mile' solution is determined



Priorities – Public Health

Covid-19 Impact Mitigation – \$2M (proposed)

Possible new Fund Allocation for Health Dept

Public health response – \$700K (reserve if other funds aren't available)

Behavioral Health – \$800K, including

Alternative Response Team (GRACE) one time startup costs

Jail COVID Testing – \$435K*

IQF Facility – \$892K*

Additional potential subcategories

Workforce development (behavioral & mental health specialists)

Case management

*already allocated



Priorities – Government Operations

Several Initiatives – \$7.9M (proposed)

Criminal Justice Backlog – \$6.3M

ARPA Administration – \$800K

Grant Manager and Compliance positions

Frozen positions– \$840K (2021 only)



Cooperation with Cities

Close Cooperation with COB plans for their ARPA Investments

Collaboration with COB to enhance the impact of County investments in the areas of Childcare and Affordable Housing

Collaboration with Small Cities to leverage County ARPA investments

Seek equitable investments in all parts of Whatcom County



Accountability & Outcomes

Develop matrices for measurable outcomes, where possible

Broadband	– Homes connected
Childcare	– Slots enhanced / created
Affordable Housing	– Units Enabled
Criminal Justice	– Court cases backlog reduced

Track leveraging of City / State / Federal funds



Other Possible Resources

- Education and Childcare
 - Child Care and Development Block Grants
 - Child Care Stabilization Fund
 - Education Stabilization Fund (School Districts)
- Health
 - Vaccination, Testing, Contact Tracing
 - Substance Abuse Prevention and Treatment (SAPT)
 - Community Mental Health Block Grants
 - Certified Community Behavioral Health Clinics
- Housing
 - Low Income Home Energy Assistance Program
 - Emergency Rental Assistance Program
- Business Support
 - Eco Dev Admin Grants for Tourism & Outdoor Rec
 - PPP / EIDL
 - Working Washington Grants
 - Restaurant Relief





Questions?
Comments?



DRAFT

ARPA Expenditure Brainstorm							
PRIORITY AREAS	%	County Total	2021	2022	2023	2024	Notes
UNMET NEEDS IN PRIORITY AREAS							
Housing security							
Rental assistance FWC		\$ -					Rental Assistance & CM for FWC (post ESG-CV ??)
Motel stays		\$ -					Use new Health Dept funds
Capital		\$ 4,525,000	\$ 525,000	\$ 2,000,000	\$ 2,000,000		In Qualified Census Tracts: New Housing Units- Samish Commons, Laurel/Forest, etc.
Eviction prevention (rental assistance)		\$ -					Opputunity Council and Federal/State Funds
Shelter homeless		\$ 3,000,000			\$ 3,000,000		Family/Child Shelter, Lighthouse Mission, Engedi Shelter (Lynden)
Shelter hygiene		\$ 1,500,000		\$ 1,500,000			Waystation
Homeless outreach		\$ -					HOT outreach expansion.
Housing support services and case management		\$ -					
SUBTOTAL, HOUSING SECURITY	20%	\$ 9,025,000	\$ 525,000	\$ 3,500,000	\$ 5,000,000	\$ -	
Economic recovery - childcare							
Large facility shells		\$ 7,000,000		\$ 2,500,000	\$ 2,500,000	\$ 2,000,000	In qualified census tracts: Aloha, Millworks, Barkley, Opportunity Council. Shell purchase (of condo).
Small Facility Expansion							
Premium pay and/or Workforce Dev.		\$ 2,000,000		\$ 2,000,000			WCC, BTC, NWC
Scholarships or bonuses for child care providers		\$ -					Tuition reduction
SUBTOTAL, CHILDCARE	20%	\$ 9,000,000	\$ -	\$ 4,500,000	\$ 2,500,000	\$ 2,000,000	Track other State and Federal funding sources
Food security and basic needs							
Food banks		\$ -					Salvation Army, Outside the qualified census tract
Food purchases		\$ -					Coordinate with WCF
SUBTOTAL, FOOD SECURITY AND BASIC NEEDS	0%	\$ -	\$ -	\$ -	\$ -	\$ -	
Economic recovery - tourism							
Tourism grants		\$ -					Use LTAC
Tourism: regional marketing		\$ -					Use LTAC
SUBTOTAL, TOURISM	0%	\$ -	\$ -	\$ -	\$ -	\$ -	
Economic recovery - business support							
Business grants		\$ -					New/ineligible biz, Those who have not yet received funding. Needs to be based on losses due to COVID
Retail advocate/COVID support		\$ -					
Permenant street alterations for COVID adaptations		\$ -					additional feedback needed
SUBTOTAL, BUSINESS SUPPORT	0%	\$ -	\$ -	\$ -	\$ -	\$ -	
Invest in capital projects							
Countywide Infrastructure		\$ 8,700,000		\$ 4,000,000	\$ 2,700,000	\$ 2,000,000	Small City/PUD/Port on infrastructure projects - East Blaine, North Ferndale, Lynden, Columbia Valley, Etc.
Regional Water Infrastructure		\$ 3,000,000	\$ 3,000,000				Black Slough, Fish Camp, Lynden's MARS project, Etc.
Broadband		\$ 6,000,000		\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	Hwy 9, Deming to Glacier, Pt. Roberts (If federal match is needed we could use EDI)
SUBTOTAL, CAPITAL PROJECTS	38%	\$ 17,700,000	\$ 3,000,000	\$ 6,000,000	\$ 4,700,000	\$ 4,000,000	
Public Health							
Public Health		\$ 700,000	\$ 350,000	\$ 350,000			Up to 2 million for Public Health purposes.
Jail Testing		\$ 435,000	\$ 435,000				
IQ Facility		\$ 892,400	\$ 892,400				
GRACE/Alt. Response Team		\$ 800,000		\$ 800,000			Health One Team Startup
BH Workforce/Case Management		\$ -					
SUBTOTAL, PUBLIC HEALTH	6%	\$ 2,827,400	\$ 1,677,400	\$ 1,150,000	\$ -	\$ -	
County Operations and Revenue Losses							
Criminal Justice Backlog		\$ 6,285,237	\$ 548,319	\$ 1,874,565	\$ 1,912,056	\$ 1,950,297	Over three years operational costs, Still need TI/Lease
Frozen Positions		\$ 840,450	\$ 840,450				Cover first year. 22-24 from GF unless there is unexpended ARPA then reimburse costs in 24' (Projected 22'-1.75M, 23'-1.825M, 24'-1.9M)
Costs of administrating ARPA		\$ 817,231	\$ 55,118	\$ 372,163	\$ 389,950		Grant Positions and Contracts
HVAC, A/V and Facility Improve							
Revenue loss							Continue to monitor need
SUBTOTAL, County Operations and Rev Losses	17%	\$ 7,942,918	\$ 1,443,887	\$ 2,246,728	\$ 2,302,006	\$ 1,950,297	

DRAFT

ARPA Expenditure Brainstorm							
PRIORITY AREAS	%	County Total	2021	2022	2023	2024	Notes
TOTAL, ALL REQUESTS	104%	\$ 46,495,318	\$ 6,646,287	\$ 17,396,728	\$ 14,502,006	\$ 7,950,297	
ARPA Revenues		\$ 44,528,542	\$ 22,264,271	\$ 22,264,271	\$ -	\$ -	
Fund Balance		\$ (1,966,776)	\$ 15,617,984	\$ 4,867,543	\$ (14,502,006)	\$ (7,950,297)	



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-065

File ID:	MIN2021-065	Version:	1	Status:	Agenda Ready
File Created:	08/06/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Special Council for August 5, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Special Council Aug 5 2021

Whatcom County Council (Special)

**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);**

MEETING START TIME REVISED TO 12:45 P.M.

Thursday, August 5, 2021

12:45 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 12:46 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**Special Order of Business**

1. [AB2021-474](#) Interviews of District Court Judge applicants

Councilmembers and Cathy Halka, Council Legislative Analyst, discussed how to go about asking the questions.

Frazey moved to have Council staff call out the questions. The motion was seconded by Kershner.

The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner,

Out of the meeting: 1 - Elenbaas

They discussed what to do in the ten minutes following the interview questions for each candidate.

Byrd moved to do up to 8 minutes of follow-up questions and 2 minutes of closing statements. The motion was seconded by Browne.

The motion carried by the following vote:

Aye: 6 - Buchanan, Byrd, Donovan, Frazey, Kershner, and Browne

Out of the Meeting: 1 - Elenbaas

Halka asked if they needed assistance with timing the interviews.

Clerk's note: Elenbaas joined the meeting at 12:52 p.m.

Chris Quinn discussed with Councilmembers whether this meeting was being broadcast live to the public and the applicants and whether the meeting should not be broadcast live to be fair to all the applicants.

Byrd moved to request that applicants log off and then join the meeting at their set time and that they not watch the other interviews. The motion was seconded by Kershner.

Dana Brown-Davis, Clerk of the Council, gave input on how they might proceed in light of how meetings are recorded and broadcast.

Councilmembers discussed the motion.

The motion failed by the following vote:

Aye: 2 - Byrd and Kershner

Nay: 5 - Donovan, Elenbaas, Frazey, Browne, and Buchanan

The Councilmembers held six 20-minute interviews with the following District Court Judge applicants:

- Lisa Keeler
- Royce Buckingham
- Melissa Nelson
- Jeffrey Lustick
- Angela Anderson
- Shoshana Paige

Council staff asked the following questions of each candidate in identical order:

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?

After the six interview questions asked by staff, Councilmembers asked each candidate follow-up questions and candidates were allowed to give a closing statement.

After all of the interviews, Halka gave a summary of the next steps, and she and Councilmembers discussed the process for voting.

This agenda item was DISCUSSED.

Adjournment

The meeting adjourned at 4:11 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-067

File ID:	MIN2021-067	Version:	1	Status:	Agenda Ready
File Created:	08/11/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Committee of the Whole Executive Session for August 10, 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 Aug 10 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

Tuesday, August 10, 2021

9 AM

Virtual Meeting

**VIRTUAL MEETING - ENDS BY 9:40 A.M. (TO PARTICIPATE, SEE
INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil OR CALL
360.778.5010)**

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 9:01 a.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

Announcements

Committee Discussion

Attorney Present: Karen Frakes and George Roche.

Buchanan stated that discussion of agenda items one and two may take place in executive session pursuant to RCW 42.30.110(1)(b) and RCW 42.30.110 (1) (i) respectively. Executive session will conclude no later than 9:40 a.m. If the meeting extends beyond the stated conclusion time, Council staff will make a public announcement.

Byrd moved to go into executive session until no later than 9:40 a.m. to discuss the agenda items pursuant to the RCW citations as announced by the Council Chair. The motion was seconded by Frazey.

The motion carried by the following vote:

Aye: 5 - Browne, Buchanan, Byrd, Elenbaas, and Frazey

Nay: 0

Out of the meeting: Donovan and Kershner (they joined after the vote)

At 9:42 a.m., Council staff announced that the executive session would extend to no later than 10 a.m.

1. [AB2021-462](#) Discussion regarding potential property acquisition [Discussion of this item may take place in Executive Session (closed to public) pursuant to RCW 42.30.110(1)(b)]

This agenda item was DISCUSSED.

2. [AB2021-486](#) Discussion with Chief Civil Deputy Prosecutor Karen Frakes regarding Council's options for responding to YouTube's removal of the June 15th Council meeting [discussion of this item may take place in executive session (closed to the public) per 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

The meeting adjourned at 9:55 a.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-068

File ID:	MIN2021-068	Version:	1	Status:	Agenda Ready
File Created:	08/13/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Committee of the Whole for August 10, 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 Aug 10 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

Tuesday, August 10, 2021

2:05 PM

Virtual Meeting

**VIRTUAL MEETING - ENDS BY 5 P.M. (TO PARTICIPATE, SEE
INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil OR CALL
360.778.5010)**

COUNCILMEMBERS

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

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 2:05 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**Special Presentation**

1. [AB2021-471](#) Presentation from the Health Department of the Community Health Impact Assessment

Erika Lautenbach, Health Department Director, updated the Councilmembers on the following concerning COVID-19 in Whatcom County:

- An almost 500 percent increase in case counts in the last five weeks
- A one-day increase of Covid-positive patients in the hospital from 22 to 25
- 41 businesses as of this morning impacted by COVID-19 cases
- A 100 percent increase in call volume in the last three weeks with requests for information on testing and vaccines
- 600 plus tests being administered each day at the NW Labs airport testing site due to increased prevalence, and the opening of the Canadian border which requires testing by travelers

Katie Stanford, Health Department, gave a presentation on the Community Health Impact Assessment and Lautenbach gave closing statements and spoke about next steps.

Councilmembers discussed with the speakers when they would be releasing the report on the assessment and giving a media presentation, having discussions about using American Rescue Plan Act (ARPA) funds to solve the childcare problem, broadening the group that will work on the childcare issue to get the best input from the most qualified people in the community, whether the Health Department has any advice to people who have been told to get vaccinated or else lose their job, whether there is any Federal Government guidance coming out on immunity after someone has had the virus, why someone who has recovered from COVID-19 would still be

required to get a vaccine or lose their job, whether the Health Department is mandating private employers to require vaccination of someone who has recovered from COVID-19, and where the Health Department stands with the requirement for students to wear masks for the upcoming school year.

This agenda item was PRESENTED AND DISCUSSED.

2. [AB2021-482](#) Presentation regarding Whatcom County's proposed American Rescue Plan Act funding priorities

Satpal Sidhu, County Executive, gave a presentation and answered questions about partnering with the cities on infrastructure projects when they have their own American Rescue Plan Act (ARPA) funds, why the County should use ARPA funds instead of Economic Development Investment (EDI) funds, the size of the buckets as presented, and whether money given to cities for development can have a string attached of permanently affordable housing.

This agenda item was PRESENTED AND DISCUSSED.

3. [AB2021-484](#) Presentation from Prosecuting Attorney, Public Defender, Superior Court and District Court on the impacts and staffing needs due to the significant backlog of court cases caused by the COVID-19 pandemic

The following people presented, discussed with Councilmembers about their needs and requests, and answered questions:

- Eric Richey, Whatcom County Prosecuting Attorney
- Tyler Schroeder, Executive's Office
- Dave Reynolds, Superior Court Director
- Stark Follis, Public Defender
- Bruce Van Glubt, District Court Administrator

They answered whether requests will come to the Council as individual supplemental requests, whether there has been further discussion on expanding the number of pro tem judges, whether ARPA funds will be enough, how the expense of added positions would be funded after the American Rescue Plan Act (ARPA) funds are used up, whether there are other types of projects not related to personnel such as software that could utilize ARPA funds to increase efficiency and help staff, and whether they have looked at vendors for software that has already been funded.

This agenda item was PRESENTED AND DISCUSSED.

Committee Discussion

1. [AB2021-463](#) Discussion and review of the draft update to the Climate Action Plan

The following people presented and answered questions:

- Chris Elder, Public Works Department
- Ellyn Murphy, Climate Impact Advisory Committee Chair
- Phil Thompson, Climate Impact Advisory Committee

They answered questions about asking for general funds instead of going to a ballot for establishing an office of climate action, the benefit from a climate mitigation perspective of burning natural gas to produce electricity as opposed to burning natural gas to generate heat for buildings or water, how electricity is practical until it is being generated by renewable means and you have the ability to store it to provide baseload power, where electricity comes from if it is not produced by natural gas, whether there is enough electricity being generated to power all of the current facilities that are using natural gas or other types of power, what local government can do to get to an electrified future and more efficiencies locally, how much detail is in the plan about electrifying school buses and whether there are federal dollars available for that, how the plan can be broken in pieces going forward in terms of implementation and which chapters should go to which committees, how this fits in to existing county programs, and how much land would be productive if they rezone Rural Forestry to Commercial Forestry.

Councilmembers and the speakers discussed putting together a workshop plan for the Council for the next few months, talking more about staffing and how to implement the plan, and how to go forward from here.

This agenda item was PRESENTED AND DISCUSSED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

Councilmembers discussed the Council appointment of an interim District Court Judge scheduled on the Council's agenda and how they should vote on it.

Dana Brown-Davis, Clerk of the Council, and Cathy Halka, Council Legislative Analyst, also spoke about staff's readiness to change how they vote tonight. No motions were made.

Adjournment

The meeting adjourned at 5:04 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-069

File ID:	MIN2021-069	Version:	1	Status:	Agenda Ready
File Created:	08/13/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Regular County Council for August 10, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Council Aug 10 2021

Whatcom County Council

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



Minutes - Draft Minutes

**Tuesday, August 10, 2021
6 PM
Virtual Meeting**

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)**

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

The Council is accepting applications to a vacancy on the Lummi Island Ferry Advisory Committee. The vacancy must be filled by someone who does not live on or own property on Lummi Island. If you're interested in participating in this group and meet the qualifications, please let us know at 360-778-5010 or email the Council at council@co.whatcom.wa.us

COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, gave a presentation (on file under AB2021-482) concerning the Priorities and Policy Framework for use of the American Rescue Plan Act (ARPA) funds.

Donovan spoke about leveraging the dollars for permanent affordable housing and childcare.

SPECIAL ORDER OF BUSINESS

1. [AB2021-485](#) Council appointment of interim District Court Judge
Donovan moved that they put this on the agenda so that it is after the public comment. The motion was seconded by Byrd.

The motion carried by the following vote:
Aye: 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Kershner, and Browne
Nay: 0

MINUTES CONSENT

Byrd moved to accept the minutes consent items. The motion was seconded by Frazey (see votes on individual items below).

1. [MIN2021-061](#) Committee of the Whole Executive Session for July 27, 2021

Byrd moved and Frazey 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. [MIN2021-062](#) Committee of the Whole for July 27, 2021

Byrd moved and Frazey seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [MIN2021-063](#) Regular County Council for July 27, 2021

Byrd moved and Frazey 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

4. [MIN2021-064](#) Special Council for August 2, 2021

Byrd moved and Frazey 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. [AB2021-413](#) 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

Doug Chadwick, Undersheriff, briefed the Councilmembers.

Buchanan opened the Public Hearing and, hearing no one, closed the Public

Hearing.

Donovan moved and Byrd seconded that the Agreement Requiring a Public Hearing be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

2. [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)

Andrew Hester, Public Works Department, briefed the Councilmembers.

Buchanan opened the Public Hearing and the following person spoke:

- Wendy Harris

Hearing no one else, Buchanan closed the Public Hearing.

Byrd moved and Frazey seconded that the Resolution (FCZDBS) Requiring a Public Hearing be APPROVED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-026

3. [AB2021-422](#) Ordinance for reestablishing a speed limit for a portion of Bay Road

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Byrd moved and Donovan seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Elenbaas stated he thinks it is a good idea.

Byrd'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 2021-050

4. [AB2021-424](#) Ordinance adopting amendments to the Whatcom County Code Title 20, Zoning to allow and regulate Battery Energy Storage Systems

Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers and answered whether there have been any applications for such an item yet.

Councilmembers discussed the item.

Donovan moved to hold this item for a month or two. The motion was seconded by Byrd.

Dana Brown-Davis, Clerk of the Council, stated this item was advertised as a scheduled public hearing so if the Council is agreeable, it would be better to have the public hearing and then vote whether to hold it after that.

Donovan withdrew his motion and Councilmembers and Personius discussed the timing of the item.

Buchanan opened the Public Hearing and the following people spoke:

- Wendy Harris
- David MacLeod
- Brad Brown

Hearing no one else, Buchanan closed the Public Hearing.

Donovan moved to hold the item. The motion was seconded by Byrd.

Councilmembers and Personius discussed the motion.

Chris Powers, NextEra Energy, addressed the Council and Councilmembers continued to discuss.

The motion to hold carried by the following vote:

Aye: 5 - Kershner, Buchanan, Byrd, Donovan, and Frazey

Nay: 2 - Browne and Elenbaas

Councilmembers discussed with Personius what additional information the Council is looking for.

Dana Brown-Davis, Clerk of the Council, asked what committee they would

like it to be referred to. They concurred to put it in Planning and Development Committee.

Final Action: Councilmembers HEARD PUBLIC TESTIMONY AND Donovan's motion that the Ordinance Requiring a Public Hearing be HELD (and REFERRED TO COMMITTEE) carried by the following vote:

Aye: 5 - Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 2 - Browne, and Elenbaas

Absent: 0

5. [AB2021-433](#) Resolution declaring Whatcom County real property as surplus
- Tyler Schroeder, Executive's Office, briefed the Councilmembers and answered whether it will be opened up so that anyone who is interested in bidding on the project could bid on it.
- Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.
- Frazey moved*** and Donovan seconded that the Resolution Requiring a Public Hearing be APPROVED.
- Schroeder answered why it is only open to one non-profit (Lake Whatcom Treatment Center) and not open to anyone.
- Satpal Sidhu, County Executive, stated there was a head-nod for this process in Executive Session.
- Frazey's motion that the Resolution Requiring a Public Hearing be APPROVED carried by the following vote:**
- Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
- Nay:** 0
- Absent:** 0
- Enactment No: RES 2021-027
6. [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
- Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers and stated this would have to be forwarded for concurrent review.

Buchanan opened the Public Hearing and the following person spoke:

- Ali Taysi

Hearing no one else for this item, Buchanan closed the Public Hearing.

Buchanan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be FORWARDED FOR CONCURRENT REVIEW. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

OPEN SESSION (20 MINUTES)

The following people spoke:

- Marcus Sanders
- Megan Wiseman
- Leah Sauter
- Robert Bystrom
- Misty Flowers
- Richard Tran
- Don Warner
- Lindy McDonough
- Jack Hovenier
- Nancy Bergman
- Shean Halley
- Natalie Chavez
- Jean Purcell
- Christie Duque
- Enoch Mann
- Brad Brown
- Stephen Jackson
- Cliff Langley
- Hannah Ortis
- Heather Katahdin

Hearing no one else, Buchanan closed the Open Session.

SPECIAL ORDER OF BUSINESS

1. [AB2021-485](#) Council appointment of interim District Court Judge

Cathy Halka, Council Legislative Analyst, discussed with Councilmembers the work done to validate the options for voting and how to proceed tonight.

Kershner moved to use the ranked choice voting system but down to the level of four choices. The motion was seconded by Byrd.

Councilmembers discussed the motion.

Donovan suggested a friendly amendment that the ranked vote be non-binding and then they can make a motion to affirm the results and ***Kershner accepted*** the friendly amendment.

Byrd suggested that it be a blind vote, but ***Kershner did not accept*** that suggestion.

Councilmembers continued to discuss the motion.

Dana Brown-Davis, Clerk of the Council, answered a question about whether they would need to rescind their prior vote on July 27 on how to vote tonight.

Kershner withdrew her motion but Byrd did not withdraw his second and stated as the seconder he would not accept the friendly amendment to make it non-binding.

Councilmembers discussed whether they would need to rescind the July 27 motion and decided they needed to, but no one made a motion to rescind which made tonight's motion moot. They went back to the original motion from the Committee of the Whole on July 27, 2021.

Buchanan moved to nominate all the candidates for consideration. The motion was seconded by Browne.

Councilmembers discussed the motion and voted as follows:

Donovan voted for Angela Anderson
Elenbaas voted for Jeffrey Lustick
Frazey voted for Angela Anderson
Kershner voted for Royce Buckingham
Browne voted for Angela Anderson
Buchanan voted for Angela Anderson

Byrd voted for Angela Anderson

Angela Anderson was appointed with five votes.

Councilmembers continued to discuss the process and the candidates.

Angela Anderson was APPOINTED.

CONSENT AGENDA

(From Council Finance and Administrative Services Committee)

Browne reported for the Finance and Administrative Services Committee and *moved* to approve Consent Agenda items 1-13. Councilmembers discussed and voted on those items (see votes on individual items below).

1. [AB2021-427](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Cascadia Youth Mental Health to assess and support regional school substance use discipline policies and practice needs, in the amount of \$22,760 for a total amended contract amount of \$40,000

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

2. [AB2021-428](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Northwest Educational Service District 189 for participation in the Regional Youth Marijuana Prevention and Education Program, in the amount of \$15,000

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [AB2021-442](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Tacoma Pierce County Health Department for administration of the food handler permit program, in an estimated amount of \$80,732 per year

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. [AB2021-443](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Skagit Valley College for the use of the Plantation Rifle Range to train personnel, in the amount of \$17,486.40

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

5. [AB2021-444](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Sedro-Woolley Police Department for the use of the Plantation Rifle Range to train personnel, in the amount of \$6,289.30

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

6. [AB2021-445](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Bellingham Police Department for the use of the Plantation Rifle Range to train personnel, in the amount of \$26,381.85

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

7. [AB2021-446](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Mount Vernon Police Department for the use of the Plantation Rifle Range to train personnel, in the amount of \$6,764.05

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

8. [AB2021-448](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Marysville Police Department for the use of the Plantation Rifle Range to train personnel, in the amount of \$12,868.22

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

9. [AB2021-449](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Skagit County Sheriff's Office for the use of the Plantation Rifle Range to train personnel, in the amount of \$15,286.73

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

10. [AB2021-452](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology for solid waste management compliance and litter and/or illegal dumping enforcement activities, in the amount of \$236,340

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

11. [AB2021-468](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Trantech Engineering, LLC to provide engineering services to implement rehabilitation efforts on the existing Nulle Road/Friday Creek Bridge No. 106

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

12. [AB2021-472](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Helmsman Management Services, LLC to provide administration of the County's self-insured Worker's Compensation Program in the amount of \$173,090

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

13. [AB2021-478](#) Request approval for the County Executive to enter into a contract for a 3-year subscription to KnowBe4 for cyber security awareness training and simulated phishing software platform with SHI International Corporation, using the Washington State Contract #06016, in an amount not to exceed \$50,409.22

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: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

OTHER ITEMS**(From Council Finance and Administrative Services Committee)**

1. [AB2021-412](#) Ordinance amending the 2021 Whatcom County Budget, request no. 12, in the amount of \$1,506,763

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 2021-051

2. [AB2021-390](#) Request authorization for the County Executive to enter into an Interlocal Agreement between Whatcom County and the Bellingham Housing Authority for the purposes of funding an EDI loan for phase 3 of the Samish Commons redevelopment project in the amount of \$750,000

***Browne* reported for the Finance and Administrative Services Committee and *moved* that the Interlocal be AUTHORIZED.**

Dana Brown-Davis, Clerk of the Council, spoke about the title of this item (Tyler Schroeder, Deputy Administrator, corrected the title for this item to reflect an amount of \$725,000 instead of \$750,000).

Councilmembers discussed the motion.

Browne's motion that the Interlocal be AUTHORIZED carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

3. [AB2021-410](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County Flood Control Zone District and the Lummi Nation for the transfer of real property (Council acting as the Flood Control Zone District Board of Supervisors)

Browne reported for the Finance and Administrative Services Committee and moved that the Contract (FCZDBS) be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. [AB2021-430](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Housing Authority of the City of Bellingham to receive American Rescue Plan Act (ARPA) funds in the amount of \$525,000 to construct phase 3 of the Samish Commons Project

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:

Aye: 4 - Browne, Buchanan, Donovan, and Frazey

Nay: 3 - Byrd, Elenbaas, and Kershner

Absent: 0

5. [AB2021-441](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology to administer and enforce sealing, tagging, and decommissioning of water wells, in an estimated annual amount of \$13,500

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. [AB2021-454](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Unity Care Northwest to provide reimbursement of professional and support services provided at Whatcom County's Community Vaccine Clinics, in the amount of \$55,950

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

7. [AB2021-458](#) Request authorization for the County Executive to enter into an interlocal agreement

amendment between Whatcom County, the City of Bellingham Fire Department and Fire Protection District No. 7 for costs associated with the implementation of the 5th medic unit in the amount of \$1,917,500

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

8. [AB2021-459](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Snohomish Health District to provide COVID-related isolation and quarantine to Snohomish County residents, in the amount of \$200 per resident, per day

Browne reported for the Finance and Administrative Services Committee and ***moved*** that the Interlocal be AUTHORIZED.

Councilmembers discussed how much this cost each resident that used it in Whatcom County and whether they can mitigate the risk of bringing COVID-19-positive people into the County, and they discussed the motion.

Satpal Sidhu, County Executive, spoke about the facility being an insurance policy.

Buchanan moved the call the question. The motion was seconded by Browne.

The motion to call the question carried by the following vote:

Aye: 6 - Frazey, Kershner, Browne, Buchanan, Byrd, and Elenbaas

Nay: 1 - Donovan

Browne's motion that the Interlocal be AUTHORIZED carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

9. [AB2021-476](#) Resolution to adopt the Whatcom County Employee's Personnel Handbook

Browne reported for the Finance and Administrative Services Committee and ***moved*** that the Resolution be APPROVED.

Councilmembers discussed the motion, thanked Karen Goens for the handbook, and wished her well in her retirement.

Clerk's note: Buchanan stated the vote on this item was 6-1 with Donovan out of the meeting. He did not hear Donovan's affirmative vote and Donovan stated that he voted yes. The record was corrected to reflect a vote of 7-0.

Browne's motion that the Resolution be APPROVED carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-028

10. [AB2021-477](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services to provide an advance in funding for DSHS-funded Developmental Disabilities Administration Programs, in an amount authorized of up to \$470,230

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

11. [AB2021-483](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Lydia Place to provide funding for additional motel rooms for families experiencing unsheltered homelessness in the amount of \$236,470 for a total amended contract amount of \$354,922

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

NOTE:

Byrd asked whether AB2021-410 and AB2021-417 are different from each other since they have similar titles and the following people spoke:

- Dana Brown-Davis, Clerk of the Council
- Tyler Schroeder, Executive's Office

One item is a resolution transferring the property and the other is an interlocal.

(From Council Public Works and Health Committee)

12. [AB2021-464](#) Resolution in the matter of considering vacating a portion of Wynn Road

Fraze reported for the Public Works and Health Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-029

13. [AB2021-465](#) Resolution in the matter of considering vacating a portion of Thomas Road

Fraze reported for the Public Works and Health Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-030

14. [AB2021-466](#) Resolution in the matter of considering vacating a portion of Horton Road

Fraze reported for the Public Works and Health Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-031

15. [AB2021-467](#) Resolution in the matter of considering vacating a portion of Boxwood Road

Fraze reported for the Public Works and Health Committee and moved that

the Resolution be APPROVED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2021-032

(No Committee Assignment)

16. [AB2021-469](#) Request to authorize Karen Frakes, Chief Civil Deputy Prosecuting Attorney, to vote on behalf of Whatcom County in favor of the Joint Plan of Reorganization of Mallinckrodt PLC and its debtor affiliates under Chapter 11 of the Bankruptcy Code in Case No. 20-12522 (JTD) in the US Bankruptcy Court for the District of Delaware

Karen Frakes, Prosecuting Attorney's Office, briefed the Councilmembers.

Browne moved and Byrd seconded that the Request for Motion be APPROVED. The motion 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. [AB2021-461](#) Request confirmation of the County Executive's appointment of Jagwinder Gill to the Agricultural Advisory Committee

Donovan moved and Frazey seconded that the Executive Appointment be CONFIRMED.

Satpal Sidhu, County Executive, answered a question about who the applicant would be replacing.

Donovan's motion that the Executive Appointment be CONFIRMED carried by the following vote:

Aye: 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

Donovan moved to introduce items one through three. The motion was seconded by Frazey (see votes on individual items below).

1. [AB2021-451](#) Ordinance amending the 2021 Whatcom County Budget, request no. 13, in the amount of \$1,615,450

Donovan moved and Frazey seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

2. [AB2021-408](#) Ordinance adopting amendments to Whatcom County Code Title 17 Flood Damage Prevention

Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [AB2021-450](#) Resolution amending the Flood Control Zone District 2021 budget, request no. 2, in the amount of \$1,142,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

Donovan moved and Frazey seconded that the Resolution (FCZDBS) be INTRODUCED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers gave committee reports.

Browne read the following title for AB2021-156 into the record and **moved** that they have another executive session for the item or bring it out into the open for a public discussion at a future meeting either in September or October:

Discussion of pending litigation with Civil Deputy Prosecutor Chris Quinn: Ericksen v. Whatcom County Flood Control Zone District, Whatcom County Superior Court Cause No. 20-2-00650-37

The motion was seconded by Donovan to bring the item back to executive session.

Browne clarified his motion and stated his preference is to have an executive session on September 28, 2021.

The motion carried by the following vote:

Aye: 7 - Byrd, Donovan, Elenbaas, Frazey, Kershner, Browne, and Buchanan

Nay: 0

Councilmembers discussed listening to other people with differing opinions, children wearing masks and other things related to COVID-19.

Dana Brown-Davis, Clerk of the Council, answered a question about the time of the Special Council meeting on August 16, 2021.

ADJOURN

The meeting adjourned at 10:27 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-070

File ID:	MIN2021-070	Version:	1	Status:	Agenda Ready
File Created:	08/16/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Special Council for August 16, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Draft Minutes Special Council Aug 16 2021

Whatcom County Council (Special)

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



Minutes - Draft Minutes

**Monday, August 16, 2021
1 PM
Virtual Meeting**

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)**

COUNCILMEMBERS

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

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 1:01 p.m. in a virtual meeting.

Roll Call

Present: 6 - Rud Browne, Barry Buchanan, Tyler Byrd, Carol Frazey, Ben Elenbaas, and Kathy Kershner

Absent: 1 - Todd Donovan

Announcements**Council Action**

1. [AB2021-475](#) Ordinance repealing Ordinance 2021-029, which imposed an interim moratorium on the acceptance and processing of applications for new or expanded facilities in the Cherry Point Urban Growth Area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point

Byrd moved and Frazey seconded that the Ordinance be ADOPTED. The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 1 - Donovan

Enactment No: ORD 2021-052

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 1:03 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-408

File ID:	AB2021-408	Version:	1	Status:	Introduced for Public Hearing
File Created:	07/12/2021	Entered by:	LCumming@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to Whatcom County Code Title 17 Flood Damage Prevention

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The proposed ordinance adopts minor amendments to the Whatcom County Flood Damage Prevention Code (Title 17) that include the following:

Amendments necessary to comply with updated Community Rating System (CRS) Class prerequisites for freeboard

Amendments necessary to comply with updated FEMA policy document # 104-008-03 for Agricultural and Accessory Structures

Revisions to the variance process

The deadline to have Title 17 amendments adopted is 9/30/21

HISTORY OF LEGISLATIVE FILE



Date:	Acting Body:	Action:	Sent To:
08/10/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Staff Memo, Proposed Ordinance, Title 17 Clean, Title 17 with Comments

MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

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

RE: Proposed Amendments to Whatcom County Code Title 17 Flood Damage Prevention

DATE: July 1, 2021

Enclosed is an ordinance adopting amendments to Whatcom County Code Title 17 Flood Damage Prevention for your consideration.

▪ **Requested Action**

Public Works respectfully requests that the Whatcom County Council consider the proposed minor amendments to Title 17 and approve the ordinance adopting the amended code, subject to a public hearing. Proposed amendments are categorically exempt from SEPA per WAC 197-11-800(19).

▪ **Background and Purpose**

In January 2021 FEMA's National Flood Insurance Program (NFIP) Community Rating System (CRS) began implementing new minimum requirements or Class prerequisites for freeboard for all participating CRS communities.

The CRS is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the National Flood Insurance Program (NFIP). In CRS communities, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community's efforts that address the three goals of the program:

- Reduce and avoid flood damage to insurable property
- Strengthen and support the insurance aspects of the National Flood Insurance Program
- Foster comprehensive floodplain management

Whatcom County is a participating community in the CRS program and must have an adopted floodplain management ordinance that meets the new CRS Class prerequisites prior to the scheduled cycle verification visit on October 12, 2021.

Whatcom County is a CRS Class 6 rated community which provides a 20% reduction on flood insurance premiums in unincorporated Whatcom County. Failure to adopt these amendments prior to the date of cycle verification visit would reduce Whatcom County's CRS rating to a Class 9 which only provides for a 5% reduction on flood insurance premiums to the community.

The CRS Floodplain Management Specialist for FEMA and Public Works staff identified minor revisions that are necessary to ensure consistency with the updated CRS Class prerequisites. The State NFIP Coordinator and Public Works staff also identified minor amendments necessary to comply with FEMA's recent policy update on Agricultural and Accessory Structures (#104-008-03) including associated local variance process.

The CRS Floodplain Management Specialist and State NFIP Coordinator have reviewed and approved these amendments to code for compliance with the NFIP and CRS manual. The revised code was presented to the Flood Control Zone District Advisory Committee at their meeting held on May 13, 2021. The committee voted in unanimous support of these amendments.

A final staff report is enclosed which provides a detailed analysis of each section of code proposed for revision.

Encl.

PROPOSED BY: Public Works Department
INTRODUCTION DATE: August 10, 2021

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 17 FLOOD DAMAGE
PREVENTION**

WHEREAS, in January 2021 FEMA's National Flood Insurance Program (NFIP) Community Rating System (CRS) began implementing new minimum requirements or Class prerequisites for freeboard for all participating CRS communities; and

WHEREAS, Whatcom County is a participating community in the CRS program and is required to adopt a floodplain management ordinance that meets the new CRS Class prerequisites prior to the scheduled cycle verification visit on October 12, 2021; and

WHEREAS, the CRS Floodplain Management Specialist and State NFIP coordinator have reviewed Whatcom County Code Title 17 for compliance with the new CRS Class prerequisites and found that minor revisions are required; and

WHEREAS, staff has revised Whatcom County Code Title 17 to include the amendments required for compliance to maintain current CRS Class 6 rating, which provides a 20% reduction on flood insurance premiums to the community; and

WHEREAS, failure to adopt these amendments prior to the date of cycle verification visit would reduce Whatcom County's CRS rating to a Class 9, which only provides for a 5% reduction on flood insurance premiums to the community; and

WHEREAS, staff included additional amendments to Whatcom County Code Title 17 for compliance with FEMA's recent policy update on agricultural and accessory structures including associated local variance process; and

WHEREAS, a public hearing on the amended Title 17 was held on September 14, 2021;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code Title 17 is hereby amended as indicated in Exhibit A to this ordinance.

ADOPTED this ____ day of _____, 2021.

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

ATTEST:

Dana Brown-Davis, County Clerk

Barry Buchanan Council Chair

APPROVED AS TO FORM:

() Approved () Denied

/s/ Christopher Quinn, approved via e-mail /JL

Christopher Quinn
Senior Civil Deputy Prosecuting Attorney

Satpal Singh Sidhu, County Executive

Date: _____

Title 17

FLOOD DAMAGE PREVENTION¹

Chapters:

- 17.04 General Provisions**
- 17.08 Definitions**
- 17.10 Regulatory Data**
- 17.12 Administration**
- 17.16 Flood Hazard Reduction Standards**
- 17.20 *Repealed***
- 17.24 Unauthorized Use of Motorized Vehicles Upon Flood Control Structures**

¹ Prior legislation: Ord. dated 9/23/77.

Chapter 17.04

GENERAL PROVISIONS

Sections:

- 17.04.010 Findings of fact.
- 17.04.020 Statement of purpose and liability disclaimer.
- 17.04.030 Methods of reducing flood losses.
- 17.04.040 Application of title.
- 17.04.050 Repealed.
- 17.04.060 Abrogation and greater restrictions.
- 17.04.070 Interpretation.
- 17.04.080 Compliance required.
- 17.04.090 Repealed.
- 17.04.100 Severability.

17.04.010 Findings of fact.

The findings of fact are the following:

A. The flood hazard areas of Whatcom County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. Without taking appropriate care and precautions, development in floodplains and watersheds may increase flood heights, frequencies, and velocities, and may result in a greater threat to humans, damage to property, destruction of natural floodplain functions, and adverse impacts to water quantity, quality, and habitat. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.020 Statement of purpose and liability disclaimer.

This title is enacted as an exercise of the police power of the county for the benefit of the public at large. It is not intended to create a special relationship with any individual, or individuals, nor to identify and protect any particular class of persons. The purpose of this title is to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas in a manner that does not adversely affect endangered species or their habitats. The degree of property and habitat protection required by this title is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by manmade or natural causes. This title does not imply that land outside of the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This title shall not create liability on the part of Whatcom County, any officer or employee thereof, or the Federal Insurance Administration, for any damages to property or habitat that result from reliance on this title or any administrative decision lawfully made thereunder. Nor shall the county or any officer, agent, or employee thereof incur or be held as assuming any liability by reason or in consequence of any permission, certificate of inspection, inspection or approval authorized herein, or issued or given as herein provided, or by reasons or consequence of any things done or acts performed pursuant to the provisions of this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.030 Methods of reducing flood losses.

In order to accomplish its purposes, this title includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, shall be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage; and

E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.040 Application of title.

This title shall apply to all special flood hazard areas, as defined in WCC 17.08.040, within the jurisdiction of Whatcom County. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.050 Basis for establishing areas of special flood hazard.

Repealed by Ord. 2017-056. (Ord. 96-050 Exh. A; Ord. 90-94; Ord. 87-25 (part)).

17.04.060 Abrogation and greater restrictions.

This title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this title and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.070 Interpretation.

In the interpretation and application of this title, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.080 Compliance required.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this title and other applicable regulations. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.090 Penalty for noncompliance.

Repealed by Ord. 2017-056. (Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.100 Severability.

The provisions and sections of this title shall be deemed separable and the invalidity of any portion of this title shall not affect the validity of the remainder. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.08

DEFINITIONS

Sections:

17.08.010	Generally.
17.08.013	Accessory structure.
17.08.015	Administrator.
17.08.020	Appeal.
17.08.030	Area of shallow flooding.
17.08.040	Area of special flood hazard.
17.08.050	Base flood.
17.08.051	Base flood elevation.
17.08.053	Basement.
17.08.055	Breakaway wall.
17.08.057	Coastal high hazard area.
17.08.058	Critical facility.
17.08.060	Development.
17.08.062	Dry floodproofing.
17.08.064	Elevation certificate.
17.08.066	FEMA.
17.08.070	Flood or flooding.
17.08.080	Flood insurance rate map (FIRM).
17.08.090	Flood insurance study.
17.08.092	Flood protection elevation (FPE).
17.08.095	Floodway.
17.08.097	Historic structure.
17.08.100	Lowest floor.
17.08.110	Manufactured home.
17.08.120	Manufactured home park or subdivision.
17.08.130	New construction.
17.08.140	Recreational vehicle.
17.08.155	Special flood hazard area (SFHA).
17.08.160	Start of construction.
17.08.170	Structure.
17.08.178	Substantial damage.
17.08.180	Substantial improvement.
17.08.190	Variance.
17.08.193	Watercourse.
17.08.195	Wet floodproofing.
17.08.200	Zone.

17.08.010 Generally.

Unless specifically defined below, words or phrases used in this title shall be interpreted so as to give them the meaning they have in common usage or to give this title its most reasonable application. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.013 Accessory structure.

“Accessory structure” means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.015 Administrator.

Whenever the term “administrator” is used it means the director of public works or his designee. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.020 Appeal.

“Appeal” means a request for a review of the administrator’s interpretation of any provision of this title or a request for a variance. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.030 Area of shallow flooding.

“Area of shallow flooding” means a designated AO or AH Zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.040 Area of special flood hazard.

“Area of special flood hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Areas of special flood hazard are designated on flood insurance rate maps with the letter A or V, including AE, AO, AH, A1-99 and VE. The area of special flood hazard is also referred to as the special flood hazard area or SFHA. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.050 Base flood.

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as “100-year flood.” Designation on maps always includes the letter A or V. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.051 Base flood elevation.

“Base flood elevation” is the elevation of the base flood above the datum of the effective FIRM. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.053 Basement.

“Basement” is any area of the structure having its floor subgrade (below ground level) on all sides, including a subgrade crawlspace. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.055 Breakaway wall.

“Breakaway wall” means a wall that is not a part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damages to the elevated portion of the building or supporting foundation system. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.057 Coastal high hazard area.

“Coastal high hazard area” means the area subject to high velocity waters, including, but not limited to, storm surge or tsunamis. The area is designated on the FIRM as Zone V1-V30, VE or V. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.058 Critical facility.

“Critical facility” means a facility necessary to protect the public health, safety, and welfare during a flood. Critical facilities include, but are not limited to: schools; nursing homes; hospitals; police, fire, and emergency operations installations; water and wastewater treatment plants; electric power stations; and installations which produce, use, or store hazardous materials or hazardous waste (other than consumer products containing hazardous substances or hazardous waste intended for household use). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.060 Development.

“Development” means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, subdivision of land, removal of substantial amounts (greater than five percent) of vegetation, or alteration of natural site characteristics located within the area of special flood hazard. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.062 Dry floodproofing.

“Dry floodproofing” means any combination of structural and nonstructural measures that prevent flood waters from entering a structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.064 Elevation certificate.

“Elevation certificate” means the official form from FEMA used to provide elevation information necessary to ensure compliance with provisions of this title and determine the proper flood insurance premium rate. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.066 FEMA.

“FEMA” means the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.070 Flood or flooding.

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters; and/or

B. The unusual and rapid accumulation or runoff of surface waters from any source. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.080 Flood insurance rate map (FIRM).

“Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.090 Flood insurance study.

“Flood insurance study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary map, and the water surface elevation of the base flood. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.092 Flood protection elevation (FPE).

“Flood protection elevation” means the elevation above the datum of the effective FIRM to which new and substantially improved structures including associated machinery or equipment and other service facilities must be protected from flood damage. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.095 Floodway.

“Floodway” means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.097 Historic structure.

“Historic structure” means any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior; or
2. Directly by the Secretary of the Interior in states without approved programs. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.100 Lowest floor.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this title found at WCC 17.16.080(B). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.110 Manufactured home.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term “manufactured home” also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 120 consecutive days. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers, recreational vehicles and other similar vehicles. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.120 Manufactured home park or subdivision.

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.130 New construction.

“New construction” means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part). Formerly 17.08.140).

17.08.140 Recreational vehicle.

“Recreational vehicle” is a vehicle which is:

- A. Built on a single chassis; and
- B. Four hundred square feet or less when measured at the largest horizontal projection; and
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A. Formerly 17.08.130).

17.08.155 Special flood hazard area (SFHA).

See WCC 17.08.040, Area of special flood hazard. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.160 Start of construction.

“Start of construction” (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97–348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial

improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.170 Structure.

“Structure” means a walled and roofed building, including a gas or liquid storage tank that is principally above ground. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.178 Substantial damage.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.180 Substantial improvement.

“Substantial improvement” means any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- A. Before the start of construction of the improvement or repair; or
- B. Before the damage occurred, if the structure has been damaged and is being restored.

For the purpose of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- C. Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- D. Any alteration of a historic structure; provided, that the alteration will not preclude the structure’s continued designation as a historic structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.190 Variance.

“Variance” means a grant of relief from the requirements of this title which permits construction in a manner that would otherwise be prohibited by this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.193 Watercourse.

“Watercourse” means only the channel and banks of an identifiable watercourse, and not the adjoining floodplain areas. The flood-carrying capacity of a watercourse refers to the flood-carrying capacity of the channel (except in the case of alluvial fans, where a channel is not typically defined). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.195 Wet floodproofing.

“Wet floodproofing” means permanent or contingent measures applied to a structure and/or its contents that prevent or provide resistance to damage from flooding by using flood-resistant materials and by allowing water to enter and exit the structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.200 Zone.

“Zone” means one or more areas delineated on the FIRM. The following zones may be used on the adopted FIRM. The special flood hazard area is comprised of the A and V Zones.

- A: SFHA where no base flood elevation is provided.

- A#: numbered A Zones (e.g., A7 or A14), SFHA with a base flood elevation.
- AE: SFHA with a base flood elevation.
- AO: SFHA subject to inundation by shallow flooding, usually resulting from sheet flow on sloping terrain, with average depths between one and three feet. Average flood depths are shown.
- AH: SFHA subject to inundation by shallow flooding (usually areas of ponding) with average depths between one and three feet. Base flood elevations are shown.
- D: area of undetermined but possible flood hazard.
- V: the SFHA subject to coastal high hazard flooding including waves of three feet or greater in height. There are three types of V Zones: V, V#, and VE, and they correspond to the A Zone designations.
- Shaded X: areas of two-tenths of one percent annual chance flood; areas of one percent annual chance flood with average depths of less than one foot or with drainage areas less than one square mile; and areas protected by levees from one percent annual chance flood.
- Unshaded X: areas determined to be outside the two-tenths of one percent annual chance floodplain. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.10

REGULATORY DATA

Sections:

- 17.10.010 Basis for establishing special flood hazard area.
- 17.10.020 Flood hazard data.
- 17.10.030 New regulatory data.

17.10.010 Basis for establishing special flood hazard area.

A. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Whatcom County, Washington and Incorporated Areas,” dated January 18, 2019, and any revisions thereto, with an accompanying flood insurance rate map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this title. The flood insurance study and the FIRM are on file at the department of public works.

B. The administrator shall make interpretations where needed as to the exact location of the boundaries of the SFHA where there appears to be a conflict between the mapped SFHA boundary and actual field conditions, as determined by the base flood elevation and ground elevations. The applicant may appeal the administrator’s interpretation of the location of the boundary in accordance with WCC 17.12.060.

C. The applicant may officially have a structure or property removed from the SFHA by obtaining a letter of map amendment (LOMA) with FEMA. A LOMA establishes a structure or property’s location in relation to the SFHA. LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.10.020 Flood hazard data.

A. The base flood elevation for the SFHAs delineated as Zone AE of Whatcom County, Washington, shall be as delineated on the 100-year flood profiles in “The Flood Insurance Study for Whatcom County, Washington and Incorporated Areas.”

B. The base flood elevation for each SFHA delineated as a Zone AH or Zone AO shall be that elevation (or depth) delineated on the flood insurance rate map. Where base flood depths are not available in Zone AO, the base flood elevation shall be considered to be two feet above the highest grade adjacent to the structure.

C. The base flood elevation for all other SFHAs delineated as Zone A shall be as defined in subsection F of this section and WCC 17.10.030(C).

D. The flood protection elevation shall be the base flood elevation plus one foot.

E. The floodway shall be as delineated on the flood insurance rate map or in accordance with subsection F of this section and WCC 17.10.030(C).

F. Where base flood elevation and floodway data have not been provided in special flood hazard areas, the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, local, or other source. In cases where the administrator is unable to obtain any base flood elevation, the flood protection elevation shall be two feet above the highest adjacent grade.

G. The base flood elevation for the SFHAs delineated as coastal Zone VE and AE of Whatcom County, Washington, shall be as delineated on the flood insurance rate maps and as found in “The Flood Insurance Study for Whatcom County, Washington and Incorporated Areas.” (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.10.030 New regulatory data.

A. All requests to revise or change the flood hazard data, including requests for a letter of map revision and a conditional letter of map revision, shall be reviewed by the administrator.

1. The administrator shall not sign the community acknowledgment form for any requests based on filling or other development, unless the applicant for the letter documents that such filling or development is in compliance with this title.

2. The administrator shall not approve a request to revise or change a floodway delineation until FEMA has issued a conditional letter of map revision (CLOMR) that approves the change.

B. If an applicant disagrees with the regulatory data prescribed by this title, he/she may submit a detailed technical study needed to replace existing data with better data in accordance with FEMA mapping guidelines. If the data in question are shown on the published FIRM, the submittal must also include a request to FEMA for a conditional letter of map revision.

C. Where base flood elevation or floodway delineation is not available in accordance with WCC 17.10.020, applicants for approval of new subdivisions and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, shall include such data with their permit applications, unless waived by the administrator. This provision does not apply to applications for permits for small projects on large lots, such as constructing a single-family home; in these situations, the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, local or other authoritative source. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.12

ADMINISTRATION

Sections:

- 17.12.010 Establishment of floodplain development permit.
- 17.12.012 Requirements for floodplain development permit application within a SFHA.
- 17.12.020 Administrative department – Designated.
- 17.12.030 Administrative department – Duties and responsibilities.
- 17.12.040 Variances – Process.
- 17.12.050 Variances – Conditions for issuance.
- 17.12.060 Appeals.
- 17.12.070 Enforcement.

17.12.010 Establishment of floodplain development permit.

A floodplain development permit shall be obtained before construction or development begins within any area of special flood hazard established in WCC 17.10.010. The permit shall be for all development as set forth in WCC 17.08.060. In situations where another county permit is required for development, the floodplain development permit may be issued in the form of conditions within the other county permit. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.012 Requirements for floodplain development permit application within a SFHA.

Application for a floodplain development permit within a SFHA shall be made through the development application process administered by the department of planning and development services or on forms furnished by the department of public works if other local permits are not required, and may include, but not be limited to:

A. One or more site plans drawn to scale showing:

1. The nature, location, dimensions, and elevations of the property;
2. Names and locations of all water bodies, waterways, and drainage facilities within 200 feet of the site;
3. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials;
4. Existing and proposed drainage facilities including, but not limited to, swales, storm sewers, overland flow paths, and detention facilities;
5. The elevation of the 100-year floods, where the data are available;
6. Existing and proposed contours at intervals sufficient to accurately determine the extent of proposed changes if the proposed project involves grading, excavation, or filling;
7. Existing vegetation and proposed vegetation removal and revegetation.

B. If the proposed project will be elevated, including a new structure, substantial improvement, or repairs to a substantially damaged structure, the application shall include the flood protection elevation for the building site and the proposed elevations of the following:

1. The top of lowest floor (including basement, crawlspace, or enclosure floor).
2. The top of the next higher floor.
3. The bottom of the lowest horizontal structural member (in V Zones only).
4. The top of the slab of an attached garage.

5. The lowest elevation of machinery or equipment servicing the structure.
6. The lowest adjacent (finished) grade next to structure.
7. The highest adjacent (finished) grade next to structure.
8. The lowest adjacent grade at the lowest elevation of a deck or stairs, including structural support.

C. If the proposed project will be wet or dry floodproofed, including a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure, the application shall include the flood protection elevation for the building site and the elevation in relation to the datum of the effective FIRM to which the structure will be floodproofed and a certification by a registered professional engineer or licensed architect that the floodproofing methods meet the floodproofing criteria in WCC 17.16.090 or 17.16.110.

D. The application shall include a description of the extent to which any watercourse will be altered or relocated as a result of proposed development, and shall also submit a request for a conditional letter of map revision (CLOMR), where required by FEMA. The project will not be approved unless FEMA issues the CLOMR and the provisions of the letter are made part of the permit requirements.

E. The applicant shall submit a finished construction elevation certificate completed and certified by a licensed professional surveyor prior to occupancy.

F. Compliance with FEMA's National Flood Insurance Program, including the protection standards for critical habitats for listed species, shall be demonstrated through a habitat assessment, and, if necessary, a mitigation plan done in accordance with the FEMA Regional Guidance for the Puget Sound Basin. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.12.020 Administrative department – Designated.

The department of public works will administer and implement this title by granting or denying floodplain development permit applications in accordance with its provisions. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.030 Administrative department – Duties and responsibilities.

The duties of the department of public works shall include, but not be limited to:

A. Permit Review. The department of public works shall:

1. Review all floodplain development permit applications to determine that the permit requirements of this title have been satisfied;
2. Review all floodplain development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;
3. Review all floodplain development permit applications to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard, and prohibit those developments that are determined to adversely affect the flood-carrying capacity. For purposes of this section, "adversely affects flood-carrying capacity" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point;
4. Review and approve all elevation certificates to determine if the structure is in compliance with this title;
5. Review all development permit applications within the SFHA to ensure the proposed development is compliant with FEMA's National Flood Insurance Program protection standards for critical habitats of species listed under the Endangered Species Act;
6. Notify the department of planning and development services of the review and decision results of the above in a timely manner.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Chapter 17.10 WCC, the department of public works shall obtain, review, and reasonably use any base flood elevation and floodway data available from a federal, state, or other source in order to administer Chapter 17.16 WCC.

C. Information to Be Obtained and Maintained. The department of public works shall:

1. When base flood elevation data is provided through the flood insurance study or required as in subsection B of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and whether or not the structure contains a basement;
2. For all new or substantially improved nonresidential structures that are floodproofed:
 - a. Verify and record the actual elevation to which the structure has been floodproofed (in relation to datum specified on the FIRM); and
 - b. Maintain certification by a registered professional engineer that the floodproofing methods for any structure meet the criteria as provided in WCC 17.16.090;
3. Maintain for public inspection all records pertaining to the provisions of this title;
4. Submit reports as required by FEMA for the National Flood Insurance Program.

D. Alteration of Watercourse.

1. Prior to any alteration or relocation of a watercourse, the department of planning and development services shall provide notification to adjacent communities and the Washington State Department of Ecology in accordance with Chapter 16.08 WCC.
2. The department of public works shall:
 - a. Provide evidence of such notification to FEMA;
 - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Required Submission of Additional Information. The administrator shall have authority to require the applicant to submit information certified by licensed professional land surveyors, architects, or engineers as may be reasonably necessary to assure conformance with the standards of this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.040 Variances – Process.

A. The administrator shall review and decide requests for variances from the requirements of this title.

B. In deciding variance requests, the administrator shall consider WCC 17.12.050, all technical evaluations, relevant factors, and standards specified in other sections of this title; and:

1. The danger that materials may be swept onto other land to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, the sediment transport of the flood waters, and the effects of wave action, if applicable, expected at the site;
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges; and
12. The potential of the proposed development to adversely affect endangered species and proposed mitigation measures to ensure compliance with the Endangered Species Act.

C. Upon consideration of the factors of subsection B of this section and the purposes of this title, the administrator may attach such conditions to the granting of variances as deemed necessary to further the purposes of this title.

D. The administrator shall maintain the records of all actions and report any variances to the Federal Insurance Administration upon request. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.050 Variances – Conditions for issuance.

A. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided WCC 17.12.040(B)(1) through (12) have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.

B. Variances may be issued for the reconstruction, rehabilitation, or restoration of historic structures without regard to the procedures set forth in the remainder of this section.

C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

E. Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in WCC 17.12.040(B), or conflict with existing local laws or ordinances; and
4. A determination that the proposed development is compliant with the Endangered Species Act.

F. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

G. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection A of this section, and otherwise complies with WCC 17.16.020 and 17.16.030.

H. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.060 Appeals.

A. Any aggrieved party may appeal any order, variance, condition of approval, or alleged error made by the administrator in the administration or enforcement of this chapter to the hearing examiner as established by Whatcom County, who shall have the authority to hear and decide such appeals.

B. An appeal shall be filed within 14 days of the issuance of a final permit decision. For decisions associated with a project permit, as defined in Chapter 20.97 WCC, the final permit decision is when the project permit is issued. For decisions not associated with a project permit, the final permit decision is when the floodplain development permit is issued by the administrator.

C. Appeals shall be processed in accordance with Chapter 22.05 WCC and accompanied by a fee as specified in the unified fee schedule.

D. The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to superior court within 10 business days of the final decision of the hearing examiner. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.12.070 Enforcement.

A. Any person, firm, or corporation violating any of the provisions of this title may be subject to enforcement actions and penalties allowed by county code, as amended, for the applicable development permit, approval, or license required for the floodplain development or action. The administrator is hereby authorized to enforce the provisions of this chapter.

B. The enforcement process and penalties contained in Chapter 20.94 WCC are hereby adopted in full for enforcement of this chapter, except for WCC 20.94.010 (Purpose) and WCC 20.94.060 (Appeals); provided, that each occurrence of the term “zoning administrator” shall be substituted with “administrator.” (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.16

FLOOD HAZARD REDUCTION STANDARDS

Sections:

- 17.16.010 Standards.
- 17.16.020 Anchoring.
- 17.16.030 Construction materials and methods.
- 17.16.040 Utilities.
- 17.16.050 Subdivision proposals.
- 17.16.060 Review of building permits.
- 17.16.070 *Repealed.*
- 17.16.080 Residential construction.
- 17.16.090 Nonresidential construction.
- 17.16.095 Critical facilities.
- 17.16.100 Manufactured homes.
- 17.16.110 Wet floodproofing.
- 17.16.115 Recreational vehicles.
- 17.16.120 Floodways.
- 17.16.125 Standards for AE and A1-30 Zones with base flood elevations but no floodways.
- 17.16.130 Standards for shallow flooding areas (AO Zones).
- 17.16.140 Coastal high hazard areas.

17.16.010 Standards.

The standards set forth in WCC 17.16.020 through 17.16.140 are required in all areas of special flood hazards. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.020 Anchoring.

A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

B. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.030 Construction materials and methods.

A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated to or above the flood protection elevation so as to prevent water from entering or accumulating within the components during conditions of flooding. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.040 Utilities.

A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

C. On-site waste storage and disposal systems shall be located to avoid impairment to them, or contamination from them, during flooding.

D. Water supply wells associated with new development shall be located where they are not subject to ponding and are not in the floodway. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.050 Subdivision proposals.

A. All subdivision proposals shall:

1. Be consistent with the need to minimize flood damage.
2. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
3. Have adequate drainage provided to reduce exposure to flood damage.

B. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be developed in accordance with WCC 17.10.030(C). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.060 Review of building permits.

Where elevation data is not available, either through the flood insurance study or from another authoritative source (WCC 17.10.010 and 17.12.030(B)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.070 Specific standards.

Repealed by Ord. 2017-056. (Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.080 Residential construction.

A. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the flood protection elevation, as determined in accordance with WCC 17.10.020(D).

B. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

1. A minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
2. The bottom of all openings shall be no higher than one foot above grade either inside or outside of the opening in the crawlspace;
3. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters.

C. Subgrade crawlspaces are prohibited unless the following conditions are met:

1. The interior grade of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade;
2. The height of the subgrade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four feet at any point;

3. A drainage system designed to adequately drain the subgrade crawlspace area (e.g., subsurface drains or sump pump system) once flood waters have receded must be provided; and
4. The crawlspace must comply with applicable FEMA guidance (FEMA Technical Bulletin 11, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, or updated guidance).

The administrator will notify the applicant that construction of a subgrade crawlspace will likely impact flood insurance premiums. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.090 Nonresidential construction.

New construction and substantial improvement of any commercial, accessory, agricultural, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall:

A. Have the lowest floor, including basement, elevated to the level of the flood protection elevation. The space below the lowest floor must meet the standards in WCC 17.16.080(B) and (C); or

B. Be dry floodproofed so that:

1. Below the flood protection elevation the structure is watertight with walls substantially impermeable to the passage of water; and
2. Structural components are capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
3. The design and methods of construction are certified by a registered professional engineer in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be as set forth in WCC 17.12.030(E) and shall be provided by the applicant as required by the department of public works; or

C. Be wet floodproofed in compliance with the requirements of WCC 17.16.110.

Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.095 Critical facilities.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA (100-year floodplain). Construction of new critical facilities shall be permissible within the floodplain if no feasible alternative site is available. Critical facilities constructed within the floodplain shall have the lowest floor elevated two feet above the base flood elevation. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible without adversely affecting the flood-carrying capacity of the SFHA. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.16.100 Manufactured homes.

All manufactured homes to be placed or substantially improved shall be:

A. Elevated on a permanent foundation in accordance with WCC 17.16.080 if within Zones A, AE, AH, and AO, and subject to WCC Title 15.

B. Elevated on a permanent foundation in accordance with WCC 17.16.140 if within Zone V or VE.

C. Securely anchored to an adequately anchored foundation system in accordance with the provisions of WCC 17.16.020(B). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.110 Wet floodproofing.

A. Wet floodproofing is allowed for the following types of nonresidential construction:

1. Wet floodproofing is allowed without a variance for enclosed areas below the flood protection elevation that are used solely for parking, access, or limited storage, including attached and detached garages.

2. Wet floodproofing is allowed with a variance for the types of structures listed below; provided the proposal meets the conditions of subsection B of this section and applicable FEMA guidance (FEMA Technical Bulletin 7, Wet Floodproofing Requirements, or updated guidance).

a. Structures functionally dependent on close proximity to water.

b. Historic structures.

c. Accessory structures that do not exceed a maximum value of \$25,000 for the cost of construction and are designed to have a low potential for structural damage. The market value of construction shall be determined by the administrator in accordance with the valuation procedure used when setting building permit fees.

d. Agricultural structures used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including livestock, if they are designed to have a low potential for structural damage.

B. Each structure that is wet floodproofed shall meet the following standards:

1. It shall comply with the floodway encroachment provisions of WCC 17.16.120.

2. It shall be anchored to prevent flotation, collapse, and lateral movement.

3. All portions of the structure below the flood protection elevation shall be constructed of flood-resistant materials.

4. Service utilities such as mechanical, electrical, and heating equipment shall meet the standards of WCC 17.16.030(C) and 17.16.040.

5. It shall have openings to allow free flowage of water that meet the criteria in WCC 17.16.080(B).

6. It shall be designed to have a low potential for structural damage from flood inundation, scouring, velocities, and debris impact.

7. The intended use of the structure shall have a low damage potential for content damage or an emergency operation plan to remove the contents.

8. The project shall meet all other requirements of this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.16.115 Recreational vehicles.

Recreational vehicles placed on sites within Zones A, AE, AH, AO, V, and VE shall either:

A. Be on the site for fewer than 120 consecutive days; and

B. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and having no permanently attached additions; or

C. Meet the requirements of WCC 17.16.100 and anchoring requirements for manufactured homes. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A).

17.16.120 Floodways.

Located within areas of special flood hazard established in WCC 17.10.010 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. Construction or reconstruction of residential structures is prohibited within designated floodways, except for the following:

1. Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; provided, that the cost of which does not exceed 50 percent of the market value of the structure either (a) before the repair, reconstruction, or improvement is started; or (b) before the damage occurred, if the structure has been damaged and is being restored. Work done on structures to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions shall not be included in the 50 percent;
2. Repairs, replacement, reconstruction, or improvements to existing farmhouses located in designated floodways and located on designated agricultural lands that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-075;
3. Repairs, replacement, reconstruction, or improvements to substantially damaged residential dwellings other than farmhouses that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-076; or
4. Repairs, reconstruction, or improvements to residential structures identified as historic structures that do not increase the building's dimensions.

C. If the provisions of subsections A and B of this section are met, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this chapter. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.125 Standards for AE and A1-30 Zones with base flood elevations but no floodways.

In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. (Ord. 2019-005 Exh. A).

17.16.130 Standards for shallow flooding areas (AO Zones).

Shallow flooding areas appear on FIRMs as AO Zones with depth designations. The base flood depths in these zones range from one to three feet where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

A. New construction and substantial improvements of residential structures within AO Zones shall have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot above the depth number specified on the FIRM (at least two feet above the highest adjacent grade if no depth number is specified).

B. New construction and substantial improvements of nonresidential structures within AO Zones shall either:

1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, to one foot above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
2. Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer as in WCC 17.16.090(B)(3).

C. Adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures shall be provided. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.140 Coastal high hazard areas.

Located within areas of special flood hazard established in WCC 17.10.020 are coastal high hazard areas, designated as Zones V and VE. These areas have special flood hazards associated with high velocity waters from tidal surges and, therefore, in addition to meeting all applicable provisions in this title, the following provisions shall also apply:

A. All new construction and substantial improvements in Zones V and VE shall be elevated on pilings and columns so that:

1. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the flood protection elevation; and
2. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections (A)(1) and (2) of this section.

B. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V and VE, and whether or not such structures contain a basement. The local administrator shall maintain a record of all such information.

C. All new construction shall be located landward of the reach of mean high tide.

D. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

1. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

E. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

F. Prohibit the use of fill for structural support of buildings.

G. Prohibit manmade alteration of sand dunes which would increase potential flood damage. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

Chapter 17.20
FLOOD CONTROL
MAINTENANCE PROGRAM

(Repealed by Ord. 2008-047)

Chapter 17.24

UNAUTHORIZED USE OF

MOTORIZED VEHICLES UPON FLOOD CONTROL STRUCTURES

Sections:

- 17.24.010 Definitions.
- 17.24.020 Unauthorized use of motorized vehicle.
- 17.24.030 Violation – Penalty.

17.24.010 Definitions.

The definitions set forth in this section shall apply throughout this chapter.

A. “County” means Whatcom County, unless otherwise noted.

B. “Flood control structure” means any structure, whether natural or manmade in origin, that operates, or is intended, to contain, channelize, direct or otherwise control the flow of water along or near the banks of the Nooksack River.

C. “Motorized vehicle” means any vehicle that is motor-driven, whether by internal combustion engine or electric motor, and any attachments thereto.

D. “Nooksack River” means the river commonly known as the Nooksack River, along with its North, Middle, and South Forks, as more precisely defined in WAC 173-18-410, as now written or hereinafter amended, and the channels within which this river and its forks flow, within Whatcom County.

E. “Proper authorization” means use of a motorized vehicle for purposes of inspection, maintenance, improvement, or construction of flood control structures, or for access for legitimate agricultural purposes:

1. By immediate family members or current employees of the owner or tenant of the land upon which the flood control structure is located, under the authority and direction of that owner or tenant; or
2. Under the authority and with the current permission of the public agencies responsible for flood control activities within the county.

The claim of proper authorization is an affirmative defense which must be pled prior to hearing or trial, and which the defendant must prove by a preponderance of the evidence. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2003-002).

17.24.020 Unauthorized use of motorized vehicle.

It is unlawful for any person to operate, or to ride upon, a motorized vehicle on any flood control structure within 3,000 feet of the Nooksack River, unless done with proper authorization. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2003-002).

17.24.030 Violation – Penalty.

Violation of this chapter shall constitute a Class 1 civil infraction under the authority granted the county in Chapter 7.80 RCW. Each violation hereof shall be punishable by a maximum penalty or default amount as set forth in RCW 7.80.120, or any successor statute thereto. All violations shall be charged, heard, and determined in accordance with the procedures set forth in Chapter 7.80 RCW. Employees of the Whatcom County public works department, river and flood division, or its successor agency, if any there be, as well as all others who are otherwise authorized to enforce ordinances of this county, are hereby authorized to enforce the provisions of this title, consistent with the provisions of Chapter 7.80 RCW.

After having been found to have committed two infractions for violations of the provisions of this chapter, any person who further violates the provisions of this chapter shall be guilty of a misdemeanor, and shall be subject to

criminal penalties including a fine of not more than \$1,000, together with statutory assessments and any costs of action, and imprisonment in the county jail for a period of not more than 90 days.

In addition to the civil and criminal remedies provided for above, the county or the owner(s) of the land affected by the violation of the provisions of this chapter may bring such injunctive, declaratory or other actions as deemed necessary, and as otherwise allowed by law, to ensure that violations are prevented or cease, and to otherwise enforce the provisions of this chapter. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2003-002).

Title 17

FLOOD DAMAGE PREVENTION¹

Chapters:

- 17.04 General Provisions**
- 17.08 Definitions**
- 17.10 Regulatory Data**
- 17.12 Administration**
- 17.16 Flood Hazard Reduction Standards**
- 17.20 *Repealed***
- 17.24 Unauthorized Use of Motorized Vehicles Upon Flood Control Structures**

¹ Prior legislation: Ord. dated 9/23/77.

Chapter 17.04

GENERAL PROVISIONS

Sections:

- 17.04.010 Findings of fact.
- 17.04.020 Statement of purpose and liability disclaimer.
- 17.04.030 Methods of reducing flood losses.
- 17.04.040 Application of title.
- 17.04.050 Repealed.
- 17.04.060 Abrogation and greater restrictions.
- 17.04.070 Interpretation.
- 17.04.080 Compliance required.
- 17.04.090 Repealed.
- 17.04.100 Severability.

17.04.010 Findings of fact.

The findings of fact are the following:

A. The flood hazard areas of Whatcom County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. Without taking appropriate care and precautions, development in floodplains and watersheds may increase flood heights, frequencies, and velocities, and may result in a greater threat to humans, damage to property, destruction of natural floodplain functions, and adverse impacts to water quantity, quality, and habitat. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.020 Statement of purpose and liability disclaimer.

This title is enacted as an exercise of the police power of the county for the benefit of the public at large. It is not intended to create a special relationship with any individual, or individuals, nor to identify and protect any particular class of persons. The purpose of this title is to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas in a manner that does not adversely affect endangered species or their habitats. The degree of property and habitat protection required by this title is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by manmade or natural causes. This title does not imply that land outside of the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This title shall not create liability on the part of Whatcom County, any officer or employee thereof, or the Federal Insurance Administration, for any damages to property or habitat that result from reliance on this title or any administrative decision lawfully made thereunder. Nor shall the county or any officer, agent, or employee thereof incur or be held as assuming any liability by reason or in consequence of any permission, certificate of inspection, inspection or approval authorized herein, or issued or given as herein provided, or by reasons or consequence of any things done or acts performed pursuant to the provisions of this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.030 Methods of reducing flood losses.

In order to accomplish its purposes, this title includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, shall be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage; and

E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.040 Application of title.

This title shall apply to all special flood hazard areas, as defined in WCC 17.08.040, within the jurisdiction of Whatcom County. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.050 Basis for establishing areas of special flood hazard.

Repealed by Ord. 2017-056. (Ord. 96-050 Exh. A; Ord. 90-94; Ord. 87-25 (part)).

17.04.060 Abrogation and greater restrictions.

This title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this title and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.070 Interpretation.

In the interpretation and application of this title, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.080 Compliance required.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this title and other applicable regulations. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.090 Penalty for noncompliance.

Repealed by Ord. 2017-056. (Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.04.100 Severability.

The provisions and sections of this title shall be deemed separable and the invalidity of any portion of this title shall not affect the validity of the remainder. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.08

DEFINITIONS

Sections:

17.08.010	Generally.
17.08.013	Accessory structure.
17.08.015	Administrator.
17.08.020	Appeal.
17.08.030	Area of shallow flooding.
17.08.040	Area of special flood hazard.
17.08.050	Base flood.
17.08.051	Base flood elevation.
17.08.053	Basement.
17.08.055	Breakaway wall.
17.08.057	Coastal high hazard area.
17.08.058	Critical facility.
17.08.060	Development.
17.08.062	Dry floodproofing.
17.08.064	Elevation certificate.
17.08.066	FEMA.
17.08.070	Flood or flooding.
17.08.080	Flood insurance rate map (FIRM).
17.08.090	Flood insurance study.
17.08.092	Flood protection elevation (FPE).
17.08.095	Floodway.
17.08.097	Historic structure.
17.08.100	Lowest floor.
17.08.110	Manufactured home.
17.08.120	Manufactured home park or subdivision.
17.08.130	New construction.
17.08.140	Recreational vehicle.
17.08.155	Special flood hazard area (SFHA).
17.08.160	Start of construction.
17.08.170	Structure.
17.08.178	Substantial damage.
17.08.180	Substantial improvement.
17.08.190	Variance.
17.08.193	Watercourse.
17.08.195	Wet floodproofing.
17.08.200	Zone.

17.08.010 Generally.

Unless specifically defined below, words or phrases used in this title shall be interpreted so as to give them the meaning they have in common usage or to give this title its most reasonable application. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.013 Accessory structure.

“Accessory structure” means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.015 Administrator.

Whenever the term “administrator” is used it means the director of public works or his designee. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.020 Appeal.

“Appeal” means a request for a review of the administrator’s interpretation of any provision of this title or a request for a variance. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.030 Area of shallow flooding.

“Area of shallow flooding” means a designated AO or AH Zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.040 Area of special flood hazard.

“Area of special flood hazard” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Areas of special flood hazard are designated on flood insurance rate maps with the letter A or V, including AE, AO, AH, A1-99 and VE. The area of special flood hazard is also referred to as the special flood hazard area or SFHA. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.050 Base flood.

“Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as “100-year flood.” Designation on maps always includes the letter A or V. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.051 Base flood elevation.

“Base flood elevation” is the elevation of the base flood above the datum of the effective FIRM. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.053 Basement.

“Basement” is any area of the structure having its floor subgrade (below ground level) on all sides, including a subgrade crawlspace. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.055 Breakaway wall.

“Breakaway wall” means a wall that is not a part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damages to the elevated portion of the building or supporting foundation system. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.057 Coastal high hazard area.

“Coastal high hazard area” means the area subject to high velocity waters, including, but not limited to, storm surge or tsunamis. The area is designated on the FIRM as Zone V1-V30, VE or V. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.058 Critical facility.

“Critical facility” means a facility necessary to protect the public health, safety, and welfare during a flood. Critical facilities include, but are not limited to: schools; nursing homes; hospitals; police, fire, and emergency operations installations; water and wastewater treatment plants; electric power stations; and installations which produce, use, or store hazardous materials or hazardous waste (other than consumer products containing hazardous substances or hazardous waste intended for household use). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.060 Development.

“Development” means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, subdivision of land, removal of substantial amounts (greater than five percent) of vegetation, or alteration of natural site characteristics located within the area of special flood hazard. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.062 Dry floodproofing.

“Dry floodproofing” means any combination of structural and nonstructural measures that prevent flood waters from entering a structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.064 Elevation certificate.

“Elevation certificate” means the official form from FEMA used to provide elevation information necessary to ensure compliance with provisions of this title and determine the proper flood insurance premium rate. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.066 FEMA.

“FEMA” means the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.070 Flood or flooding.

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters; and/or

B. The unusual and rapid accumulation or runoff of surface waters from any source. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.080 Flood insurance rate map (FIRM).

“Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.090 Flood insurance study.

“Flood insurance study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary map, and the water surface elevation of the base flood. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.092 Flood protection elevation (FPE).

“Flood protection elevation” means the elevation above the datum of the effective FIRM to which new and substantially improved structures including associated machinery or equipment and other service facilities must be protected from flood damage. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Comment [TB1]: Required to maintain FEMA CRS Class 6 rating

17.08.095 Floodway.

“Floodway” means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.097 Historic structure.

“Historic structure” means any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior; or
2. Directly by the Secretary of the Interior in states without approved programs. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.100 Lowest floor.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this title found at WCC 17.16.080(B). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.110 Manufactured home.

“Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term “manufactured home” also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 120 consecutive days. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers, recreational vehicles and other similar vehicles. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.120 Manufactured home park or subdivision.

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.130 New construction.

“New construction” means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part). Formerly 17.08.140).

17.08.140 Recreational vehicle.

“Recreational vehicle” is a vehicle which is:

- A. Built on a single chassis; and
- B. Four hundred square feet or less when measured at the largest horizontal projection; and
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A. Formerly 17.08.130).

17.08.155 Special flood hazard area (SFHA).

See WCC 17.08.040, Area of special flood hazard. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.160 Start of construction.

“Start of construction” (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial

improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.170 Structure.

“Structure” means a walled and roofed building, including a gas or liquid storage tank that is principally above ground. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.178 Substantial damage.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.180 Substantial improvement.

“Substantial improvement” means any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- A. Before the start of construction of the improvement or repair; or
- B. Before the damage occurred, if the structure has been damaged and is being restored.

For the purpose of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

C. Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

D. Any alteration of a historic structure; provided, that the alteration will not preclude the structure’s continued designation as a historic structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.190 Variance.

“Variance” means a grant of relief from the requirements of this title which permits construction in a manner that would otherwise be prohibited by this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.08.193 Watercourse.

“Watercourse” means only the channel and banks of an identifiable watercourse, and not the adjoining floodplain areas. The flood-carrying capacity of a watercourse refers to the flood-carrying capacity of the channel (except in the case of alluvial fans, where a channel is not typically defined). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.195 Wet floodproofing.

“Wet floodproofing” means permanent or contingent measures applied to a structure and/or its contents that prevent or provide resistance to damage from flooding by using flood-resistant materials and by allowing water to enter and exit the structure. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.08.200 Zone.

“Zone” means one or more areas delineated on the FIRM. The following zones may be used on the adopted FIRM. The special flood hazard area is comprised of the A and V Zones.

– A: SFHA where no base flood elevation is provided.

- A#: numbered A Zones (e.g., A7 or A14), SFHA with a base flood elevation.
- AE: SFHA with a base flood elevation.
- AO: SFHA subject to inundation by shallow flooding, usually resulting from sheet flow on sloping terrain, with average depths between one and three feet. Average flood depths are shown.
- AH: SFHA subject to inundation by shallow flooding (usually areas of ponding) with average depths between one and three feet. Base flood elevations are shown.
- D: area of undetermined but possible flood hazard.
- V: the SFHA subject to coastal high hazard flooding including waves of three feet or greater in height. There are three types of V Zones: V, V#, and VE, and they correspond to the A Zone designations.
- Shaded X: areas of two-tenths of one percent annual chance flood; areas of one percent annual chance flood with average depths of less than one foot or with drainage areas less than one square mile; and areas protected by levees from one percent annual chance flood.
- Unshaded X: areas determined to be outside the two-tenths of one percent annual chance floodplain. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.10
REGULATORY DATA

Sections:

- 17.10.010 Basis for establishing special flood hazard area.
- 17.10.020 Flood hazard data.
- 17.10.030 New regulatory data.

17.10.010 Basis for establishing special flood hazard area.

A. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Whatcom County, Washington and Incorporated Areas,” dated January 18, 2019, and any revisions thereto, with an accompanying flood insurance rate map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this title. The flood insurance study and the FIRM are on file at the department of public works.

B. The administrator shall make interpretations where needed as to the exact location of the boundaries of the SFHA where there appears to be a conflict between the mapped SFHA boundary and actual field conditions, as determined by the base flood elevation and ground elevations. The applicant may appeal the administrator’s interpretation of the location of the boundary in accordance with WCC 17.12.060.

C. The applicant may officially have a structure or property removed from the SFHA by obtaining a letter of map amendment (LOMA) with FEMA. A LOMA establishes a structure or property’s location in relation to the SFHA. LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.10.020 Flood hazard data.

A. The base flood elevation for the SFHAs delineated as Zone AE of Whatcom County, Washington, shall be as delineated on the 100-year flood profiles in “The Flood Insurance Study for Whatcom County, Washington and Incorporated Areas.”

B. The base flood elevation for each SFHA delineated as a Zone AH or Zone AO shall be that elevation (or depth) delineated on the flood insurance rate map. Where base flood depths are not available in Zone AO, the base flood elevation shall be considered to be two feet above the highest grade adjacent to the structure.

C. The base flood elevation for all other SFHAs delineated as Zone A shall be as defined in subsection F of this section and WCC 17.10.030(C).

D. The flood protection elevation shall be the base flood elevation plus one foot.

E. The floodway shall be as delineated on the flood insurance rate map or in accordance with subsection F of this section and WCC 17.10.030(C).

F. Where base flood elevation and floodway data have not been provided in special flood hazard areas, the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, local, or other source. In cases where the administrator is unable to obtain any base flood elevation, the flood protection elevation shall be two feet above the highest adjacent grade.

G. The base flood elevation for the SFHAs delineated as coastal Zone VE and AE of Whatcom County, Washington, shall be as delineated on the flood insurance rate maps and as found in “The Flood Insurance Study for Whatcom County, Washington and Incorporated Areas.” (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.10.030 New regulatory data.

A. All requests to revise or change the flood hazard data, including requests for a letter of map revision and a conditional letter of map revision, shall be reviewed by the administrator.

1. The administrator shall not sign the community acknowledgment form for any requests based on filling or other development, unless the applicant for the letter documents that such filling or development is in compliance with this title.

2. The administrator shall not approve a request to revise or change a floodway delineation until FEMA has issued a conditional letter of map revision (CLOMR) that approves the change.

B. If an applicant disagrees with the regulatory data prescribed by this title, he/she may submit a detailed technical study needed to replace existing data with better data in accordance with FEMA mapping guidelines. If the data in question are shown on the published FIRM, the submittal must also include a request to FEMA for a conditional letter of map revision.

C. Where base flood elevation or floodway delineation is not available in accordance with WCC 17.10.020, applicants for approval of new subdivisions and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, shall include such data with their permit applications, unless waived by the administrator. This provision does not apply to applications for permits for small projects on large lots, such as constructing a single-family home; in these situations, the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, local or other authoritative source. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.12

ADMINISTRATION

Sections:

- 17.12.010 Establishment of floodplain development permit.
- 17.12.012 Requirements for floodplain development permit application within a SFHA.
- 17.12.020 Administrative department – Designated.
- 17.12.030 Administrative department – Duties and responsibilities.
- 17.12.040 Variances – Process.
- 17.12.050 Variances – Conditions for issuance.
- 17.12.060 Appeals.
- 17.12.070 Enforcement.

17.12.010 Establishment of floodplain development permit.

A floodplain development permit shall be obtained before construction or development begins within any area of special flood hazard established in WCC 17.10.010. The permit shall be for all development as set forth in WCC 17.08.060. In situations where another county permit is required for development, the floodplain development permit may be issued in the form of conditions within the other county permit. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.012 Requirements for floodplain development permit application within a SFHA.

Application for a floodplain development permit within a SFHA shall be made through the development application process administered by the department of planning and development services or on forms furnished by the department of public works if other local permits are not required, and may include, but not be limited to:

A. One or more site plans drawn to scale showing:

1. The nature, location, dimensions, and elevations of the property;
2. Names and locations of all water bodies, waterways, and drainage facilities within 200 feet of the site;
3. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials;
4. Existing and proposed drainage facilities including, but not limited to, swales, storm sewers, overland flow paths, and detention facilities;
5. The elevation of the 100-year floods, where the data are available;
6. Existing and proposed contours at intervals sufficient to accurately determine the extent of proposed changes if the proposed project involves grading, excavation, or filling;
7. Existing vegetation and proposed vegetation removal and revegetation.

B. If the proposed project will be elevated, including a new structure, substantial improvement, or repairs to a substantially damaged structure, the application shall include the flood protection elevation for the building site and the proposed elevations of the following:

1. The top of lowest floor (including basement, crawlspace, or enclosure floor).
2. The top of the next higher floor.
3. The bottom of the lowest horizontal structural member (in V Zones only).
4. The top of the slab of an attached garage.

5. The lowest elevation of machinery or equipment servicing the structure.
6. The lowest adjacent (finished) grade next to structure.
7. The highest adjacent (finished) grade next to structure.
8. The lowest adjacent grade at the lowest elevation of a deck or stairs, including structural support.

C. If the proposed project will be wet or dry floodproofed, including a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure, the application shall include the flood protection elevation for the building site and the elevation in relation to the datum of the effective FIRM to which the structure will be floodproofed and a certification by a registered professional engineer or licensed architect that the floodproofing methods meet the floodproofing criteria in WCC 17.16.090 or 17.16.110.

D. The application shall include a description of the extent to which any watercourse will be altered or relocated as a result of proposed development, and shall also submit a request for a conditional letter of map revision (CLOMR), where required by FEMA. The project will not be approved unless FEMA issues the CLOMR and the provisions of the letter are made part of the permit requirements.

E. The applicant shall submit a finished construction elevation certificate completed and certified by a licensed professional surveyor prior to occupancy.

F. Compliance with FEMA's National Flood Insurance Program, including the protection standards for critical habitats for listed species, shall be demonstrated through a habitat assessment, and, if necessary, a mitigation plan done in accordance with the FEMA Regional Guidance for the Puget Sound Basin. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.12.020 Administrative department – Designated.

The department of public works will administer and implement this title by granting or denying floodplain development permit applications in accordance with its provisions. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.030 Administrative department – Duties and responsibilities.

The duties of the department of public works shall include, but not be limited to:

A. Permit Review. The department of public works shall:

1. Review all floodplain development permit applications to determine that the permit requirements of this title have been satisfied;
2. Review all floodplain development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;
3. Review all floodplain development permit applications to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard, and prohibit those developments that are determined to adversely affect the flood-carrying capacity. For purposes of this section, "adversely affects flood-carrying capacity" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point;
4. Review and approve all elevation certificates to determine if the structure is in compliance with this title;
5. Review all development permit applications within the SFHA to ensure the proposed development is compliant with FEMA's National Flood Insurance Program protection standards for critical habitats of species listed under the Endangered Species Act;
6. Notify the department of planning and development services of the review and decision results of the above in a timely manner.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Chapter 17.10 WCC, the department of public works shall obtain, review, and reasonably use any base flood elevation and floodway data available from a federal, state, or other source in order to administer Chapter 17.16 WCC.

C. Information to Be Obtained and Maintained. The department of public works shall:

1. When base flood elevation data is provided through the flood insurance study or required as in subsection B of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and whether or not the structure contains a basement;
2. For all new or substantially improved nonresidential structures that are floodproofed:
 - a. Verify and record the actual elevation to which the structure has been floodproofed (in relation to datum specified on the FIRM); and
 - b. Maintain certification by a registered professional engineer that the floodproofing methods for any structure meet the criteria as provided in WCC 17.16.090;
3. Maintain for public inspection all records pertaining to the provisions of this title;
4. Submit reports as required by FEMA for the National Flood Insurance Program.

D. Alteration of Watercourse.

1. Prior to any alteration or relocation of a watercourse, the department of planning and development services shall provide notification to adjacent communities and the Washington State Department of Ecology in accordance with Chapter 16.08 WCC.
2. The department of public works shall:
 - a. Provide evidence of such notification to FEMA;
 - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Required Submission of Additional Information. The administrator shall have authority to require the applicant to submit information certified by licensed professional land surveyors, architects, or engineers as may be reasonably necessary to assure conformance with the standards of this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.040 Variances – Process.

A. ~~The hearing examiner/administrator as established by Whatcom County~~ shall ~~hear-review~~ and decide requests for variances from the requirements of this title.

B. In deciding variance requests, the ~~hearing examiner/administrator~~ shall consider WCC 17.12.050, all technical evaluations, relevant factors, and standards specified in other sections of this title; and:

1. The danger that materials may be swept onto other land to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;

Comment [TB2]: Variances to flood code do not require hearings examiner decision or public notice, this amendment is being proposed to reduce burden to applicant and staff when processing variances for Ag. Structures per updated FEMA policy #104-008-03

Comment [TB3]: Same as above

6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, the sediment transport of the flood waters, and the effects of wave action, if applicable, expected at the site;
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges; and
12. The potential of the proposed development to adversely affect endangered species and proposed mitigation measures to ensure compliance with the Endangered Species Act.

C. Upon consideration of the factors of subsection B of this section and the purposes of this title, the ~~hearing-examiner~~ ~~administrator~~ may attach such conditions to the granting of variances as deemed necessary to further the purposes of this title.

D. The ~~hearing-examiner~~ ~~administrator~~ shall maintain the records of all actions and report any variances to the Federal Insurance Administration upon request. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

Comment [TB4]: Variances to flood code do not require hearings examiner decision or public notice, this amendment is being proposed to reduce burden to applicant and staff when processing variances for Ag. Structures per updated FEMA policy #104-008-03

Comment [TB5]: Same as above

17.12.050 Variances – Conditions for issuance.

A. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided WCC 17.12.040(B)(1) through (12) have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.

B. Variances may be issued for the reconstruction, rehabilitation, or restoration of historic structures without regard to the procedures set forth in the remainder of this section.

C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

E. Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in WCC 17.12.040(B), or conflict with existing local laws or ordinances; and
4. A determination that the proposed development is compliant with the Endangered Species Act.

F. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its

inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

G. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection A of this section, and otherwise complies with WCC 17.16.020 and 17.16.030.

H. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.12.060 Appeals.

A. Any aggrieved party may appeal any order, variance, condition of approval, or alleged error made by the administrator in the administration or enforcement of this chapter to the hearing examiner as established by Whatcom County, who shall have the authority to hear and decide such appeals.

Comment [TB6]: "Hearings examiner as established by Whatcom County" was removed from section 17.12.040 (variances) but is needed for appeals.

B. An appeal shall be filed within 14 days of the issuance of a final permit decision. For decisions associated with a project permit, as defined in Chapter 20.97 WCC, the final permit decision is when the project permit is issued. For decisions not associated with a project permit, the final permit decision is when the floodplain development permit is issued by the administrator.

C. Appeals shall be processed in accordance with Chapter 22.05 WCC and accompanied by a fee as specified in the unified fee schedule.

D. The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to superior court within 10 business days of the final decision of the hearing examiner. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.12.070 Enforcement.

A. Any person, firm, or corporation violating any of the provisions of this title may be subject to enforcement actions and penalties allowed by county code, as amended, for the applicable development permit, approval, or license required for the floodplain development or action. The administrator is hereby authorized to enforce the provisions of this chapter.

B. The enforcement process and penalties contained in Chapter 20.94 WCC are hereby adopted in full for enforcement of this chapter, except for WCC 20.94.010 (Purpose) and WCC 20.94.060 (Appeals); provided, that each occurrence of the term "zoning administrator" shall be substituted with "administrator." (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

Chapter 17.16

FLOOD HAZARD REDUCTION STANDARDS

Sections:

- 17.16.010 Standards.
- 17.16.020 Anchoring.
- 17.16.030 Construction materials and methods.
- 17.16.040 Utilities.
- 17.16.050 Subdivision proposals.
- 17.16.060 Review of building permits.
- 17.16.070 *Repealed.*
- 17.16.080 Residential construction.
- 17.16.090 Nonresidential construction.
- 17.16.095 Critical facilities.
- 17.16.100 Manufactured homes.
- 17.16.110 Wet floodproofing.
- 17.16.115 Recreational vehicles.
- 17.16.120 Floodways.
- 17.16.125 Standards for AE and A1-30 Zones with base flood elevations but no floodways.
- 17.16.130 Standards for shallow flooding areas (AO Zones).
- 17.16.140 Coastal high hazard areas.

17.16.010 Standards.

The standards set forth in WCC 17.16.020 through 17.16.140 are required in all areas of special flood hazards. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.020 Anchoring.

A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

B. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.030 Construction materials and methods.

A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated ~~to or above the flood protection elevation or located~~ so as to prevent water from entering or accumulating within the components during conditions of flooding. ~~Locating such equipment below the base flood elevation may cause flood insurance premiums to be increased.~~ (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

Comment [TB7]: Required to maintain FEMA CRS Class 6 rating

Comment [TB8]: Not necessary as equipment below the BFE/FPE is not allowed

17.16.040 Utilities.

A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

C. On-site waste storage and disposal systems shall be located to avoid impairment to them, or contamination from them, during flooding.

D. Water supply wells associated with new development shall be located where they are not subject to ponding and are not in the floodway. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.050 Subdivision proposals.

A. All subdivision proposals shall:

1. Be consistent with the need to minimize flood damage.
2. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
3. Have adequate drainage provided to reduce exposure to flood damage.

B. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be developed in accordance with WCC 17.10.030(C). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.060 Review of building permits.

Where elevation data is not available, either through the flood insurance study or from another authoritative source (WCC 17.10.010 and 17.12.030(B)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.070 Specific standards.

Repealed by Ord. 2017-056. (Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.080 Residential construction.

A. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the flood protection elevation, as determined in accordance with WCC 17.10.020(D).

B. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

1. A minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
2. The bottom of all openings shall be no higher than one foot above grade either inside or outside of the opening in the crawlspace;
3. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters.

C. Subgrade crawlspaces are prohibited unless the following conditions are met:

1. The interior grade of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade;
2. The height of the subgrade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four feet at any point;

3. A drainage system designed to adequately drain the subgrade crawlspace area (e.g., subsurface drains or sump pump system) once flood waters have receded must be provided; and
4. The crawlspace must comply with applicable FEMA guidance (FEMA Technical Bulletin 11, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, or updated guidance).

The administrator will notify the applicant that construction of a subgrade crawlspace will likely impact flood insurance premiums. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.090 Nonresidential construction.

New construction and substantial improvement of any commercial, accessory, agricultural, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall:

A. Have the lowest floor, including basement, elevated to the level of the flood protection elevation. The space below the lowest floor must meet the standards in WCC 17.16.080(B) and (C); or

B. Be dry floodproofed so that:

1. Below the flood protection elevation the structure is watertight with walls substantially impermeable to the passage of water; and
2. Structural components are capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
3. The design and methods of construction are certified by a registered professional engineer in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be as set forth in WCC 17.12.030(E) and shall be provided by the applicant as required by the department of public works; or

C. Be wet floodproofed in compliance with the requirements of WCC 17.16.110.

Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.095 Critical facilities.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA (100-year floodplain). Construction of new critical facilities shall be permissible within the floodplain if no feasible alternative site is available. Critical facilities constructed within the floodplain shall have the lowest floor elevated two feet above the base flood elevation. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible without adversely affecting the flood-carrying capacity of the SFHA. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.16.100 Manufactured homes.

All manufactured homes to be placed or substantially improved shall be:

A. Elevated on a permanent foundation in accordance with WCC 17.16.080 if within Zones A, AE, AH, and AO, and subject to WCC Title 15.

B. Elevated on a permanent foundation in accordance with WCC 17.16.140 if within Zone V or VE.

C. Securely anchored to an adequately anchored foundation system in accordance with the provisions of WCC 17.16.020(B). (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.110 Wet floodproofing.

A. Wet floodproofing is allowed for the following types of nonresidential construction:

1. Wet floodproofing is allowed without a variance for enclosed areas below the flood protection elevation that are used solely for parking, access, or limited storage, including attached and detached garages.

2. Wet floodproofing is allowed with a variance for the types of structures listed below; ~~however, the administrator may waive the requirement for a formal variance,~~ provided the proposal meets the conditions of subsection B of this section and applicable FEMA guidance (FEMA Technical Bulletin 7, Wet Floodproofing Requirements, or updated guidance).

Comment [TB9]: A Variance for Ag. structures is required per updated FEMA policy document #104-008-03

a. Structures functionally dependent on close proximity to water.

b. Historic structures.

c. Accessory structures that do not exceed a maximum value of \$25,000 for the cost of construction and are designed to have a low potential for structural damage. The market value of construction shall be determined by the administrator in accordance with the valuation procedure used when setting building permit fees.

d. Agricultural structures used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including livestock, if they are designed to have a low potential for structural damage.

B. Each structure that is wet floodproofed shall meet the following standards:

1. It shall comply with the floodway encroachment provisions of WCC 17.16.120.

2. It shall be anchored to prevent flotation, collapse, and lateral movement.

3. All portions of the structure below the flood protection elevation shall be constructed of flood-resistant materials.

4. Service utilities such as mechanical, electrical, and heating equipment shall meet the standards of WCC 17.16.030(C) and 17.16.040.

5. It shall have openings to allow free flowage of water that meet the criteria in WCC 17.16.080(B).

6. It shall be designed to have a low potential for structural damage from flood inundation, scouring, velocities, and debris impact.

7. The intended use of the structure shall have a low damage potential for content damage or an emergency operation plan to remove the contents.

8. The project shall meet all other requirements of this title. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A).

17.16.115 Recreational vehicles.

Recreational vehicles placed on sites within Zones A, AE, AH, AO, V, and VE shall either:

A. Be on the site for fewer than 120 consecutive days; and

B. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and having no permanently attached additions; or

C. Meet the requirements of WCC 17.16.100 and anchoring requirements for manufactured homes. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A).

17.16.120 Floodways.

Located within areas of special flood hazard established in WCC 17.10.010 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. Construction or reconstruction of residential structures is prohibited within designated floodways, except for the following:

1. Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; provided, that the cost of which does not exceed 50 percent of the market value of the structure either (a) before the repair, reconstruction, or improvement is started; or (b) before the damage occurred, if the structure has been damaged and is being restored. Work done on structures to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions shall not be included in the 50 percent;
2. Repairs, replacement, reconstruction, or improvements to existing farmhouses located in designated floodways and located on designated agricultural lands that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-075;
3. Repairs, replacement, reconstruction, or improvements to substantially damaged residential dwellings other than farmhouses that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-076; or
4. Repairs, reconstruction, or improvements to residential structures identified as historic structures that do not increase the building's dimensions.

C. If the provisions of subsections A and B of this section are met, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this chapter. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.125 Standards for AE and A1-30 Zones with base flood elevations but no floodways.

In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. (Ord. 2019-005 Exh. A).

17.16.130 Standards for shallow flooding areas (AO Zones).

Shallow flooding areas appear on FIRMs as AO Zones with depth designations. The base flood depths in these zones range from one to three feet where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

A. New construction and substantial improvements of residential structures within AO Zones shall have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot above the depth number specified on the FIRM (at least two feet above the highest adjacent grade if no depth number is specified).

B. New construction and substantial improvements of nonresidential structures within AO Zones shall either:

1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, to one foot above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
2. Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer as in WCC 17.16.090(B)(3).

C. Adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures shall be provided. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

17.16.140 Coastal high hazard areas.

Located within areas of special flood hazard established in WCC 17.10.020 are coastal high hazard areas, designated as Zones V and VE. These areas have special flood hazards associated with high velocity waters from tidal surges and, therefore, in addition to meeting all applicable provisions in this title, the following provisions shall also apply:

A. All new construction and substantial improvements in Zones V and VE shall be elevated on pilings and columns so that:

1. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the flood protection elevation; and
2. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections (A)(1) and (2) of this section.

B. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V and VE, and whether or not such structures contain a basement. The local administrator shall maintain a record of all such information.

C. All new construction shall be located landward of the reach of mean high tide.

D. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

1. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

E. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

F. Prohibit the use of fill for structural support of buildings.

G. Prohibit manmade alteration of sand dunes which would increase potential flood damage. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 96-050 Exh. A; Ord. 87-25 (part)).

Chapter 17.20
FLOOD CONTROL
MAINTENANCE PROGRAM

(Repealed by Ord. 2008-047)

Chapter 17.24

UNAUTHORIZED USE OF

MOTORIZED VEHICLES UPON FLOOD CONTROL STRUCTURES

Sections:

- 17.24.010 Definitions.
- 17.24.020 Unauthorized use of motorized vehicle.
- 17.24.030 Violation – Penalty.

17.24.010 Definitions.

The definitions set forth in this section shall apply throughout this chapter.

A. “County” means Whatcom County, unless otherwise noted.

B. “Flood control structure” means any structure, whether natural or manmade in origin, that operates, or is intended, to contain, channelize, direct or otherwise control the flow of water along or near the banks of the Nooksack River.

C. “Motorized vehicle” means any vehicle that is motor-driven, whether by internal combustion engine or electric motor, and any attachments thereto.

D. “Nooksack River” means the river commonly known as the Nooksack River, along with its North, Middle, and South Forks, as more precisely defined in WAC 173-18-410, as now written or hereinafter amended, and the channels within which this river and its forks flow, within Whatcom County.

E. “Proper authorization” means use of a motorized vehicle for purposes of inspection, maintenance, improvement, or construction of flood control structures, or for access for legitimate agricultural purposes:

1. By immediate family members or current employees of the owner or tenant of the land upon which the flood control structure is located, under the authority and direction of that owner or tenant; or
2. Under the authority and with the current permission of the public agencies responsible for flood control activities within the county.

The claim of proper authorization is an affirmative defense which must be pled prior to hearing or trial, and which the defendant must prove by a preponderance of the evidence. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2003-002).

17.24.020 Unauthorized use of motorized vehicle.

It is unlawful for any person to operate, or to ride upon, a motorized vehicle on any flood control structure within 3,000 feet of the Nooksack River, unless done with proper authorization. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2003-002).

17.24.030 Violation – Penalty.

Violation of this chapter shall constitute a Class 1 civil infraction under the authority granted the county in Chapter 7.80 RCW. Each violation hereof shall be punishable by a maximum penalty or default amount as set forth in RCW 7.80.120, or any successor statute thereto. All violations shall be charged, heard, and determined in accordance with the procedures set forth in Chapter 7.80 RCW. Employees of the Whatcom County public works department, river and flood division, or its successor agency, if any there be, as well as all others who are otherwise authorized to enforce ordinances of this county, are hereby authorized to enforce the provisions of this title, consistent with the provisions of Chapter 7.80 RCW.

After having been found to have committed two infractions for violations of the provisions of this chapter, any person who further violates the provisions of this chapter shall be guilty of a misdemeanor, and shall be subject to

criminal penalties including a fine of not more than \$1,000, together with statutory assessments and any costs of action, and imprisonment in the county jail for a period of not more than 90 days.

In addition to the civil and criminal remedies provided for above, the county or the owner(s) of the land affected by the violation of the provisions of this chapter may bring such injunctive, declaratory or other actions as deemed necessary, and as otherwise allowed by law, to ensure that violations are prevented or cease, and to otherwise enforce the provisions of this chapter. (Ord. 2019-005 Exh. A; Ord. 2017-056 Exh. A; Ord. 2003-002).



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:	Introduced for Public Hearing
File Created:	07/19/2021	Entered by:	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Resolution Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	09/14/2021	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

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
07/27/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

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 requirements 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: Executive
INTRODUCTION DATE: July 27, 2021

RESOLUTION NO. _____

**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 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, following a public hearing the Whatcom County Council declared real property known as 1661 Baker Creek Place, tax parcel number 3803171904530000 to be surplus; and

WHEREAS, 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 to Lake Whatcom Treatment Center, a non-profit agency as allowed through WCC 1.10.340; and

NOW, THEREFORE, BE IT RESOLVED that the 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 requirements of Whatcom County Code, Chapter 1.10.

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:

/s/ Christopher Quinn, approved electronically

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: AB2021-510

File ID:	AB2021-510	Version:	1	Status:	Agenda Ready
File Created:	08/30/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Special Order of Business		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Request Council appointment of one councilmember to attend the Whatcom Transportation Authority (WTA) Board Composition Review, as required by law

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Per RCW 36.57A.055, a member of the county legislative authority and an elected representative from each city within the boundaries of the Public Transportation Benefit Area must meet to review the composition of the WTA governing body every four years. The Council has received a request from WTA to appoint one of its members to attend a review meeting on October 14, 2021. Councilmember Todd Donovan, the Council's current WTA Board member, has volunteered to attend the review meeting as the Council's representative.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Letter from WTA, RCW 36.57A.055



Whatcom Transportation Authority

August 13, 2021

Mr. Barry Buchanan
Council Chairperson
Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225

Re: Four-Year Review of Whatcom Transportation Authority Board Composition

Dear Chairman Buchanan:

As the General Manager of the Whatcom Transportation Authority (WTA), I am giving notice in accordance with RCW 36.57A.055 (attached) that on Thursday, October 14, 2021 at 9:45 a.m. in the Board Room at WTA, 4011 Bakerview Spur, Bellingham, a meeting will be held to review the composition of the WTA Board of Directors. A virtual participation option will be made available as well.

The above noted statute provides that every four years a member of the county legislative authority and an elected representative from each city within the boundaries of the Public Transportation Benefit Area shall meet and review the composition of the WTA governing body. The Composition Review Committee may change the composition of the Board if change is deemed appropriate.

Pursuant to RCW 36.57A.055, the County Council will designate the County Council's member to serve on the Composition Review Committee, and the Bellingham, Lynden, Ferndale, Blaine, Everson, Nooksack, and Sumas City Councils will each designate one of their City's elected officials to serve on the Committee. Each respective Council may choose to appoint the present WTA Board member representing their jurisdiction to serve on the Committee, or they may choose another council member.

I would appreciate it if your Council Clerk would notify my assistant and Clerk of the Board, Vicki Esser, by e-mail at vickie@ridewta.com of the designated representative who will be serving on the Committee by October 1, 2021. Additional background material will be provided to the designated representatives in advance of the meeting.

Very truly yours,

A handwritten signature in blue ink that reads "Les".

Les Reardanz
General Manager

A handwritten note in blue ink that reads "THANK YOU MR. BUCHANAN!". The word "THANK" is underlined.

cc: WTA Board of Directors
Dana Brown-Davis, Clerk of the Council

RCW 36.57A.055**Governing body—Periodic review of composition.**

After a public transportation benefit area has been in existence for four years, members of the county legislative authority and the elected representative of each city within the boundaries of the public transportation benefit area shall review the composition of the governing body of the benefit area and change the composition of the governing body if the change is deemed appropriate. When determining if a change to the composition of the governing body is appropriate, the proportional representation requirements of RCW 36.57A.050 must be taken into consideration if the population of the county in which the public transportation benefit area is located is more than four hundred thousand and the county does not also contain a city with a population of seventy-five thousand or more operating a transit system pursuant to chapter 35.95 RCW, and the composition of the governing body must be changed if necessary to meet this requirement. The review shall be at a meeting of the designated representatives of the component county and cities, and the majority of those present shall constitute a quorum at such meeting. Twenty days notice of the meeting shall be given by the chief administrative officer of the public transportation benefit area authority. After the initial review, a review shall be held every four years.

If an area having a population greater than fifteen percent, or areas with a combined population of greater than twenty-five percent of the population of the existing public transportation benefit area as constituted at the last review meeting, annex to the public transportation benefit area, or if an area is added under RCW 36.57A.140(2), the representatives of the component county and cities shall meet within ninety days to review and change the composition of the governing body, if the change is deemed appropriate. This meeting is in addition to the regular four-year review meeting and shall be conducted pursuant to the same notice requirement and quorum provisions of the regular review.

[2018 c 154 § 2; 1991 c 318 § 16; 1983 c 65 § 4.]

NOTES:

Effective date—2018 c 154: See note following RCW 36.57A.050.

Intent—1991 c 318: See note following RCW 36.57A.040.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-507

File ID:	AB2021-507	Version:	1	Status:	Agenda Ready
File Created:	08/24/2021	Entered by:	SMildner@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Executive Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Request confirmation of the Executive's reappointment of Wendy Miller and Mark Challender to the Americans with Disabilities Act (ADA) Compliance Committee

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached applications

HISTORY OF LEGISLATIVE FILE

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



Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

Title	Ms.
First Name	Wendy
Last Name	Miller
Today's Date	8/22/2021
Street Address	909 Marine Dr. #114
City	Bellingham
Zip	98225
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	8593121078
Secondary Telephone	Field not completed.
Email Address	millerwa828@gmail.com
1. Name of Board or Committee	Americans with Disabilities Act (ADA) Compliance Committee
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 4
4. Are you a US citizen?	Yes
5. Are you registered to vote in Whatcom County?	Yes

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	Yes
If yes, please list dates:	Up until COVID; didn't record dates.
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	<i>Field not completed.</i>
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	librarian and community volunteer
10. Please describe why you're interested in serving on this board or commission	I have Parkinson's and want to be sure the ADA needs of all citizens are complied with.
References (please include daytime telephone number):	Donald Case 8594929184
Signature of applicant:	Wendy Miller
Place Signed / Submitted	Bellingham, WA



Application for Appointment to Whatcom County Boards and Commissions

Public Statement

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.

First Name	Mark
Last Name	Challender
Date	12/30/2017
Street Address	3412 South Avenue
City	Bellingham
Zip	98229
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	<i>Field not completed.</i>
Primary Telephone	3607399209
Secondary Telephone	<i>Field not completed.</i>
Email Address	Mark@challender.com
1. Name of Board or Committee	Americans with Disabilities Act (ADA) Compliance Committee
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 3
4. Are you a US citizen?	Yes
5. Are you registered to vote in Whatcom County?	Yes

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	No
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No (Yes → 2018-2021)
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	Field not completed.
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Retired Information Systems professional, previous school board member, long Time ski to Sea committee member, previous executive director of whatcom county council of governments, president of whatcom emergency communications group (amateur radio), approved emergency worker for whatcom unified emergency management and now a disabled person using a power wheelchair.
10. Please describe why you're interested in serving on this board or commission	I want to volunteer to keep myself involved.
References (please include daytime telephone number):	Field not completed.
Signature of applicant:	Mark Challender
Place Signed / Submitted	Bellingham, wa



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-500

File ID:	AB2021-500	Version:	1	Status:	Agenda Ready
File Created:	08/11/2021	Entered by:			
Department:		File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Whatcom County Zoning Code Relating to Temporary Homeless Facility Regulations

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
-------	--------------	---------	----------

Attachments: Staff Memo, Draft Ordinance, Planning Commission Findings

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius
Director

Memorandum

August 11, 2021

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

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Temporary Homeless Facility Regulations (PLN2021-00003)

The Whatcom County Council adopted interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities (Ordinances 2018-039, 2018-041, 2019-074, and 2020-053). These ordinances also requested County staff to prepare proposed revisions to the County's land use regulations relating to temporary homeless facilities and bring the revisions to the Planning Commission and County Council for review.

The Planning Commission held a public hearing and issued recommendations on July 22, 2021. The Planning Commission's recommended proposal would amend the Whatcom County Zoning Code by:

- a. Adding a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17). This new chapter includes a purpose statement, locational requirements, capacity and duration of temporary homeless facilities, requirements for temporary homeless facilities, application procedures, and permit procedures.
- b. Adding definitions of "Temporary Homeless Facility" and related terms (WCC 20.97).

Under the proposed regulations, temporary homeless facilities would normally be allowed only within urban growth areas, where more intensive land uses are permitted, services typically exist nearby, and transportation options are more readily available. However, under state law, this provision cannot be applied to facilities on property owned or controlled by religious organizations (RCW 36.01.290). Therefore, such temporary homeless facilities could be located anywhere throughout the County.

Thank you for your review and consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
WHATCOM COUNTY ZONING CODE RELATING TO
TEMPORARY HOMELESS FACILITY REGULATIONS**

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations;

WHEREAS, The County Council held a public hearing; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The Whatcom County Council adopted interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities (Ordinances 2018-039, 2018-041, 2019-074, and 2020-053). These ordinances also requested County staff to prepare a draft ordinance and proposed revisions to the County's land use regulations relating to these facilities.
2. The proposal is to amend the Whatcom County Zoning Code (Title 20) as follows:
 - a. Add a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17); and
 - b. Add definitions of "Temporary Homeless Facility" and related terms (WCC 20.97).
3. Notice of the subject amendments was submitted to the Washington State Department of Commerce on July 1, 2021.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 6, 2021.

5. Notice of the Planning Commission hearing was sent to the County's e-mail list on July 7, 2021.
6. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on July 9, 2021.
7. Notice of the Planning Commission hearing was posted on the County website on July 9, 2021.
8. The Planning Commission held a public hearing on the subject amendments on July 22, 2021.
9. Pursuant to WCC 22.10.060(2), in order to approve an amendment to the development regulations, the planning commission and county council must find that the amendment is consistent with the comprehensive plan.
10. The Whatcom County Comprehensive Plan Housing Chapter states:

. . . Subsidized housing, homeless housing, transient, emergency, and special needs housing are all part of the affordability riddle, and in some instances a major part. Residents currently possessing safe and decent housing may not fully understand the scope of the housing problem and they may tend not to want housing for less advantaged households near them. In that regard, the location of affordable housing can be as difficult an issue as funding. Many people who do not want rural sprawl also do not want in-fill near them. . . (p. 3-10).
11. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-1 states:

Review and revise existing regulations to identify inhibitions to housing for the varying preferences of those needing housing. Focus on population segments with particular needs such as temporary, transitional, or emergency housing.
12. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-2 states:

Evaluate all new regulations or codes developed at the county level to ensure they accommodate housing preferences and needs existing at that time.
13. State law limits local government regulation of temporary homeless facilities hosted by religious organizations (RCW 36.01.290).
14. According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2020 Annual Report* (July 2020), at least 707 people were homeless in Whatcom County in January 2020 (p. 9). Of the 707 homeless people, 218 were unsheltered living in camps, cars, and other places not

meant for human habitation (p. 13). However, the Annual Report also “. . . acknowledged that Point in Time Counts consistently underestimate the number of those who are homeless . . .” (p. 2). According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2021 Annual Report* (July 2021), 859 people were homeless in Whatcom County in January 2021 (p. 7). Of the 859 homeless people, 218 were unsheltered (p. 8).

15. According to *A Home for Everyone Strategic Plan to End Homelessness in Whatcom* (2019), “interim housing” includes both emergency shelters and transitional housing (p. 37). These living conditions are considered as “sheltered homelessness” (p. 13). This Plan states that a number of providers participate in interim housing services “but the demand for shelters is far from being met in Whatcom County” (p. 38). Unsheltered homelessness is used to describe “the living conditions for individuals or households who sleep in places not meant for human habitation, such as tents, doorways, abandoned buildings, vehicles, or other places outside” (p. 13).
16. Homelessness continues to be a local, regional and national challenge due to many social and economic factors.
17. Tent encampments, tiny house encampments, and other homeless facilities have become temporary mechanisms to provide shelter for homeless individuals and families.
18. Temporary homeless facility regulations and permit processing requirements are necessary to preserve and protect public health and safety.
19. Temporary homeless facility regulations and permit processing requirements are necessary to prevent or mitigate adverse impacts to public or private property.
20. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a regulatory framework for addressing some of the community’s temporary housing needs in an orderly fashion.

CONCLUSION

The subject Whatcom County development regulation 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. Amendments to the Whatcom County Zoning Code (Title 20) relating to Temporary Homeless Facilities are hereby adopted as shown on Exhibit A.

Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2021.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chairperson

APPROVED as to form:

() Approved () Denied

/s/ Royce Buckingham

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Exhibit A

NOTE: The proposal is to insert an entirely new chapter in the Whatcom County Zoning Code (Title 20, Chapter 20.17). Underlining and strikethroughs below are solely to show differences between the proposal and County Ordinance 2020-053 (and/or, as applicable, Bellingham Municipal Code provisions).

Chapter 20.17

Temporary Homeless Facilities

Sections:

- 20.17.010 Purpose.**
- 20.17.020 Permit Required.**
- 20.17.030 Location.**
- 20.17.040 Capacity of Temporary Homeless Facilities.**
- 20.17.050 Duration of Temporary Homeless Facilities.**
- 20.17.060 Requirements for Temporary Homeless Facilities.**
- 20.17.065 Additional Requirements for Temporary Building Encampments.**
- 20.17.070 Application.**
- 20.17.080 Permit Procedures.**

20.17.010 Purpose.

The purpose of this chapter is to allow and establish a review process for the location, siting, and operation of temporary shelters for people experiencing homelessness (known as temporary homeless facilities, as defined in chapter 20.97). These regulations are intended to protect public health and safety by requiring safe operations of the shelters for both the shelter guests and the broader community. Temporary homeless facilities~~shelters~~ include temporary building encampments, temporary tent encampments, temporary safe parking areas, and temporary tiny house encampments. ~~This chapter does not include regulations for interim housing.~~

Rationale: The Purpose statement above is from Bellingham Municipal Code 20.15.010 relating to “Temporary Shelters for People Experiencing Homelessness” with changes shown with underlining and strike-throughs. Bellingham Municipal Code 20.15A and 20.08.020 have specific provisions relating to longer duration “Interim Housing” that the Whatcom County Code does not contain.

20.17.020 Permit Required.

Temporary homeless facilities must have a sponsor and managing agency as defined in chapter 20.97.

Establishment of a temporary homeless facility shall require ~~approval of~~ an administrative approval use permit, ~~as described in this ordinance,~~ and compliance with all other applicable County regulations. The director shall have authority to grant, grant with conditions or deny an application for an administrative approval use permit for a temporary homeless facility~~under this ordinance.~~

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 6), with proposed changes shown with underlining and strike-throughs.

20.17.030 Location.

Temporary homeless facilities are only allowed in urban growth areas. This locational requirement does not apply to temporary homeless facilities on property owned or controlled by religious organizations under RCW 36.01.290.

Section 20.17.030 above is not in Ordinance 2020-053. Under this provision temporary homeless facilities would be allowed only within urban growth areas, where more intensive land uses are permitted, services typically exist nearby, and transportation options are more readily available. However, this provision cannot be applied to facilities on property owned or operated by religious organizations under RCW 36.01.290.

20.17.040 ~~Capacity~~ Duration of Temporary Homeless Facilities.

- (1) ~~No more than a~~ A maximum of ~~50~~100 people may be housed in an individual temporary homeless facility~~ies (encampments)~~ located in the unincorporated County ~~at any time~~. Multiple temporary homeless facility~~encampment~~ locations may be permitted provided that the aggregate total of people in all temporary homeless facilities~~tent and/or tiny house encampments~~ shall not exceed 100.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 5), with proposed changes shown with underlining and strike-throughs. The Planning Commission modified the 1st sentence so it applies to individual facilities. The 2nd sentence applies to all facilities in unincorporated Whatcom County.

20.17.050 Duration of Temporary Homeless Facilities.

- (1) The director shall not grant a permit for the same site more than once in any calendar year nor; ~~provided that director is not authorized to~~ issue a permit for the same site sooner than 180 days from the date the site is vacated ~~as provided for in Section 4 of this ordinance.~~

- (2) Temporary tent encampments and temporary safe parking areas may be approved for a period not to exceed 190 days. The director may grant one 190-day extension, provided all conditions have been complied with and circumstances associated with the use have not changed. ~~This extension shall be subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1).~~ The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its preexistingpre-encampment condition.
- (3) Temporary tiny house encampments may be approved for a period of between six months and ~~up to~~ one year, provided the sponsor and managing agency comply with all permit conditions. The director may grant one or more extension(s) not to exceed one additional year, ~~provided enabling legislation allows so. Extensions are subject to a Type II review process and may be appealed to the hearing examiner as provided in WCC 22.05.020(1).~~ The permit shall specify a date by which the use shall be terminated and the site vacated and restored to its preexistingpre-encampment condition.

Rationale: The requirements above (subsections 1-3) are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 5), with proposed changes shown with underlining and strike-throughs. All decisions by the Director are subject to appeal under WCC 22.05.160. See also proposed WCC 20.17.080(5) below.

- (4) Temporary building encampments may be approved for a period of up to five years, provided the sponsor and managing agency comply with all permit conditions. Should the original permit be granted for a period of less than five years, the director may grant one or more extensions up to a total of five years. ~~Extensions are subject to a Type I review process under BMC 21.10.100 and may be appealed to the hearing examiner as provided in BMC 21.10.250.~~ The permit shall specify a date by which the use shall be terminated and the site vacated and, where applicable, restored to its preexisting condition.

Rationale: The requirements above (subsection 4) are a modified version of requirements from Bellingham Municipal Code 20.15.060, with proposed changes shown with underlining and strike-throughs. All decisions by the Director are subject to appeal under WCC 22.05.160. See also proposed WCC 20.17.080(5) below.

20.17.060 Requirements for Temporary Homeless Facilities.

The following requirements shall apply to all temporary homeless facilities approved under this chapter ordinance, unless modified by the director through ~~approval of~~ an administrative approval use permit.

- (1) The temporary homeless facilityencampment shall be located a minimum of 20 feet from the property line of abutting properties containing commercial, industrial, and multifamily residential uses. The temporary homeless facilityencampment shall be located a minimum of 40 feet from the property line of abutting properties containing single-family residential or public recreational uses, ~~unless~~ These buffers may be reduced if the director finds that a reduced buffer width will provide adequate separation between the temporary homeless

~~facility encampment~~ and adjoining uses, due to changes in elevation, intervening buildings or other physical characteristics of the site ~~of the encampment~~.

Rationale: The definition of “temporary homeless facility” encompasses all four types of temporary homeless facilities (including encampments).

- (2) No temporary homeless facility shall be located within a critical area or its buffer as defined by Whatcom County Code (WCC) 16.16 or 23.
- (3) A temporary homeless facility shall comply with the applicable ~~regulations development standards~~ of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities shall not be considered structures for the purposes of calculating parcel’s total lot coverage, as defined by WCC 20.97.217.
- (4) A six-foot-tall fence is required around the perimeter of the ~~temporary homeless facility encampment~~ to limit access to the site for safety and security reasons; provided, that the fencing does not create a sight obstruction at the street or street intersections or curbs as determined by the county engineer. ~~unless the director determines that~~ the director may waive the fence requirement if there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.
- (5) Exterior lighting must be directed downward and glare contained within the temporary ~~homeless facility encampment~~.
- (6) The maximum number of residents at a temporary ~~homeless facility encampment~~ site shall be determined by the director taking into consideration site conditions, but in no case shall the number be greater than fifty (50) people.
- (7) On-site parking of the sponsor shall not be displaced unless sufficient required off-street parking remains available for the host's use to compensate for the loss of on-site parking or unless a shared parking agreement is executed with adjacent properties.
- (8) A transportation plan, including provisions for transit, and pedestrian and bicycle ingress and egress to the ~~temporary homeless facility site encampment~~, shall be submitted for review and approval.
- (9) No children under the age of 18 are allowed to stay overnight in the temporary ~~homeless facility encampment~~, unless accompanied by a parent or guardian. If a child under the age of 18 without a parent or guardian present attempts to stay at the ~~temporary homeless facility encampment~~, the sponsor and the managing agency shall actively endeavor to find alternative shelter for the child through community partners such as Northwest Youth Services, Opportunity Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth services organizations. Children under the age of 18 without a parent or guardian present shall be allowed to remain in a temporary ~~homeless facility encampment~~ while alternative shelter is being sought.
- (10) The sponsor or managing agency shall provide and enforce a written code of conduct, which not only provides for the health, safety and welfare of the temporary ~~homeless facility encampment~~ residents, but also mitigates impacts to neighbors and the community. A copy of the code of conduct shall be submitted to the County at the time of application for the administrative

approval use permit. ~~Said-The~~ code of conduct shall be incorporated into the conditions of approval. The managing agency shall post the County approved written code of conduct on site.

- (11) An operations plan must be provided that addresses site management, site maintenance, and provision of human and social services. The managing agency shall demonstrate that:~~Individuals or organizations shall~~

- A. Individuals in the agency have ~~either a~~ demonstrated experience providing similar services to homeless residents; ~~and/or~~
- B. Individuals in the agency have certification or academic credentials in an applicable human service field; ~~and/or~~
- C. Individuals in the agency have applicable experience in a related program with a homeless population; ~~or-~~
- D. ~~Should an individual or organization not have any of the preceding qualifications,~~
Additional prescriptive measures will be implemented~~may be required~~ to minimize risk to both residents of the temporary homeless facility and the community in general.

- (12) The sponsor and the managing agency shall ensure the temporary homeless facility complies~~compliance~~ with Washington State laws and regulations and the Whatcom County Health Department's regulations concerning, but not limited to, drinking water connections, solid waste disposal, and human waste. The sponsor and the managing agency shall permit inspections by local agencies and/or departments to ensure such compliance and shall implement all directives resulting therefrom within the specified time period.

Rationale: The change above would clarify that the sponsor and managing agency are responsible to ensure the homeless facility complies with State and County laws, but that an individual's compliance with certain laws is enforced by the Sheriff's Office.

- (13) The sponsor and managing agency shall assure all applicable public health regulations, including but not limited to the following, will be met for:

- (a) Potable water, which shall be available at all times at the site;
- (b) Sanitary portable toilets, which shall be set back from all property lines as determined by the director;
- (c) Hand-washing stations by the toilets and food preparation areas;
- (d) Food preparation or service tents; and
- (e) Refuse receptacles.

- (14) Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food handling and storage, including proper temperature control, shall be followed and temporary homeless facility~~encampment~~ residents involved in food donations and storages shall be made aware of these Whatcom County Health Department requirements.

- (15) The sponsor and the managing agency shall designate points of contact and provide contact information (24 hour accessible phone contact) to the chief criminal deputy of the Whatcom County Sheriff or his/her designee. At least one designated point of contact shall be on duty at all times. The names of the on-duty points of contact shall be posted on-site daily and their

contact information shall be provided to the Whatcom County Sheriff's Office as described above.

- (16) Facilities for dealing with trash shall be provided on-site throughout the temporary homeless facility~~encampment~~. A regular trash patrol in the ~~immediate~~-vicinity of the ~~temporary encampment~~-site shall be provided.
- (17) The sponsor and the managing agency shall take reasonable and legal steps to obtain verifiable identification information (recognizing this may not be possible if a homeless individual's identification documents have been lost or stolen), to include full name and date of birth, from current and prospective temporary homeless facility~~encampment~~ residents and use the identification to obtain sex offender and warrant checks from appropriate agencies. The sponsor and the managing agency shall keep a current log of names and dates of all people who stay overnight in the temporary homeless facility~~encampment~~. This log shall be available upon request to law enforcement agencies and prospective ~~encampment~~ residents shall be so advised by the sponsor and managing agency. Persons who have active warrants, or who are required to register as sex offenders, are not allowed in a temporary homeless facility~~prohibited from the encampment's location~~.
- (18) The sponsor and the managing agency shall immediately contact the Whatcom County Sheriff's Office if someone is rejected or ejected from the temporary homeless facility~~encampment~~ when the reason for rejection or ejection is an active warrant or a match on a sex offender check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the rejected/ejected person is a potential threat to the community.
- (19) All permanent or temporary structures shall have fully operational smoke detectors installed and can be battery operated. Fire extinguishers shall be provided for each site. The number and type of fire extinguishers shall be determined by the director in consultation with the managing agency. Tents over 300 square feet in size and canopies in excess of 400 square feet shall utilize flame retardant materials.

Rationale: The added language above was recommended by the Whatcom County Building Services Division Manager/Deputy Fire Marshal.

- (20) The sponsor, the managing agency and temporary homeless facility~~encampment~~ residents shall cooperate with other providers of shelters and services for homeless persons within the County and shall make inquiry with these providers regarding the availability of existing resources.
- (21) The sponsor and/or managing agency shall provide before-~~setup~~encampment photos of the host site with the application. Upon vacation of the temporary homeless facility~~encampment~~, all temporary structures and debris shall be removed from the host site within one calendar week.
- (22) Upon cessation of the temporary homeless facility~~encampment~~, the site shall be restored, as near as possible, to its original condition. Where deemed necessary by the director, the sponsor and/or managing agency shall re-plant areas in which vegetation had been removed or destroyed.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 4), with proposed changes shown with underlining and strike-throughs.

20.17.065 Additional Requirements for Temporary Building Encampments.

In addition to the requirements of WCC 20.17.020, the following requirements apply to temporary building encampments, unless modified by the director during the administrative approval use permit approval process:

- (1) Temporary building encampments hosted in existing structures that do not meet building codes at the time of application may be provisionally approved consistent with the requirements of RCW 19.27.042.
- (2) No more than one bed (or bunkbed for a parent/guardian and a child under the age of 18) per 35 square feet of floor area is permitted.
- (3) The number of toilets required for each encampment will be determined by the Whatcom County Health Department after a review of factors such as the potential number of guests.

Rationale: The requirements above are drawn from requirements from Bellingham Municipal Code 20.15.030.

20.17.070 Application.

Application for an administrative approval use permit shall be made on forms provided by the County, and shall be accompanied by the following information; provided, that the director may waive any of these items, upon request by the applicant and finding that the item is not necessary to analyze the application. An application to establish a temporary homeless facility shall be signed by both the sponsor and the managing agency ("applicant") and contain the following:

- (1) A site plan of the property, drawn to scale, showing existing natural features, existing and proposed grades, existing and proposed utility improvements, existing rights-of-way and improvements, and existing and proposed structures, tents and other improvements (including landscaping and fencing at the perimeter of the proposed facilityencampment and the property and off-street parking);
- (2) A vicinity map, showing the location of the site in relation to nearby streets and properties;
- (3) A written summary of the proposal, responding to the standards and requirements of WCC 20.17this ordinance;
- (4) The written code of conduct, operations plan and a transportation plan as required by WCC 20.17.020this ordinance;
- (5) Statement of actions that the applicant will take reasonable steps to obtain verifiable identification from encampmenttemporary homeless facility residents and to use the identification to obtain sex offender and warrant checks from appropriate agencies;

- (6) Project statistics, including site area, building coverage, number and location of tents and temporary structures, expected and maximum number of residents, and duration of the temporary homeless facility~~encampment~~;
- (7) Address and parcel number of the subject property;
- (8) Photographs of the site;
- (9) A list of other permits that are or may be required for development of the property (issued by the County or by other government agencies), insofar as they are known to the applicant;
- (10) Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25 and the Unified Fee Schedule; and
- (11) A list of any requirements under WCC 20.17 ~~that this ordinance for which~~ the applicant is asking to modify.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 7), with proposed changes shown with underlining and strike-throughs.

20.17.080 Permit Procedures.

- (1) Notice. All temporary homeless facility applications shall be reviewed under a Type II process under WCC 22.05, except that the final decision must be rendered within 60 days of a determination of completeness. Additionally, the notice of application shall contain proposed duration and operation of the temporary homeless facility, number of residents for the facility~~encampment~~, and contain a County website link to the proposed written code of conduct, operations plan and transportation plan for the facility.
- (2) Decision and Notice of Decision. Final action on permit applications made under this section shall be in accordance with WCC 22.05. Before any such permit may be granted, the applicant shall demonstrate and the director shall find consistency WCC 22.05.02~~820.84.220~~ and the following:
 1. The proposed use meets the requirements of WCC 20.17~~this ordinance~~; and
 2. Measures, including the requirements herein and as identified by the director, have been taken to minimize the possible adverse impacts ~~that~~which the proposed temporary homeless facility~~encampment~~ may have on the area in which it is located. It is acknowledged that not all impacts can be eliminated, however the risk of significant impacts can be reduced to a temporary and acceptable level as the duration of the temporary homeless facility~~encampment~~ will be limited.

A notice of the decision shall be provided in accordance with WCC 22.05.

- (3) Conditions. Because each temporary ~~homeless facility encampment~~ has unique characteristics, including, but not limited to, size, duration, uses, number of occupants and composition, the director shall have the authority to impose conditions on the approval of an administrative approval use permit to ensure that the proposal meets the criteria for approval listed above. Conditions, if imposed, must be intended to protect public health, life and safety and minimize nuisance-generating features such as noise, waste, air quality, unsightliness, traffic, physical hazards and other similar impacts that the temporary ~~homeless facility encampment~~ may have on the area in which it is located. In cases where the application for an administrative approval use permit does not meet the provisions of WCC 20.17this ordinance (except when allowed under WCC 20.17.080(4)subsection (D) of this section) or adequate mitigation may not be feasible or possible, the director shall deny the application.
- (4) Modification of Requirements. The director may approve an administrative approval use permit for a temporary ~~homeless facility encampment~~ that relaxes one or more of the standards in this ordinance only when, in addition to satisfying the decision criteria stated above, the applicant submits a description of the standard to be modified and demonstrates how the modification would result in a safe ~~facility encampment~~ with minimal negative impacts to the host community under the specific circumstances of the application. In considering whether the modification should be granted, the director shall first consider the effects on the health and safety of ~~temporary homeless facility encampment~~ residents and the neighboring communities. Modifications shall not be granted if their adverse impacts on ~~temporary homeless facility encampment~~ residents and/or neighboring communities will be greater than those without modification. The burden of proof shall be on the applicant.
- (5) Appeal. The director's decision, including permit extensions, may be appealed to the hearing examiner as provided in WCC 22.05.020(1) and 22.05.160.
- (6) Revocation. The director shall also have the authority to revoke an approved administrative approval use permit, pursuant to WCC 22.05.150 at any time a sponsor or managing agency has failed to comply with the applicable provisions of WCC 20.17this ordinance or the permit.

Rationale: The requirements above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 8), with proposed changes shown with underlining and strike-throughs.

Chapter 20.97

DEFINITIONS

NOTE: The proposal is to insert entirely new definitions in the Whatcom County Zoning Code (Title 20) as shown below. Underlining and strikethroughs below are solely to show differences between the proposal and County Ordinance 2020-053. Code Publishing would provide proper codification numbers for these new definitions.

"Temporary homeless facility" means a facility providing temporary housing accommodations that includes a sponsor and managing agency, the primary purpose of which is to provide temporary shelter for people experiencing homelessness in general or for specific populations of the homeless. Temporary homeless facilities ~~include but are not limited to are temporary building encampments, temporary safe parking areas,~~ temporary tent encampments and temporary tiny house encampments.

"Temporary building encampment" means a temporary homeless shelter in a building or other permanent structure with overnight sleeping accommodations for the homeless, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. This definition includes low-barrier shelters and other similar uses.

"Temporary safe parking area" means a temporary homeless shelter for a group of people living in their vehicles, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.

"Temporary tent encampment" means a short-term living facility for a group of homeless people that is composed of tents or other temporary structures, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency.

"Temporary tiny house encampment" means a temporary homeless facility for a group of people living in purpose-built tiny houses for people experiencing homelessness, as approved by the director, on a site provided or arranged for by a sponsor with services provided by a sponsor and supervised by a managing agency. Temporary tiny houses for the homeless are between 100 and 300~~typically less than 200~~ square feet and easily constructed and moved to various locations. ~~For the purposes of this ordinance, temporary tiny houses~~ are not dwelling units and, as such, are not required to meet building codes.

"Managing agency" means an organization identified as the manager of a temporary homeless facility that has the capacity to organize and manage a temporary homeless facility on a 24 hour basis. Managing agencies are limited to religious organizations and non-profit agencies. A group of homeless residents is not considered a managing agency. A "managing agency" may be the same entity as the sponsor.

"Sponsor" means an organization that:

- A. Invites a temporary homeless facility to reside on land they own or lease; and
- B. Is a State of Washington registered not-for-profit corporation and federally recognized tax exempt 501(c)(3) organization; or
- C. Is recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization, which expresses its religious mission, in part, by organizing living accommodations for the homeless.

Rationale: The definitions above are from Whatcom County Ordinance 2020-053 relating to Interim Zoning Regulations for Temporary Homeless Facilities (Section 3), with the following modifications and additions:

- The definition of "Temporary homeless facility" in Ordinance 2020-053 indicates that these facilities "include but are not limited to" temporary tent encampments and temporary tiny house encampments. The City of Bellingham's definition of "Temporary homeless shelter" includes four types of shelters: Temporary building encampments, temporary safe parking areas, temporary tent encampments, and temporary tiny house encampments (Bellingham Municipal Code 20.08.020). The above definition has been modified to include all four types of temporary homeless facilities and delete the phrase "include but are not limited to" in order to increase clarity.
- A definition of "Temporary building encampment" was added that is consistent with Bellingham Municipal Code 20.08.020.
- A definition of "Temporary safe parking area" was added consistent with Bellingham Municipal Code 20.08.020, except that the Planning Commission removed the phrase "This definition does not include recreational vehicles." Therefore, RVs would be allowed in temporary safe parking areas.
- In the definition of "Temporary tiny house encampment," the size of tiny houses was modified from "typically less than 200 square feet" to "between 100 and 300 square feet." This provides consistency with the definition in the Bellingham Municipal Code 20.08.020. It also provides clarity for the public, managing agencies, sponsors, and staff relating to the allowed size of temporary tiny houses.
- The definition of "Managing agency" has been modified by inserting a clause that management is "on a 24 hour basis" (recommended by the Whatcom County Building Services Division Manager/Deputy Fire Marshal). Additionally, a phrase included in the definition of "Managing Agency" in Bellingham Municipal Code 20.08.020 has been added ("A group of homeless residents is not considered a managing agency").

**WHATCOM COUNTY
PLANNING COMMISSION**

Temporary Homeless Facility Regulations

FINDINGS OF FACT AND REASONS FOR ACTION

1. The Whatcom County Council adopted interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities (Ordinances 2018-039, 2018-041, 2019-074, and 2020-053). These ordinances also requested County staff to prepare a draft ordinance and proposed revisions to the County's land use regulations relating to these facilities.
2. The proposal is to amend the Whatcom County Zoning Code (Title 20) as follows:
 - a. Add a new chapter entitled "Temporary Homeless Facilities" (WCC 20.17); and
 - b. Add definitions of "Temporary Homeless Facility" and related terms (WCC 20.97).
3. Notice of the subject amendments was submitted to the Washington State Department of Commerce on July 1, 2021.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 6, 2021.
5. Notice of the Planning Commission hearing was sent to the County's e-mail list on July 7, 2021.
6. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on July 9, 2021.
7. Notice of the Planning Commission hearing was posted on the County website on July 9, 2021.

8. The Planning Commission held a public hearing on the subject amendments on July 22, 2021.
9. Pursuant to WCC 22.10.060(2), in order to approve an amendment to the development regulations, the planning commission and county council must find that the amendment is consistent with the comprehensive plan.
10. The Whatcom County Comprehensive Plan Housing Chapter states:

. . . Subsidized housing, homeless housing, transient, emergency, and special needs housing are all part of the affordability riddle, and in some instances a major part. Residents currently possessing safe and decent housing may not fully understand the scope of the housing problem and they may tend not to want housing for less advantaged households near them. In that regard, the location of affordable housing can be as difficult an issue as funding. Many people who do not want rural sprawl also do not want in-fill near them. . . (p. 3-10).
11. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-1 states:

Review and revise existing regulations to identify inhibitions to housing for the varying preferences of those needing housing. Focus on population segments with particular needs such as temporary, transitional, or emergency housing.
12. Whatcom County Comprehensive Plan, Housing Chapter Policy 3E-2 states:

Evaluate all new regulations or codes developed at the county level to ensure they accommodate housing preferences and needs existing at that time.
13. State law limits local government regulation of temporary homeless facilities hosted by religious organizations (RCW 36.01.290).
14. According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2020 Annual Report* (July 2020), at least 707 people were homeless in Whatcom County in January 2020 (p. 9). Of the 707 homeless people, 218 were unsheltered living in camps, cars, and other places not meant for human habitation (p. 13). However, the Annual Report also “. . . acknowledged that Point in Time Counts consistently underestimate the number of those who are homeless . . .” (p. 2). According to *A Home for Everyone Whatcom County Coalition to End Homelessness 2021 Annual Report* (July 2021), 859 people were homeless

in Whatcom County in January 2021 (p. 7). Of the 859 homeless people, 218 were unsheltered (p. 8).

15. According to *A Home for Everyone Strategic Plan to End Homelessness in Whatcom* (2019), "interim housing" includes both emergency shelters and transitional housing (p. 37). These living conditions are considered as "sheltered homelessness" (p. 13). This Plan states that a number of providers participate in interim housing services "but the demand for shelters is far from being met in Whatcom County" (p. 38). Unsheltered homelessness is used to describe "the living conditions for individuals or households who sleep in places not meant for human habitation, such as tents, doorways, abandoned buildings, vehicles, or other places outside" (p. 13).
16. Homelessness continues to be a local, regional and national challenge due to many social and economic factors.
17. Tent encampments, tiny house encampments, and other homeless facilities have become temporary mechanisms to provide shelter for homeless individuals and families.
18. Temporary homeless facility regulations and permit processing requirements are necessary to preserve and protect public health and safety.
19. Temporary homeless facility regulations and permit processing requirements are necessary to prevent or mitigate adverse impacts to public or private property.
20. The subject amendments further the goals and policies of the Whatcom County Comprehensive Plan by providing a regulatory framework for addressing some of the community's temporary housing needs in an orderly fashion.

CONCLUSION


The subject Whatcom County development regulation 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, amendments to the Whatcom County Zoning Regulations (Title 20) relating to Temporary Homeless Facilities.

WHATCOM COUNTY PLANNING COMMISSION


Kelvin Barton, Chair


Tammy Axlund, Secretary

7-26-2021
Date

7/23/21
Date

Commissioners voted to recommend approval on July 8, 2021 (vote was 8-0 with 1 member absent). Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Jim Hansen, Stephen Jackson, Kimberley Lund, Jon Maberry, Natalie McClendon, and Dominic Mocerì.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-512

File ID:	AB2021-512	Version:	1	Status:	Agenda Ready
File Created:	08/30/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 14, in the amount of \$315,947

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #14 request funding from the Affordable Housing, Behavioral Health Facilities, and Related Services Program Fund:

1. To appropriate \$24,169 to fund an additional housing program specialist FTE position.

From the American Rescue Plan Act Fund:

2. To appropriate \$291,778 to fund eleven additional temporary full time COVID response positions.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Ordinance, Summary, Requests

**ORDINANCE NO.
AMENDMENT NO. 14 OF THE 2021 BUDGET**

WHEREAS, the 2021-2022 budget was adopted November 24, 2020; and,
WHEREAS, changing circumstances require modifications to the approved 2021-2022 budget;
and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the
Whatcom County Council,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the 2021-2022
Whatcom County Budget Ordinance #2020-068 is hereby amended by adding the following additional
amounts to the 2021 budget included therein:

Fund	Expenditures	Revenues	Net Effect
Affordable Housing, Behavioral Health Facilities, and Related Services Program Fund	24,169	(24,169)	-
American Rescue Plan Act Fund	291,778	-	291,778
Total Supplemental	315,947	(24,169)	291,778

BE IT FURTHER ORDAINED by the Whatcom County Council that Exhibit C – Position Control
Changes in the 2021-2022 Budget Ordinance should also be amended to provide for the following
FTE changes:

- Add 1 FTE Program Specialist in Health

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

() Approved () Denied

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

Satpal Sidhu, County Executive
Date: _____

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 14				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
Affordable Housing, Behavioral Health Facilities, and Related Services Program Fund	To fund additional housing program specialist position.	24,169	(24,169)	-
American Rescue Plan Act Fund	To fund eleven additional temporary full time COVID response positions.	291,778	-	291,778
Total Supplemental		315,947	(24,169)	291,778

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3291

Fund 133

Cost Center 133100

Originator: Anne Deacon

Year 1

2021

Add'l FTE ☒

Priority

1

Name of Request: Housing Specialist

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4313.2500	Housing & Related Svcs Tax	(\$24,169)
	6110	Regular Salaries & Wages	\$16,432
	6210	Retirement	\$1,684
	6230	Social Security	\$1,257
	6245	Medical Insurance	\$4,104
	6255	Other H&W Benefits	\$467
	6259	Worker's Comp-Interfund	\$182
	6269	Unemployment-Interfund	\$43
	Request Total		\$0

1a. Description of request:

The Health Department is seeking budget authority to add an additional Housing Specialist in the Human Services Division.

1b. Primary customers:

Whatcom County households who qualify for low-income housing.

2. Problem to be solved:

The expanse and complexity of work in the homelessness and affordable housing program has increased significantly over the past few years. Grant revenues from the state and federal government have increased, along with the need for comprehensive reporting to the funders as well as program development. Homelessness issues locally have increased the need for the county to work more closely with city and community partners, and has also increased the need for county staff to provide intensive technical assistance to housing providers. Two new local revenue sources have created the need for a robust affordable housing development component in the housing program that requires new sets of skills and new community partners. The current two Housing Specialists have been struggling to meet the work demands of the program now, and with additional monies and associated expectations, staffing is now insufficient to meet the expectations, demands, and opportunities that the multimillion-dollar program has.

3a. Options / Advantages:

The Human Services Manager and Human Services Supervisor have been performing some of the work of the Housing Specialists in an effort to meet work demands. This is not sustainable at the level currently required. New stable local monies require staff technical expertise in affordable housing development and a consistent point person in the county. Hiring an additional Housing Specialist is the best option to meet the increasing demands of the program while simultaneously creating in-house expertise and stability in affordable housing development.

3b. Cost savings:

Two new sources of local monies that support affordable housing development eliminate the need for general fund support of this position. Increased revenue from document recording fees will also help

Supplemental Budget Request

Status: Pending

Health

Human Services

Suppl ID # 3291

Fund 133

Cost Center 133100

Originator: Anne Deacon

offset the costs of this new position in future years.

4a. Outcomes:

The county will have an affordable housing development specialist that will facilitate creation of new housing units in the county, serve as the county point person for affordable housing efforts, and support the need for reasonable workloads for the housing program staff who can then meet demands with high quality work.

4b. Measures:

The new Housing Specialist will be hired before year end and begin to assume the work already accomplished in affordable housing, and expand upon it.

5a. Other Departments/Agencies:

The city of Bellingham is supportive of this additional county position since it will improve collaborative efforts in both affordable housing development as well as addressing the current challenges facing those who are experiencing homelessness. Small city governments are depending on the county to provide leadership and technical expertise in affordable housing development outside the limits of the city of Bellingham.

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

N/A

6. Funding Source:

Sales and use tax for housing and related services Fund

Supplemental Budget Request

Status: Pending

Health

Communicable Disease & Epidemiology

Suppl ID # 3296

Fund 138

Cost Center

Originator: Erika Lautenbach

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☒

Add'l Space ☒

Priority 1

Name of Request: 11 positions to support COVID response

X

Department Head Signature (Required on Hard Copy Submission) *Erika Lautenbach* Date *9/3/21*

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$171,908
	6210	Retirement	\$20,611
	6230	Social Security	\$13,151
	6245	Medical Insurance	\$74,237
	6255	Other H&W Benefits	\$8,498
	6259	Worker's Comp-Interfund	\$2,926
	6269	Unemployment-Interfund	\$447
	Request Total		\$291,778

1a. Description of request:

In order to support COVID response efforts, the Health Department requests spending authority to support the on-going COVID response operations through December 31, 2021.

This funding request supports the addition of 11 temp with benefits positions. In addition to 6 Case and contact investigator (CCI) positions, it includes addition of 1 logistics coordinator, 1 communications specialist, 2 Clerk III positions and 1 program specialist full-time temporary with benefit positions. These positions are funded for a full 3 months with ARPA funding. These positions are may be extended into 2022 as COVID response needs and funding are determined.

1b. Primary customers:

Customers are all residents of Whatcom County, who will benefit from timely communications, response and support from Whatcom County Health department.

2. Problem to be solved:

Temporary positions create a structural barrier for stable and consistent support as temporary extra help employees may only work full time for three months and then drop hours to 16 hours per week. This challenge contributes to turnover in favor of full-time positions, instability in staffing, severe administrative burden to continually recruit, hire and train additional temporary staff, and reduced capacity to respond to the pandemic.

During the last peak in January/February 2021, we supported this work through shared staffing from other agencies through the structure of Whatcom Unified Command. However, with the stand down of unified command on July 31, after 18 months staff that were fulfilling these roles have been returned to their home agencies.

In order to meet support, response and communications needs required to support substantial and high levels of transmission of COVID-19 in Whatcom County, we need full-time temporary with benefits personnel in logistics, clerical, communications and outreach to manage that workload. The program specialist position will provide community outreach, information, referral, service coordination and health promotion related to COVID-19 for Hispanic/Latino/Latinx community members who experience cultural

Supplemental Budget Request

Status: Pending

Health

Communicable Disease & Epidemiology

Suppl ID # 3296

Fund 138

Cost Center

Originator: Erika Lautenbach

and linguistic barriers. The Communication Specialist request is in response to the sustained need for timely, reliable, and comprehensive communication and tools to reach residents and the media.

While the intensity of COVID case burden has varied throughout the pandemic, the demand for regular communication locally has consistently remained high and is tied to the success of prevention measures and the credibility of the Health Department and Whatcom County. This position will both provide additional support for communication, with an emphasis on graphic design and videography for the successful candidate or by reassignment of duties within the existing team of Communications Specialists. These are two areas of communication for which the Health Department has contracted services that could be met, in part, with additional in-house capacity. Additionally, adding another full-time position would allow the Health Department to achieve its communication objectives during the fall and winter months without relying on other County or city agencies for temporary staffing reassignments.

3a. Options / Advantages:

Employees will be advantaged by having benefits, and by having some stability and predictability in their employment status. The County will be advantaged by having a more stable workforce and the ability to attract and retain well-qualified individuals needed to respond to COVID. With the 5th surge of COVID cases, we will be able to support logistics requests from partner agencies, public communications and administrative support for test and vaccine scheduling.

3b. Cost savings:

These positions will support the COVID response and allow regular staff ability to take vacation and decrease overtime. These positions will also reduce need to pull regular staff from other program areas (or other agencies) to support COVID surge response, additionally surged staff often have a higher rate of pay than these new positions. The more effective the response, the sooner the county will recover economically.

4a. Outcomes:

Whatcom County businesses and healthcare facilities will be supported with PPE and other supplies logistics coordination. Communication support will result in increased information and data to residents, media and elected officials countywide, and additional volume of linguistically and culturally appropriate education materials and tools for organizations impacted by the virus. More staff available to assist in the response, less administrative time spent in recruitment, hiring and training, more efficient operations with better trained and more experienced staff, less reliance on pulling regular staff from other program areas; when regular staff are surged, there is often a period training/refreshing needed not to mention leaving the programs that are pulled from shorthanded.

4b. Measures:

Adequate community testing; 90% of cases called within 24 hours; 80% of contacts called within 48 hours; daily monitoring of all people in isolation and quarantine; timely contact with businesses, schools, day cares, healthcare organizations, and long-term care facilities. Outbreaks will be minimized and managed effectively in partnership with employers. Increased social media posts, information on website, media briefings, education materials, and other communication tools as needed.

5a. Other Departments/Agencies:

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

6. Funding Source:

American Rescue Plan Act (ARPA) funds



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-414

File ID:	AB2021-414	Version:	1	Status:	Agenda Ready
File Created:	07/14/2021	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for the use and presence in County Rights-of-Way to allow for the transportation of natural gas within and through Whatcom County

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Franchise Agreement, Franchise Fact Sheet, Application



MEMORANDUM

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

THROUGH: Jon Hutchings, Director *JH*

FROM: Andrew Hester, Public Works Real Estate Coordinator *AH*

RE: Franchise for Cascade Natural Gas Corporation

DATE: July 14, 2021

▪ **Requested Action**

Adopt an ordinance that grants a franchise to Cascade Natural Gas Corporation allowing it to use and be present in County Rights of Way for the installation, maintenance, operation, repair, modification, replacement, and/or removal of such new or existing pipeline facilities, together with equipment and appurtenances thereto, for the transportation of natural gas within and through Whatcom County per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

▪ **Background and Purpose**

Cascade Natural Gas Corporation's existing franchise agreement has expired and they have applied for a new franchise agreement for the purposes of utilizing County rights of way for the transportation of natural gas.

Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

Encl.

ORDINANCE NO. _____

AN ORDINANCE GRANTING CASCADE NATURAL GAS CORPORATION (“GRANTEE”) A CORPORATION, ITS SUCCESSORS, GRANTEES AND ASSIGNS THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR NEW OR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF NATURAL GAS WITHIN AND THROUGH WHATCOM COUNTY (“GRANTOR”).

WHEREAS, Cascade Natural Gas Corporation (hereinafter "Grantee") has applied for a nonexclusive Franchise to operate and maintain a natural gas pipeline system within and through Whatcom County (hereinafter the "County" or "Grantor"); and,

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the ____ day of _____, 2021, and notice of this hearing has been duly published on the _____ day of _____, 2021, and the ____ day of _____, 2021, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of the County and its inhabitants that a franchise be granted to Grantee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a non-exclusive franchise set forth in the language herein below, Sections 1 through 18, is hereby granted to Cascade Natural Gas Corporation for a period of 25 years from the Effective Date.

Section 1. Definitions.

For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

1.1 Construct or Construction shall mean installing, removing, replacing, and repairing new or existing pipeline(s) and/or Facilities and may include, but is not limited to, digging and/or excavating for the purposes of installing, removing, replacing, and repairing new or existing pipeline(s) and/or Facilities.

1.2 **Effective Date** shall mean the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Grantee, upon which the rights, duties and obligations shall come in effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.

1.3 **Facilities** shall mean the Grantee's pipeline system, lines, valves, mains, appurtenances, and all other Facilities related to the purpose of transportation and/or distribution of Grantee's product(s).

1.4 **Franchise** shall mean this Franchise and any amendments, exhibits, or appendices to this Franchise.

1.5 **Franchise Area** means the area within the jurisdictional boundaries of the Grantor, including any areas annexed by Grantor during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

1.6 **Hazardous Substance** shall mean any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant. The term shall specifically include natural gas, petroleum and petroleum products and their bi-products, residue, and remainder in whatever form or state. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, injury, sickness, illness, behavior abnormalities or, genetic abnormalities.

1.7 **Maintenance or Maintain** shall mean examining, testing, inspecting, repairing, maintaining and replacing Grantee's pipeline system and/or Facilities or any part thereof as required and necessary for safe operation.

1.8 **Pipeline Corridor** shall mean the pipeline pathway through the Franchise Area in which the existing or future pipeline system and or Facilities of the Grantee are located, including any Rights-of-Way, Public Property, and/or easement over and through private property.

1.9 **Public Properties** shall mean the present and/or future property owned or leased by Grantor within the present and/or future corporate limits or jurisdictional boundaries of the Grantor.

1.10 **Operate or Operations** shall mean the use of Grantee's new or existing pipeline(s) and/or Facilities for the transportation, distribution and handling of natural gas within and through the Franchise Area.

1.11 **Rights-of-Way** means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas located within the Franchise Area.

Section 2. Grant of Authority.

2.1 Grantor hereby grants to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Washington, and which is authorized to transact business within the State of Washington, its successors and assigns (as provided in Section 4), the right, privilege, authority and Franchise to Construct, Operate and Maintain its existing and future pipeline system and/or Facilities related to the transportation, distribution and handling of natural gas within the Franchise Area, including but not limited to Rights-of-Way, public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, rights of way and similar public ways and extensions and additions thereto, including but not limited to rights-of-way dedicated for compatible uses now or hereafter held by the Grantor within its corporate boundaries.

2.2 This Franchise is non-exclusive. Grantor reserves all rights to its property, including, without limitation, the right to grant additional Franchises, easements, licenses and permits to others to use the Rights-of Way and Public Properties, provided that the Grantor shall not grant any other Franchise, license, easement or permit that would unreasonably interfere with Grantee's permitted use under this Franchise. This Franchise shall in no manner prohibit the Grantor or limit its power to perform work upon its Rights-of-Way, Public Properties or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of-Way and Public Properties, or any part of them, as the Grantor may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other Public Properties of every type and description.

2.3 This Franchise is conditioned upon the terms and conditions contained herein and Grantee's compliance with all applicable federal, state or other regulatory programs that currently exist or may hereafter be enacted by any regulatory agencies with jurisdiction over the Grantee.

2.4 By granting this Franchise, the Grantor is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee. Grantee agrees and covenants to, at its sole cost and expense, take all reasonable and prudent steps to protect, support, and keep safe from harm its pipeline system and/or Facilities, or any part thereof, when necessary to protect the public health and safety.

2.5 This Franchise is only intended to convey a limited right and interest. It is not a warranty of title or interest in Grantor's Rights-of-Way or other Public Property. None of the rights granted herein shall affect the Grantor's jurisdiction over its property, streets or Rights-of-Way.

Section 3. Term.

3.1 Each of the provisions of this Franchise shall become effective upon the Effective Date, subject to Grantee's acceptance of the terms and conditions of this Franchise and shall remain in effect for twenty-five (25) years thereafter.

3.2 Prior to the expiration of this Franchise, either party may request renewal of the Franchise. Upon such request, the parties shall enter into good faith negotiations with regard to renewal of the Franchise and the terms and conditions thereof. If such negotiations continue in good faith

beyond the expiration date of this Franchise, Grantee's rights and responsibilities under this Franchise shall be controlled by the terms of this Franchise during the period of such negotiations.

Section 4. Assignment and Transfer of Franchise.

4.1 This franchise shall not be leased, assigned or otherwise transferred without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld or delayed.

4.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the County not less than 120 days prior to the proposed date of transfer: (a) a summary setting forth the identity of the transferee and the nature and type of the proposed assignment or transfer and, (b) Any other information reasonably required and requested by the County, including but not limited to information about the proposed assignee's or transferee's safety record; and, c) An application fee which shall be set by the County, plus any other costs actually and reasonably incurred by the County in processing and investigating the proposed assignment or transfer.

4.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the Grantee.

4.4 Any transfer or assignment of this Franchise without the prior written consent of the County shall be void and result in revocation of the Franchise.

Section 5. Compliance with Laws and Standards.

5.1 In carrying out any authorized activities under the privileges granted herein, Grantee shall meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the pipeline and its operation. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or the pipeline(s) and Facilities.

5.2 In the case of any conflict between the terms of this Franchise and the terms of Grantor's ordinances, codes, regulations, standards and procedures, this Franchise shall govern.

Section 6. Construction and Maintenance.

6.1 All pipeline Construction, Maintenance or Operation undertaken by Grantee, upon Grantee's direction or on Grantee's behalf shall be completed in a workmanlike manner.

6.2 Except in the case of an emergency where immediate action is required to protect the integrity of Facilities, the Grantee shall first file with the Grantor such detailed plans, specifications and profiles of the intended work as may be required by the Grantor prior to

commencing any Construction and/or Maintenance work in the Franchise Area,. Grantor may require such additional information, plans and/or specifications as are in Grantor's opinion necessary to protect the public health and safety during the Construction and/or Maintenance work and for the remaining term of this Franchise.

6.3 All Construction and/or Maintenance work shall be performed in conformity with the maps and specifications filed with the Grantor, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

6.4 All pipe and other components of any Facilities used in Construction and/or Maintenance activities within the Franchise Area will shall comply with applicable federal regulations, as from time to time amended

6.5 Except in the event of an emergency, Grantee shall provide Grantor at least ten (10) calendar days written notice prior to any Construction and/or Maintenance, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee's pipeline(s) or Facilities within the Franchise Area.

6.6 Work shall only commence upon the issuance of applicable permits by the County, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the pipeline(s) or Facilities, Grantor's property or other persons or property, Grantee may proceed without first obtaining the normally required permits. During normal working hours Grantee shall verbally notify the Director for Whatcom County Public Works or the Whatcom County Engineer as soon as possible after the event of the need to perform emergency repairs. In the event Grantee must take emergency action, Grantee shall (1) take all reasonable and prudent steps to protect, support, and keep safe from harm its pipeline(s) and/or Facilities, or any part thereof; Grantor's property; or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

6.7 Unless such condition or regulation is in conflict with a federal requirement, the Grantor may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the Grantor's property including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any Rights-of-Way improvements, private facilities and public safety.

6.8 Whenever necessary, after Constructing or Maintaining any of Grantee's pipeline(s) or Facilities within the Franchise Area, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise. Such restoration shall be done in a manner consistent with

applicable codes and laws, under the supervision of the Grantor and to the Grantor's satisfaction and specifications.

6.9 Grantee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice prior to commencing any Maintenance or Construction under this Franchise and additionally to those owners or other persons in control of property in the Franchise Area when the Maintenance or Construction will affect access or otherwise impact the property.

6.10 Intentionally omitted.

6.11 The Grantee shall provide upon the request of the Grantor a survey depicting the location of the Pipeline Corridor within the Franchise Area as well as the approximate location of Grantee's pipeline system and Facilities within the Pipeline Corridor along with all other known utilities, landmarks, and physical features.

6.12 Grantee shall also provide upon request of the Grantor, detailed as-built design drawings showing the size, depth and location of all pipes, valves, gauges, other service appurtenances and Facilities within the Franchise Area.

6.13 Per the terms and conditions of the permitting process, the Grantee shall provide updated and corrected as-built drawings and a survey showing the location, depth and other characteristics of the Facilities within the Franchise Area.

6.14 Nothing in this Franchise shall be deemed to impose any duty or obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by Grantor.

6.15 Grantee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise area, including safety of all persons and property during the performance of any work.

Section 7. Operations, Maintenance, Inspection, Testing.

7.1 Grantee shall operate, maintain, inspect and test its pipeline(s) and Facilities in the Franchise Area in full compliance with the applicable provisions of all federal, state and local laws, regulations and standards, as now enacted or hereafter amended, and any other future laws or regulations that are applicable to Grantee's pipeline(s) and Facilities, products and business operations.

7.2 If the federal Office of Pipeline Safety or the state regulatory agency significantly decrease their staffs, or if any congressional or legislative study indicates that federal or state regulatory

oversight has significantly decreased in effectiveness during the term of this Franchise, then Grantee and County agree to expeditiously negotiate new franchise provisions that will provide the County with access to detailed information regarding testing and inspection such as would have been routinely submitted to the federal or state regulatory agencies under the regulations in effect at the time of the Effective Date. If Grantor and Grantee fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution provisions of Section 13.

Section 8. Encroachment Management.

8.1 Upon request of the Grantor, Grantee shall provide a written encroachment management plan that demonstrates how Grantee's pipeline(s) and/or Facilities are and will be protected against possible encroachment. This plan shall include at least the following: (1) education and one-call involvement as defined in Federal Regulations, and (2) an encroachment management processes demonstrating: (a) Grantee's process for monitoring activity in or near the Pipeline Corridor; (b) Grantee's field verification of the location of Facilities within the Pipeline Corridor; (c) Grantee's encroachment tracking system; (d) Grantee's review/coordination process for critical encroachments; (e) control center notification of existing or active encroachments; and f) assertive protection of the pipeline Rights-of-Way.

8.2 Upon notification to Grantee of planned construction by another within ten (10) feet of Grantee's Pipeline Corridor, Grantee shall flag the precise location of its Facilities before the construction commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that Grantee's Pipeline is not damaged by the construction.

Section 9. Leaks, Ruptures and Emergency Response.

9.1 Grantee shall have in place, at all times during the term of this Franchise, a system for remotely monitoring pressures and flows across the Franchise Area. The remote monitoring must be able to accurately detect pipeline ruptures.

9.2 During the term of this Franchise, Grantee shall have a written emergency response plan and procedure for locating leaks and ruptures and for shutting down valves as rapidly as possible.

9.3 Upon acceptance of this Franchise, Grantee shall provide, for Grantor's approval and acceptance, a copy of its emergency response plans and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the adequacy of Grantee's emergency response plan, the parties will submit the plan to independent, third party review. If the review recommends that Grantee make modifications or additions to Grantee's emergency response plan, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the recommendations, Grantee shall provide a written report to the Grantor explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over the whether to follow the recommendations.

9.4 Grantee's emergency plans and procedures shall designate Grantee's responsible local emergency response officials and a direct 24-hour emergency contact number for the control center operator. Grantee shall, after being notified of an emergency, cooperate with the Grantor and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

9.5 The parties agree to meet once every (5) Calendar years, or upon request of the Grantor, to review the emergency plans and procedures. Grantee shall coordinate this meeting with the Grantor.

9.6 Grantee shall be responsible for all costs incurred in responding to any leak, rupture or other release of natural gas from Grantee's pipeline system and/or Facilities, and all reasonable remediation costs. This provision shall not be interpreted to preclude Grantee from seeking contribution, indemnity and subrogation for such costs from a party liable for the leak, rupture, or other release of natural gas from Grantee's system and/or Facilities.

9.7 If requested by Grantor in writing, Grantee shall provide a written summary concerning any leak or rupture within thirty (30) days with of the event, including, but not limited to, the leak or rupture's date, time, amount, location, response, remediation and other agencies Grantee has notified.

9.8 The Grantor may demand that any substantial leak or rupture be investigated by an independent pipeline consultant mutually selected by Grantor and Grantee. Grantee shall be solely responsible for paying all of the consultant's reasonable costs and expenses incurred in investigating the occurrence and reporting the findings. Grantee shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to Grantee's pipeline(s) and/or Facilities may be warranted.

9.9 If the consultant recommends that Grantee make modifications or additions to Grantee's pipeline(s) and/or Facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the consultant's recommendations, Grantee shall provide a written report to the Grantor explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the consultant's recommendations.

Section 10. Relocation.

10.1 In the event that Grantor undertakes or approves the construction of or changes to the grade or location of any water, sewer or storm drainage line, street, sidewalk or other County improvement project or any governmental agency or any person or entity acting in a governmental capacity, or on the behalf of, under the authority of, or at the request of the Grantor or any other governmental agency, undertakes any improvement project and the Grantor determines that the project might reasonably require the relocation of Grantee's Facilities, Grantor shall provide the Grantee at least one hundred and twenty (120) calendar days prior

written notice or such additional time as may reasonably be required, of such project requiring relocation of Grantee's pipeline(s) and/or Facilities.

10.2 Grantor shall provide Grantee with copies of pertinent portions of the plans and specifications for the improvement project. Upon request, Grantee shall, at its cost and expense, determine and identify for Grantor the exact location of its pipeline(s) and Facilities potentially affected by the improvement project.

10.3 Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the County written alternatives to the relocation within forty-five (45) calendar days of receiving the plans and specifications. The County shall evaluate the alternatives and advise Grantee in writing if one or more of the alternatives is suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If requested by the County, Grantee shall submit additional information to assist the County in making the evaluation. The County shall give each alternative proposed by Grantee full and fair consideration but retains full discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the County ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as proposed by the County.

10.4 If any improvement project under this section is required in the interest of public health, safety, welfare, necessity or convenience, as adjudged in the sole discretion of the Grantor, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk

10.5 Grantor shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Facilities, in order to minimize costs while meeting Grantor's project objectives.

10.6 Grantor must act reasonably and in good faith when evaluating, considering, and making all decisions reserved to it referenced in this Section 10.

10.7 Grantee shall complete relocation of its Facilities so as to accommodate the improvement project at least ten (10) calendar days prior to commencement of the improvement project or such other time as the parties may agree in writing.

Section 11. Removal, Abandonment in Place

11.1 In the event of Grantee's permanent cessation of use of its Facilities, or any portion thereof, within the Franchise Area, the Grantee may purge its Facilities as directed by Grantor and abandon them in place. The Grantor shall have the right to request and require Grantee to remove Facilities..

11.2 In the event of the removal of all or a portion of the Facilities, Grantee shall restore the Franchise Area to as good or better condition as it was in before the work began.

11.3 Removal and restoration work shall be done at Grantee's sole cost and expense and to Grantor's reasonable satisfaction. Grantee shall be responsible for any environmental review required by state or federal law for the removal of any Facilities and the payment of any costs of the environmental review.

11.4 If Grantee is required to remove its Facilities and fails to do so and/or fails to adequately restore the Franchise Area or other mutually agreed upon action(s), Grantor may, after reasonable notice to Grantee, remove the Facilities, restore the premises and/or take other action as is reasonably necessary at Grantee's expense. This remedy shall not be deemed to be exclusive and shall not prevent Grantor from seeking a judicial order directing that the Facilities be removed.

11.5 Unless the removal of the abandoned facilities is required by the permitting process, the Grantee may purge its pipelines and other Facilities, as directed by Grantor, and abandon them in place. Grantee shall be responsible for any environmental review required by state or federal law for the abandonment of any pipeline(s) and/or other Facilities and the payment of any costs of such environmental review. Grantor's consent to the abandonment of Facilities in place shall not relieve the Grantee of the obligation and/or costs to remove or to alter such Facilities in the future in the event it is reasonably determined that removal or alterations is necessary or advisable for the health and safety of the public, in which case the Grantee shall perform such work at no cost to the Grantor. Grantee shall notify Whatcom County Engineer when abandonment of Grantee's facilities occur without the requirement of the County permitting process.

11.6 The parties expressly agree that paragraph 11.5 shall survive the expiration, revocation or termination of this Franchise.

Section 12. Violations, Remedies and Termination.

12.1 In addition to any rights set out elsewhere in this Franchise, or other rights it may possess at law or equity, the Grantor reserves the right to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise. The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

12.2 Intentionally omitted.

12.3 Grantor may also terminate this Franchise if Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within ninety (90) calendar days of Grantor's providing Grantee written notice, which shall be served registered mail upon the Region Director , or, if not reasonably capable of being cured within ninety (90) calendar days, within such other reasonable period of time as the parties may agree.

12.4 This Franchise shall not be terminated except upon a majority vote of the full membership of the County Council, after reasonable notice to Grantee and an opportunity to be heard.

12.5 In the event of termination under this franchise due to Grantee's material breach, Grantee shall immediately discontinue operation of the Facilities through the Franchise Area. Either party may in such case invoke the dispute resolution provisions. Alternatively, Grantor may elect to seek relief directly in Superior Court, in which case the dispute resolution requirements shall not be applicable in this limited situation. Once the Grantee's rights to Operate in the Franchise Area have terminated, Grantee shall comply with Franchise provision regarding

12.6 Notwithstanding the forgoing, the Grantor and Grantee hereby agree that it is not the Grantor's intention to terminate the rights conferred upon Grantee under this Franchise for violations of the Franchise resulting from a good faith error by Grantee or that have resulted in no material adverse impact on the Grantor or its inhabitants.

12.7 Termination of this franchise shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the pipeline pursuant to this Franchise and to restore the Franchise Area.

12.8 The parties acknowledge that the covenants set forth herein are essential to this Franchise, and, but for the mutual agreements of the parties to comply with such covenants, the parties would not have entered into this Franchise. The parties further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the parties shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any of the covenants contained herein should the other party fail to perform them.

Section 13. Dispute Resolution.

13.1 In the event of a dispute between Grantor and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Franchise. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute

13.2 If the parties are unable to resolve the dispute under the procedure set forth in this section, the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall

have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

13.3 If the parties fail to achieve a resolution of the dispute through mediation, either party may then pursue any available judicial remedies, provided that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

Section 14. Indemnification.

14.1 General Indemnification. Except to the extent caused by the acts or omissions of a party not under the direction and control of Grantee, Grantee shall indemnify, defend and hold harmless Grantor from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of Grantee's Facilities, and the products contained in, transferred through, released or escaped from said pipeline and appurtenant Facilities, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws. If any action or proceeding is brought against Grantor by reason of the Facilities, Grantee shall defend the Grantor at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor, which approval shall not be unreasonably withheld.

14.2 Environmental Indemnification. Except to the extent caused by the acts or omissions of a party not under the direction and control of Grantee, Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the Facilities or (c) other activity related to this Franchise by Grantee, its agents, contractors or subcontractors. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

Section 15. Insurance and Bond Requirements.

15.1 During this Franchise, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of FIFTY MILLION UNITED STATES DOLLARS (\$50,000,000.00) for each occurrence, in a form and with a carrier reasonably acceptable to the Grantor, naming

Grantor as an additional insured, but only to the extent of Grantee's indemnity obligations included herein, to cover any and all insurable liability, damage, claims and loss as set forth in Section 14.1 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and loss as set forth in Section 14.2 above, except for liability for fines and penalties for violation of environmental laws as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, pollution liability coverage, at a minimum covering liability from sudden and accidental occurrences, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace.

15.2 Proof of insurance and a copy of the insurance policy, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor upon request. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days prior written notice to the Grantor.

15.3 Intentionally omitted.

15.4 The indemnity, insurance and bond provisions contained herein shall survive the termination of this Franchise and shall continue for as long as the Grantee's Facilities shall remain in use by Grantee in or on County Rights of Way or on the Franchised Areas or until the parties execute a new Franchise Agreement which modifies or terminates these indemnity, insurance and bond provisions.

Section 16. Receivership and Foreclosure.

16.1 Grantee shall immediately notify the Grantor in writing if it: files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any parts of its business operations, pipeline(s) or Facilities within or affecting the Franchise Area.

16.2 Upon the foreclosure or other judicial sale of all or a substantial part of Grantee's business operations, pipeline(s) or Facilities within or affecting the Franchise Area, or upon the termination of any lease covering all or a substantial part of the pipeline(s) or Facilities within or affecting the Franchise Area, or upon the occasion of additional events which effectively cause termination of Grantee's rights or ability to operate the pipeline(s) or Facilities within or affecting the Franchise Area, Grantee shall notify the Grantor of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Franchise Agreement governing the consent of the Grantor to such change in control of the Grantee shall apply.

16.3 The Grantor shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise Agreement and remedied any existing violations and/or defaults; and

(b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement granted to the Grantee except where expressly prohibited by Washington law.

Section 17. Legal Relations.

17.1 Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.

17.2 Grantee accepts any privileges granted by Grantor to the Franchise Area, public Rights-of-Way and other Public Property in an "as is" condition. Grantee agrees that the Grantor has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of facilities or the facilities themselves in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the County or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Franchise.

17.3 Grantee waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply. This Franchise shall not create any duty of the Grantor or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the County or any of its officials, employees or agents in the exercise of powers reserved to the Grantor. Further, this Ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the Grantor shall be deemed a duty to the general public and not to any specific party, group or entity.

17.4 This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that in any action, except actions based on federal questions, venue shall lie exclusively in Whatcom County, Washington.

Section 18. Miscellaneous.

- 18.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise Agreement so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.
- 18.2 Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.
- 18.3 In the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Grantee, then Grantee's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- 18.4 The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.
- 18.5 By entering into this Franchise, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Franchise.
- 18.6 This Franchise and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.
- 18.7 Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday,

payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the Grantor:

Whatcom County Executive
Whatcom County Courthouse
311 Grand Ave., Suite 108
Bellingham, WA 98225

To Grantee:

Cascade Natural Gas Corporation
Attn: Region Director, NW
1520 S. 2nd Street
Mount Vernon, WA 98273

18.8 The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.

18.9 This Franchise Agreement and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Franchise Agreement can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Franchise Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought. All previous Franchise Agreements between the parties pertaining to Grantee's Operation of its pipeline(s) and/or Facilities are hereby superseded.

18.10 This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the Whatcom County Council the Statement of Acceptance, attached hereto as Exhibit A (the "Franchise Acceptance").

18.11 Should Grantee fail to file the Franchise Acceptance with the County Council within 30 days after the adoption of this ordinance, then the County shall have the right by ordinance to declare Grantee's forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter. The County shall retain this right to

terminate the Franchise until such time as Grantee files the Franchise Acceptance pursuant to the terms herein.

18.12 The Effective Date of this Franchise shall be the ____ day of _____, 20__, after adoption by the Whatcom County Council and legal publication or recording of this ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided.

ADOPTED this _____ day of _____ 2021.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 6/30/2021)

Satpal Singh Sidhu, County Executive

() Approved () Denied

Date Signed: _____

FRANCHISE FACT SHEET

Applicant:	Cascade Natural Gas Corporation
Type of Franchise:	Pipeline/Natural Gas
Brief description:	Franchise is for the purpose of constructing/operating/maintaining pipeline facilities for natural gas.
Location/ Abbreviated legal description:	All rights-of-way within Whatcom County
Duration:	25 years
Existing or New Franchise?	Existing franchise
Related Council Agenda Bills:	AB2021-414 AB2021-415
Related Ordinance Numbers:	N/A
Additional Information:	N/A

Date of Fact Sheet: July 9, 2021

APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL:

COMES NOW, Cascade Natural Gas Corporation

who respectfully petitions the Whatcom County Council for a twenty-five (25) year
franchise to lay, construct, maintain, and repair
Install, operate, abandon, replace, and remove new or existing natural gas facilities
within and through Whatcom County

and all necessary appurtenances along, over, and across the following roads situated
in Whatcom County, Washington:
All rights of way situated within the jurisdictional boundaries of Whatcom County

The petitioner further requests that the Whatcom County Council fix a time and place
for a public hearing on the granting of this continuation of franchise, and that public
notice be given, at the expense of the petitioner, as provided by law; and that, at
said hearing, petitioner be granted the franchise continuation herein requested.

DATED: 7-21-2021

Cascade Natural Gas Corporation

Company Name

8113 W. Grandridge Blvd.

Mailing Address

Kennewick, WA 99336

City State Zip

360-336-3887

Phone Number



Signature of authorized agent/owner

David Gutschmidt

Print or type name



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-508

File ID:	AB2021-508	Version:	1	Status:	Agenda Ready
File Created:	08/24/2021	Entered by:	RMcconne@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance for Installation of a Stop Sign on Northshore Road

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed Ordinance, Exhibit A, Map



Memorandum

To: The Honorable Satpal 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 *JPK*

Date: August 13, 2021

Re: **Ordinance - Installation of a Stop Sign on Northshore Road**

Requested Action

Public Works respectfully requests that the County Council adopt the proposed ordinance to install a stop sign for northbound traffic on Northshore Road (County Road Number 47051) at the intersection with Northshore Road (County Road Number 47052).

Background and Purpose

This issue was originally brought to Engineering Services – Traffic by Bruce Parelskin and Fred Miller, both residents of Northshore Rd, south of the intersection, in August of 2019. They then saw unprecedented use of the Lake Whatcom Park in the summer of 2020, due to the closure of almost all other forms of recreation because of the Covid-19 Pandemic; approximately 86% of the traffic at the intersection was headed to/from the Lake Whatcom Park area. In 2021, this percentage fell to approximately 80% and the total number of Average Daily Trips fell by more than half, but given the percentages it would still be worthwhile to revise the stop control at the intersection. Benefits of the final configuration include improved traffic flow, less pollution from westbound vehicles no longer having to stop and then accelerate, reduced noise from stopping and accelerating vehicles and less drivers mistakenly heading to the dead end portion at the north end of Smith Creek and being forced to turn around. This intersection traffic study consisted of 3 traffic counts performed at the same location in 2020 and 2021; a review of collision reports received from the Washington State Patrol; and associated roadway information. It was also determined that the stop sign for westbound traffic on Northshore Rd (47052) was never established via ordinance or resolution and is not codified in the Whatcom County Code.

Information

This ordinance will allow for the installation of a stop sign and is necessary to comply with RCW 36.32.120 *Powers of legislative authorities* and 46.61.200 *Stop intersections other than arterials may be designated* to install traffic control signs.

Please contact Douglas Ranney II, Engineering Services Manager at extension 6255 if you have any questions regarding this ordinance.

ORDINANCE NO. _____

INSTALLATION OF A STOP SIGN ON NORTSHORE RD

WHEREAS, in compliance with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install traffic control signs on certain County Roads; and

WHEREAS, several citizens have requested a change in traffic control at the intersection of Northshore Rd (County Road Number 47051) and Northshore Rd (County Road Number 47052); and

WHEREAS, the County Engineer completed a Traffic Study of the intersection; and

WHEREAS, the County Engineer has agreed that it is necessary to formally establish the new stop sign; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a stop sign be established for northbound traffic on Northshore Rd at the intersection with Northshore Rd in section 32, Township 38 North, Range 4 East, W.M.

BE IT FURTHER ORDAINED, by the Whatcom County Council that the following be added to the Whatcom County Code Section 10.16.1690:

Road Name	Direction- Stopping	Cross Street
<u>Northshore Road</u>	<u>Northbound</u>	<u>Northshore Road</u>

BE IT FURTHER ORDAINED, that the County Engineer is hereby directed to install the appropriate signs and the Whatcom County Sheriff and the Washington State Patrol be notified by a copy of this ordinance.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

/s/ Christopher Quinn via email
Christopher Quinn,
Sr. Deputy Prosecuting Attorney,
Civil Division

Satpal Singh Sidhu, County Executive

() Approved () Denied

Date Signed: _____



Exhibit A:
Northshore Rd Intersection Realignment Traffic Study
07/12/2021

Current Configuration:



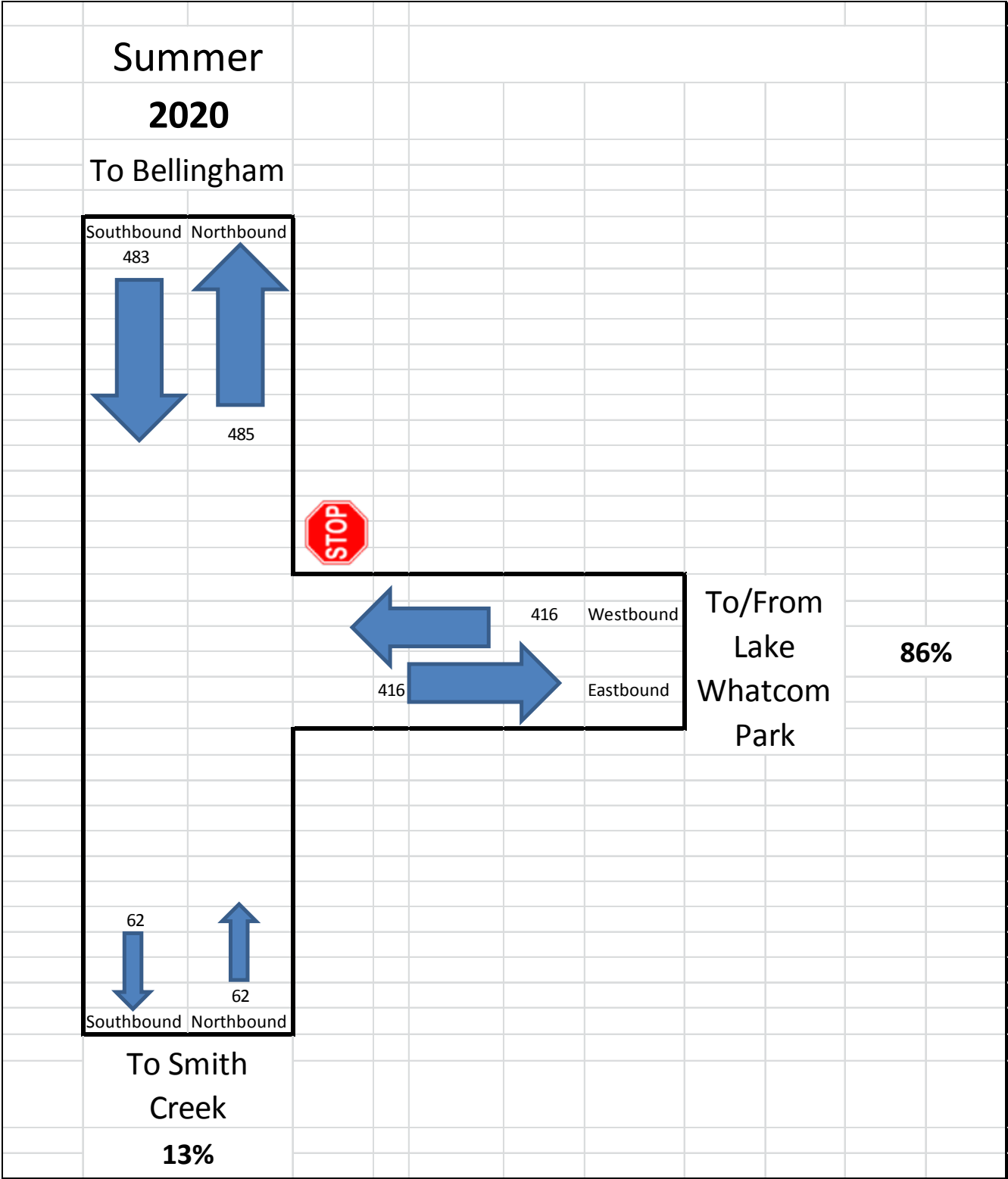
Westbound Northshore Rd (RD# 47052) has stop control; north and south bound Northshore Rd (RD # 47051) have the right-of-way.

Final Configuration:

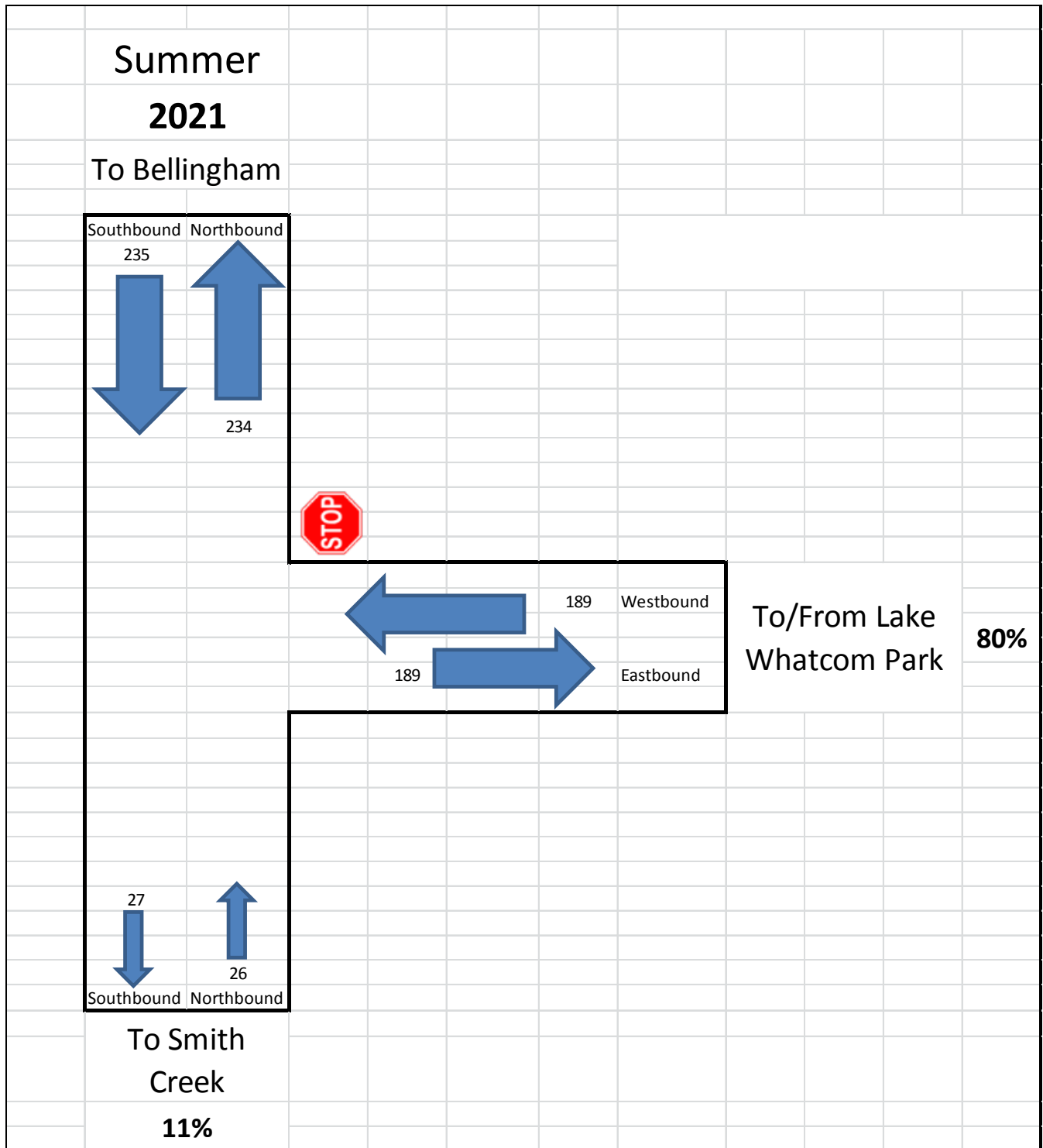


Northbound Northshore Rd (RD# 47051) has stop control; westbound Northshore Rd (RD# 47052) to northbound Northshore Rd (RD# 47051) and southbound Northshore Rd (RD# 47051) to eastbound Northshore Rd (RD# 47052) has the right-of-way.

2020 Traffic Distributions:



2021 Traffic Distribution



Background:

This issue was originally brought to Engineering Services – Traffic by Bruce Parelskin and Fred Miller, both residents of Northshore Rd, south of the intersection, in August of 2019. They then saw unprecedented use of the Lake Whatcom Park in the summer of 2020, due to the closure of almost all other forms of recreation because of the Covid-19 Pandemic, approximately 86% of the traffic at the intersection was headed to/from the Lake Whatcom Park area. In 2021, this percentage fell to approximately 80% and the total number of Average Daily Trips fell by more than half, but given the percentages it would still be worthwhile to revise the stop control at the intersection. Benefits of the final configuration include improved traffic flow, less pollution from

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vehicles no longer having to stop and then accelerate westbound, reduced noise from stopping and accelerating vehicles and less drivers mistakenly heading to the dead end portion at the north end of Smith Creek and being forced to turn around. This intersection traffic study consisted of 3 traffic counts performed at the same location in 2020 and 2021. It was also determined that the stop sign for westbound traffic on Northshore Rd (47052) was never established via ordinance or resolution and is not in the Whatcom County Code.

Collisions:

No collisions have taken place at this intersection since at least 2001.

Classification:

Both Northshore Rd (47051) and Northshore Rd (47052) are classified as Rural Local Access at this location. Northshore Rd (47051) has 10 foot BST lanes and 2 foot gravel shoulders from the Urban Area Boundary at MP 4.03 to the end of the road at MP 5.66. Northshore Rd (47052) has 11 foot BST lanes and 6 foot BST shoulders for its entire length.

Speeds and Volumes:

Traffic counts were taken in the summer of 2020 and 2021 on Northshore Rd (47051) north and south of the intersection with Northshore Rd (47052) and on Northshore Rd (47052) east of the intersection with Northshore Rd (47051). These counts consist of volume, speed and truck percentage.

Counts:

2020 Northshore Rd (47051) N of Northshore Rd (47052) ADT 968 NB 485 SB 483

2021 Northshore Rd (47051) N of Northshore Rd (47052) ADT 469 NB 234 SB 235

2020 Northshore Rd (47051) S of Northshore Rd (47052) ADT 124 NB 62 SB 62

2021 Northshore Rd (47051) S of Northshore Rd (47052) ADT 53 NB 26 SB 27

2020 Northshore Rd (47052) E of Northshore Rd (47051) ADT 832 EB 416 WB 416

2021 Northshore Rd (47052) E of Northshore Rd (47051) ADT 378 EB 189 WB 189

85th percentile Speed:

2020 Northshore Rd (47051) N of Northshore Rd (47052) Combined 40.4 MPH NB 39.5 MPH SB 41.2 MPH

2021 Northshore Rd (47051) N of Northshore Rd (47052) Combined 42.3 MPH NB 41.4 MPH SB 42.3 MPH

2020 Northshore Rd (47051) S of Northshore Rd (47052) Combined 32.0 MPH NB 29.8 MPH SB 33.4 MPH

2021 Northshore Rd (47051) S of Northshore Rd (47052) Combined 33.3 MPH NB 31.6 MPH SB 33.9 MPH

2020 Northshore Rd (47052) E of Northshore Rd (47051) Combined 37.4 MPH EB 36.4 MPH WB 38.1 MPH

2021 Northshore Rd (47052) E of Northshore Rd (47051) Combined 37.3 MPH EB 35.8 MPH WB 38.0 MPH

Truck Percentage:

2020 Northshore Rd (47051) N of Northshore Rd (47052) Combined 5.6% NB 3.9% SB 7.5%

2021 Northshore Rd (47051) N of Northshore Rd (47052) Combined 5.9% NB 6.2% SB 5.6%

2020 Northshore Rd (47051) S of Northshore Rd (47052) Combined 6.6% NB 6.2% SB 6.9%

2021 Northshore Rd (47051) S of Northshore Rd (47052) Combined 7.4% NB 7.2% SB 7.6%

2020 Northshore Rd (47052) E of Northshore Rd (47051) Combined 4.7% EB 5.8% WB 3.6%

2021 Northshore Rd (47052) E of Northshore Rd (47051) Combined 4.0% EB 4.3% WB 3.7%

Recommendation:

1. Add Stop control to Northbound Northshore Rd (47051), south of Northshore Rd (47052)
2. Remove Stop control from Westbound Northshore Rd (47052)
3. Add Centerline Stripe and Edgeline Extensions through the intersection to emphasize the Southbound to Eastbound and Westbound to Northbound Traffic Right-of-Way.
4. Add W1-10bL Left Curve Warning Sign with side road for southbound traffic, north of the intersection. Perform Ball Bank evaluation to determine if an advisory speed will be required.



a.

W1-10bL

5. Add W1-10cR Right Curve Warning Sign with side road for westbound traffic, east of the intersection. Perform Ball Bank evaluation to determine if an advisory speed will be required.



a.

W1-10cR

6. This change in configuration would require a public hearing and an ordinance to add a stop sign for northbound Northshore Rd.
 - a. A new stop line at the location of the new northbound Stop sign and a short section of centerline marking with slight curve could be added for emphasis
7. W23-2 New Traffic Pattern Ahead signs with flags would be needed for 6 months following completion of the above changes.



a.

8. Other traffic signs as required by the Manual on Uniform Traffic Control Devices may be necessary, including Large Arrow or Chevron Signs.

Vicinity Map – Northshore Rd/Northshore Rd Intersection





Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-503

File ID:	AB2021-503	Version:	1	Status:	Agenda Ready
File Created:	08/20/2021	Entered by:	SWinger@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Resolution Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Resolution authorizing the sale of surplus personal property pursuant to WCC 1.10

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The County Purchasing Agent is required by Whatcom County Code 1.10.180 to submit a list (see Exhibit 'A') of surplus personal property to the Council for authority to dispose of said personal property

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Resolution, Exhibit A

PROPOSED BY: Finance

DATE INTRODUCED: 09/14/2021

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE SALE OF WHATCOM COUNTY SURPLUS PERSONAL PROPERTY

PURSUANT TO WCC 1.10

WHEREAS, a public hearing was held on _____, 2021 to discuss the sale of Whatcom County personal property; and

WHEREAS, it was determined to be in the best interest of Whatcom County to sell the property listed in Exhibit "A" and such property shall be sold at public auction or by sealed bid after September 2021, subsequent to compliance with notice requirements of WCC 1.10.200; and

NOW, THEREFORE, BE IT RESOLVED that the property listed in Exhibit "A" be sold at public auction or by sealed bid after September 2021 pursuant to the notice requirements of WCC 1.10.200.

BE IT FURTHER RESOLVED that where there is no bid within the advertised terms the County may withdraw the property from the sale, or if the County deems such action to be in the public interest, reject any or all bids either written or oral, and thereafter negotiate the sale of the property providing the negotiated price is higher than the highest bid at the public sale and that the public has notice by advertisement, under WCC 1.10.200, and an opportunity to compete through mailed bids, for the purchase by offer of a more favorable price.

APPROVED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecuting Attorney

Exhibit "A"
CAPITAL EQUIPMENT SURPLUS REQUEST
September 2021

PUBLIC WORKS – EQUIPMENT SERVICES							
UNIT	YEAR	MAKE	MODEL	DEPT	VIN #	EST MILES/HRS	COMMENTS
063	2007	Chevy	Colorado Crew Cab 4x4 Truck	HLTH	1GCDT13E978223476	129,776	Already Replaced
075	2005	Toyota	Prius Hybrid Sedan	HLTH	JTDKB22U653101886	100,685	Already Replaced
096	2005	Toyota	Prius Hybrid Sedan	HLTH	JTDKB22U053102371	106,392	Already Replaced
188	2001	Ford	F350 XL 4x4 Truck	ER&R	1FDWF37S41EB19574	121,949	Already Replaced
BC 12002	2001	Makita	G410R Generator w/ #188	ER&R	1000524	N/A	Already Replaced
203	1993	GMC	C3500 Truck	M&O	1GDJC34K8PE502613	115,520	Already Replaced
213	1988	International	5YD Single Axle Dump Truck	M&O	1HTLDTV9KH625883	56,465	Already Replaced
224	1987	Dodge	D 350 Truck	ER&R	1B6MD3453HS494677	100,200	Already Replaced
229	2005	Kenworth	T800B Six Wheel Dump Truck	M&O	1NKDXBEXX5R091326	240,122	Already Replaced
314	1991	CAT	140G Grader	M&O	72V13873	11,094	Already Replaced
315	2000	Brentwood	Pup Trailer	M&O	2B9KSBK8YS304420	N/A	Already Replaced
316	2000	Brentwood	Pup Trailer	M&O	2B9KSBK9YS304426	N/A	Already Replaced
329	2012	John Deere	6430 Tractor	M&O	1L06430PTBP704136	8,246	Already Replaced
338	2012	John Deere	6430 Tractor	M&O	1L06430PVPB705617	17,699	Already Replaced
341	2010	Broce	RJT350 Broom	M&O	406973	1,162	Already Replaced
342	2010	Broce	RJT350 Broom	M&O	406974	4,231	Already Replaced
360	1984	John Deere	850 Dozer	M&O	J713373	1,236	Already Replaced
445	2001	Zieman	Tilt Top Trailer	M&O	1ZCT32A271ZP23573	N/A	Already Replaced
456	1990	Swenson	Sander w/ #213	M&O	54038	N/A	Already Replaced
457	1991	Swenson	Sander w/ #229	M&O	N/A	N/A	Already Replaced
476	2009	Snow-Boss	Plow 8'6"	M&O	115957	N/A	Already Replaced
477	2003	Pump	Pump TP-150 6"	M&O	TP-150/3/02	N/A	Already Replaced
496	1981	Anti-Ice	1500 gallon Tank	M&O	B-427602	N/A	Already Replaced
529	2012	US Mower	Rotary Mid Mount Mower	M&O	102074	N/A	Already Replaced
538	2012	US Mower	Rotary Mid Mount Mower	M&O	102062	N/A	Already Replaced
579	1994	Snow Plow	Snow plow w/ #229	M&O	N/A	N/A	Already Replaced
596	1980	Snow Plow	12' snow plow	M&O	11-143-9	N/A	Already Replaced
869	2008	Ford	F250 4x4 EX Cab Truck	PARKS	1FTSX21Y18EA18736	145,301	Already Replaced

DESCRIPTION	
Miscellaneous buckets for equipment the county no longer owns	Miscellaneous broken and unusable tools, parts, and supplies
Obsolete plow mounts	Used & unsalvageable bridge decks
Miscellaneous obsolete vehicle parts	Miscellaneous obsolete inventory items (culvert, timbers, etc.)
Wash rack misc./obsolete parts (incl. pressure washer parts)	Miscellaneous obsolete hydraulic cylinders

GENERAL FUND – SURPLUS EQUIPMENT						
UNIT	YEAR	MAKE	MODEL/DESCRIPTION	DEPT	PROPERTY TAG #	COMMENTS

DESCRIPTION
Miscellaneous worn, obsolete, or broken office equipment, computer components, and furniture



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-515

File ID:	AB2021-515	Version:	1	Status:	Agenda Ready
File Created:	08/31/2021	Entered by:	SMock@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Resolution Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	09/14/2021	Enactment #:			

Primary Contact Email: sdraper

TITLE FOR AGENDA ITEM:

Resolution in the matter of the Whatcom County Six-Year Transportation Improvement Program (STIP) for the years 2022 through 2027

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Each year the County is required to update its Six-Year Transportation Improvement Program (STIP), per RCW 35.77.010 and RCW 36.81.121. The STIP includes the capital elements of the first six years of the Fourteen-Year Ferry Program. The STIP is intended as a planning tool for local, state, and federally funded projects and is designed to identify projects for preliminary engineering, right-of-way purchase and/or construction

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, 1. 2022-2027 resolution.pdf, 2. 2022-2027 Project Narratives.pdf, 3. Attachments.pdf, 4. E. 2020 Annual Bridge Report FINAL.pdf, 5. Exhibit A 2022-2027 Draft STIP.pdf, 6. Exhibit B 2022-2035 Ferry Capital Plan Final.pdf

**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

Memo

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

Through: Jon Hutchings, Director *JH*

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

Date: August 31, 2021

Re: Six-Year Transportation Improvement Program (STIP), 2022-2027
Introduction, Public Hearing and Adoption

Requested Action:

As a follow-up to our August 10th work session with County Council, the Department of Public Works requests that the STIP Resolution and its associated exhibits, 2022-2027 Six-Year Transportation Improvement Program and 2022-2035 Fourteen-Year Ferry Capital Program, be introduced on the September 14th County Council meeting. We then request that a public hearing be advertised for and held at the September 28th County Council meeting, with the resolution potentially adopted at said meeting.

Background and Purpose:

Each year the County is required to update its Six-Year Transportation Improvement Program, per RCW 35.77.010 and RCW 36.81.121. The County is also required to prepare a Fourteen-Year Ferry Capital Program each year per RCW 36.54.015 and an Annual Bridge Report per RCW 36.81.121. The STIP includes the capital elements of the first six years of the Fourteen-Year Ferry Capital Program which is Exhibit "B" of the resolution.

Information:

- 1- Memorandum to County Executive and Council**
 - Attachment "A" – Removed, Re-modified, and Added Projects
 - Attachment "B" - 2022-2027 Capital Projects List
 - Attachment "R1-R39, B1-B14, F1-F3, Y1-Y10" – Project Narrative Sheets
 - Attachment "C1" - Road Fund Balance Projections
 - Attachment "C2" - Road Fund Revenue Projections
 - Attachment "C3" - Road Fund Expenditure Projections
 - Attachment "D" - Roadway Priority Rating Program
 - Attachment "E" – Annual Bridge Report
- 2- 2022-2027 Six Year Transportation Improvement Program Resolution**
 - Exhibit "A" - 2022-2027 Six-Year Transportation Improvement Program
 - Exhibit "B" - 2022-2035 Fourteen-Year Ferry Capital Program

PROPOSED BY: _____

INTRODUCED: 9/14/2021

RESOLUTION NO. _____

SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM
FOR THE YEARS 2022 THROUGH 2027

WHEREAS, pursuant to RCW 36.81.121, Whatcom County is required to prepare and approve a Six-Year Transportation Improvement Program each year; and

WHEREAS, pursuant to RCW 36.54.015, Whatcom County is required to prepare a Fourteen-Year Ferry Capital Program each year; and

WHEREAS, the Road Priority Array and the Annual Bridge Report were made available to the legislative authority during the preparation of this program; and

WHEREAS, following approval of the Six-Year Transportation Improvement Program, the law requires an annual review of the work accomplished under the program and a determination of current transportation needs; and

WHEREAS, based upon the findings of the annual review, and after a public hearing, a Six-Year Transportation Improvement Program shall be approved; and

WHEREAS, pursuant to RCW 36.81.121, the Six-Year Transportation Improvement Program and Fourteen-Year Ferry Capital Program must be consistent with the County comprehensive plan pursuant to RCW 36.70A; and

WHEREAS, the Six-Year Transportation Improvement Program attached hereto as Exhibit "A" has been reviewed and determined to be consistent with the County's comprehensive plan; and

WHEREAS, the Fourteen-Year Ferry Capital Program attached hereto as Exhibit "B" has been reviewed and determined to be consistent with the County's comprehensive plan;

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

1. That the Whatcom County Six-Year Transportation Improvement Program for the years 2022 through 2027, which is attached hereto as Exhibit "A", including the capital elements of the first six-years of the Fourteen-Year Ferry Capital Program, which is attached hereto as Exhibit "B", is hereby approved.
2. That the County Engineer is directed to file a copy of the same with the County Road Administration Board and the State Secretary of Transportation.

APPROVED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

Approved Via Email -CQ/SM 9/2/2021
Chris Quinn, Senior Civil Deputy Prosecuting Attorney

Birch Bay Drive and Pedestrian Facility CRP #907001

Construction Funding Year(s): 2022 - 2024

Project Narrative:

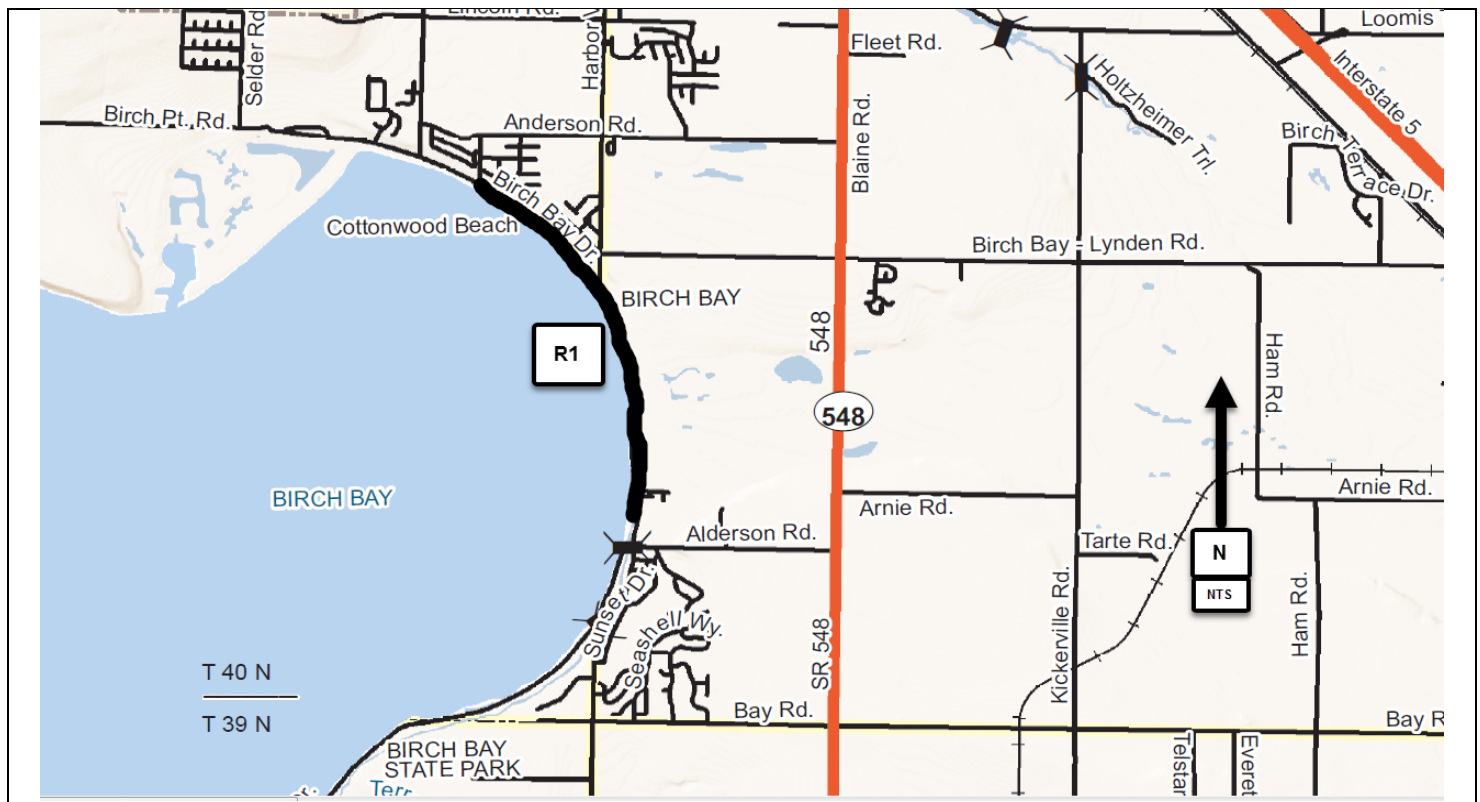
This project is located parallel to Birch Bay Drive from Cedar Avenue to the mouth of Terrell Creek, in Sections 30 and 31, T40N, R1E, and Sections 24 and 25, T40N, R1W. This is a 1.58 mile separated berm with pathway to encourage pedestrian use along Birch Bay Drive to support safety and to protect the roadway from storm damage. In addition, the project will provide mitigation for both beach erosion and roadway protection. This project is listed **#R1** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Phase I of the Feasibility Study was completed in 2006. Phase 2A (Preliminary Construction Cost Estimate) was completed in 2007, and updated in spring of 2013. Preliminary Engineering began in late 2013, R/W acquisition began in 2016 (100% complete), and permitting is 100% complete. Construction began in December 2019 and is expected to last through 2022. Due to the long duration monitoring periods required by project permits, it is anticipated that the contract may be open through 2025.

Total Estimated Project Cost: \$14,150,000 Expenditures to Date: \$7,690,000	Funding Sources:	
	Federal	\$3,172,000 (STP and TAP)
	State	\$0
	Local	\$10,978,000

Environmental Permitting	Whatcom County-Shorelines; WDFW-HPA, Army Corps of Engineers, DOE; Sec 404 Clean Water Act; NEPA
Right-of-Way Acquisition (Actual)	\$1,686,000
County Forces (Estimate)	N/A



East Smith Road & Hannegan Road Intersection Improvements CRP # 914002

Construction Funding Year(s): 2022

Project Narrative:

The intersection of East Smith and Hannegan Roads is located in Sections 28, 29, 32 and 33, T39N, R3E. This intersection currently experiences delays due to the lack of left-turn channelization on Smith Road. The project work entails the construction of a two-lane Roundabout at the intersection. This project is listed **#R2** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

The 'Alternatives Analysis' completed by a traffic consultant in 2018 determined a two-lane Roundabout as the best design solution. Design proceeding, and is expected to be completed in 2021, with Construction planned for 2022 depending on ROW acquisition, utility relocation, and environmental permitting.

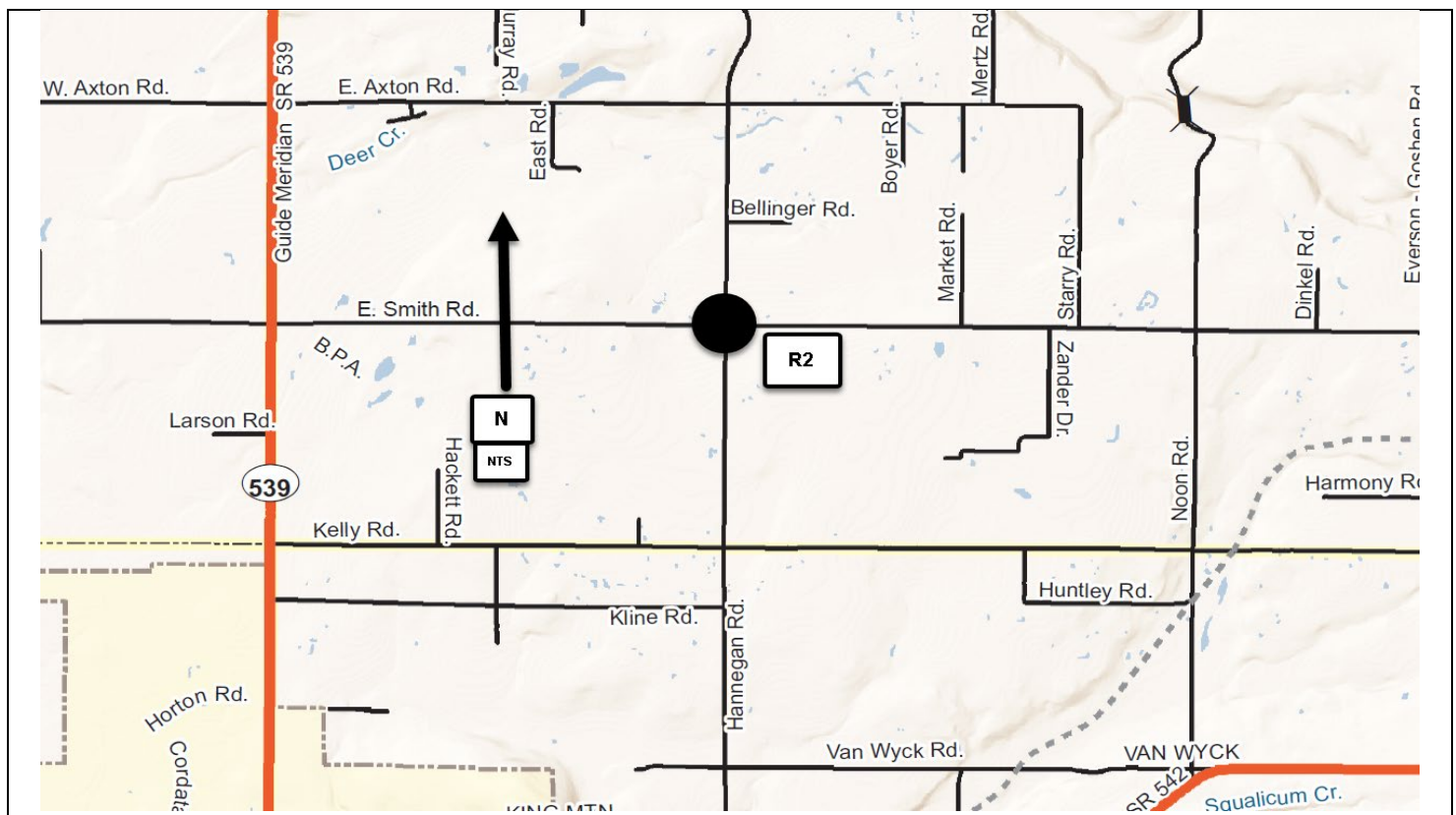
Total Estimated Project Cost: \$4,300,000

Expenditures to Date: \$461,000

Funding Sources:

Federal	\$2,000,000 ST/HSIP available in 2021
State	\$0
Local	\$2,300,000

Environmental Permitting	NEPA, ESA, Corp of Engr, Clrg/CAO, DOE
Right-of-Way Acquisition (Estimate)	\$350,000
County Forces (Estimate)	N/A



**Marine Drive
Locust Avenue to Alderwood Avenue
Reconstruction and Bike/Ped Facilities
CRP # 917001**

Construction Funding Year(s): 2022

Project Narrative:

This Marine Drive project is located between Locust Ave. and Alderwood Avenue in Section 15 of T38N, R2E. The work involves reconstruction of approximately 0.6 mile of roadway with emphasis on bike/pedestrian and stormwater quality enhancements. This project is listed **#R3** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Construction contract awarded in summer of 2021, with construction expected to begin in fall 2021 and continue into 2022.

Total Estimated Project Cost: \$4,177,000 Expenditures to Date: \$550,000	Funding Sources:	
	Federal	\$2,510,000 (STBG and TA)
	State	\$0
	Local	\$1,667,000

Environmental Permitting	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	\$50,000
County Forces (Estimate)	N/A



Samish Way & Galbraith Lane Pedestrian Crosswalk CRP # 919005

Construction Funding Year(s): 2022

Project Narrative:

Construct a pedestrian-actuated crosswalk for access across Samish Way at Galbraith Lane in response to the City of Bellingham's expansion of the upper Lake Padden parking lot on Samish Way. The existing and projected high use of this parking lot for mountain bike and pedestrian use will result in numerous pedestrians and bikes crossing Samish Way. This project is listed **#R4** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Currently working with the City of Bellingham to provide an in-house design for the pedestrian-actuated crosswalk. COB plans to install the crosswalk with their traffic signal crews, and construction is planned in 2022.

Total Estimated Project Cost: \$ 60,000

Expenditures to Date: \$20,400

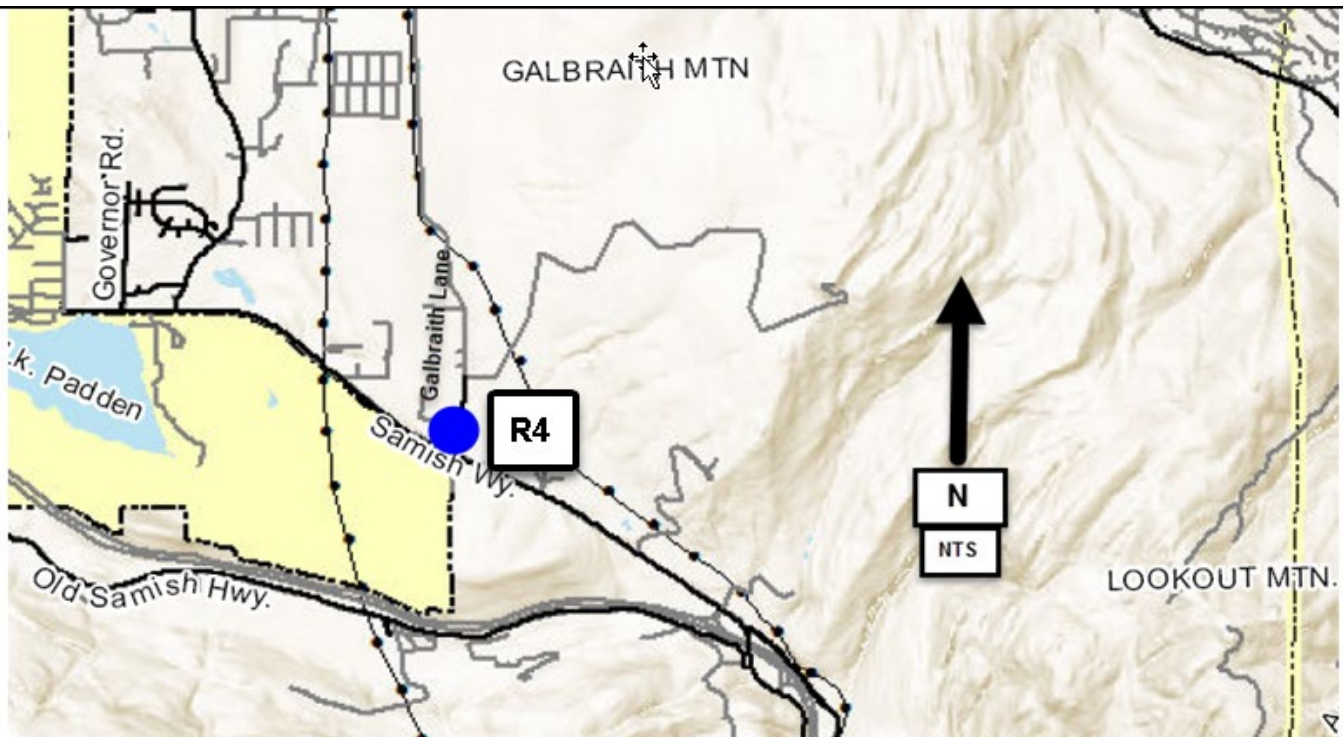
Funding Sources:

Federal	\$0
State	\$0
Local	\$60,000

Environmental Permitting	SEPA, Land Disturbance, Critical Areas
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Right-of-Way Acquisition (Estimate)	\$10,000
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County Forces (Estimate)	TBD
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Marshall Hill Slide Damage Repair Slide Repair CRP # 921022

Construction Funding Year(s): 2022

Project Narrative:

This Marshall Hill project is located between Cronk Road and SR 542 in Section 32 of T39N and R5E. This project will replace a culvert and repair slide damage. This project is listed **#R5** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Geotechnical report and evaluation of failing culvert has been completed. Design work progressing on culvert replacement and slope stabilization. Roadway may remain closed in this area over winter of 2021-2022; however, still evaluating.

Total Estimated Project Cost: \$725,000

Expenditures to Date: \$35,000

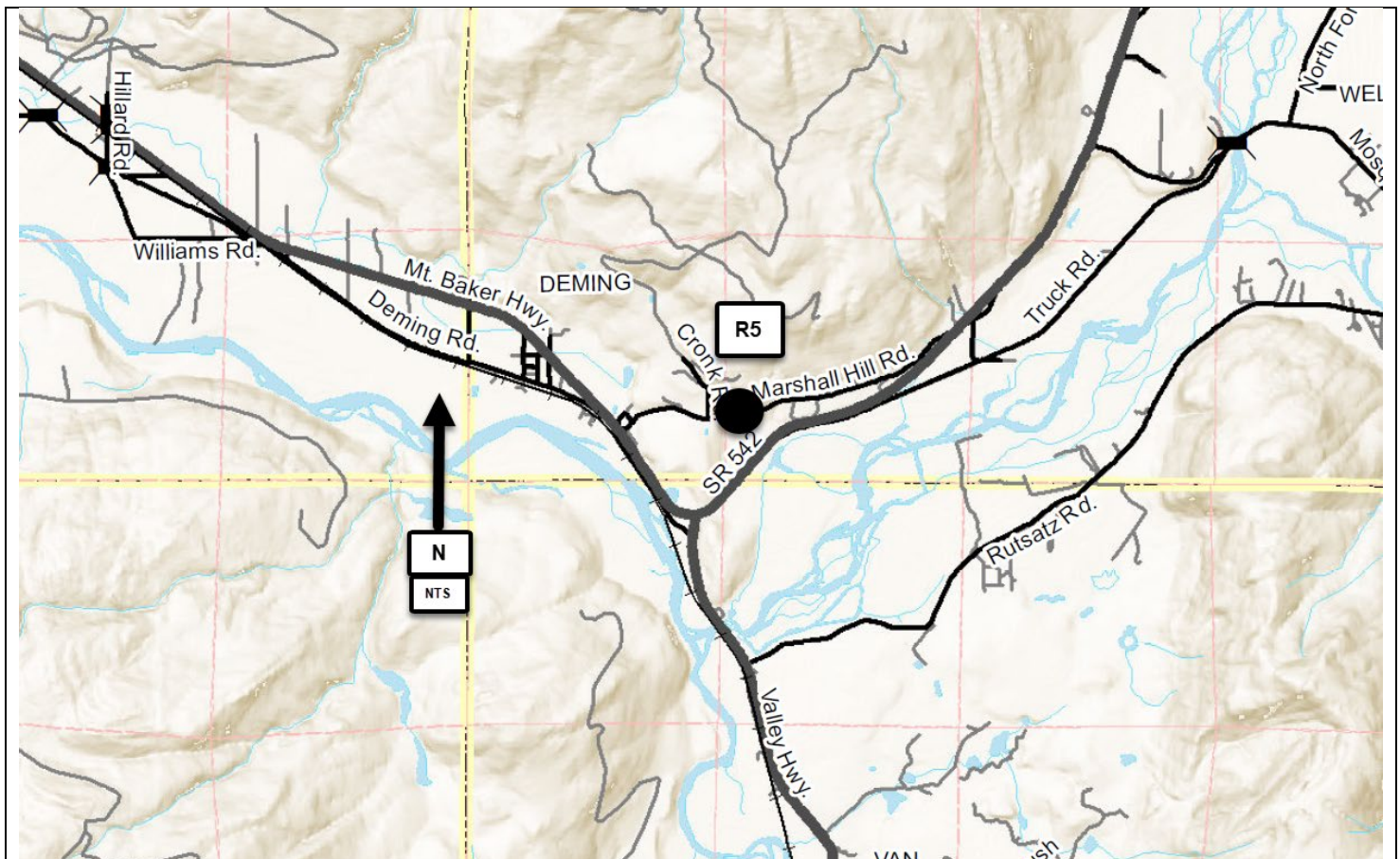
Funding Sources:

Federal	\$0
State	\$
Local	\$725,000

Environmental Permitting SEPA

Right-of-Way Acquisition (Estimate) N/A

County Forces (Estimate) N/A



Birch Bay Lynden Rd. & Blaine Rd. Intersection Improvements CRP # 906001

Construction Funding Year(s): 2024

Project Narrative:

This project is located 4.6 miles south of Blaine, at the corners common to Sections 19, 20, 29, and 30, T40N, R1E. Intersection improvements being considered are a roundabout or a signal. This is a joint project with the Washington State Department of Transportation; however, it is unlikely that they will participate as a funding source. This project is listed **#R6** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Survey work and R/W Plan started. Consultant contract complete to evaluate & decide on preferred design alternative, which was a roundabout. Applied for and received federal STBG funding of \$800K which is available in 2023-2024. Final design consultant selected, and proceeding with final design in late 2021. Additional grant funds will be looked for through other sources.

Total Estimated Project Cost: \$5,050,000

Expenditures to Date: \$89,000

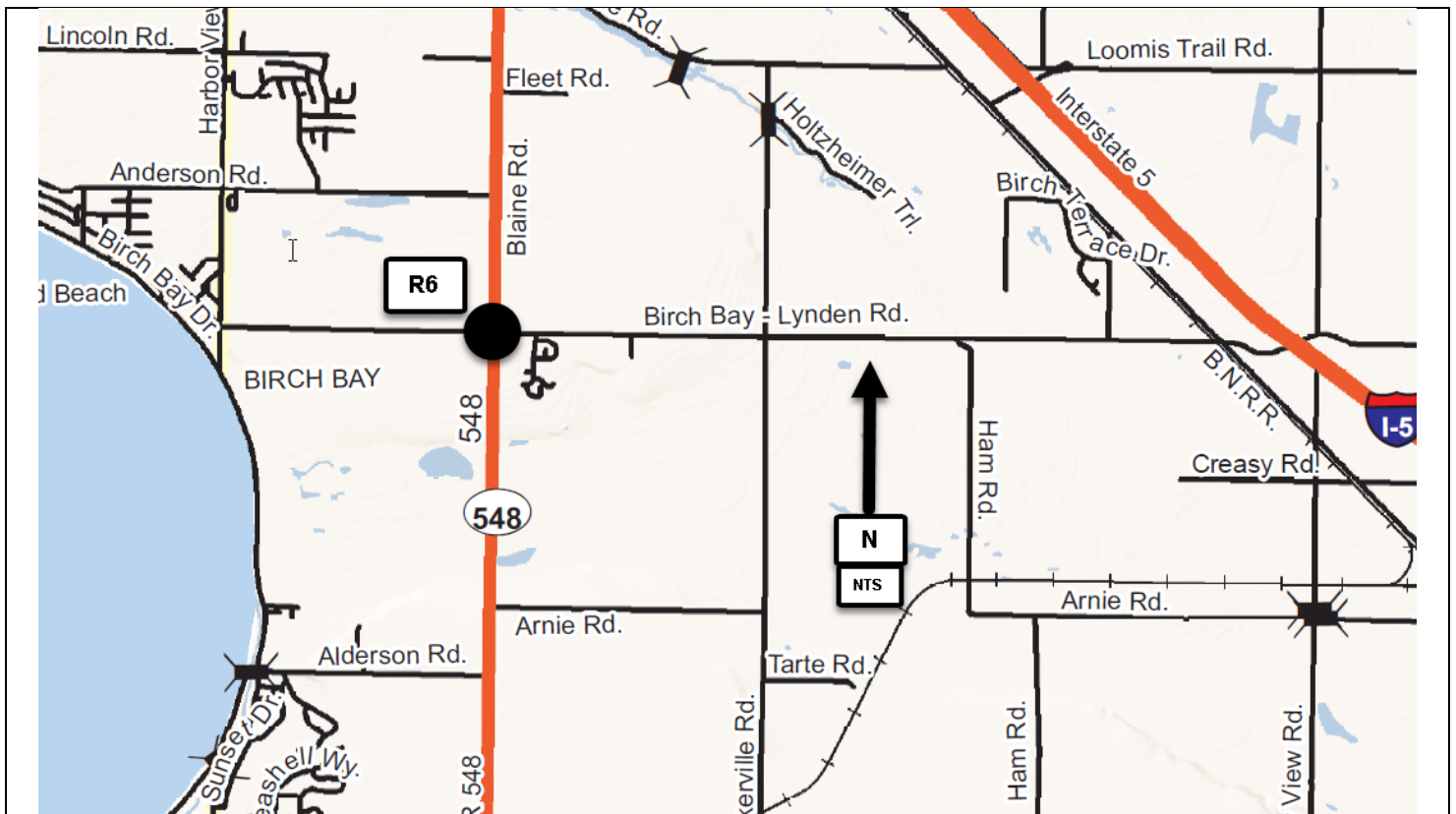
Funding Sources:

Federal	\$ STBG available in 2023-2024
State	\$0
Local	\$1,200,000 (add'l Grant funds sought)

Environmental Permitting ESA, NEPA, Clrg/CAO, Corp of Engr, DOE,

Right-of-Way Acquisition (Estimate) \$500,000

County Forces (Estimate)



Smith Road & Northwest Drive Intersection Improvements CRP # 918019

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Section 27 & 34 of T39N, R2E. The work involves intersection improvements that will likely be a roundabout or traffic signal at the current 4-way stop. This project will also require drainage upgrades and R/W acquisition, and is dependent on the NW Annex building being demolished at a future date. This project is listed **#R7** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Consultant contract underway to evaluate & decide on preferred design alternative, and will be determined in late Fall of 2021. Working closely with Facilities on coordination of intersection improvements in conjunction with NW Annex modifications. Public Works is working with Whatcom Council of Governments (WCOG) to submit this project for Regional Transportation Funding with a request for \$5 million.

Total Estimated Project Cost: TBD
Expenditures to Date: \$ 43,000

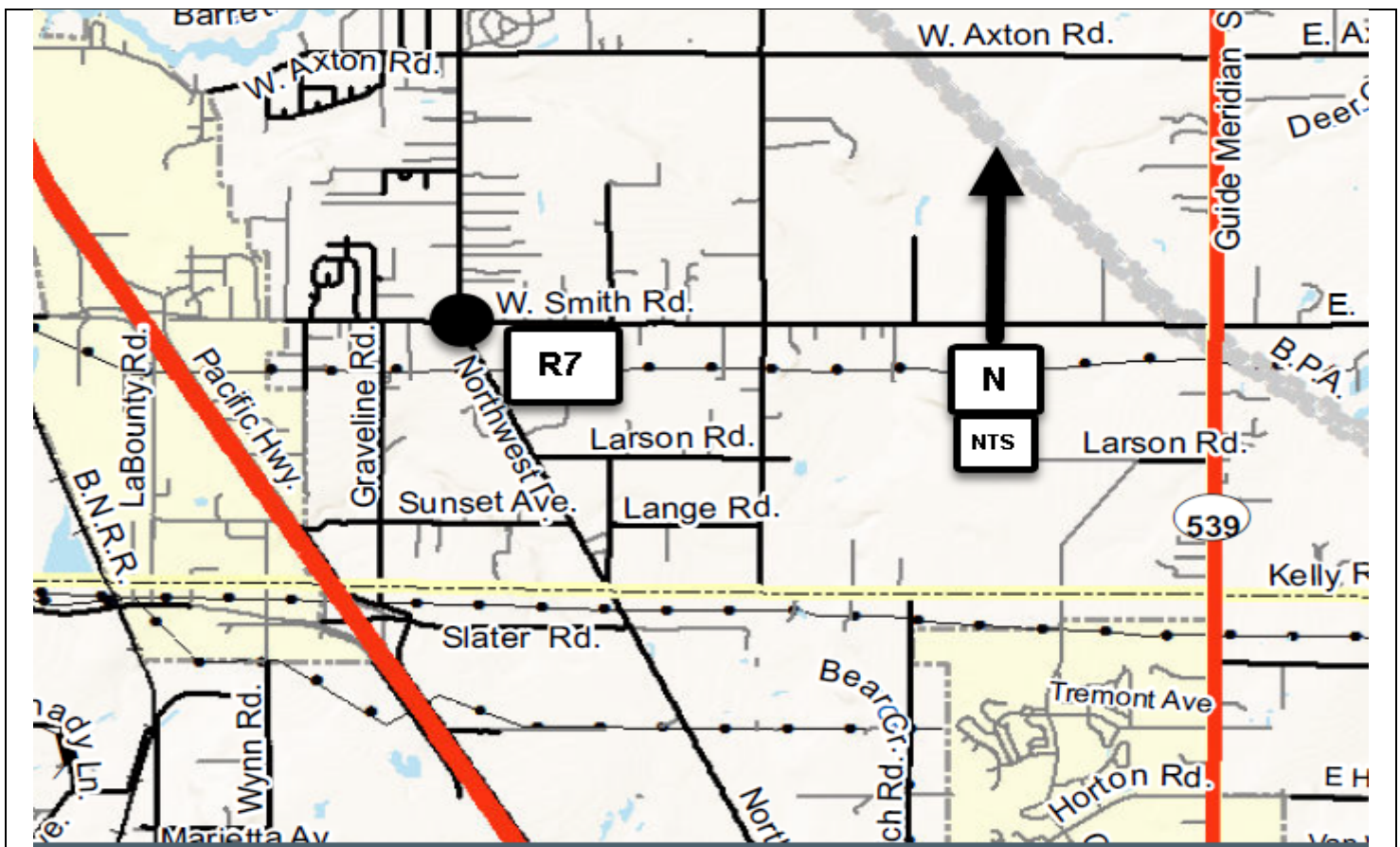
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$35,000 (Grant funds sought thru WCOG)

Environmental Permitting SEPA, Critical Areas, DOE

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Chief Martin Road/Cagey Road to Kwina Pavement Rehabilitation CRP # 920016

Construction Funding Year(s): TBD

Project Narrative:

This Chief Martin Road project is located between Cagey Road to Kwina Road in Sections 24 & 25 of T39N and R1E. The work will involve the pavement rehabilitation of approximately 2.50 miles of roadway. This project is listed **#R8** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Design, permitting and temporary easements to begin in late 2021. Currently looking for funding sources for the construction phase.

Total Estimated Project Cost: \$100,000

Expenditures to Date: \$0

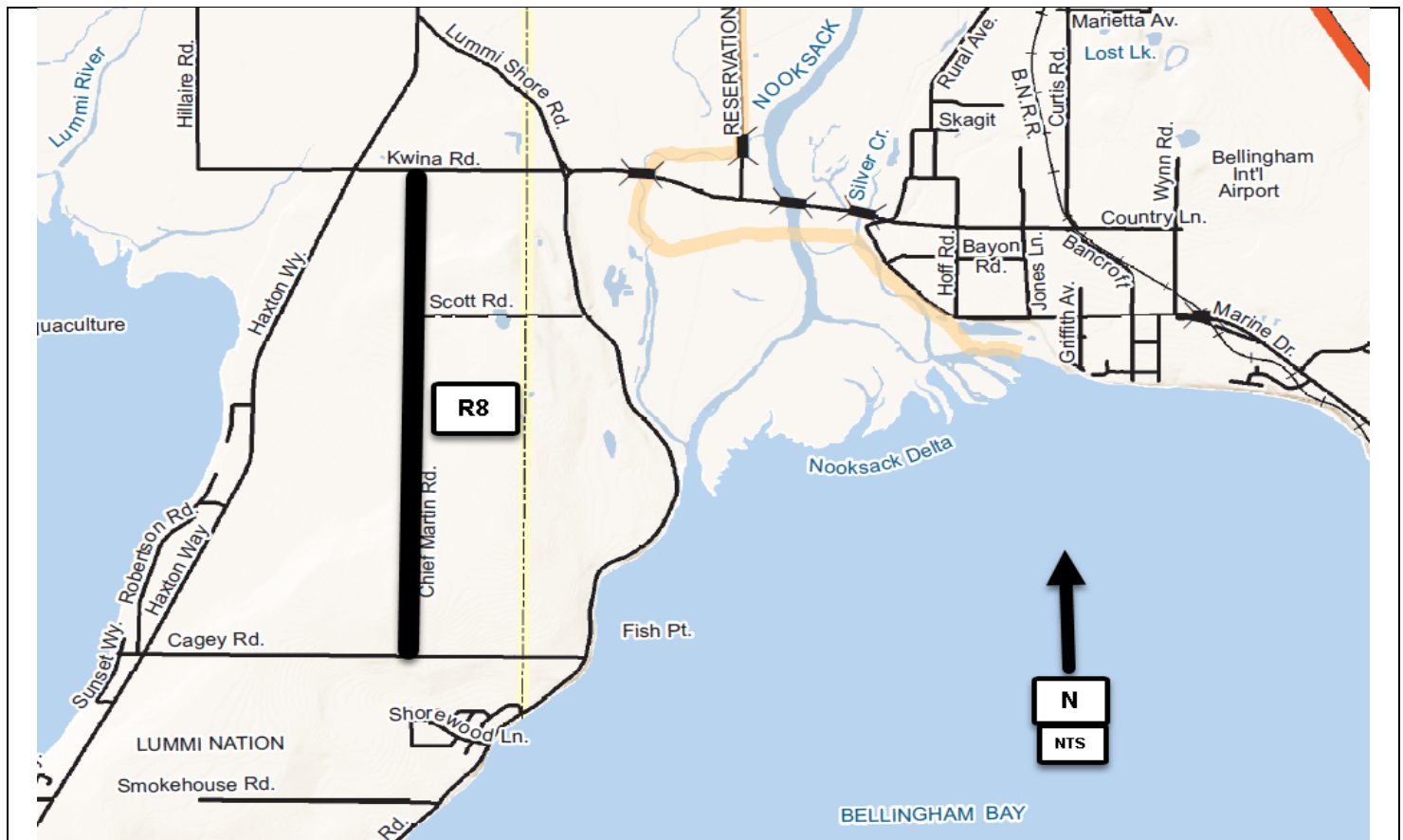
Funding Sources:

Federal	
State	
Local	\$100,000

Environmental Permitting SEPA, ESA, HPA, Clrg/CAO

Right-of-Way Acquisition (Estimate) 5,000

County Forces (Estimate) N/A



Slater Road & Northwest Drive Intersection Improvements CRP # 918019

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Section 27 & 34 of T39N, R2E. The work involves intersection improvements that will likely be a roundabout or traffic signal at the current 3-way stop. This project will also require fish passage upgrades and R/W acquisition. This project is listed **#R9** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: WSDOT is the lead agency on this project and will be providing the design & construction efforts; however, Public Works staff will coordinate with WSDOT on local agency concerns for the Corridor. Construction start date to be determined (TBD) depending on State progress with permitting and R/W.

Total Estimated Project Cost: TBD
Expenditures to Date: \$ 22,000

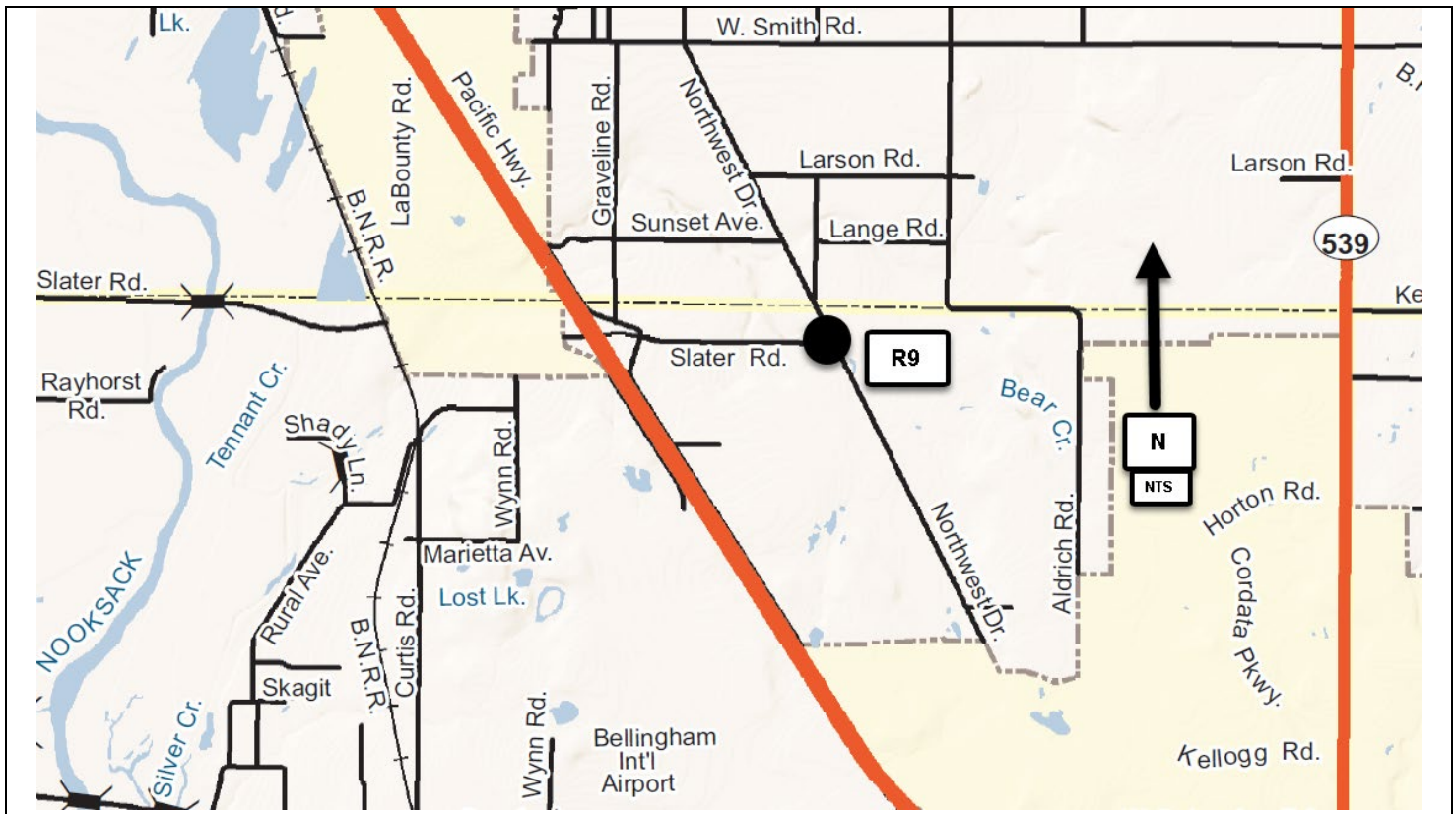
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$15,000

Environmental Permitting SEPA, Critical Areas, DOE

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



**Birch Bay Drive
Crosswalk
CRP #Not Assigned**

Construction Funding Year(s): 2024-2025

Project Narrative:

This project is proposed to be located on Birch Bay Drive at the location of Whatcom County Parks and Recreation's three acre property parcel. The work will involve the installation of a pedestrian-actuated crosswalk, from the Birch Bay Berm, crossing Birch Bay Drive, to the Park's facility. Said facility will be installed when the Parks parcel generates the required 'warrants' needed to justify the protected crossing. The project is located in Section 30, T40N, R1E, and is listed as **#R10** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

No work has begun on this future project. Whatcom County Parks and Recreation is currently developing their property, and there is close communication between the two County departments on this future proposed project.

Total Estimated Project Cost: \$495,000

Expenditures to Date: \$ 0

Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$495,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)



Lummi Nation Transportation Projects CRP #912017

Construction Funding Year(s): 2022

Project Narrative:

The Lummi Nation Transportation Projects is located in Section 2, T37N, R1E and Section 34, T38N, R1E. This work, in fulfillment of the ferry lease obligation, involves the construction of transportation improvement projects in accordance with Exhibit C of the October 27, 2011 Uplands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point. This project is listed **#R11** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Projects funds will be available for expenditure when funds of equal or greater value are matched by the Lummi Nation.

Total Estimated Project Cost: \$4,000,000 Expenditures to Date: \$2,000,000	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$2,000,000

Environmental Permitting	N/A
Right-of-Way Acquisition (Estimate)	N/A
County Forces (Estimate)	N/A

Due to the nature of this item, no map exists. Location of the new transportation projects will be determined in 2022.

Point Roberts Transportation Improvements

CRP # 910002

Construction Funding Year(s): 2022

Project Narrative:

Point Roberts is located in T40N and T41N, R3W. The proposed improvements would be specific to area needs and the development of projects to be funded by the Pt. Roberts Transportation Benefit District. This project is listed **#R12** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Public Works has assigned staff working with the Point Roberts Transportation Benefit District Advisory Committee to coordinate project evaluation, selection, and development.

Total Estimated Project Cost: \$150,000

Expenditures to Date: \$400

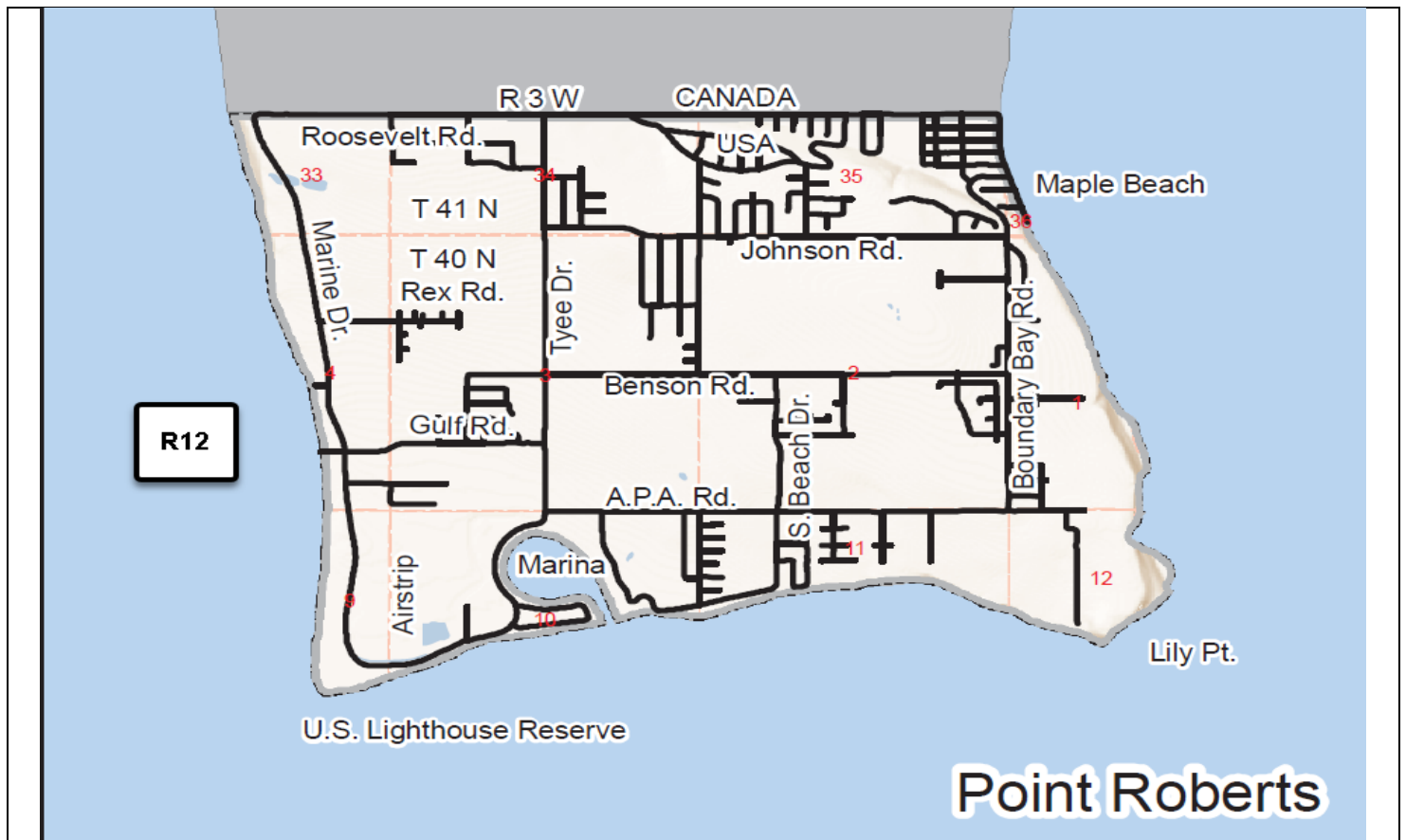
Funding Sources:

Federal	\$0
State	\$0
Local	\$150,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Hemmi Road Flood Mitigation CRP # 916007

Construction Funding Year(s): 2022

Project Narrative:

This Hemmi Road Flood Mitigation project is located on Hemmi Road approximately a half mile east of Hannegan Road, located in Section 16 and 21 of T39N, R3E. Hemmi Road is submerged several months of the year at this location. 2021 work included raising a portion of the road, installing a larger culvert and associated road work. 2022 work consists of mitigation planting for the project. This project is listed **#R13** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Road construction and culvert installation expected to be completed in 2021 with construction mitigation planting scheduled to be completed in 2022.

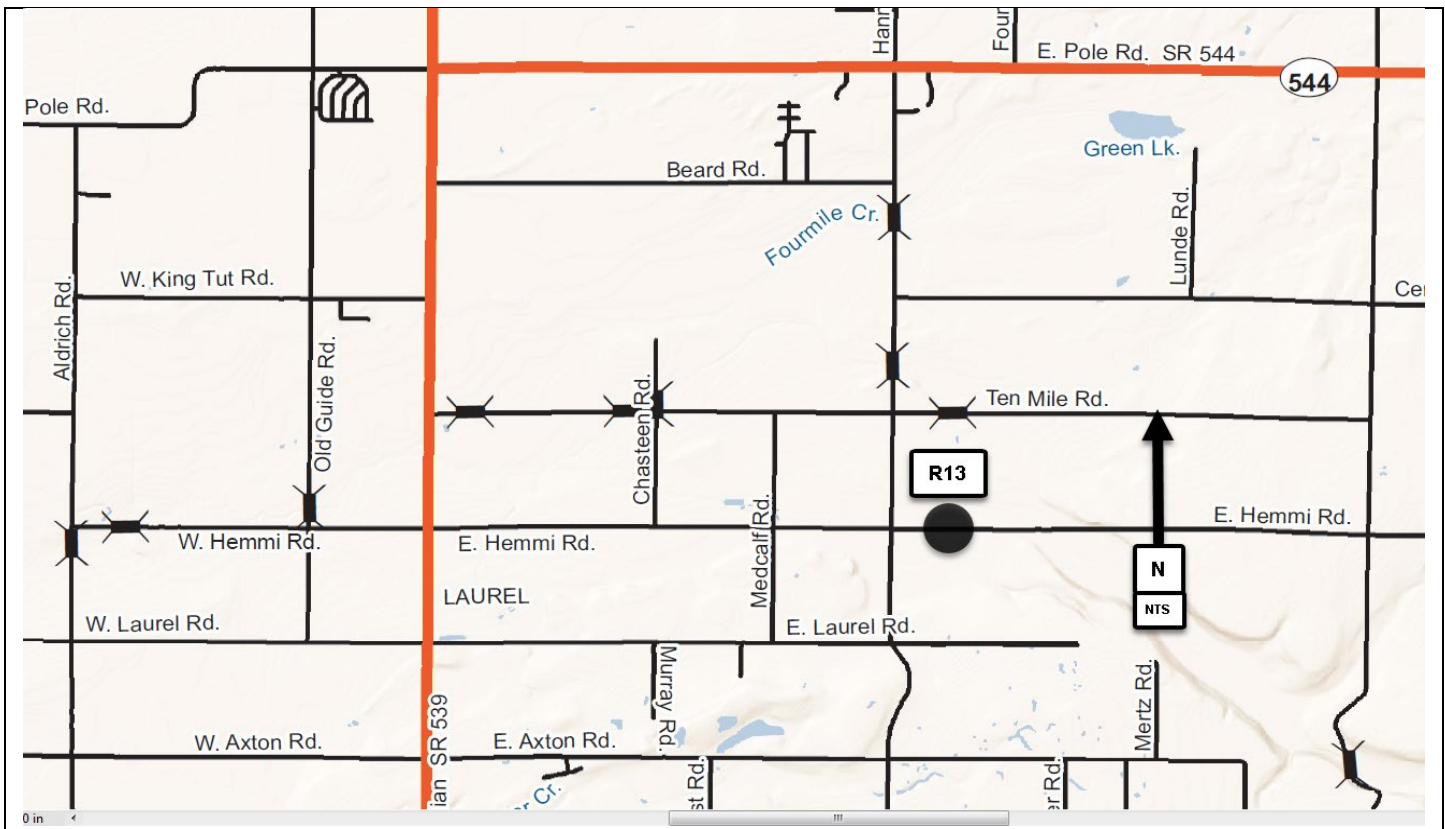
Total Estimated Project Cost: \$1,745,000

Expenditures to Date: \$295,000

Funding Sources:

Federal	
State	
Local	\$1,745,000

Environmental Permitting	SEPA, HPA, Shorelines, ACOE 404
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Innis Creek Road CRP # 915014

Construction Funding Year(s): TBD

Project Narrative:

This project is located northeast of Wickersham in Section 29, T37N, R5E. The work involves raising a quarter mile section of Innis Creek Road to mitigate flooding issues. This project is listed **#R14** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Preliminary design completed in 2019 with alternatives developed; however, environmental mitigation, due to presence of endangered species, has initiated re-evaluation of options.

Total Estimated Project Cost: TBD
Expenditures to Date: \$ 71,000

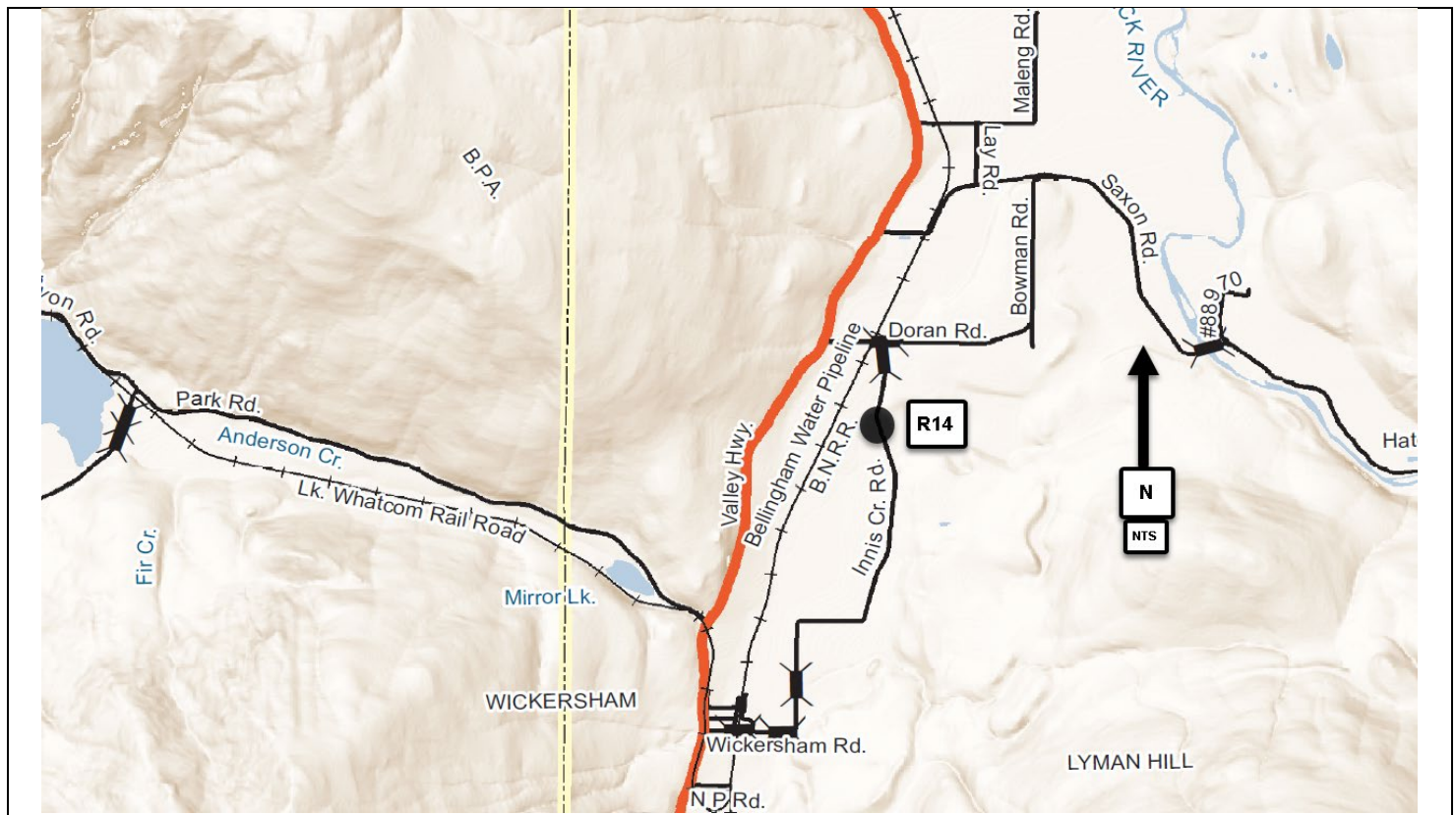
Funding Sources:

Federal	\$0
State	\$0
Local	\$10,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Birch Bay Drive – Jackson Rd. to Shintaffer Rd. CRP #921001

Construction Funding Year(s): 2022

Project Narrative:

This project is located in Sections 24, 30, and 31 of T40N, R1E. The work involves pavement rehabilitation of approximately 2.5 miles of roadway through a grind/repave operation. This project is listed **#R15** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Project design and construction will closely follow the Birch Bay Drive & Pedestrian Facility project to rehabilitate Birch Bay Drive after the soft shore berm construction activities. Additional funding sources will be pursued as they become available.

Total Estimated Project Cost: \$1,750,000

Expenditures to Date: \$ 0

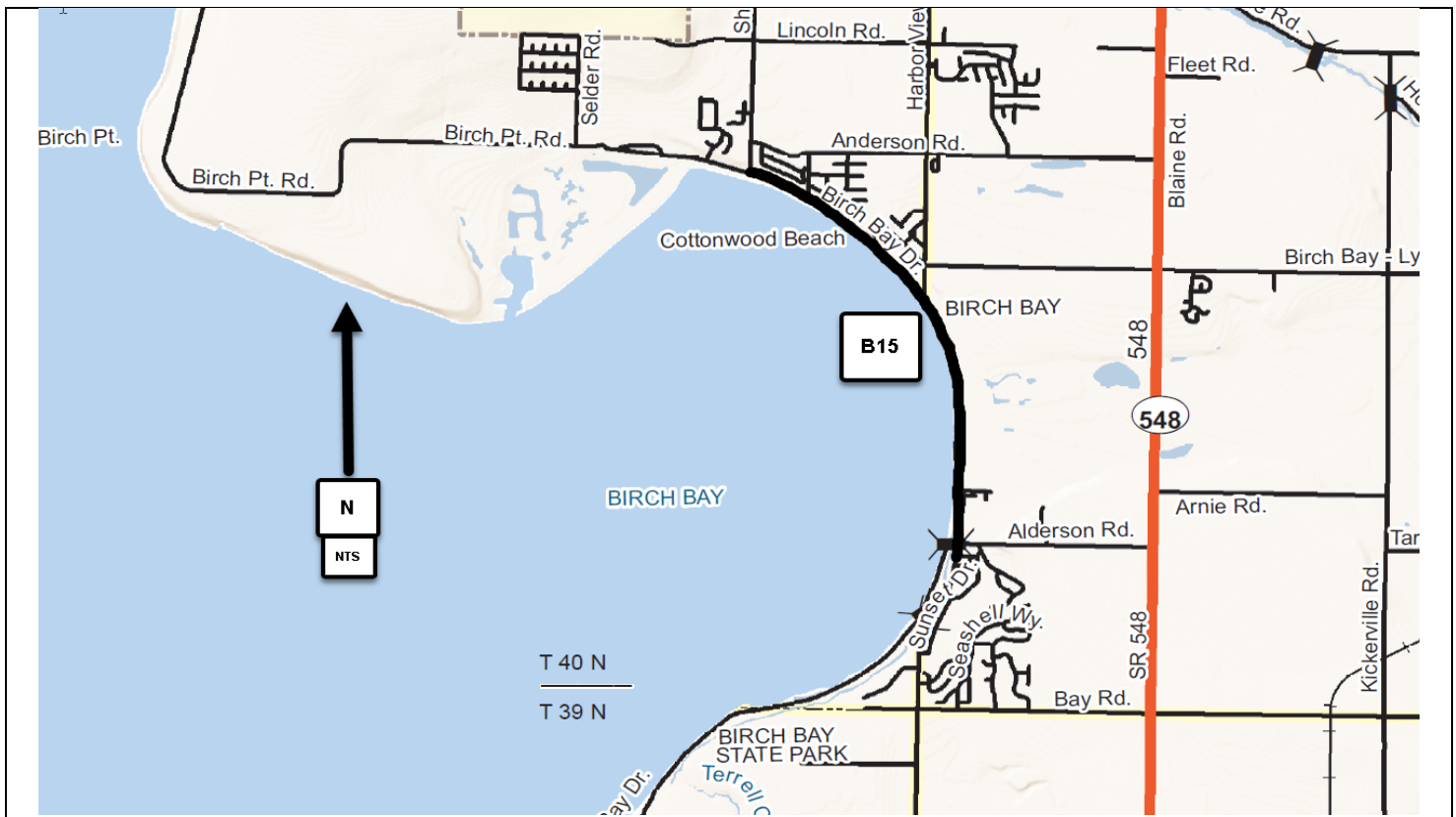
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$1,750,000

Environmental Permitting SEPA, CLR/CAO, Shorelines

Right-of-Way Acquisition (Estimate) \$0

County Forces (Estimate) TBD



Marine Drive II Alderwood Avenue to Bridge No. 172 Reconstruction and Bike/Ped Facilities CRP # 921002

Construction Funding Year(s): TBD

Project Narrative:

This Marine Drive project is located between Alderwood Avenue and Bridge No. 172 in Section 15 of T38N, R2E. The work involves reconstruction of approximately ½ mile of roadway with emphasis on bike/pedestrian enhancements. This project is listed **#R16** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Design, permitting, R/W and construction time frames would be contingent on availability of additional grant monies to fund the project. With additional funding, Preliminary engineering could possibly start in 2022

Total Estimated Project Cost: TBD

Expenditures to Date: \$0

Funding Sources:

Federal	\$800,000 (STBG and TA)
State	\$0
Local	\$0

Environmental Permitting	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Turkington Road/Jones Creek CRP # 915013

Construction Funding Year(s): 2022

Project Narrative:

This project is located in Sections 6 & 7, T37N, R5E. This work involves completing design of road and bridge modifications in this area in coordination with a debris flow berm project being developed by the River and Flood Division. The project is listed **#R17** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Design work and ROW acquisition work is underway by the River & Flood Division, and both phases are expected to be completed in 2021. Construction is dependent on grant funding, and a grant application for construction funding has been submitted to the State DOE Floodplains By Design program. Construction is scheduled to begin in 2022 if successful in obtaining construction funding.

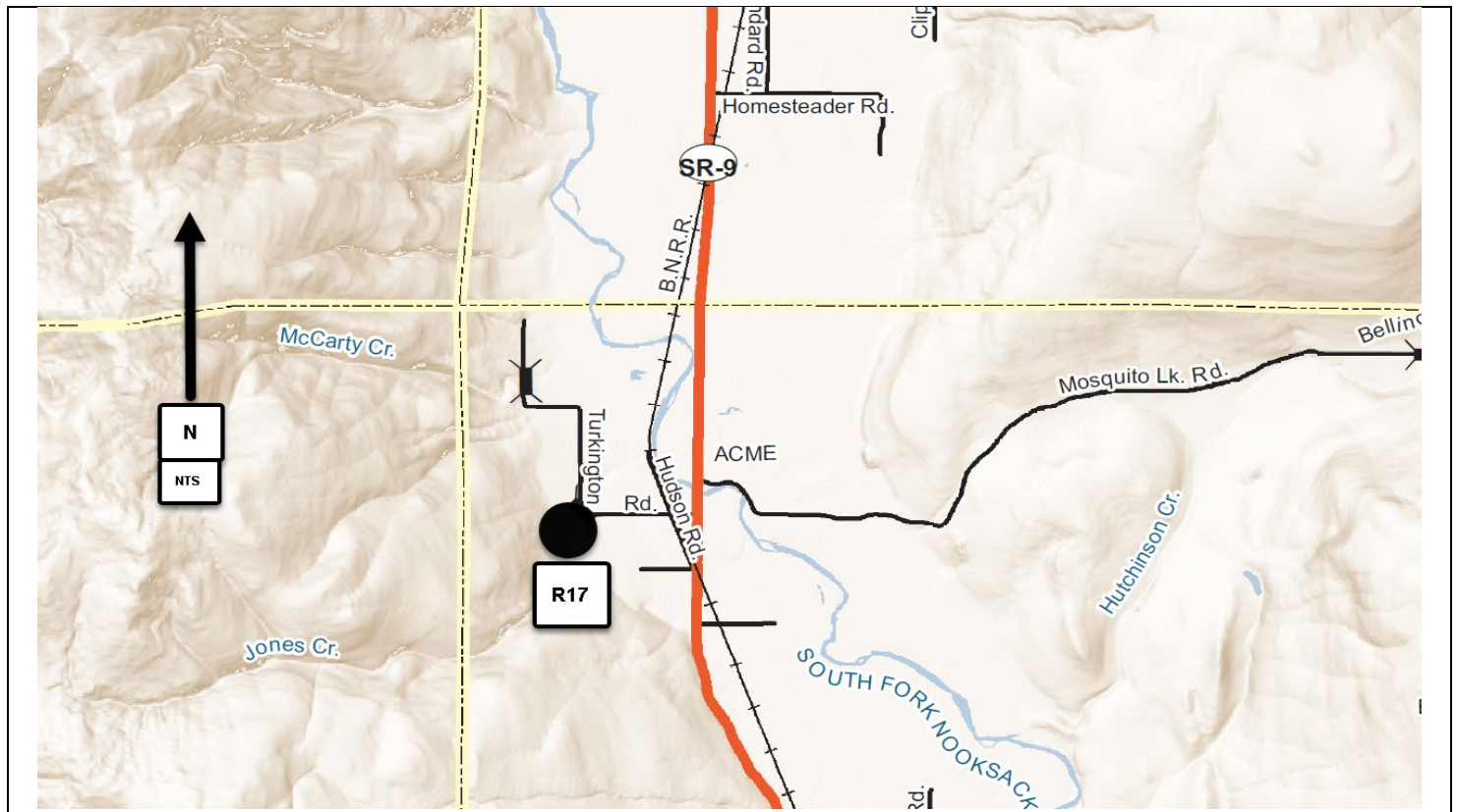
Total Estimated Project Cost: \$ 585,000

Expenditures to Date: \$0

Funding Sources:

Federal	\$0
State	\$0
Local	\$585,000 (2021-2022)

Environmental Permitting	BA, HPA, SEPA, Corps of Engrs, CLR/CAO, Shorelines, DNR
Right-of-Way Acquisition (Estimate)	\$50,000
County Forces (Estimate)	N/A



Truck Road Flood Damage Repair CRP 921003

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Sections 6 & 7, T37N, R5E. The project is listed **#R18** on the 2022-2027 Six-Year Transportation Improvement Program. During high-water events of the 2017/2018 winter, the North Fork Nooksack River eroded the unprotected bank of Truck Road to within 13 feet of the roadway surface. This prompted an emergency project to construct a passive riprap revetment underneath a section of the roadway to provide immediate protection. Flooding during 2020 eroded the remaining bank exposing the recently constructed riprap revetment and destabilizing a portion of the north bound lane. Jersey barriers were placed by county crews to block off this lane to traffic. The FCZD is evaluating road realignment and bank stabilization alternatives to provide a long-term solution in this area.

Project Status: An analysis of road realignment and bank stabilization alternatives is planned for 2021. Preliminary design of the preferred alternatives will be initiated once the preferred alternative is selected. Construction of the road setback is anticipated to occur in 2023. The FCZD is seeking FEMA funds to partially fund the project. Project costs listed are for design only, with the 6-Yr TIP costs supporting only a portion of the unfunded design effort.

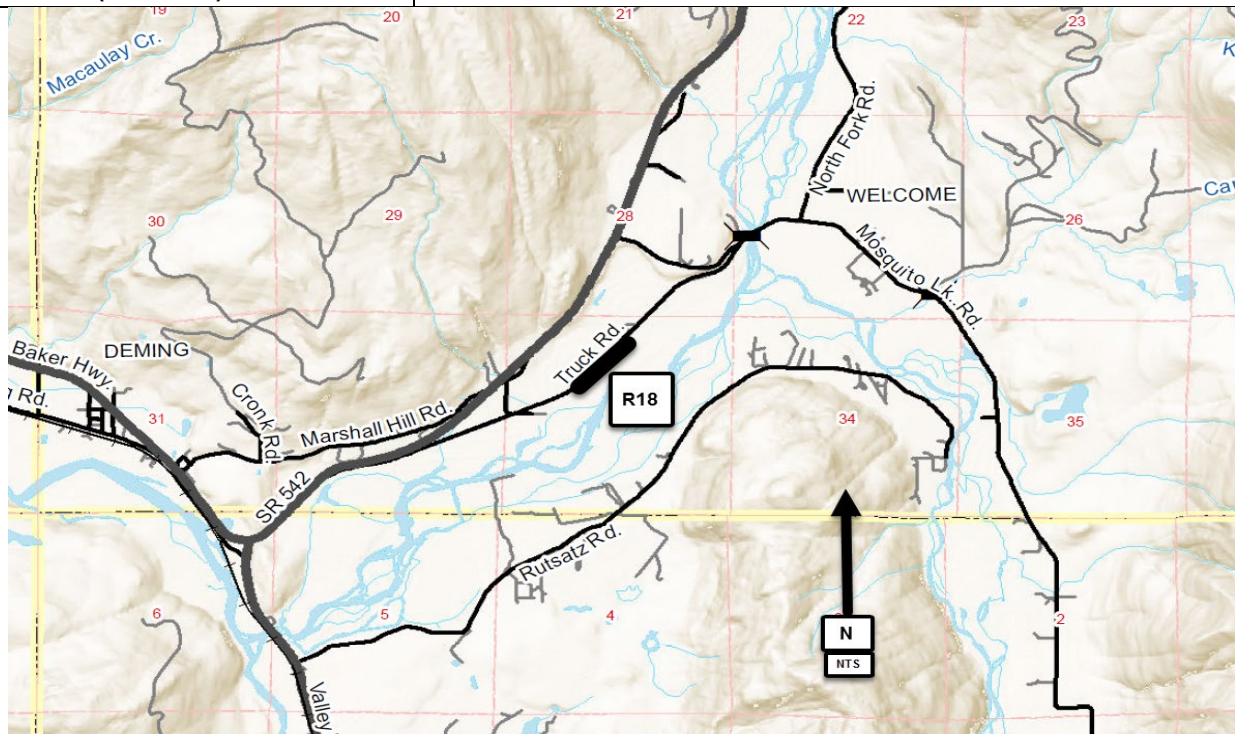
Total Estimated Project Cost: \$ 400,000

Expenditures to Date: \$0

Funding Sources:

Federal FEMA	\$300,000
State	\$0
Local	\$100,000

Environmental Permitting	BA, HPA, SEPA, Corps of Engrs, CLR/CAO, Shorelines, DNR
Right-of-Way Acquisition (Estimate)	\$50,000
County Forces (Estimate)	N/A



Abbott Road/Levee Improvements CRP # 919002

Construction Funding Year(s): 2022-2023

Project Narrative:

This project is located in Section 27, T40N, R3E. This project proposes to stabilize an approximately 600-LF section of the left bank of the Nooksack River adjacent to Abbott Road and to extend the upstream end of the Abbott Levee and realigned it to run under Abbott Road. This project is listed **#R19** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: The project managed by the River and Flood section and is currently in the preliminary engineering design phase. The FCZD has contracted with an engineering consultant to design measures to help arrest the ongoing erosion with construction planned for summer of 2021. The reach assessment will also provide the technical basis for developing alternatives for upstream improvements as Phase 2. The 6-Yr TIP will only show the portion of road fund support for the design effort.

Total Estimated Project Cost: \$400,000

Expenditures to Date: \$0

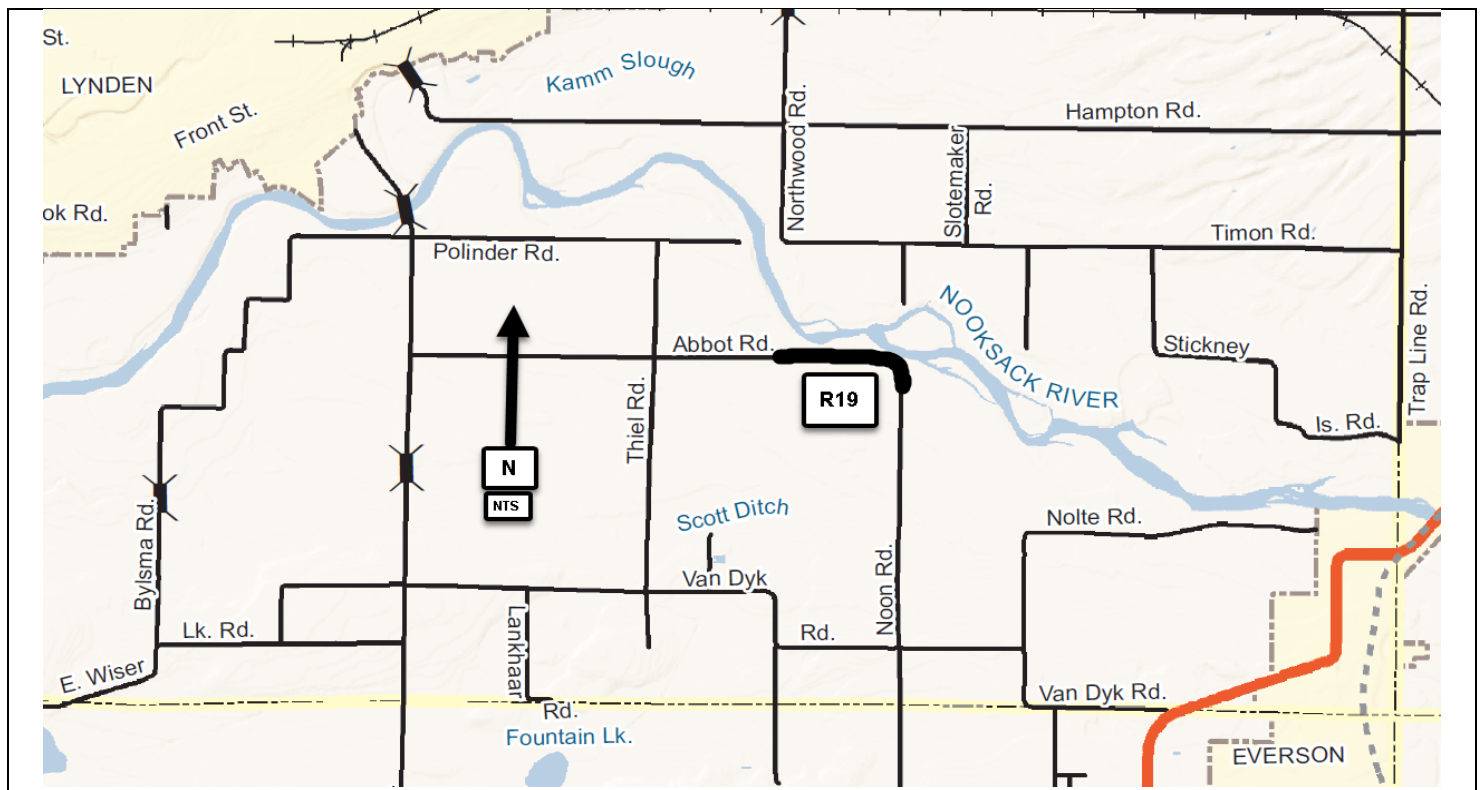
Funding Sources:

Federal	\$
State	\$
Local	\$400,000 (2021-2022)

Environmental Permitting	HPA, ACOE, Shorelines, SEPA
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Ferndale Road/Levee Improvements CRP # 919001

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Sections 30 and 31, T39N, R2E. This project includes reconstruction of 1.2 miles of levee including the Ferndale Levee and Ferndale Treatment Plant Levee segments. The new levee will be set back slightly to Ferndale Road with the roadway serving as the crest of the levee. This project is listed **#R20** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Due to the high cost, outside funding will be sought. The WCFCZD will pursue funding through the Floodplains by Design grant program administered by the DOE. The 6-Yr TIP will only show the road fund support for the design effort.

Total Estimated Project Cost: \$150,000

Expenditures to Date: \$0

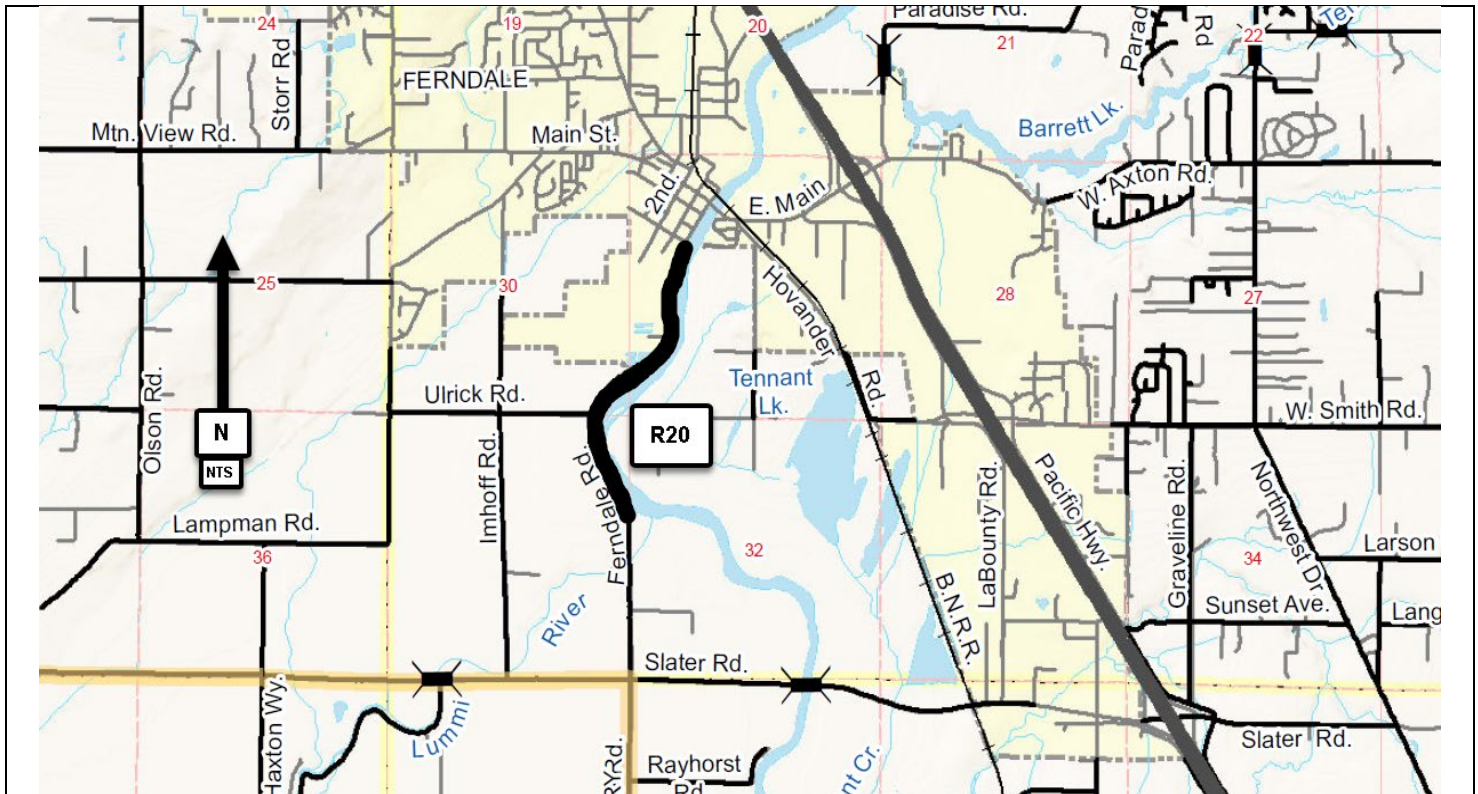
Funding Sources:

Federal	\$
State	\$
Local	\$150,000 (2022-2023)

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Lake Louise Rd., Austin Street to Lake Whatcom Blvd. Pavement Rehabilitation CRP #921004

Construction Funding Year(s): 2023

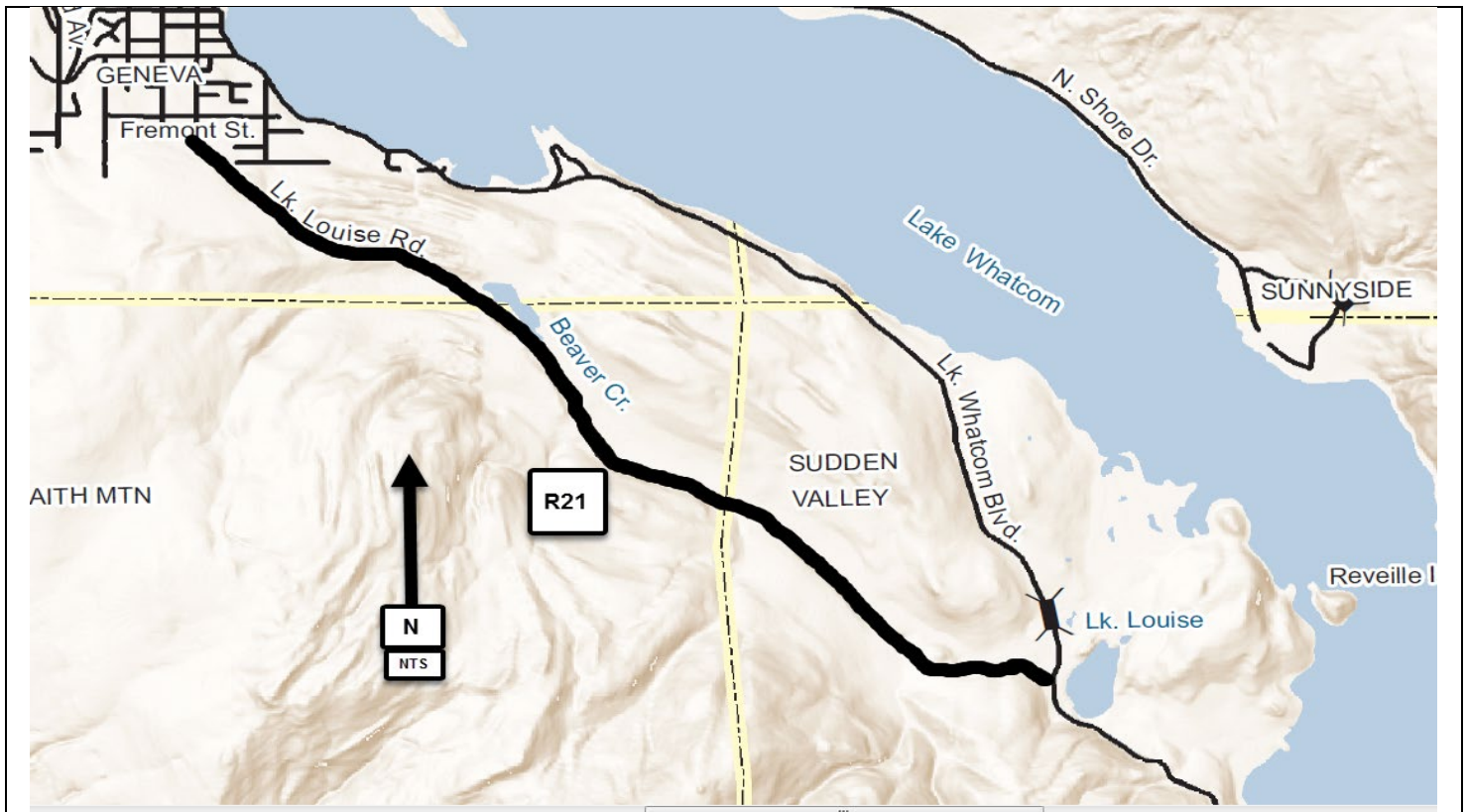
Project Narrative:

The Lake Louise Rd. , Austin St. to Lake Whatcom Blvd. project is located in Sections 35 and 36 of Township 38N , Range 3E and Sections 1, 6, 7, and 8 of Township 37N, Range 4E. The work will involve the pavement rehabilitation of approximately 4.06 miles of roadway and culvert replacements for fish passage. This project is listed **#R21** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work will begin in 2022, with construction planned for summer of 2023.

Total Estimated Project Cost:	\$2,050,000	Funding Sources:	
		Federal	\$ 0
		State	\$ 0
		Local	\$2,050,000
Expenditures to Date:	\$ 0		

Environmental Permitting	SEPA,
Right-of-Way Acquisition (Estimate)	\$0
County Forces (Estimate)	TBD



Austin Street, Lake Louise to Cable Pavement Rehabilitation with ADA Improvements CRP #921005

Construction Funding Year(s): 2023

Project Narrative:

This Lakeway Drive/Terrace, City of Bellingham to Cable St. project is located in Sections 34 and 35 of T38N, R3E. The work will involve the structural overlay of approximately 0.4 miles of roadway along with ADA barrier improvements. This project is listed **#R22** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work will occur in late 2022, with Construction planned for 2023.

Total Estimated Project Cost: \$535,000

Expenditures to Date: \$ 0

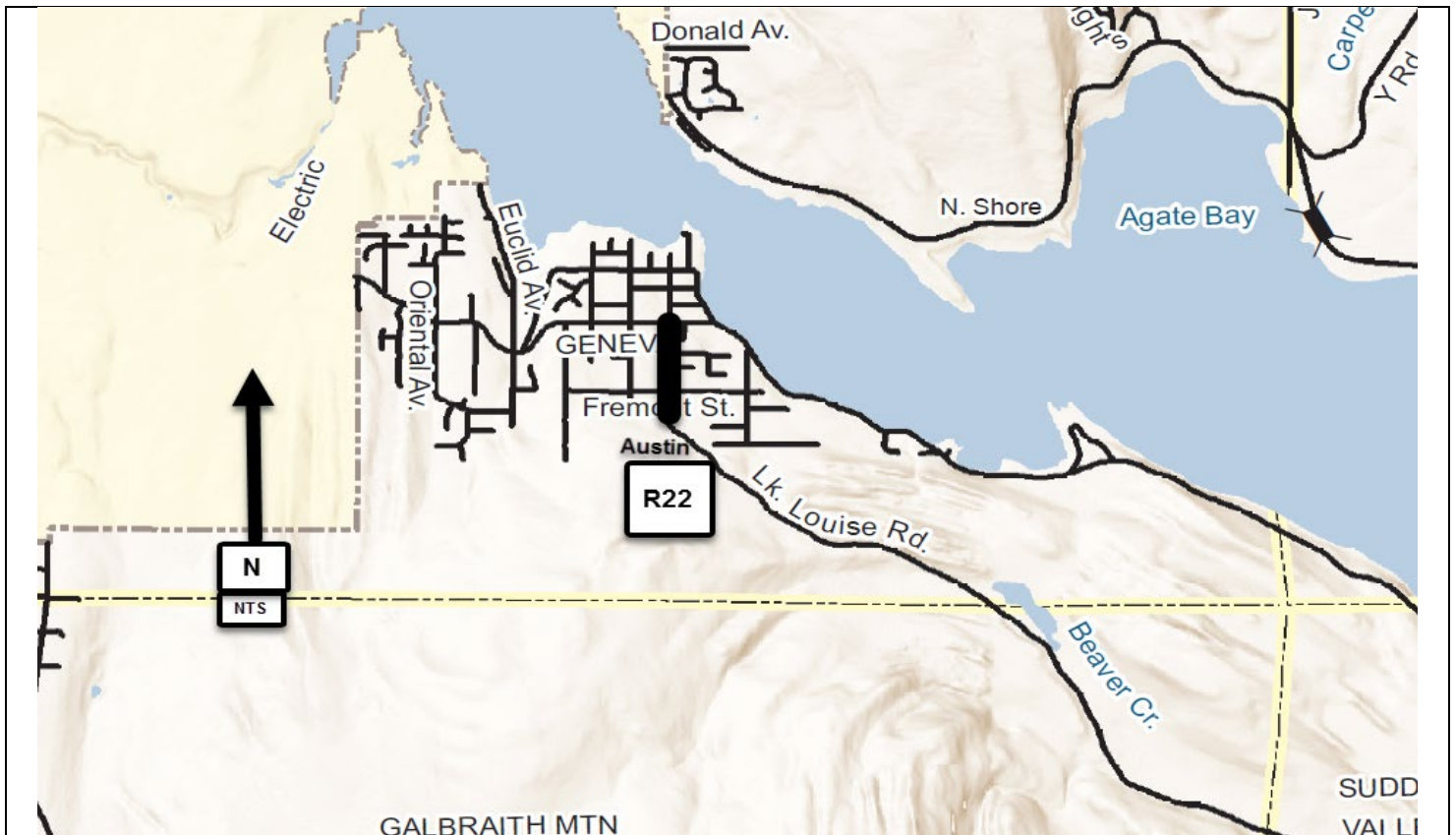
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$535,000

Environmental Permitting SEPA,

Right-of-Way Acquisition (Estimate) \$0

County Forces (Estimate) TBD



Northwest Drive, Slater Rd. to Axton Rd. Pavement Rehabilitation CRP #Not Assigned

Construction Funding Year(s): TBD

Project Narrative:

This Northwest Drive, Slater Rd. to Axton Rd. project is located in Section 3, T38N, R2E and Section 34 and 27 in T39N, R2E . The work will involve the structural overlay of approximately .79 miles of roadway along with other minor improvements. This project is listed **#R23** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work will start in late 2022, with additional coordination with Facilities to have a pavement rehabilitation project available to implement when construction activity benefits all proposed improvements in the area.

Total Estimated Project Cost: \$100,000

Expenditures to Date: \$ 0

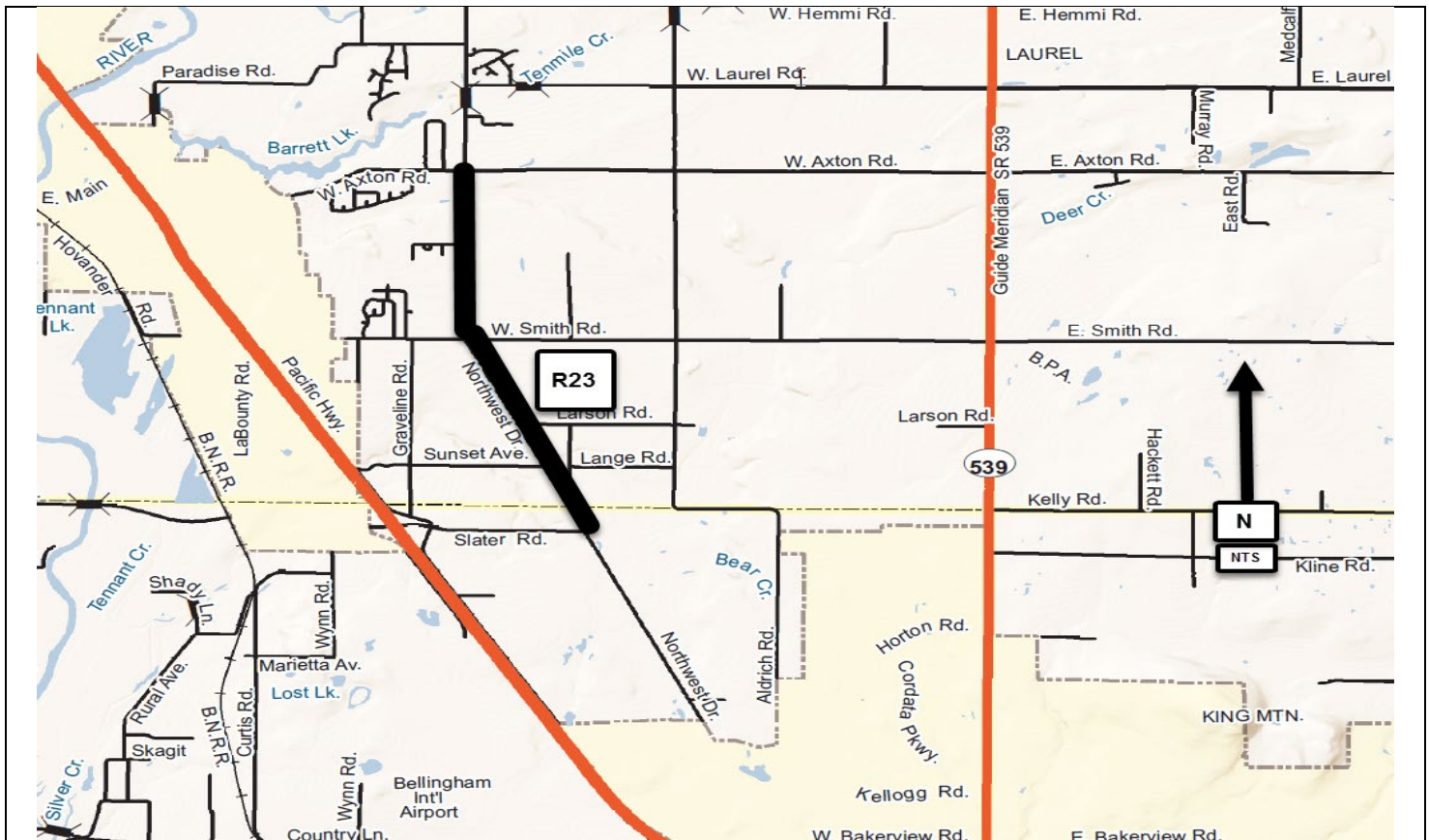
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$100,000

Environmental Permitting SEPA,

Right-of-Way Acquisition (Estimate) \$0

County Forces (Estimate) TBD



Axton Road, City of Ferndale to SR 539 Pavement Rehabilitation CRP #Not Assigned

Construction Funding Year(s): 2025

Project Narrative:

This Axton Road, City of Ferndale to SR 539 project is located in Sections . The work will involve the structural overlay of approximately 2.27 miles of roadway along with other minor improvements. This project is listed **#R24** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work will occur in late 2024, with Construction planned for Summer of 2025.

Total Estimated Project Cost: \$1,535,000

Expenditures to Date: \$ 0

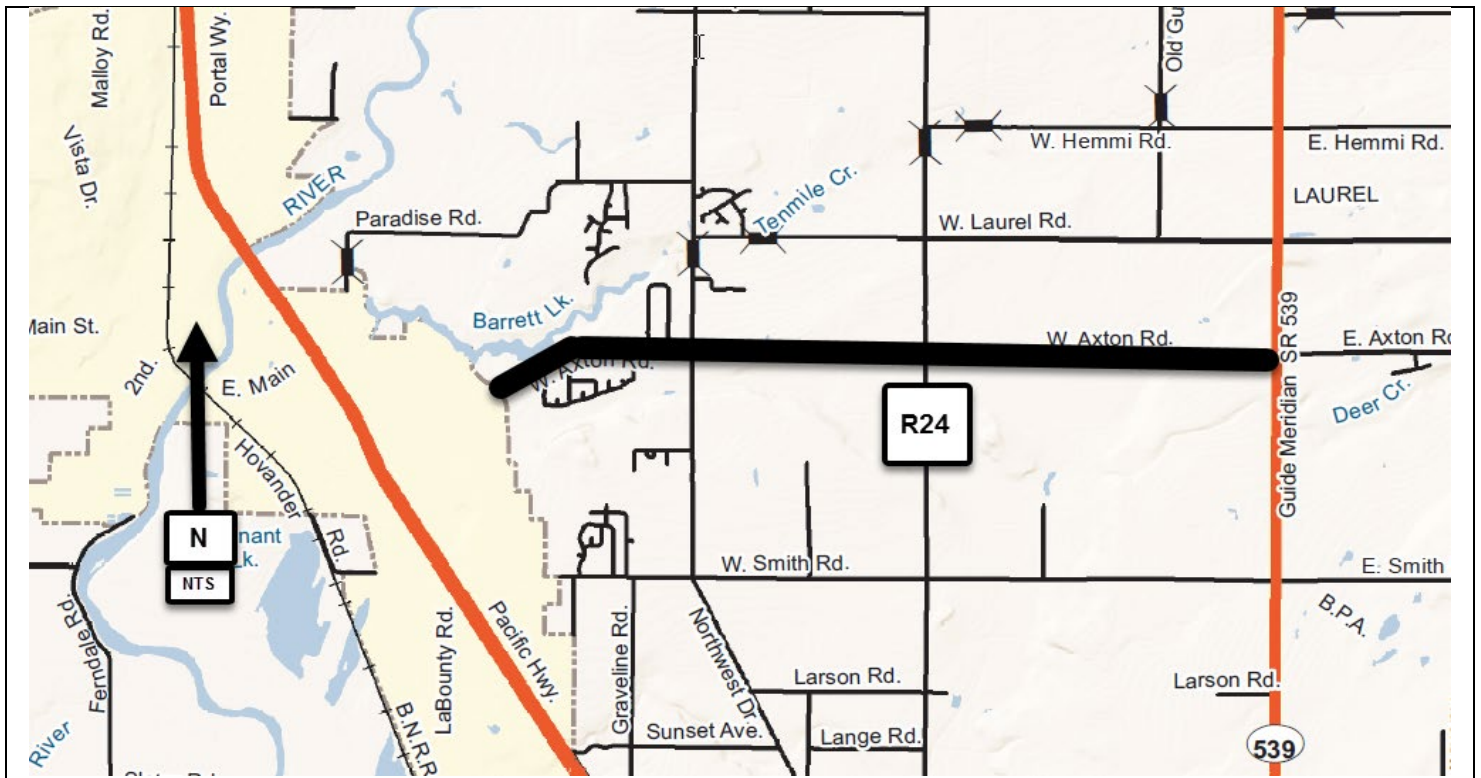
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$1,535,000

Environmental Permitting SEPA,

Right-of-Way Acquisition (Estimate) \$0

County Forces (Estimate) TBD



Hampton Road, City of Lynden to Van Buren Pavement Rehabilitation CRP #Not Assigned

Construction Funding Year(s): 2024

Project Narrative:

This Hampton Road, City of Lynden urban area boundary to Van Buren. The work will involve the structural overlay of approximately 4.65 miles of roadway along with other minor improvements. This project is listed **#R25** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design scheduled to begin in late 2022, with Construction planned for Summer of 2024.

Total Estimated Project Cost: \$2,070,000

Expenditures to Date: \$ 0

Funding Sources:

Federal \$ 0 (RATA)

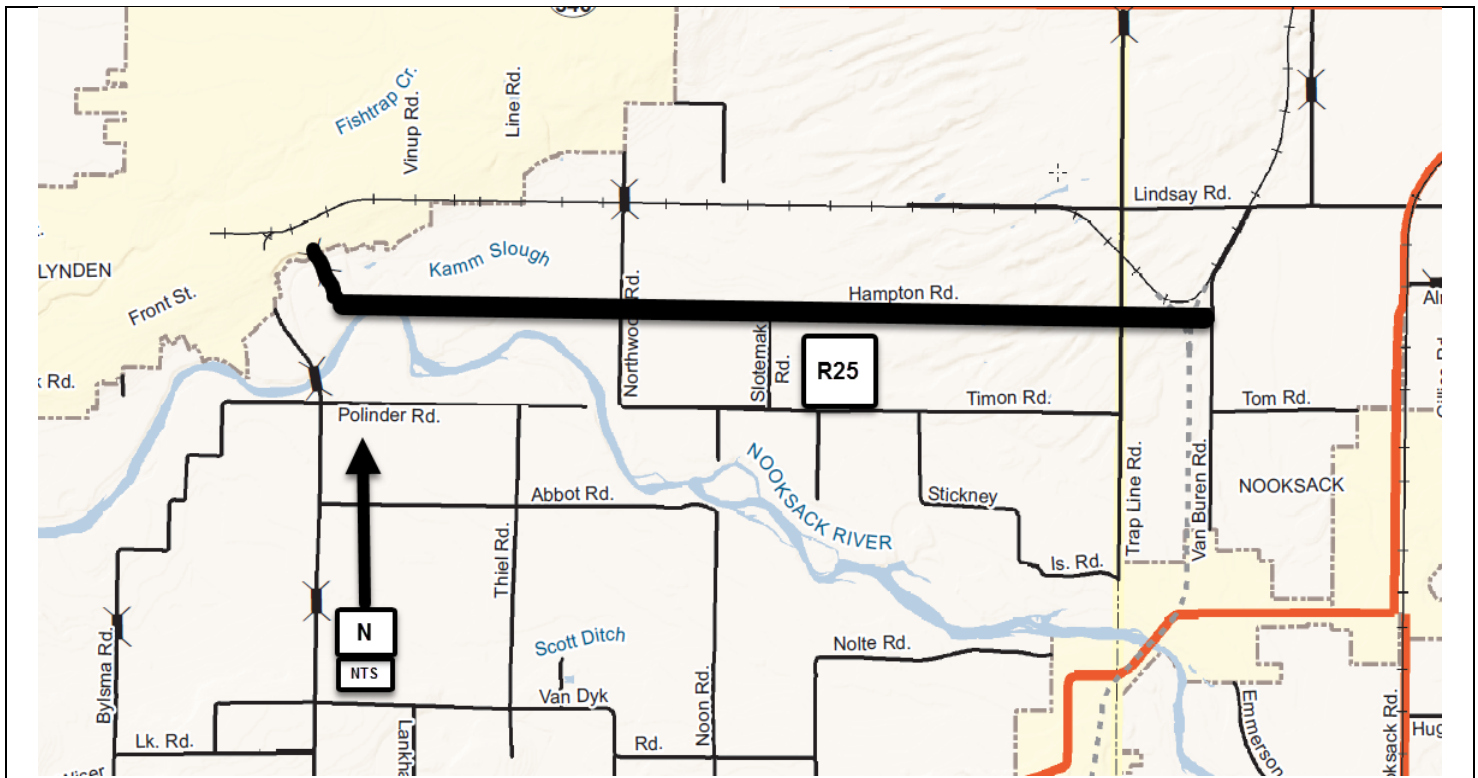
State \$ 170,000

Local \$1,900,000

Environmental Permitting SEPA,

Right-of-Way Acquisition (Estimate) \$0

County Forces (Estimate) TBD



Everson Goshen Road, Smith Rd. to Pole Rd. Pavement Rehabilitation CRP #Not Assigned

Construction Funding Year(s): 2026

Project Narrative:

This Everson Goshen Rd., Smith Rd. to Pole Rd. project is located in Sections 26, 25, 23, 24, 14, 13, 11, 12 of T39N, R3E. The work will involve the structural overlay of approximately 4.09 miles of roadway along with other minor improvements. This project is listed **#R26** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work will occur in late 2025, with Construction planned for Summer of 2026.

Total Estimated Project Cost: \$2,215,000

Expenditures to Date: \$ 0

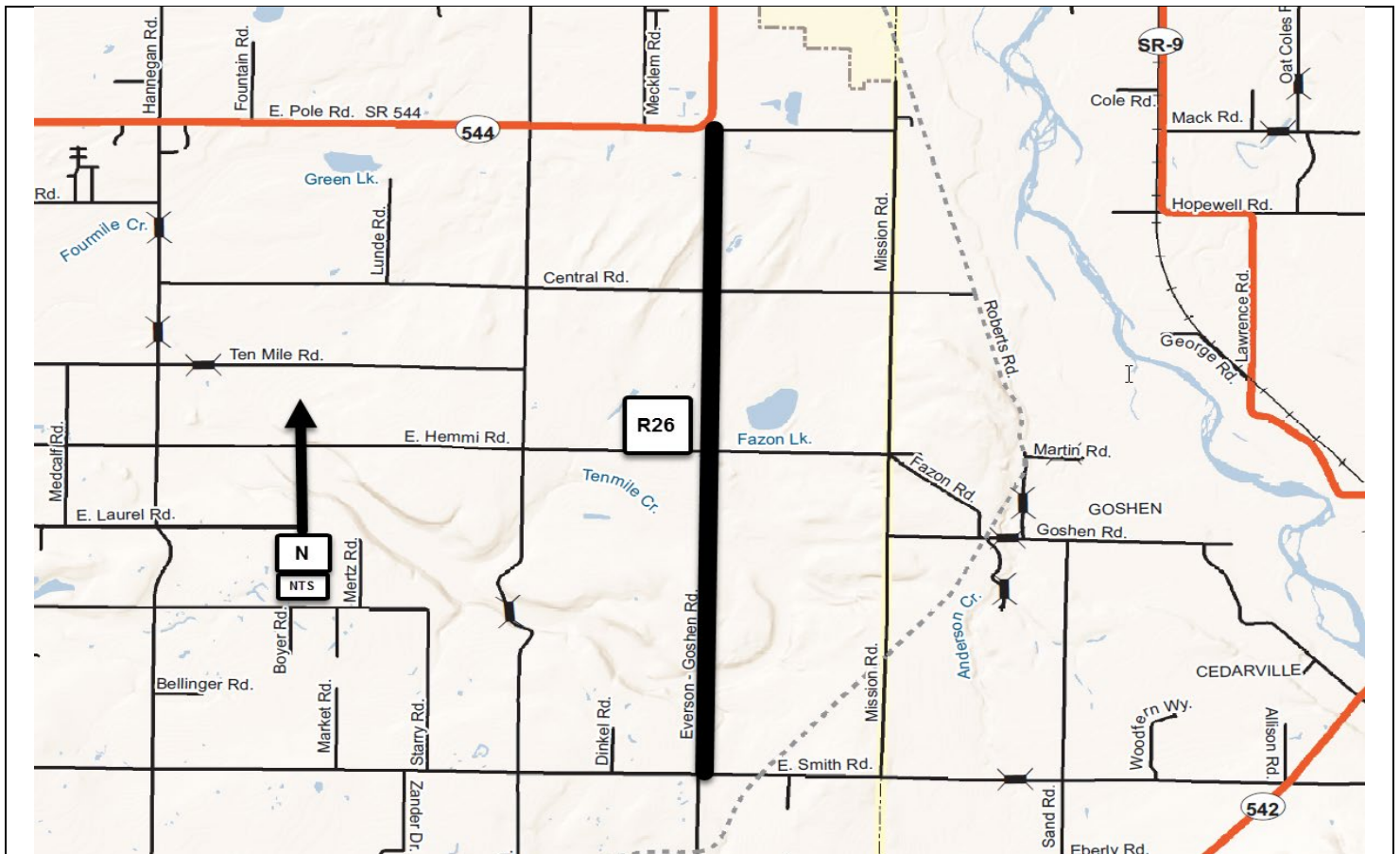
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$2,215,000

Environmental Permitting SEPA,

Right-of-Way Acquisition (Estimate) \$0

County Forces (Estimate) TBD



Lakeway Drive/Terrace, City of Bellingham to Cable Pavement Rehabilitation CRP #Not Assigned

Construction Funding Year(s): 2026

Project Narrative:

This Lakeway Drive/Terrace, City of Bellingham to Cable St. project is located in Sections . The work will involve the structural overlay of approximately 0.79 miles of roadway along with other minor improvements. This project is listed **#R27** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work will occur in late 2025, with Construction planned for Summer of 2026.

Total Estimated Project Cost: \$725,000

Expenditures to Date: \$ 0

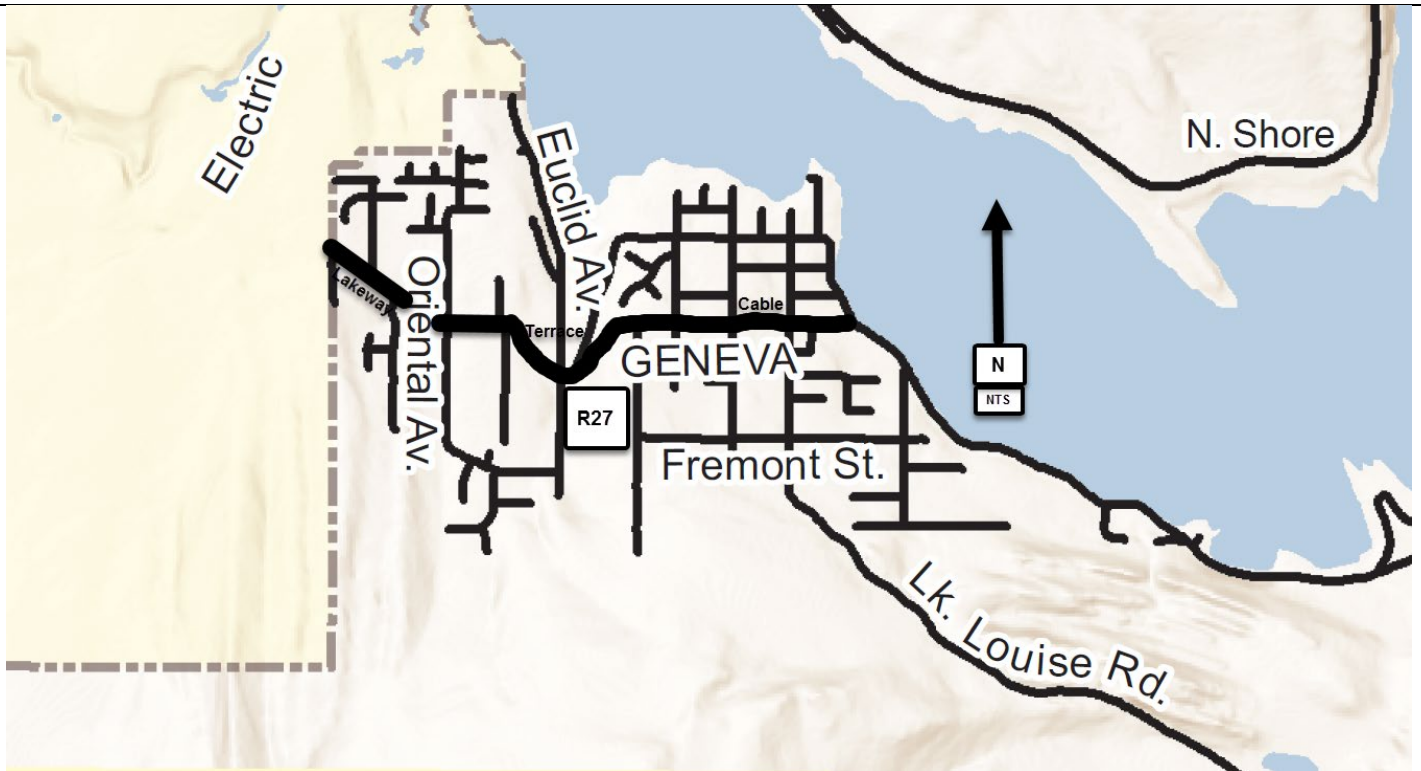
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$725,000

Environmental Permitting SEPA,

Right-of-Way Acquisition (Estimate) \$0

County Forces (Estimate) TBD



Lakeway Drive Corridor Improvements Preliminary Engineering Study CRP # 921019

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Section 34, T38N, R3E. This project proposes to evaluate the County's 1.4 miles of Lakeway Drive to coordinate with the proposed re-channelization of Lakeway Drive within the city limits. In addition, intersection Level of Service and ADA compliance will be evaluated in the corridor. This project is listed **#R28** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Close coordination with the City of Bellingham on their channelization plans and associated construction activities will drive the preliminary engineering efforts in the County.

Total Estimated Project Cost: \$100,000

Expenditures to Date: \$0

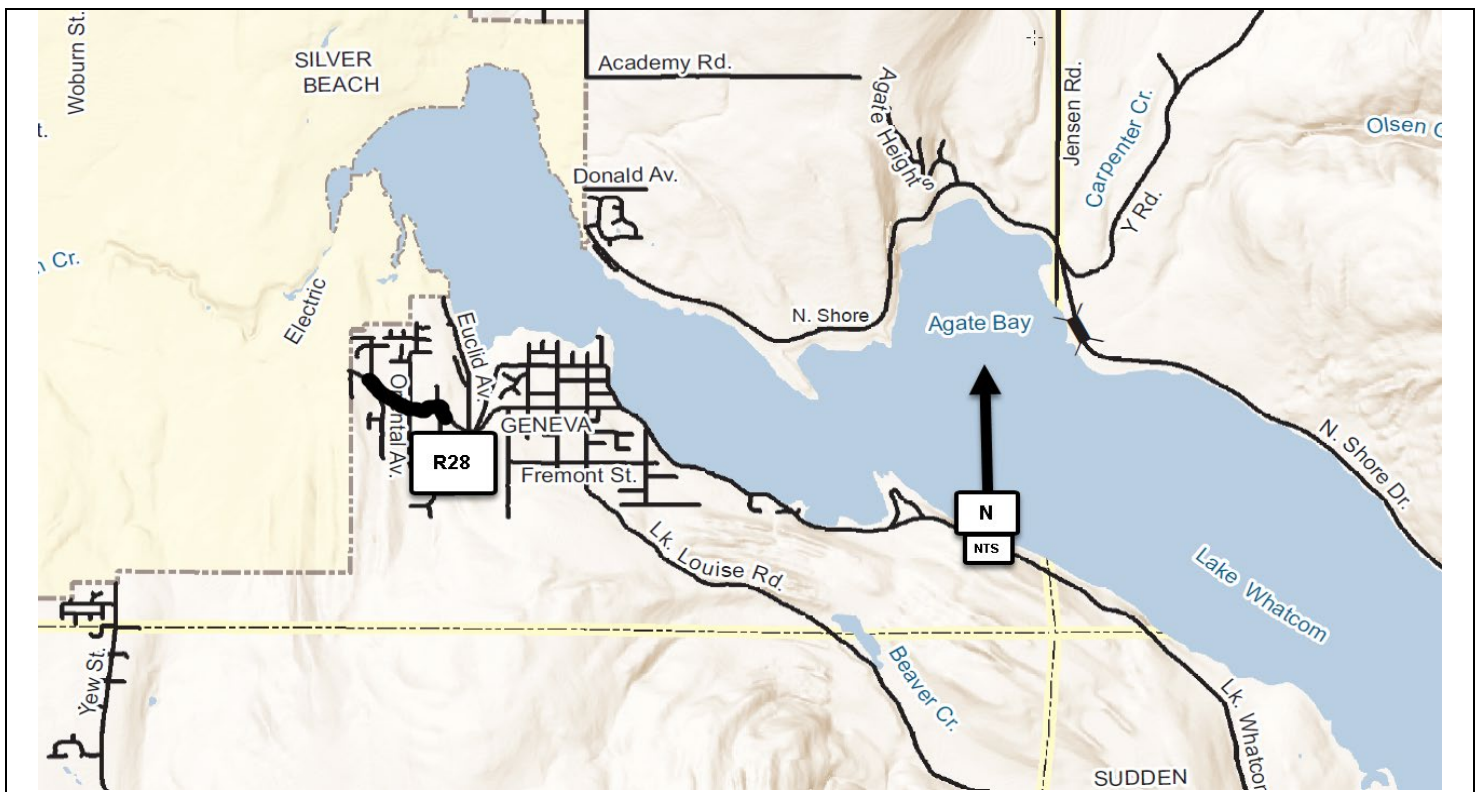
Funding Sources:

Federal	\$0
State	\$0
Local	\$100,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) N/A



Lincoln Road II Harborview Road to SR 548(Blaine Road) Reconstruction and New Alignment CRP # 908011

Construction Funding Year(s): TBD

Project Narrative:

This Lincoln Road project, from Harborview Road to SR 548 (Blaine Rd), is located in Sections 18 and 19 of T40N, R1E. The work involves improvements to a 1 mile section that includes road reconstruction, new roadway alignment, safety upgrades, and storm water quality and quantity treatment. This project is listed **#R29** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Design, permitting, R/W and construction time frames would be contingent on availability of additional grant monies, coordination with WSDOT on their improvements to Blaine Road, and wetland mitigations issues. Major intersection revisions at Harborview and Blaine Roads will need serious consideration when this project moves forward.

Total Estimated Project Cost: \$ TBD

Expenditures to Date: \$0

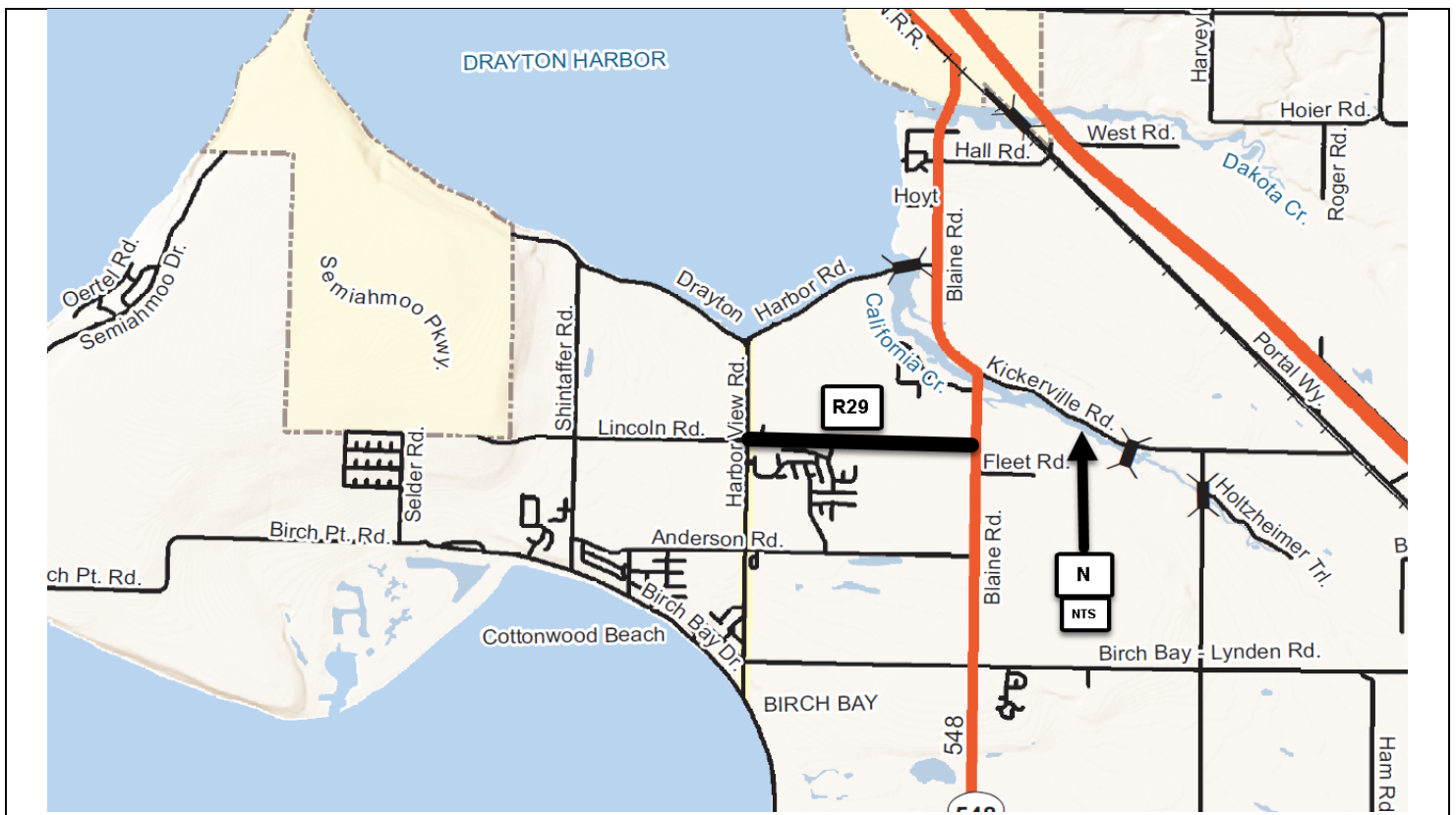
Funding Sources:

Federal	\$0
State	\$0
Local	\$10,000

Environmental Permitting ECS, BA, SEPA, CLR/CAO, Corps of Engrs

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) N/A



**Slater Road, Lake Terrell Road to Haxton Way
Pavement Rehabilitation
CRP #Not Assigned**

Construction Funding Year(s): 2027

Project Narrative:

This project is listed **#R30** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work will occur in late 2026, with Construction planned for Summer of 2027.

Total Estimated Project Cost: \$1,125,000

Expenditures to Date: \$ 0

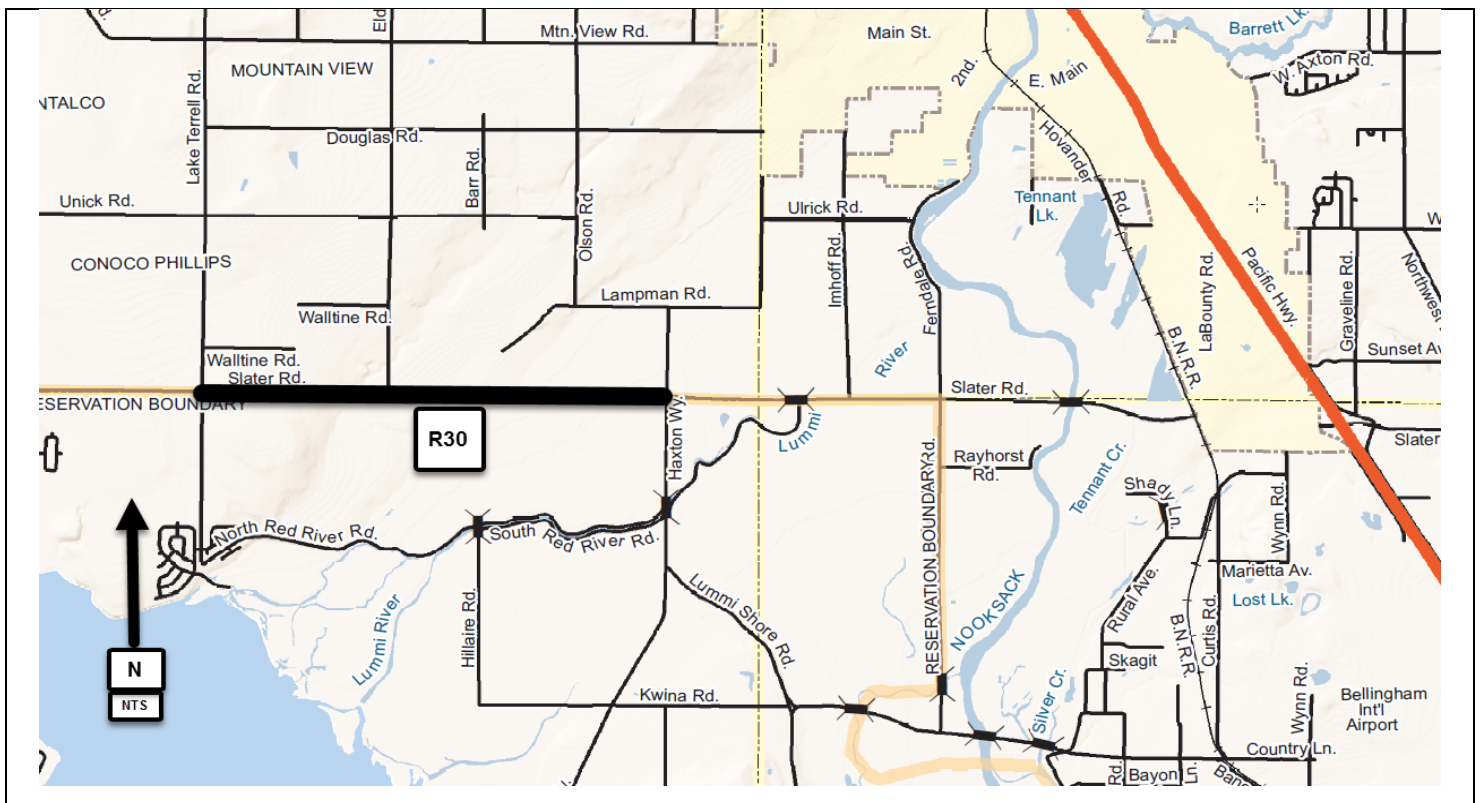
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$1,125,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)



**Small Area Paving
Bridge Approach, Pavement Rehabilitation, Minor Widening
CRP #Not Assigned**

Construction Funding Year(s): 2022

Project Narrative:

This work will address multiple locations throughout Whatcom County that are in need of corrections to settling bridge approaches, minor widening for safety issues, and pavement rehabilitation. This project is listed **#R31** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Working with the Maintenance & Operations Division to scope out potential projects.

Total Estimated Project Cost: \$350,000 Expenditures to Date: \$ 0	Funding Sources:	
	Federal	\$ 0
	State	\$ 0
	Local	\$350,000

Environmental Permitting	
Right-of-Way Acquisition (Estimate)	
County Forces (Estimate)	

Due to the nature of this item, no map exists. Final locations of the Small Area Paving sites will be determined in late 2021 / early 2022.

**Birch Bay Lynden Road, Rathbone Road to Berthusen Road
Pavement Rehabilitation
CRP #Not Assigned**

Construction Funding Year(s): 2024

Project Narrative:

This project is listed #R32 on the 2021-2026 Six-Year Transportation Improvement Program.

Project Status: Design work will occur in late 2023, with Construction planned for Summer of 2024.

Total Estimated Project Cost: \$860,000

Expenditures to Date: \$ 0

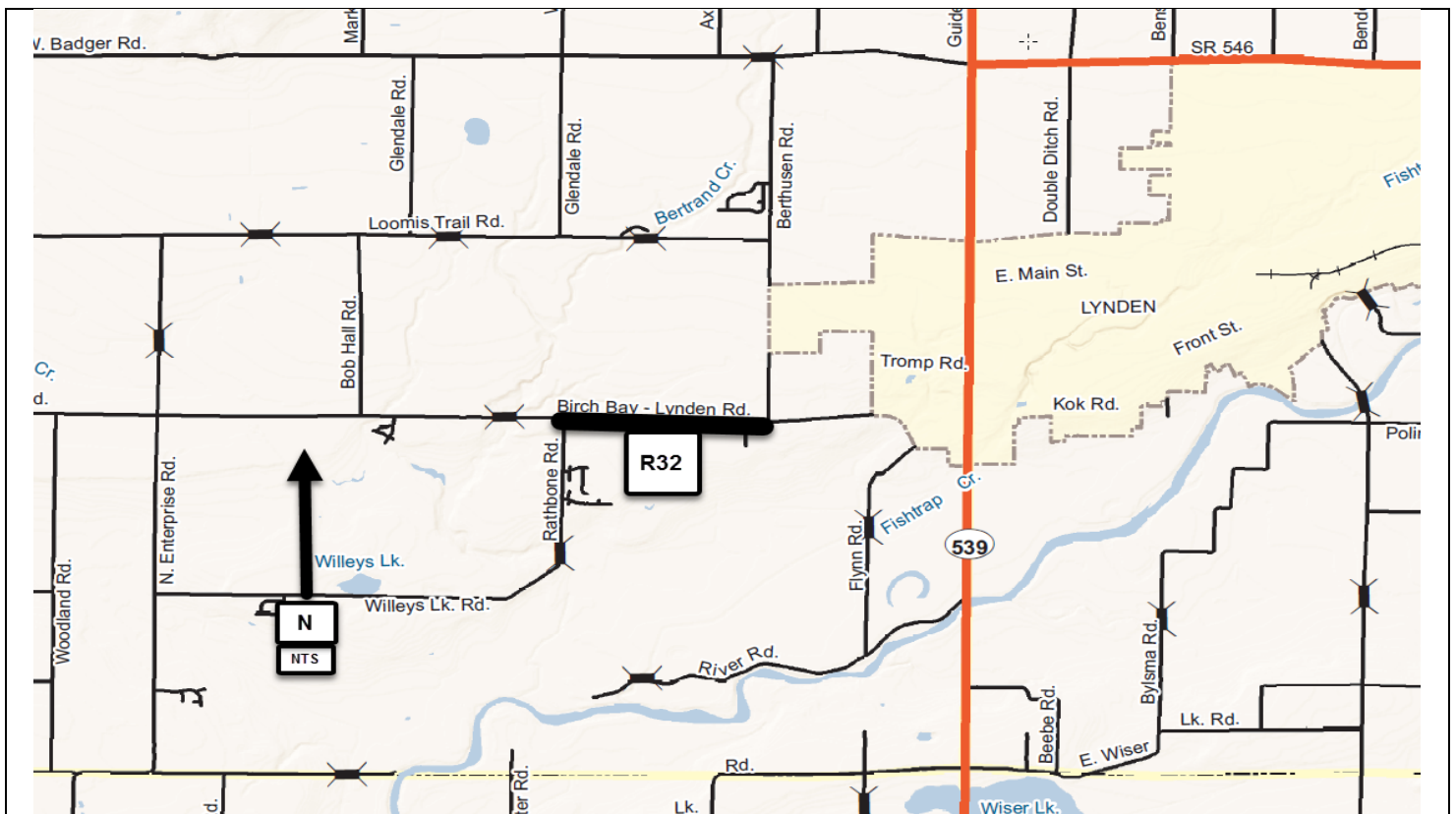
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$860,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)



North Shore Road Bellingham City Limits to Y Road CRP # 902007

Construction Funding Year(s): TBD

Project Narrative:

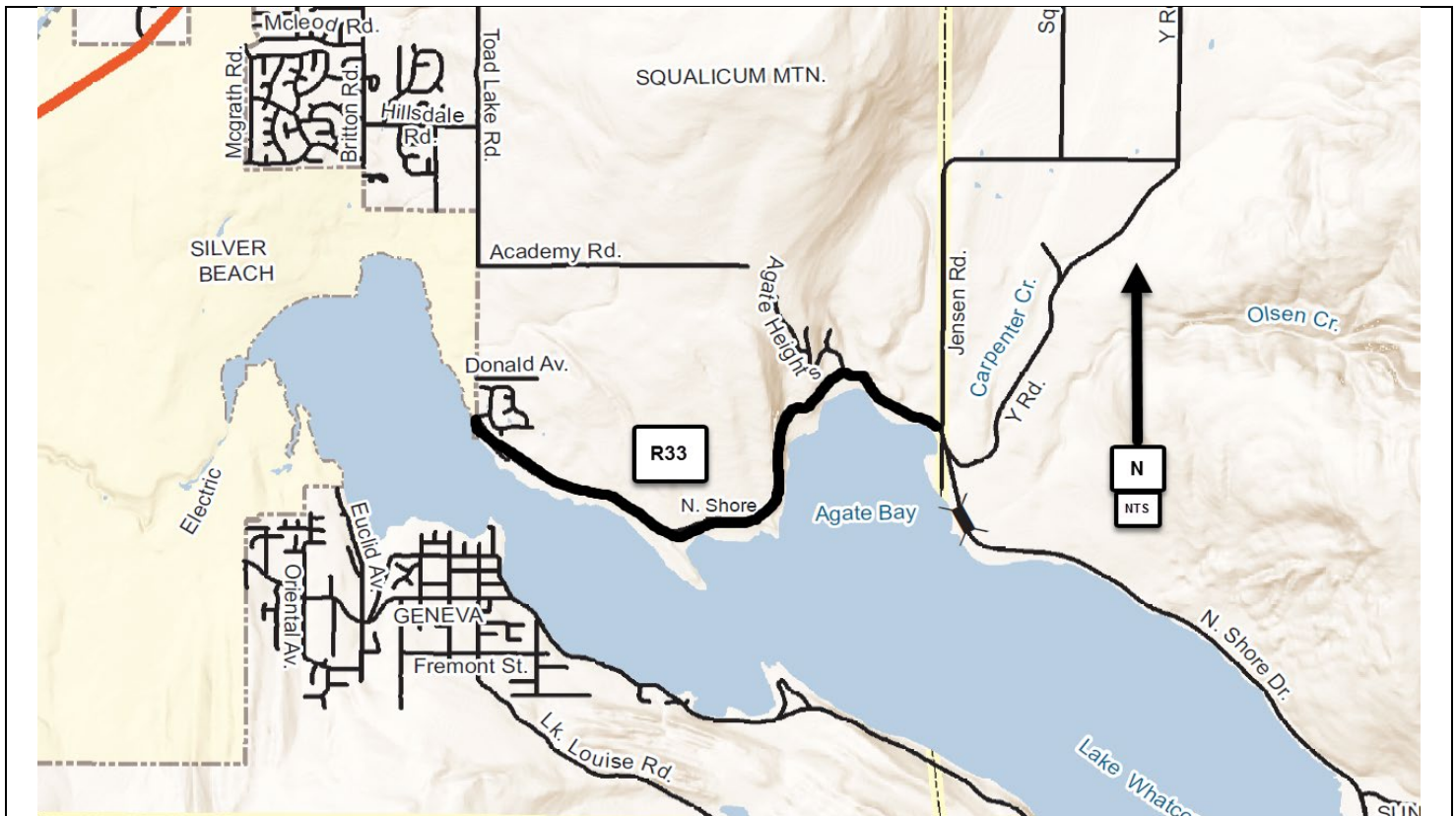
This project is located in Sections 25 and 26, T38N, R3E. The work will involve improvements to a 2.87 mile section of the North Shore Road from the Bellingham City Limits to 'Y' Road, including: various improvements to address horizontal and vertical alignment deficiencies; spot safety upgrades, and stormwater quality treatment. This project is listed **#R33** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Preliminary design and construction time frames will be contingent on resolution of funding needs, along with permitting and R/W issues associated with the final selected sites.

Total Estimated Project Cost: TBD Expenditures to Date: \$ 0	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$10,000 (Grant funding will be sought)

Environmental Permitting	SEPA, CLR/CAO, Shorelines
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



South Pass Road 2020 Flood Damage Repair CRP #921007

Construction Funding Year(s): 2023

Project Narrative:

This project was a result of a storm event in February of 2020, which damaged the 'on-system' road and allowed for federal Emergency Relief (ER) grant funding to be received. The project is listed **#R34** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design work has been initiated in 2021, and will continue into 2022 along with permitting, for a planned Construction effort in 2023.

Total Estimated Project Cost: \$455,000

Expenditures to Date: \$ 0

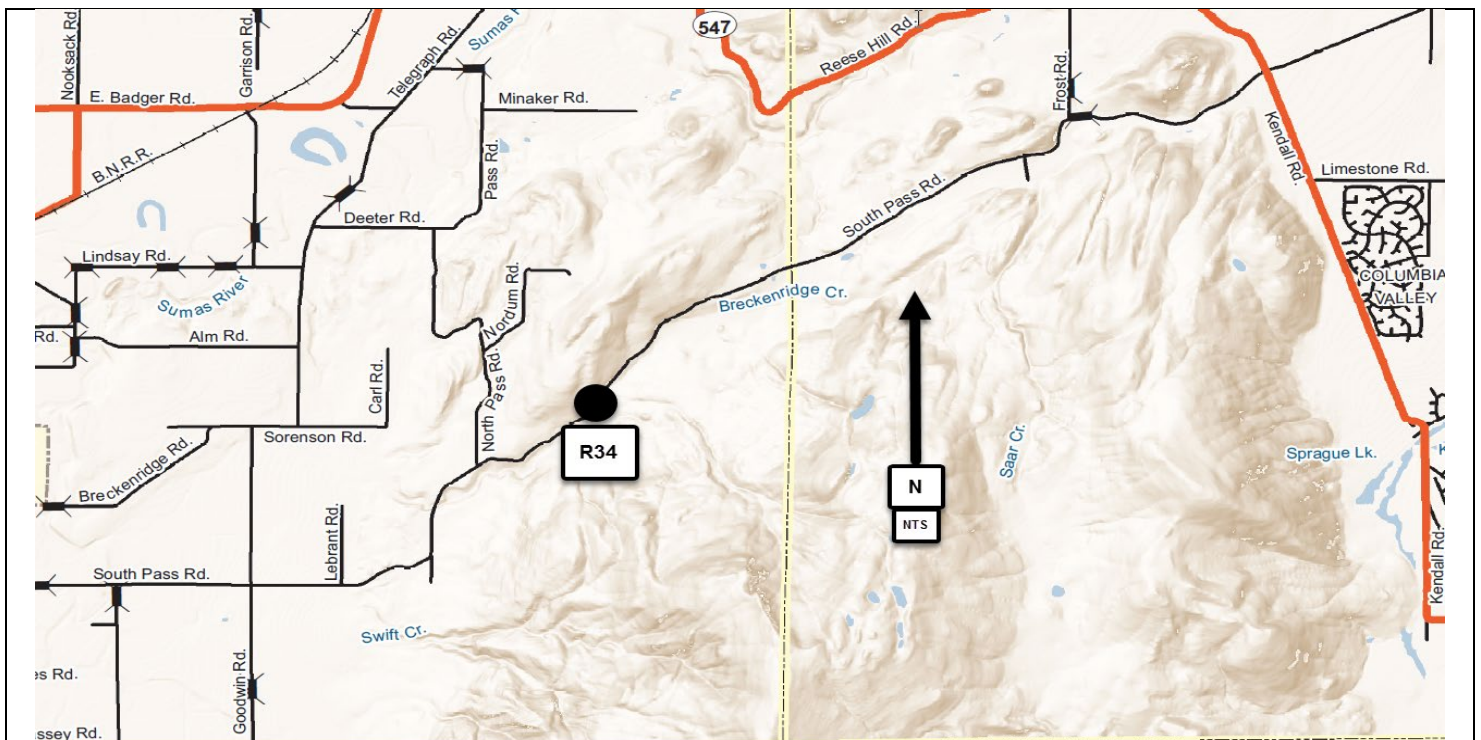
Funding Sources:

Federal	\$380,000
State	\$ 0
Local	\$75,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)



Everson Goshen Road & E. Smith Road Intersection Improvements CRP #Not Assigned

Construction Funding Year(s): TBD

Project Narrative:

The intersection of Everson Goshen Road & East Smith is located in Sections 25, 26, 35 and 36 of T39N, R3E. The project work entails intersection improvements to improve traffic flow and safety. This project is listed **#R35** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Project scoping and preliminary analysis will begin in 2024.

Total Estimated Project Cost: \$
Expenditures to Date: \$ 0

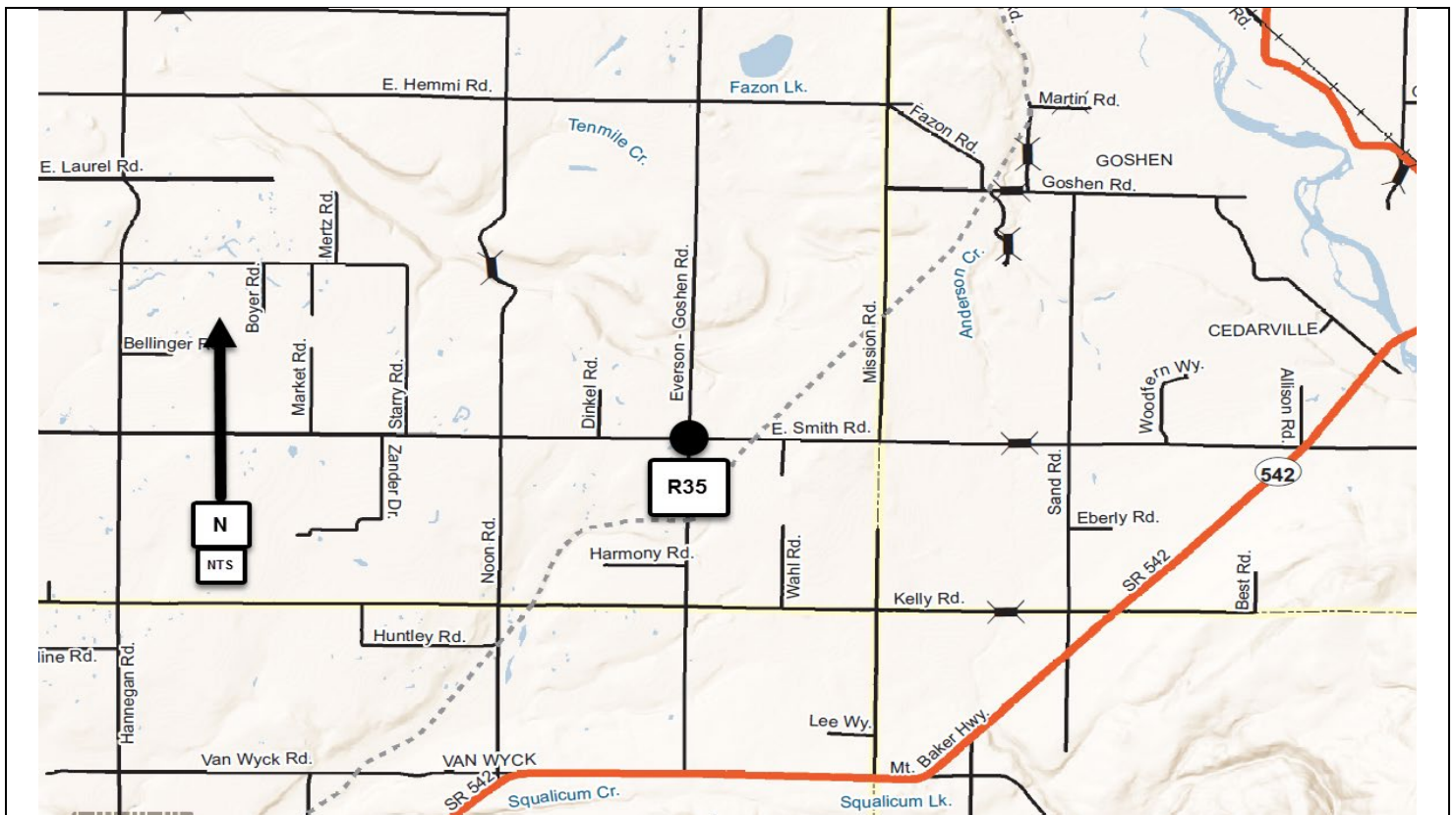
Funding Sources:

Federal	\$
State	\$ 0
Local	\$10,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)



**Birch Bay Drive/Lora Lane
Culvert Replacement
CRP #Not Assigned**

Construction Funding Year(s): TBD

Project Narrative:

This project is located on Birch Bay Drive, near the intersection of Lora Lane and the outfall of Terrell Creek into Birch Bay. The work entails the installation of a large diameter cross culvert under Birch Bay Drive to replace a failing corrugated metal pipe. The roadway work is in conjunction with a larger planned Stormwater Project to address multiple drainage issues in this area. The project is located in Sections 30 & 31, T40N, R1E, and is listed as **#R36** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

The Stormwater Division is leading a multiple drainage improvement project in the area, and this cross culvert replacement is a road fund related component of the project. The Engineering Division will contribute to the Stormwater Division for this culvert portion of the work when design, permitting and R/W phases are completed.

Total Estimated Project Cost: \$TBD

Expenditures to Date: \$ 0

Funding Sources:

Federal	\$40,000
State	\$ 0
Local	\$40,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)



**Birch Bay Lynden Rd/Kickerville Rd.
Intersection Improvements
CRP #Not Assigned**

Construction Funding Year(s): TBD

Project Narrative:

This busy intersection is being reviewed for Level of Service and safety improvements. Currently the project was submitted for federal Highway Safety Improvement Program (HSIP) grant funds during the summer of 2021. This project is listed **#R37** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: The start of design efforts is contingent on receiving grant funding.

Total Estimated Project Cost: \$TBD

Expenditures to Date: \$ 0

Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$15,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)



Corridor Intersection Alternatives Analysis (6 ea)
Birch Bay Lynden Rd/Berthusen Rd; Birch Bay Lynden Rd/Enterprise Rd;
Bay Rd/Kickerville Rd; Bay Rd/Valley View Rd;
Hannegan Rd/Hemmi Rd; Hannegan Rd/VanWyck Rd
Intersection Improvements
CRP # Not Assigned

Construction Funding Year(s): **TBD**

Project Narrative:

This entry addresses the review of two (2) intersections on each of three (3) main corridors in Whatcom County. At each of the six (6) intersections, an alternatives analysis will be produced that will evaluate the optimal configuration or improvements needed to address level of service, functionality and safety at each intersection for a future 20-year design period. These projects are listed **#R38** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Currently the project has been submitted for federal grant funding in the Highway Safety Improvement Program (HSIP). Results will be known by early 2022.

Total Estimated Project Cost: \$ 360,000

Expenditures to Date: \$

Funding Sources:	
Federal	\$ 0
State	\$ 0
Local	\$ 360,000

Environmental Permitting

Right-of-Way Acquisition (Actual)

\$

County Forces (Estimate)

N/A

Due to the nature of this item, no map exists. Council review and prioritization will be sought at the appropriate times.

**Deer Trail Slide Repair
Slide Repair
CRP #921020**

Construction Funding Year(s): 2022

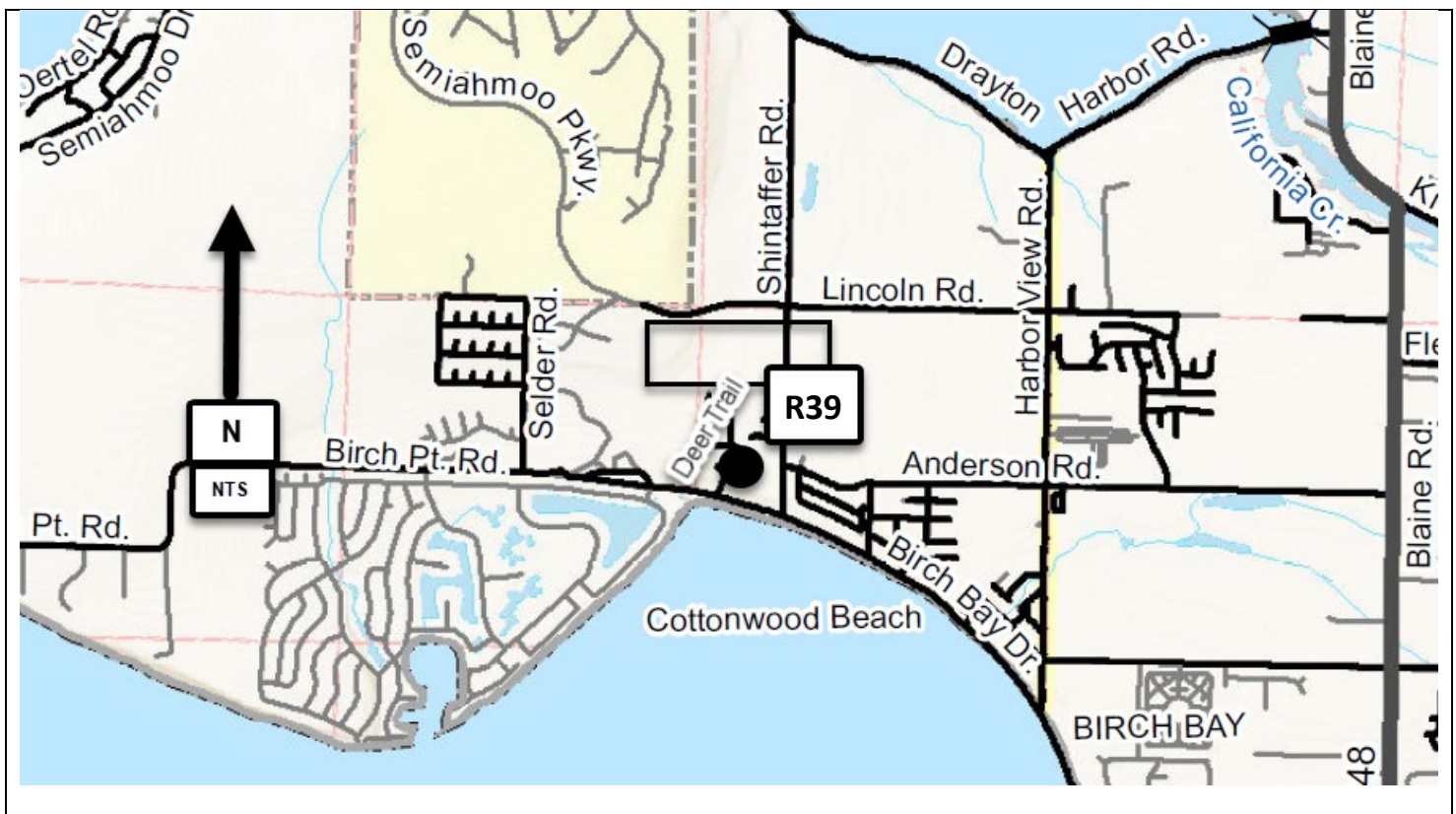
Project Narrative:

The work associated with this slide repair project was due to a storm event in January of 2021. Due to the roadway being the only ingress and egress for approximately 70 homes, an emergency declaration was obtained to perform construction repairs in 2021. This project is listed **#R39** on the 2022-2027 Six-Year Transportation Improvement Program. This project is located off of Birch Bay Drive, in Section 24, T40N, R1W.

Project Status: Design, permitting and R/W acquisition concluding, with construction scheduled to begin in fall 2021. Possible carry over into early 2022 to finalize all construction measures.

Total Estimated Project Cost: \$130,000 Expenditures to Date: \$ 0	Funding Sources:	Local
	Federal	\$ 0
	State	\$ 0
	Local	\$130,000

Environmental Permitting	SEPA
Right-of-Way Acquisition (Estimate)	\$10,000
County Forces (Estimate)	TBD



Marine Drive / Little Squalicum Creek - Bridge No. 1 Rehabilitation CRP #910017

Construction Funding Year(s): TBD

Project Narrative:

This project is located near the Bellingham city limits in Section 8, T38N, R2E. This is a rehabilitation project to replace the bridge deck, strengthen the girders and cross beams and remove the structurally deficient designation on the bridge. The project is listed **#B1** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Preliminary design and permitting work to begin in 2025 .

Total Estimated Project Cost: TBD

Expenditures to Date: \$0

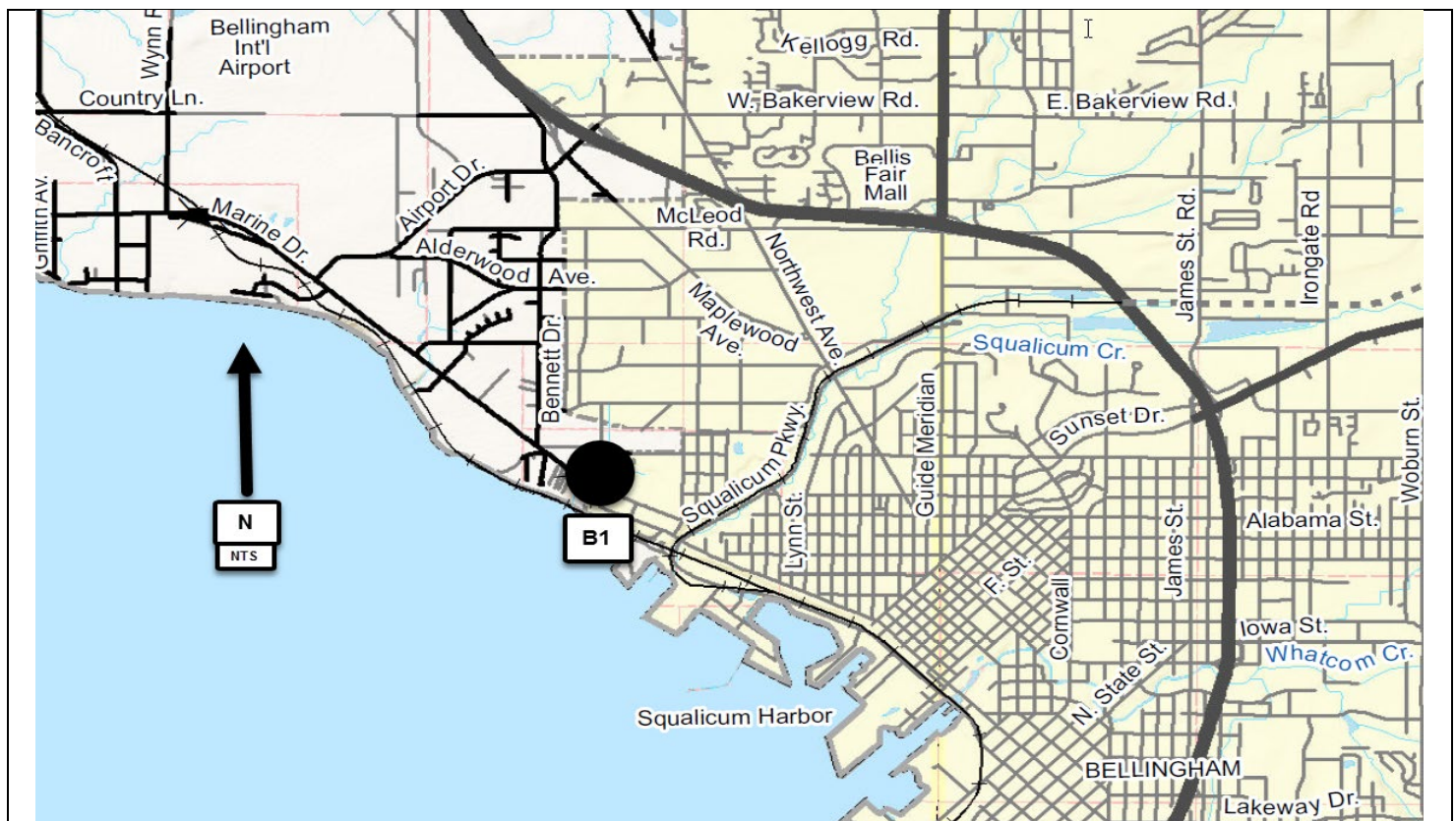
Funding Sources:

Federal	\$0
State	\$0
Local	\$20,000

Environmental Permitting HPA, NEPA

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Jackson Road / Terrell Creek - Bridge No. 81 Replacement CRP # 917004

Construction Funding Year(s): TBD

Project Narrative:

This project is located near Birch Bay in Section 31, T40N, R1W. This is a project to replace the existing 62-foot structurally deficient bridge. This project is listed **#B2** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Preliminary design work, including a type, size, and location study began in 2020. Outside funding will be pursued for the construction phase of this project.

Total Estimated Project Cost: \$ TBD

Expenditures to Date: \$ 250,000

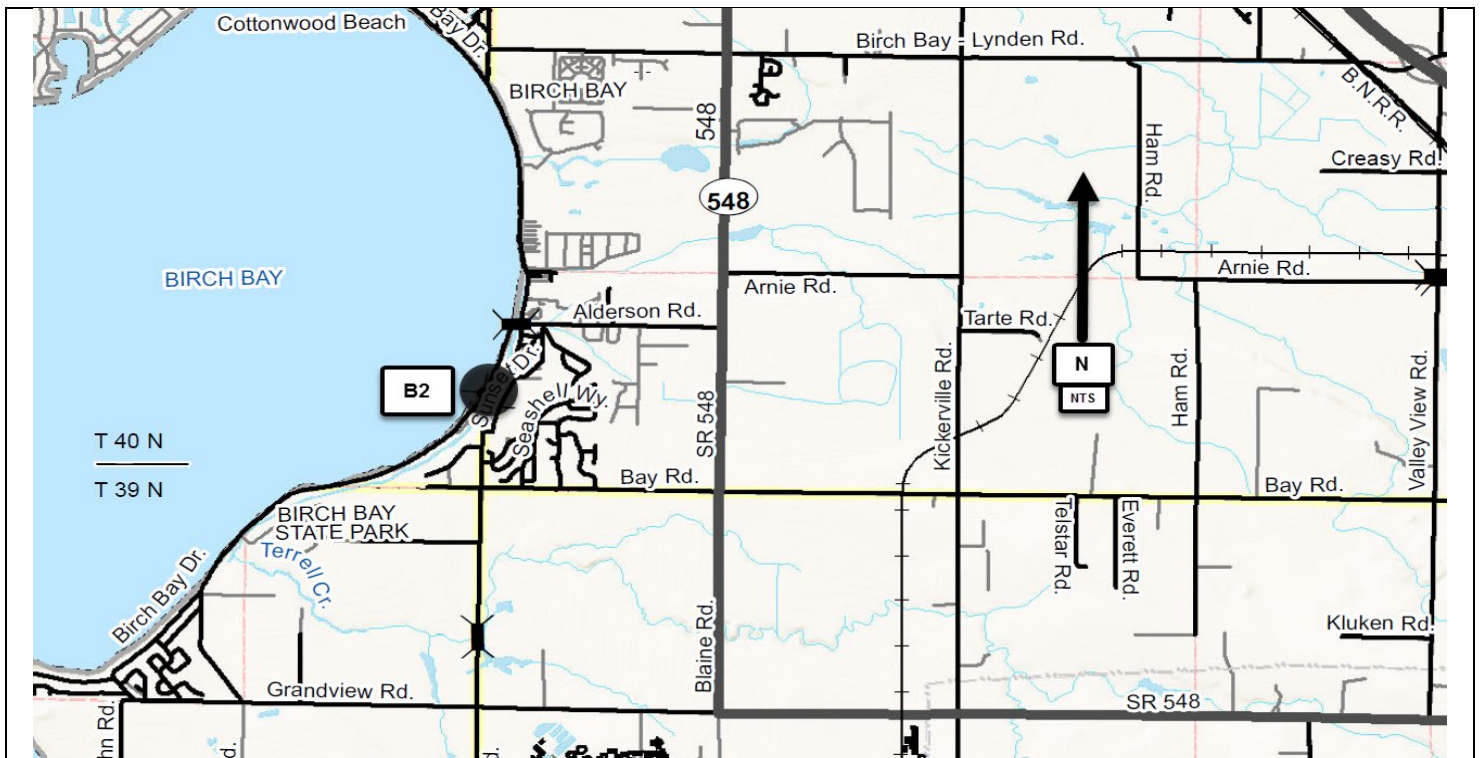
Funding Sources:

Federal	\$
State	\$
Local	\$450,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Mosquito Lake Road / Porter Creek - Bridge No. 141 Replacement CRP # Not Assigned

Construction Funding Year(s): TBD

Project Narrative:

This project is located south of Welcome in Section 11, T38N, R5E. This project will replace the existing 31-foot bridge in order to mitigate ongoing scour and debris issues. This project also affords an opportunity to address geometric issues that arose from the emergency realignment of Mosquito Lake Road in 2004. This project is listed #B3 on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Preliminary design and permitting to begin in 2026.

Total Estimated Project Cost: TBD

Expenditures to Date: \$ 0

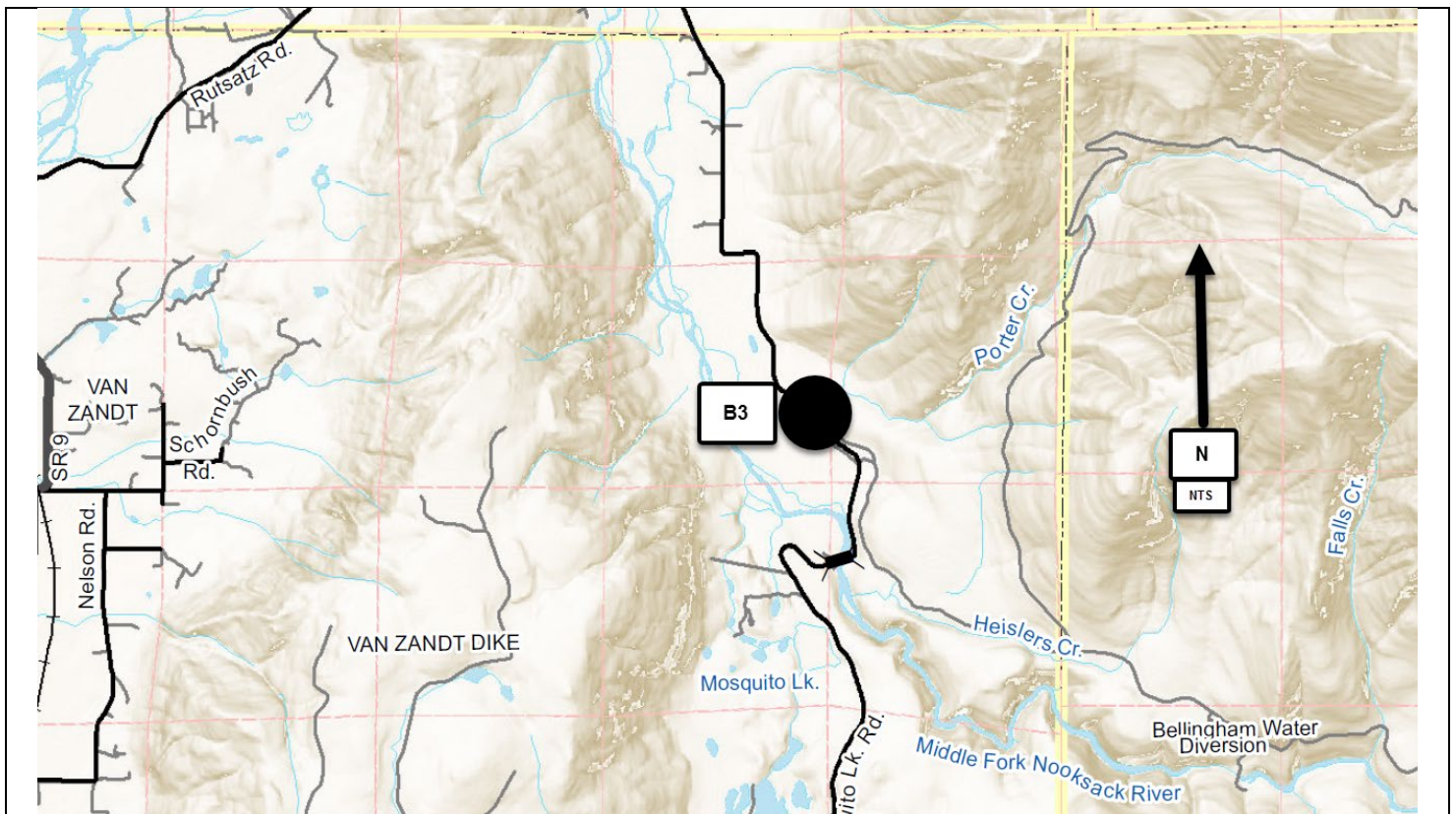
Funding Sources:

Federal	\$0
State	\$0
Local	\$5,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



N. Lake Samish Road Bridge No. 107 Replacement CRP # 913006 (Project Based Budget 378100)

Construction Funding Year(s): 2022 or 2023

Project Narrative:

This project is located on Lake Samish in Section 27, T37N, R3E. This project will replace the existing 250-foot timber bridge which is structurally deficient. This project is listed **#B4** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

The type, size, and location study for the replacement bridge was completed in 2017. Design, permitting, and real estate work is underway and it is anticipated that the design will be at the 90% stage by the end of 2019. Approximately \$9.0 million in Federal Bridge Replacement funds were secured in late 2019 for the construction phase of the project. Construction is scheduled for 2022 or 2023 pending completion of real estate and environmental work.

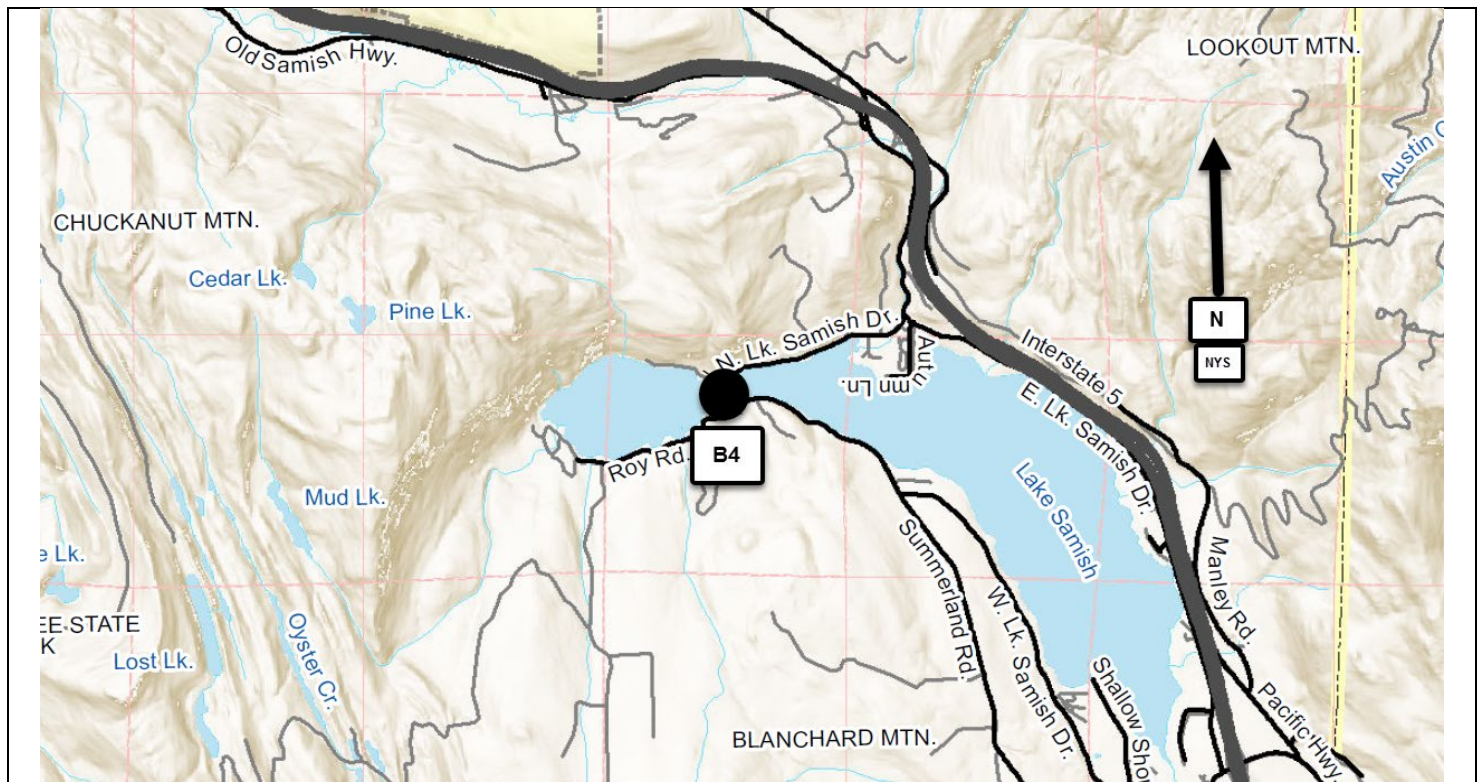
Total Estimated Project Cost: \$10,250,000

Expenditures to Date: \$1,150,000

Funding Sources:

Federal	\$9,000,000 (BR funds)
State	\$0
Local	\$1,250,000

Environmental Permitting	HPA, NEPA, ACOE, WC Shorelines, DOE
Right-of-Way Acquisition	TBD
County Forces	N/A



Goshen Road/Anderson Creek Bridge No. 248 Replacement CRP # 920003

Construction Funding Year(s): 2024

Project Narrative:

This project is located south of Everson/Goshen in Section 19, T39N, R4E. This is a project to replace the existing 62-foot structurally deficient bridge. This project is listed **#B5** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status: Preliminary design, permitting and real estate work began in 2020. Approximately \$4 million in Federal Bridge Replacement funds were secured in late 2019 for the preliminary engineering and construction phases of this project.

Total Estimated Project Cost: \$ 4,200,000

Expenditures to Date: \$ 300,000

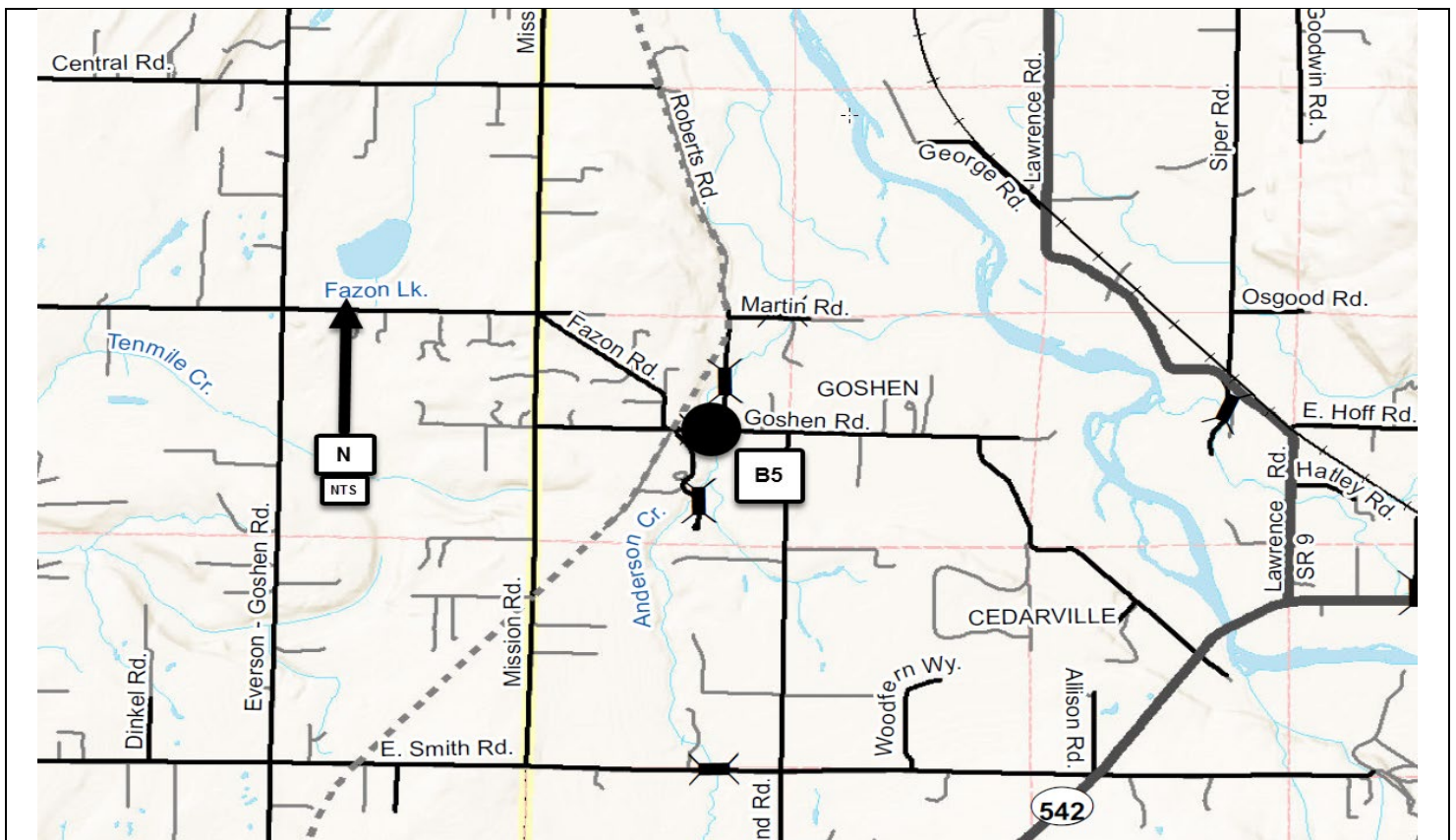
Funding Sources:

Federal	\$4,000,000
State	\$0
Local	\$200,000

Environmental Permitting	HPA, NEPA, ACOE, DOE, WC Shorelines
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	N/A
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**Martin Road/Anderson Creek Bridge No. 250
Replacement
CRP # Not Assigned**

Construction Funding Year(s): TBD

Project Narrative: Project:

This project is located on Martin Road in Section 18 & 19, T39N, R4E. This is a project to replace the existing 31-foot structurally deficient bridge. This project is listed **#B6** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Preliminary design and permitting to begin in 2026.

Total Estimated Project Cost: TBD

Expenditures to Date: \$0

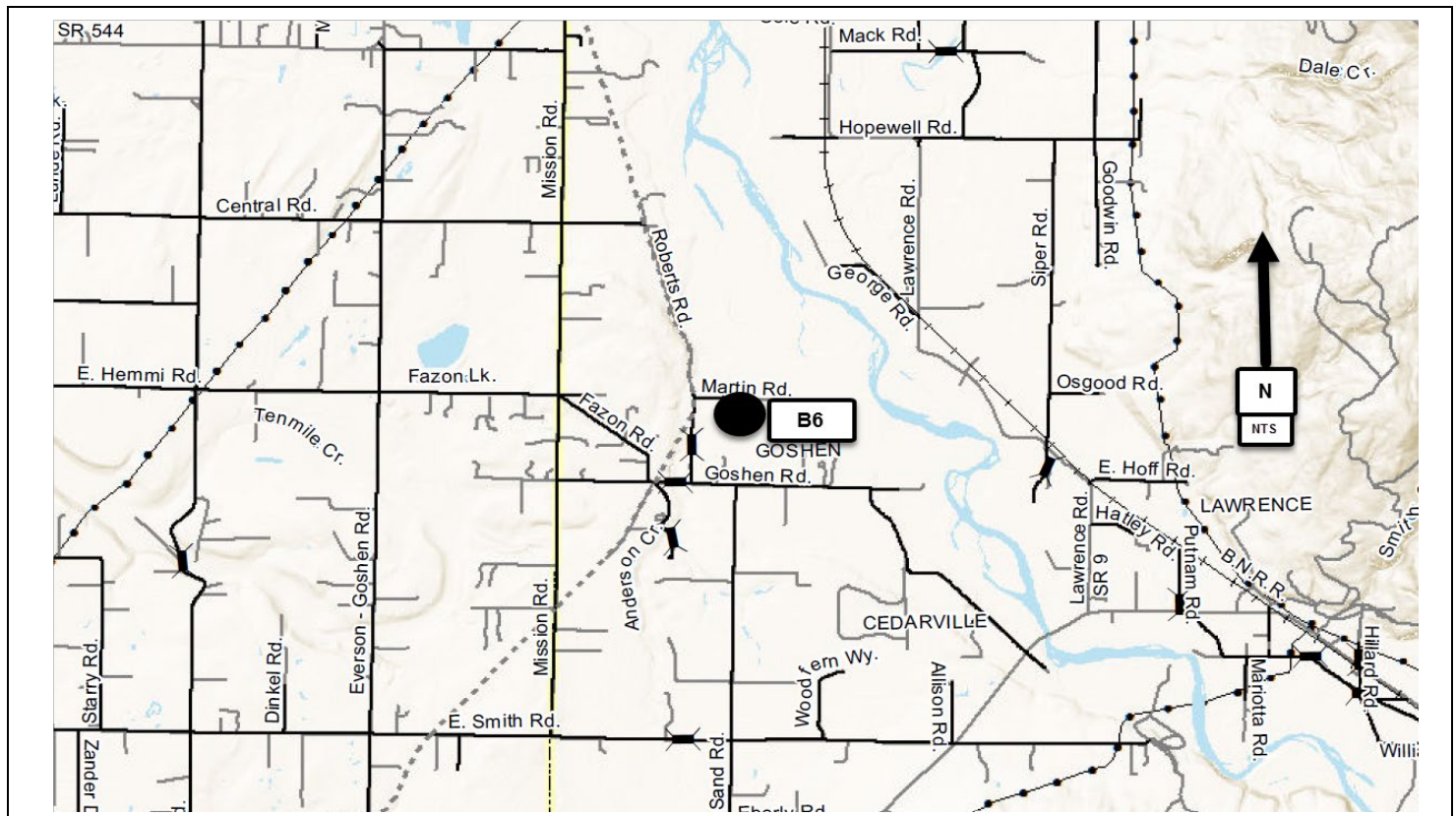
Funding Sources:

Federal	
State	
Local	\$5,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Loomis Trail Rd/Bertrand Cr. Trib. Bridge No. 497
Scour Mitigation
CRP # Not Assigned

Construction Funding Year(s): TBD

Project Narrative:

This project is located on Loomis Trail Road in Section 15 & 22, T40N, R2E. This project is to mitigate scour issues on the existing 21-foot bridge. This project is listed **#B7** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Preliminary design and permitting to begin in 2025.

Total Estimated Project Cost: TBD

Expenditures to Date: \$0

Funding Sources:

Federal

State

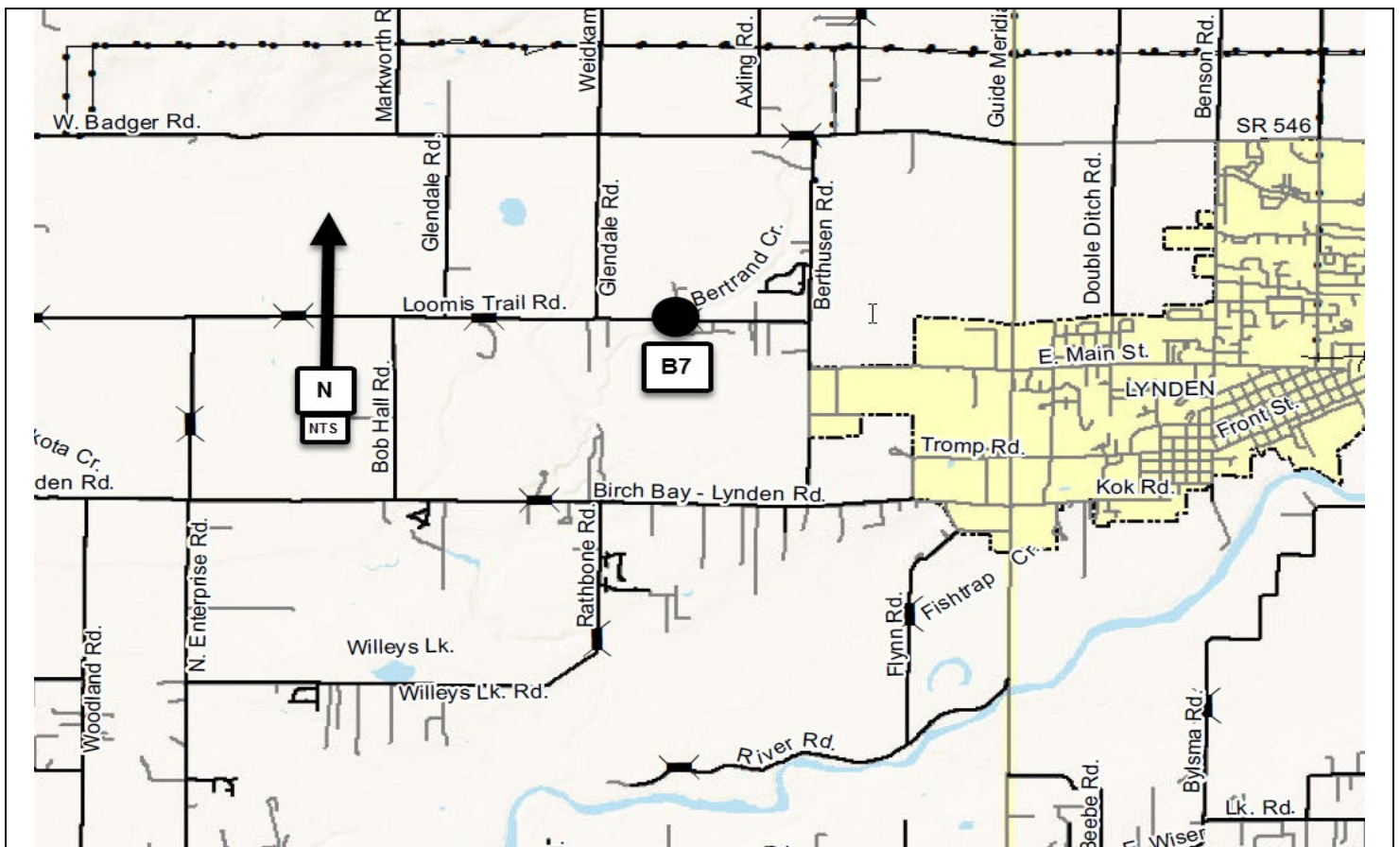
Local

\$5,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Flynn Road/Fishtrap Creek Bridge No. 51 Replacement CRP # Not Assigned

Construction Funding Year(s): TBD

Project Narrative:

This project is located on Flynn Road in Section 25, T40N, R2E. This project is to replace the existing 36-foot span all timber structurally deficient bridge. This project is listed **#B8** on the 2022-2027 Six-Year Transportation Improvement Program. Project development will be coordinated with the River & Flood Program as the bridge replacement will need to account for potential modifications to the Fishtrap Creek levees as identified in the lower Nooksack River Comp plan.

Project Status:

Preliminary design and permitting to begin in 2025.

Total Estimated Project Cost: TBD

Expenditures to Date: \$0

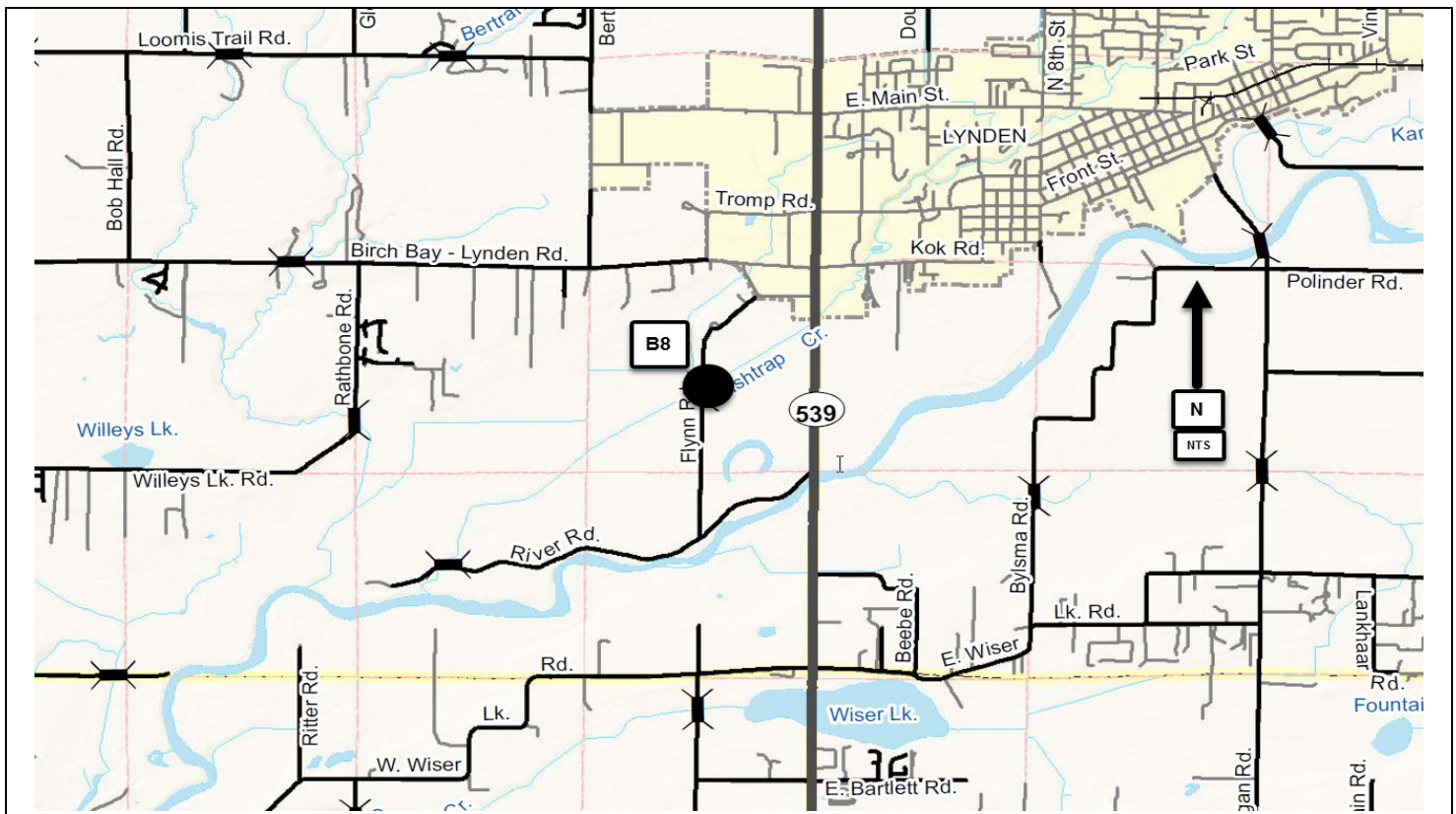
Funding Sources:

Federal	
State	
Local	\$5,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



**Salakanum Way/Anderson Creek Bridge No. 509
Replacement
CRP # Not Assigned**

Construction Funding Year(s): TBD

Project Narrative:

This project is located on Salakanum Way in Section 19, T39N, R4E. This project is to replace the existing 31-foot structurally deficient bridge. This project is listed **#B9** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status:

Preliminary design and permitting to begin in 2025.

Total Estimated Project Cost: TBD

Expenditures to Date: \$0

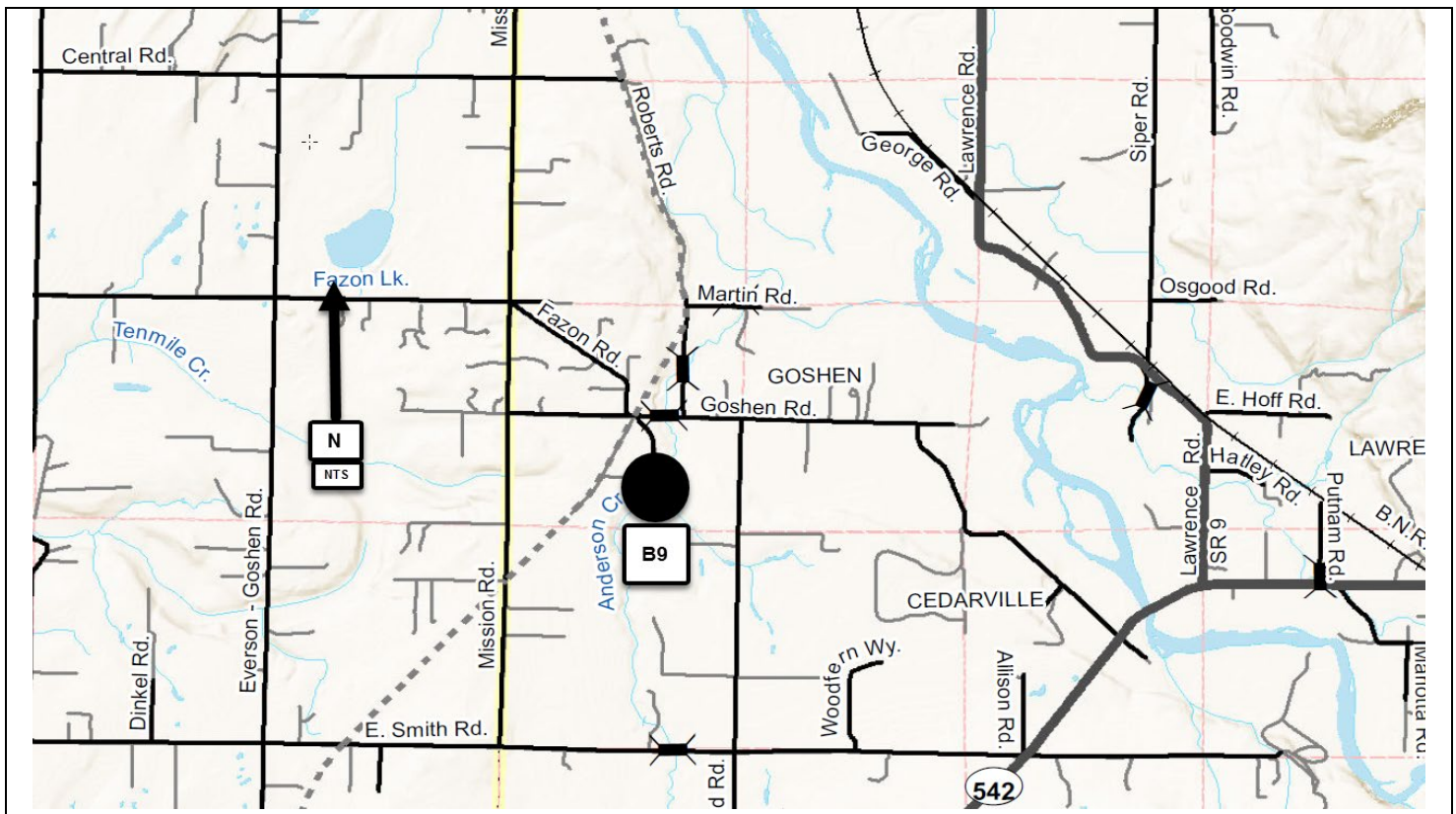
Funding Sources:

Federal	
State	
Local	\$5,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Mosquito Lake Rd/Hutchinson Creek Tributary Fish Passage CRP # 919006

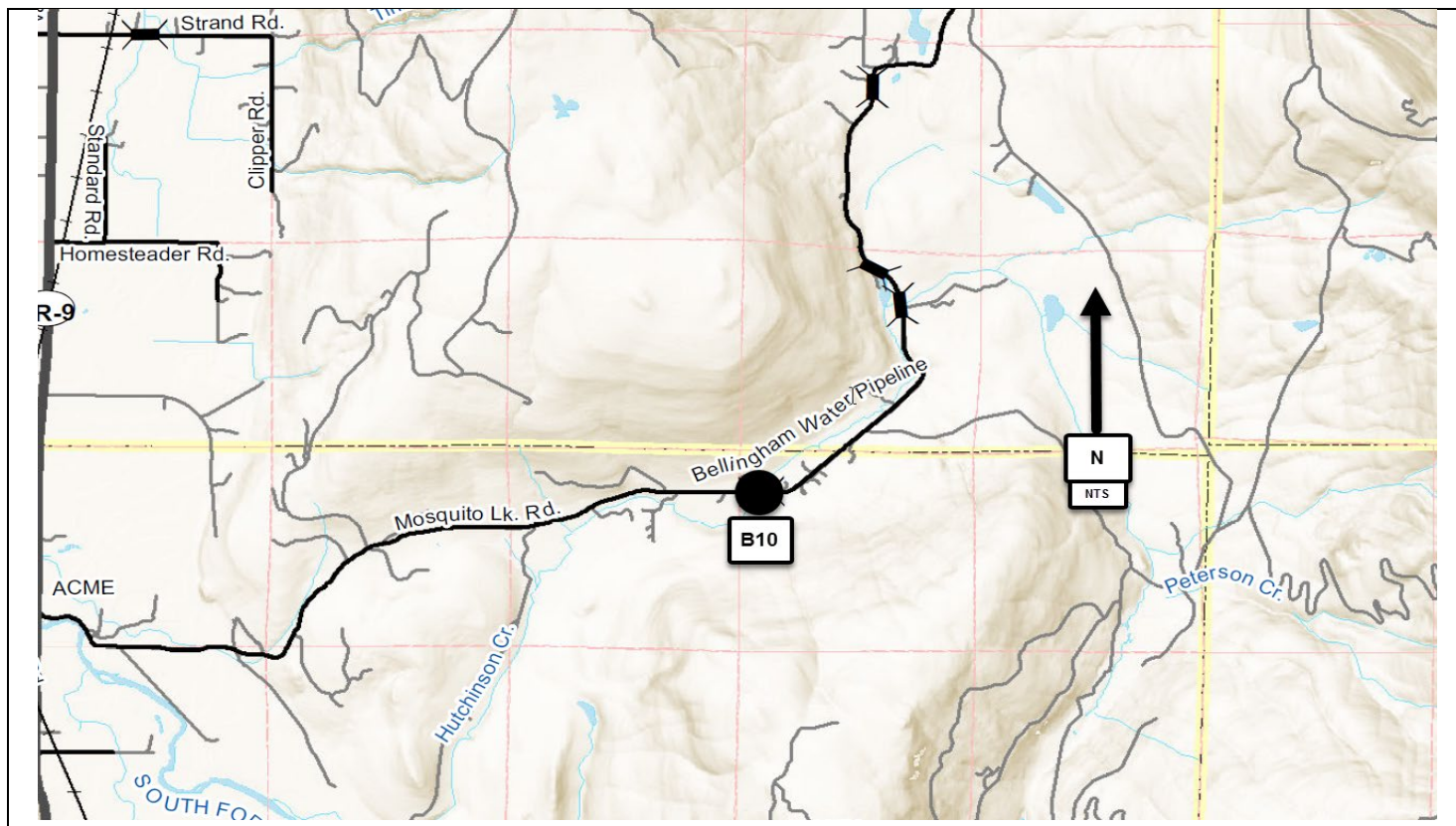
Construction Funding Year(s): 2022

Project Narrative: The existing 30-inch diameter concrete culvert at this location was damaged in early 2018 and a temporary fix completed in late 2018. This culvert has been identified as a barrier to fish passage. Permits for the temporary repair project requires that the existing culvert is replaced with a structure that meets current fish passage requirements. This project is listed **#B10** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Design, permitting and real estate work underway. Construction of this project planned for 2022.

Total Estimated Project Cost: \$660,000 Expenditures to Date: \$100,000	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$660,000

Environmental Permitting	SEPA, HPA, ACOE, WC Shorelines, DOE
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



North Fork Road/Kenny Creek Fish Passage CRP # 919007

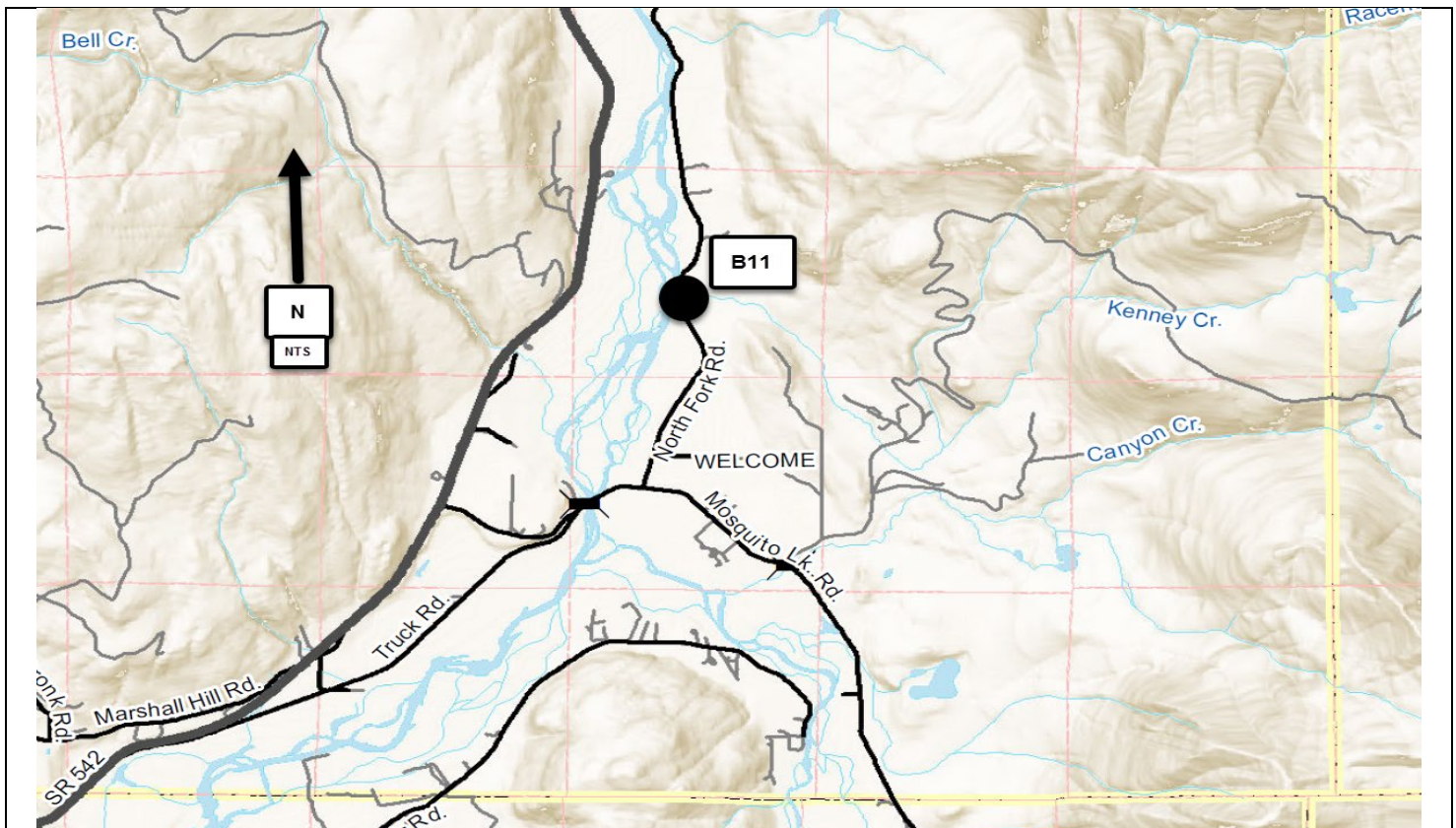
Construction Funding Year(s): 2023

Project Narrative: The existing 5-foot diameter corrugated steel culvert which carries Kenny Creek under the North Fork Road has been identified as a barrier to fish passage and, considering habitat to be gained, is considered one of the highest priority barriers within the County road system. Washington State Fish Barrier Removal Board (FBRB) funding has been secured for the design and construction phases of this fish passage project. This project is listed as **#B11** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Project design, permitting and real estate began in 2019. Design work expected to be complete in the spring of 2021. Whatcom County has been awarded \$443,000 of State FBRB funds for the design phase of this project and in the summer of 2021 Whatcom County was awarded \$2,975,000 in state FBRB funds for the construction phase of this project. Construction of this project is scheduled for 2023.

Total Estimated Project Cost: \$4,023,000 Expenditures to Date: \$ 400,000	Funding Sources:	
	Federal	\$0
	State	\$ 3,418,000 (FBRB funds)
	Local	\$ 605,000

Environmental Permitting	SEPA, HPA, ACOE, WC Shorelines, DOE
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



Deal Road Fish Passage Culverts CRP #921008

Construction Funding Year(s): TBD

Project Narrative: This project is located in Sections 33, T39N, R5E. This project is listed **#B12** on the 2022-2027 Six-Year Transportation Improvement Program. Project includes replacing two existing culverts that have been identified as barriers to fish passage in the Deal Road area with culverts that meet current fish passage requirements.

Project Status: Preliminary design and permitting to begin in late 2021 and continue through 2022.

Total Estimated Project Cost: \$ TBD

Expenditures to Date: \$ 10,000

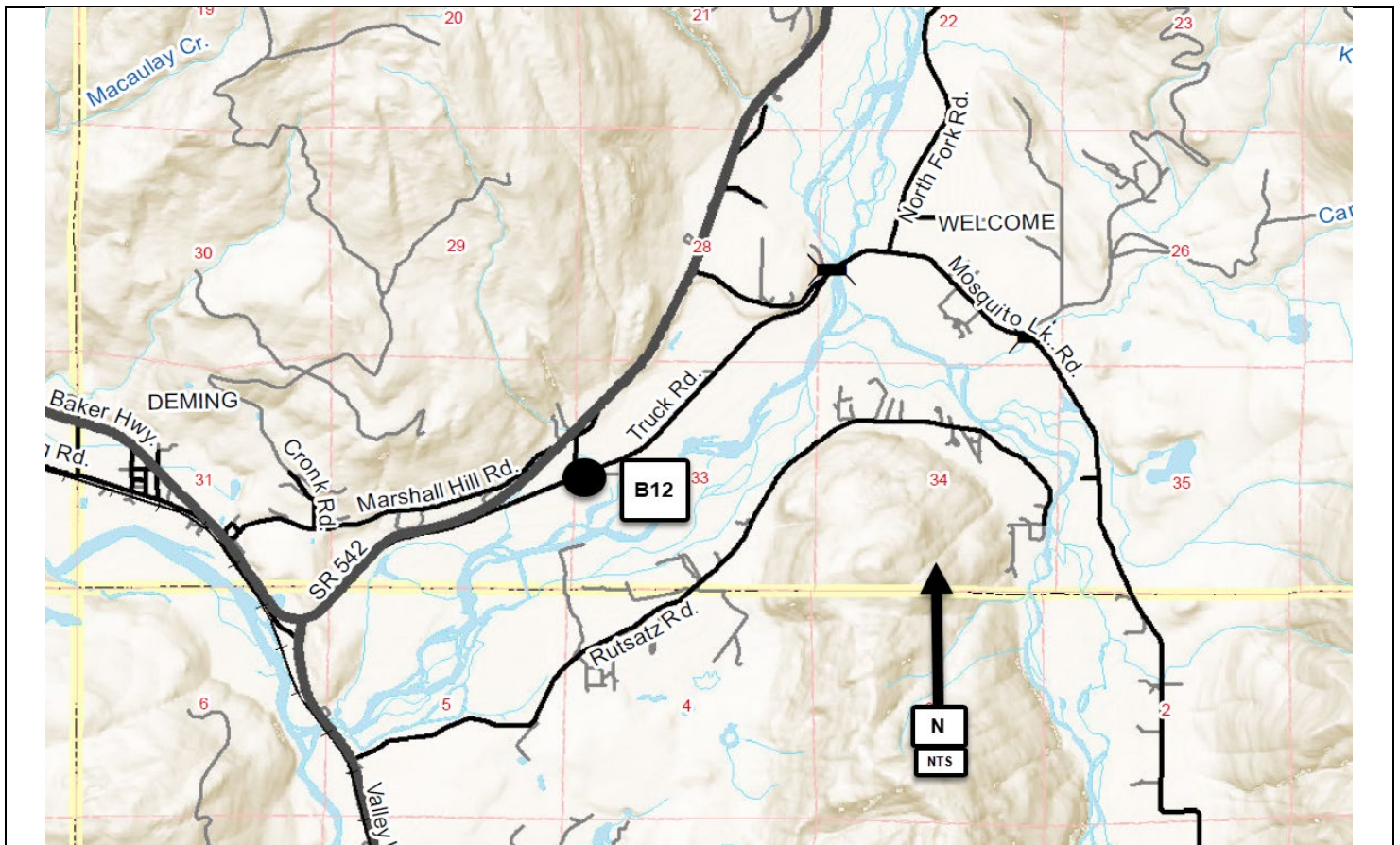
Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$95,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



**Fox Road/California Creek
Fish Passage
CRP # Not Assigned**

Construction Funding Year(s): TBD

Project Narrative:

This project is listed **#B13** on the 2022-2027 Six-Year Transportation Improvement Program. Project includes replacing the existing culvert that has been identified as a barrier to fish passage on Fox Road with a structure that meets current fish passage requirements.

Project Status: Project scoping and preliminary analysis will begin in 2022

Total Estimated Project Cost: \$TBD

Expenditures to Date: \$0

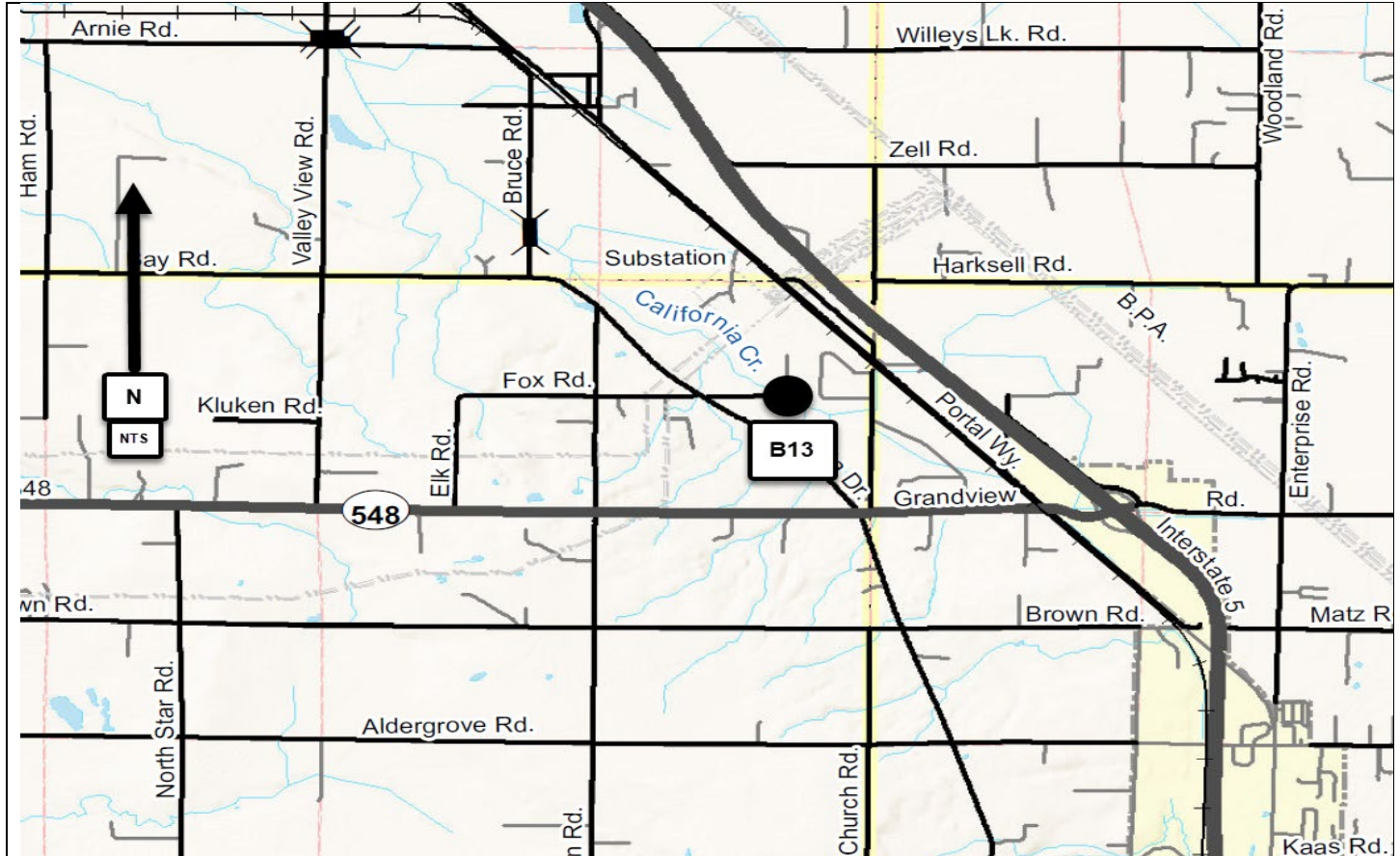
Funding Sources:

Federal	
State	
Local	\$425,000

Environmental Permitting	SEPA, HPA, Shorelines, ACOE 404
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Nulle Road/Friday Creek Bridge No. 106 Rehabilitation CRP #921021

Construction Funding Year(s): 2022

Project Narrative: This project is located in Sections 36, T37N, R3E. The project. This project is listed **#B14** on the 2022-2027 Six-Year Transportation Improvement Program. Project includes implementing rehabilitation elements so that the existing restrictions on the bridge can be removed and better prepare the bridge to handle increased traffic during construction of the North Lake Samish Bridge No. 107 Replacement Project.

Project Status: Preliminary design and environmental permitting work underway. Construction scheduled 2022.

Total Estimated Project Cost: \$ 600,000

Expenditures to Date: \$ 75,000

Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$600,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



Lummi Island Ferry System Modernization & Preservation Project

CRP # 919008

Construction Funding Year(s): 2024

Project Narrative:

This project includes replacement of the Whatcom Chief with a 34 car vessel and modifications of the existing ferry terminals to accommodate the new vessel. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F1** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Design work for the new vessel and terminal modifications is underway. This work will coincide with the next cycle of funding by the County Road Administration Board and the Federal RAISE grant process

Total Estimated Project Cost: \$34,000,000

Expenditures to Date: \$500,000

Funding Sources:

Federal	\$ 20,000,000
State	\$ 2,000,000
Local	\$ 12,000,000

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	N/A

M/V Whatcom Chief



Lummi Island Breakwater Replacement CRP #914015

Construction Funding Year(s): 2022

Project Narrative:

This project includes replacing the southerly breakwater at the Lummi Island ferry terminal. This structure was constructed in the mid 1980's and is reaching the end of its service life. This project is listed **#F2** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Design and permitting work expected to be completed in 2021, with construction of this project scheduled in 2022. Approximately \$1,005,000 in federal Ferry Boat Program funds will be utilized for the preliminary engineering and construction phases of this project.

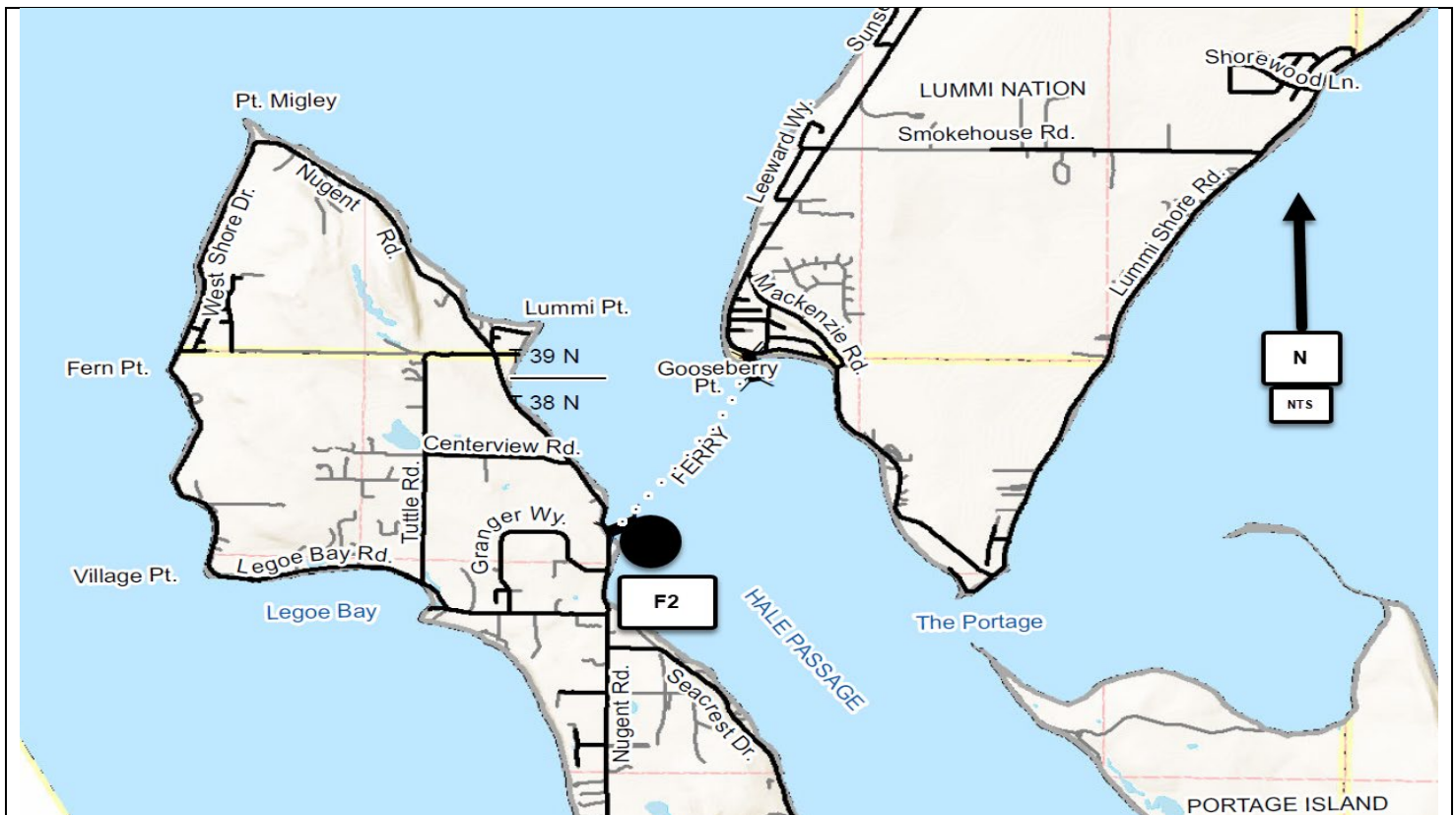
Total Estimated Project Cost: \$2,370,000

Expenditures to Date: \$220,000

Funding Sources:

Federal	\$1,005,000 (FBP)
State	\$
Local	\$1,365,000

Environmental Permitting	HPA, CORPS 404, COUNTY SHORELINES, NEPA
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	N/A



Relocation of Gooseberry Terminal CRP # 919009

Construction Funding Year(s): **TBD**

Project Narrative:

This project involves relocation of the Gooseberry Point Ferry Terminal. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F3** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Early action items will likely include EIS and real estate work. This work will coincide with the next cycle of funding by the County Road Administration Board and the Federal RAISE grant process.

Total Estimated Project Cost: **TBD**

Expenditures to Date: **\$ 0**

Funding Sources:

Federal	\$0
State	\$0
Local	\$150,000

Environmental Permitting	None Required
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Right-of-Way Acquisition (Estimate)	None Required
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County Forces (Estimate)	None Required
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Various Bridges Rehabilitation / Replacement CRP # To Be Assigned

Construction Funding Year(s): 2022 - 2027

Project Narrative:

This item provides funding to address unanticipated bridge rehabilitation and/or replacement. It is listed **#Y1** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Design and construction to occur as necessary.

Total Estimated Project Cost: \$1,800,000

Expenditures to Date: N/A

Funding Sources:

Federal	\$
State	\$
Local	\$1,800,000 (STIP 2022-2027)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Due to the nature of this item, no map exists. Council review and prioritization will be sought at the appropriate times.

Right of Way Acquisition CRP # To Be Assigned
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Construction Funding Year(s):	2022-2027
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Project Narrative:

This item addresses the unanticipated need for Right-of-Way that may arise during a given year that requires immediate action. This project is listed #Y2 on the 2022-2027 Six Year Transportation Improvement Program.
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Project Status:

N/A.

Total Estimated Project Cost: \$150,000
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Expenditures to Date:

Funding Sources:	
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Federal	\$0
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State	\$0
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Local	\$150,000 (2022-2027)
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Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	N/A
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.
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Unanticipated Site Improvements

CRP # To Be Assigned

Construction Funding Year(s): 2022 - 2027

Project Narrative:

This Annual Construction Program item addresses the unanticipated project(s) that may arise during a given year that require immediate action due to safety concerns, environmental factors, traffic volumes, accident history, funding or grant availability and other issues not related to an existing program project. This project is listed #Y3 on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: \$1,800,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$1,800,000 (2022-2027)

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) N/A

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Stormwater Quality Improvements

CRP # To Be Assigned

Construction Funding Year(s): 2022 - 2027

Project Narrative:

This project varies in location. Identification and prioritization to be addressed and reviewed through County Council. This project is listed **#Y4** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: \$720,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$720,000 (2022-2027)

Environmental Permitting	TBD
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Right-of-Way Acquisition (Estimate)	TBD
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County Forces (Estimate)	TBD
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Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Non-motorized Transportation Improvements CRP # To Be Assigned

Construction Funding Year(s):	2022 - 2027
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Project Narrative:

This program item addresses the need to identify and prioritize non-motorized projects for future consideration. Projects would include pedestrian and bike facilities (eg: sidewalks, trails, shoulder widening) in various locations around the county. This project is listed **#Y5** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

It is anticipated that the design and construction of projects will occur yearly as the needs and locations are determined.

Total Estimated Project Cost: \$160,000 Expenditures to Date:	<table border="1" style="width: 100%;"> <tr> <th colspan="2">Funding Sources:</th> </tr> <tr> <td style="width: 50%;">Federal</td> <td>\$0</td> </tr> <tr> <td>State</td> <td>\$0</td> </tr> <tr> <td>Local</td> <td>\$160,000 (2022-2027)</td> </tr> </table>	Funding Sources:		Federal	\$0	State	\$0	Local	\$160,000 (2022-2027)
Funding Sources:									
Federal	\$0								
State	\$0								
Local	\$160,000 (2022-2027)								

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

<p>Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.</p>

Fish Passage Project

CRP # To Be Assigned

Construction Funding Year(s): 2022

Project Narrative:

This project is for the design and construction of fish passage projects. This project is listed **#Y6** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Design work will begin in 2021 with construction of the first project scheduled for 2022.

Total Estimated Project Cost: TBD Expenditures to Date: N/A	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$300,000 (2022-2027)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Swift Creek Transportation Impacts CRP # To Be Assigned
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Construction Funding Year(s):	TBD
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Project Narrative:

This item addresses the various projects related to Sumas Mountain/Swift Creek Slide. Locations to be determined. This project is #Y7 on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Design and construction for the various projects will be initiated in 2022 and extend through 2027.

Total Estimated Project Cost: \$400,000 Expenditures to Date:	<table border="1" style="width: 100%;"> <tr> <th colspan="2" style="text-align: left;">Funding Sources:</th> </tr> <tr> <td style="width: 50%;">Federal</td> <td style="width: 50%;">\$0</td> </tr> <tr> <td>State</td> <td>\$0</td> </tr> <tr> <td>Local</td> <td>\$400,000 (2022-2027)</td> </tr> </table>	Funding Sources:		Federal	\$0	State	\$0	Local	\$400,000 (2022-2027)
Funding Sources:									
Federal	\$0								
State	\$0								
Local	\$400,000 (2022-2027)								

Environmental Permitting	N/A
Right-of-Way Acquisition (Estimate)	N/A
County Forces (Estimate)	N/A

<p>Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.</p>

Railroad Crossing Improvements

CRP # To Be Assigned

Construction Funding Year(s): 2022 - 2027

Project Narrative:

Locations to be determined. Identification and prioritization to be addressed. This project is listed **#Y8** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Locations and prioritization of projects is on-going. Negotiations with BNSF will be a factor on timing and cost.

Total Estimated Project Cost: \$300,000 Expenditures to Date: - 0 -	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$300,000 (2022-2027)

Environmental Permitting	TBD
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Beam Guardrail Replacements/Upgrades CRP # To Be Assigned

Construction Funding Year(s): 2022 - 2027

Project Narrative:

Locations to be determined. Identification and prioritization to be addressed. This project is listed **#Y9** on the 2022-2027 Six Year Transportation Improvement Program.

Project Status:

Locations and prioritization of projects is on-going, with close coordination with M&O Division and Traffic Section.

Total Estimated Project Cost: \$1,200,000 Expenditures to Date: - 0 -	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$1,200,000 (2022-2027)

Environmental Permitting	SEPA, Clrg/CAO,
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

**ADA Barrier Removal
ADA Transition Plan, Multiple Locations
CRP # Not Assigned**

Construction Funding Year(s): TBD

Project Narrative:

Whatcom County will be addressing an update to its Americans with Disabilities Act (ADA) Transition Plan in 2019, concentrating on an assessment of facilities in County road rights-of-way. This project will involve the removal of a number of barriers yearly, in a systematic and prioritized method. This project is listed **#Y10** on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: ADA Transition Plan update will be completed in 2021, with a number of priority barrier locations highlighted by the study, addressed by design efforts in 2021.

Total Estimated Project Cost: \$1,200,000

Expenditures to Date: \$0

Funding Sources:

Federal	\$0
State	\$0
Local	\$1,200,000

Environmental Permitting

Right-of-Way Acquisition (Estimate)

County Forces (Estimate)

Due to the nature of this item, no map exists. Location and priority of the ADA Barrier Removals will be determined when the updated Transition Plan is complete.

2022-2027 Six Year Transportation Improvement Program (STIP)

Major Project Removals & Additions

-Not complete list of all changes-

Projects Removed from 2021-2026 STIP

Project Number	Project Title	Reason/Status
R5	Birch Bay Lynden Rd Paver (Enterprise to Rathbone Rd)	Completed 2021
R10	Horton Rd (new rdwy from Northwest to Aldrich Rd)	Priority decrease / Annexation nexus
B12	Truck Rd Fish Passage Culvert Replacement	Completed 2021
F2	Gooseberry Pt Terminal Preservation Project	Completed 2021

Projects Modified from 2021-2026 STIP

Project Number	Project Title	Reason/Status
R32	Birch Bay Lynden Rd Paver (Rathbone to Lynden UAB)	Extended Limits from Berthusen to Lynden UAB

Projects Added to 2022-2027 STIP:

Project Number	Project Title	Reason/Status
R5	Marshall Hill Rd Slide Repair/Culvert Replacement	2021 Event Damage Site
R10	Birch Bay Dr Crosswalk (Berm to Parks Parcel)	Request from Parks; anticipate mtg warrants for crossing numbers
R36	Birch Bay Dr / Lora Lane Culvert Replacement	Supporting Stormwater Project; pipe in roadway prism
R37	Birch Bay Lynden Rd / Kickerville Rd Intersection Imprvs	Add turn lanes for Safety/HSIP
R38	Corridor Intersection Alternatives Analysis	Review 6 intersection on 3 primary corridors due to safety or LOS
R39	Deer Trail Slide Repair	2021 Event Damage Site
B13	Fox Road Fish Passage Culvert	Maintenance issue / WDFW req'mnt
860B14	Nulle Road/Friday Creek Bridge No. 106	Rehabilitation

2022-2027 Six Year Transportation Improvement Program

Financial Distribution by Year

6/23/2021

Project Costs in Thousands of Dollars

Attachment "B"

Project No.	Project Name	Total 2022-2027	Total Grant 2022-2027	Total Local 2022-2027	2022	2023	2024	2025	2026	2027
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Road Capital Construction

R1	Birch Bay Drive & Pedestrian Facility	450	0	450	350	90	10	0	0	0
R2	East Smith Road & Hannegan Road	4,300	2,000	2,300	4,300	0	0	0	0	0
R3	Marine Drive, Locust Avenue to Alderwood Avenue	3,550	2,509	1,041	3,550	0	0	0	0	0
R4	Samish Way & Galbraith Lane	60	0	60	60	0	0	0	0	0
R5	Marshall Hill Road Slide Rpr/Culvert Rplc	725	0	725	725	0	0	0	0	0
R6	Birch Bay Lynden Rd. & Blaine Rd.	5,050	801	4,249	650	350	4,050	0	0	0
R7	Smith Road & Northwest Drive	35	0	35	25	5	5	0	0	0
R8	Chief Martin Road, Cagey Road to Kwina Road	100	0	100	100	0	0	0	0	0
R9	Slater Road & Northwest Drive	15	0	15	5	5	5	0	0	0
R10	Birch Bay Drive Crosswalk	495	0	495	50	70	375	0	0	0
R11	Lummi Nation Transportation Projects	2,000	0	2,000	2,000	0	0	0	0	0
R12	Point Roberts Transportation Improvements	150	0	150	150	0	0	0	0	0
R13	Hemmi Road Flood Mitigation	125	0	125	125	0	0	0	0	0
R14	Innis Creek Road	10	0	10	10	0	0	0	0	0
R15	Birch Bay Drive, Jackson Rd to Shintaffer Rd	1,750	0	1,750	1,750	0	0	0	0	0
R16	Marine Drive II, Alderwood Ave to Brdg No. 172	25	0	25	15	5	5	0	0	0
R17	Turkington Road/Jones Creek	54	0	54	54	0	0	0	0	0
R18	Truck Road	37	0	37	37	0	0	0	0	0
R19	Abbott Road/Levee Improvements	155	0	155	155	0	0	0	0	0
R20	Ferndale Road/Levee Improvements	50	0	50	50	0	0	0	0	0
R21	Lake Louise, Austin St to Lake Whatcom Blvd.	2,050	0	2,050	25	2,025	0	0	0	0
R22	Austin Street, Lake Louise to Cable	535	0	535	25	510	0	0	0	0
R23	Northwest Drive, Slater Rd. to Axton Rd.	100	0	100	15	85	0	0	0	0
R24	Axton Road, City of Ferndale to SR 539	1,535	0	1,535	0	0	15	1,520	0	0
R25	Hampton Road, City of Lynden UAB to Van Buren	2,070	170	1,900	25	10	2,035	0	0	0
R26	Everson Goshen Road, Smith Rd. to Pole Rd	2,215	0	2,215	0	0	0	15	2,200	0
R27	Lakeway Drive/Terrace, COB to Cable	725	0	725	0	0	0	25	700	0
R28	Lakeway Drive Corridor Improvements	100	0	100	50	50	0	0	0	0
R29	Lincoln Road II, Harborview Rd to Blaine Rd	10	0	10	5	5	0	0	0	0
R30	Slater Road, Lake Terrell Rd to Haxton Wy	1,125	0	1,125	0	0	0	0	25	1,100
R31	Small Area Paving	350	0	350	350	0	0	0	0	0
R32	Birch Bay Lynden Rd, Rathbone to Lynden	860	0	860	0	10	850	0	0	0
R33	Northshore Road, Bellingham City Limits to Y Rd	10	0	10	0	0	0	5	5	0
R34	South Pass Road	455	380	75	40	415	0	0	0	0
R35	Everson Goshen Road & E. Smith Road	10	0	10	0	0	5	5	0	0
R36	Birch Bay Drive / Lora Lane Culvert Replc	40	0	40	30	0	0	5	5	0
R37	Birch Bay Lynden Rd / Kickerville Rd	15	0	15	5	5	5	0	0	0
R38	Corridor Intersection Alts Analysis (6 ea)	360	0	360	5	355	0	0	0	0
R39	Deer Trail Slide Damage Repair	130	0	130	130	0	0	0	0	0

Project No.	Project Name	Total 2022-2027	Total Grant 2022-2027	Total Local 2022-2027	2022	2023	2024	2025	2026	2027
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Bridge and Fish Passage Capital Construction

B1	Marine Drive/Little Squalicum Bridge No.1	20	0	20	0	0	0	20	0	0
B2	Jackson Road/Terrell Creek/Bridge No. 81	450	0	450	250	200	0	0	0	0
B3	Mosquito Lk Rd/Porter Crk/Bridge No. 141	5	0	5	0	0	0	0	5	0
B4	North Lake Samish Road/Bridge No. 107	9,025	9,000	25	7,425	1,600	0	0	0	0
B5	Goshen Road/Anderson Crk/Bridge No. 248	3,990	3,950	40	220	120	3,650	0	0	0
B6	Martin Rd/Anderson Crk/Bridge No. 250	5	0	5	0	0	0	0	5	0
B7	Loomis Trail Rd/Bertrand Crk Trib Brdg No. 497	5	0	5	0	0	0	5	0	0
B8	Flynn Road/Fishtrap Creek Bridge No. 51	5	0	5	0	0	0	5	0	0
B9	Salakanum Wy/Anderson Crk Brdg No. 509	5	0	5	0	0	0	5	0	0
B10	Mosquito Lake Rd/ Hutchinson Crk Tributary	610	0	610	610	0	0	0	0	0
B11	North Fork Road/Kenney Creek	3,770	3,175	595	270	3,500	0	0	0	0
B12	Deal Road	95	0	95	95	0	0	0	0	0
B13	Fox Road	425	0	425	155	160	110	0	0	0
B14	Nulle Road/Friday Creek Bridge No. 106	600	0	600	600	0	0	0	0	0

Ferry Capital Construction

F1	Replacement of Whatcom Chief & Terminal	33,379	22,000	11,379	649	1,076	9,555	14,833	7,266	0
F2	Lummi Island Breakwater Replacement	2,150	885	1,265	2,150	0	0	0	0	0
F3	Relocation of Gooseberry Terminal	150	0	150	50	50	50	0	0	0
F4										

Yearly Capital Construction

Y1	Various Bridges Rehabilitation/Replacement	1,800	0	1,800	300	300	300	300	300	300
Y2	Right of Way Acquisition	150	0	150	50	20	20	20	20	20
Y3	Unanticipated Site Improvements	1,800	0	1,800	300	300	300	300	300	300
Y4	Unanticipated Stormwater Quality Improvements	720	0	720	120	120	120	120	120	120
Y5	Unanticipated Non-motorized Transportation Improv	160	0	160	60	20	20	20	20	20
Y6	Fish Passage Project	300	0	300	50	50	50	50	50	50
Y7	Swift Creek Transportation Impacts	400	0	400	100	60	60	60	60	60
Y8	Railroad Crossing Improvements	300	0	300	200	20	20	20	20	20
Y9	Beam Guardrail Replacements/Upgrades	1,200	0	1,200	350	50	350	50	350	50
Y10	ADA Barrier Removal	1,200	0	1,200	200	200	200	200	200	200
Total		94,550	44,870	49,680	29,070	11,841	22,165	17,583	11,651	2,240

Road Fund

FUND BALANCE

Cash Flow Projections (\$ in millions)

1	2	3	4	5	6	7	8	9	10
Year	General Revenue	Non- Capital Expense	Net	Const. Revenue	Const. Expense	Net	Ending Fund Balance	Designated Fund Balance	Available Fund Balance
act. 2010	\$23.184	(\$18.494)	\$4.690	\$3.813	(\$4.481)	(\$0.668)	\$18.875	\$0.290	\$18.585
act. 2011	\$24.136	(\$17.733)	\$6.403	\$1.078	(\$2.038)	(\$0.960)	\$24.318	\$0.397	\$23.921
act. 2012	\$24.628	(\$17.904)	\$6.724	\$1.103	(\$2.953)	(\$1.850)	\$29.192	\$10.460	\$18.732
act. 2013	\$26.646	(\$25.083)	\$1.563	\$3.922	(\$5.210)	(\$1.288)	\$29.467	\$17.204	\$12.263
act. 2014	\$24.518	(\$18.147)	\$6.370	\$7.426	(\$9.450)	(\$2.024)	\$33.814	\$11.434	\$22.380
act. 2015	\$25.125	(\$20.406)	\$4.719	\$6.884	(\$13.315)	(\$6.431)	\$32.101	\$12.151	\$19.950
act. 2016	\$25.270	(\$21.455)	\$3.815	\$3.700	(\$7.064)	(\$3.364)	\$32.552	\$12.250	\$20.302
act. 2017	\$27.224	(\$22.458)	\$4.766	\$0.672	(\$7.008)	(\$6.337)	\$30.982	\$9.394	\$21.588
act. 2018	\$27.695	(\$22.657)	\$5.037	\$1.114	(\$3.954)	(\$2.840)	\$33.179	\$9.000	\$24.179
act. 2019	\$27.893	(\$23.033)	\$4.860	\$3.041	(\$7.580)	(\$4.539)	\$33.500	\$10.000	\$23.500
act. 2020	\$26.422	(\$21.760)	\$4.662	\$3.119	(\$15.928)	(\$12.809)	\$25.353	\$3.000	\$22.353
est. 2021	\$27.453	(\$22.174)	\$5.280	\$4.782	(\$12.534)	(\$7.752)	\$22.881	\$3.000	\$19.881
proj. 2022	\$26.887	(\$22.596)	\$4.291	\$13.234	(\$29.070)	(\$15.836)	\$11.336	\$3.000	\$8.336
proj. 2023	\$27.083	(\$23.027)	\$4.056	\$5.931	(\$11.841)	(\$5.910)	\$9.482	\$3.000	\$6.482
proj. 2024	\$27.305	(\$23.466)	\$3.839	\$12.412	(\$22.165)	(\$9.753)	\$3.568	\$3.000	\$0.568
proj. 2025	\$27.772	(\$23.915)	\$3.857	\$10.409	(\$17.583)	(\$7.174)	\$0.251	\$3.000	(\$2.749)
proj. 2026	\$27.892	(\$26.872)	\$1.020	\$2.884	(\$11.651)	(\$8.767)	(\$7.496)	\$0.000	(\$7.496)
proj. 2027	\$28.210	(\$24.839)	\$3.370	\$0.000	(\$2.240)	(\$2.240)	(\$6.365)	\$0.000	(\$6.365)

Whatcom County Public Works

ATTACHMENT "C2"

8/31/2021

Road Fund

REVENUES

Cash Flow Projections (\$ in millions)

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Year	Property Tax Revenue	General Fuel Tax	Private Timber Harvest	Federal Forest	State Forest	Ferry Tolls	Fuel Tax Ferry Deficit	Reimb.	Interfund Charges	Other Revenue	Total Non-Const Revenue	Const. Grants & Loans	Total Revenue
act. 2010	\$16.276	\$3.778	\$0.093	\$0.639	\$0.292	\$0.000	\$0.000	\$0.361	\$0.777	\$0.968	\$23.184	\$3.813	\$26.997
act. 2011	\$16.841	\$3.734	\$0.181	\$0.515	\$0.517	\$0.000	\$0.000	\$0.351	\$0.732	\$1.265	\$24.136	\$1.078	\$25.214
act. 2012	\$16.876	\$3.784	\$0.282	\$0.454	\$0.739	\$0.000	\$0.000	\$0.333	\$0.695	\$1.465	\$24.628	\$1.103	\$25.731
act. 2013	\$17.870	\$3.888	\$0.196	\$0.000	\$0.474	\$0.000	\$0.000	\$0.406	\$0.706	\$3.809	\$26.646	\$3.922	\$30.567
act. 2014	\$18.328	\$3.906	\$0.144	\$0.469	\$0.285	\$0.000	\$0.000	\$0.361	\$0.626	\$1.207	\$24.518	\$7.426	\$31.944
act. 2015	\$18.583	\$4.012	\$0.256	\$0.432	\$0.533	\$0.000	\$0.000	\$0.348	\$0.515	\$1.251	\$25.125	\$6.884	\$32.009
act. 2016	\$18.935	\$4.322	\$0.182	\$0.428	\$0.208	\$0.000	\$0.000	\$0.246	\$0.688	\$1.067	\$25.270	\$3.700	\$28.970
act. 2017	\$19.721	\$4.427	\$0.165	\$0.079	\$0.230	\$0.000	\$0.000	\$0.432	\$0.720	\$2.261	\$27.224	\$0.672	\$27.896
act. 2018	\$20.016	\$4.556	\$0.276	\$0.397	\$0.501	\$0.000	\$0.000	\$0.679	\$0.645	\$1.433	\$27.695	\$1.114	\$28.808
act. 2019	\$19.879	\$4.541	\$0.000	\$0.379	\$0.529	\$0.000	\$0.000	\$0.722	\$0.743	\$1.898	\$27.893	\$3.041	\$30.934
act. 2020	\$20.391	\$3.375	\$0.000	\$0.350	\$0.426	\$0.000	\$0.000	\$0.599	\$0.878	\$1.210	\$26.422	\$3.119	\$29.541
est. 2021	\$20.096	\$4.552	\$0.000	\$0.350	\$0.452	\$0.000	\$0.000	\$0.611	\$0.904	\$1.295	\$27.453	\$4.782	\$32.235
proj. 2022	\$20.322	\$4.202	\$0.000	\$0.350	\$0.452	\$0.000	\$0.000	\$0.623	\$0.931	\$0.813	\$26.887	\$13.234	\$40.121
proj. 2023	\$20.352	\$4.326	\$0.000	\$0.350	\$0.452	\$0.000	\$0.000	\$0.636	\$0.959	\$0.814	\$27.083	\$5.931	\$33.014
proj. 2024	\$20.505	\$4.347	\$0.000	\$0.350	\$0.452	\$0.000	\$0.000	\$0.648	\$0.988	\$0.820	\$27.305	\$12.412	\$39.717
proj. 2025	\$20.494	\$4.784	\$0.000	\$0.350	\$0.452	\$0.000	\$0.000	\$0.661	\$1.018	\$0.820	\$27.772	\$10.409	\$38.181
proj. 2026	\$20.632	\$4.716	\$0.000	\$0.350	\$0.452	\$0.000	\$0.000	\$0.675	\$1.048	\$0.825	\$27.892	\$2.884	\$30.776
proj. 2027	\$20.690	\$4.929	\$0.000	\$0.350	\$0.452	\$0.000	\$0.000	\$0.688	\$1.080	\$0.828	\$28.210	\$0.000	\$28.210

Notes

A Ferry Fund created 1/1/2006 - ferry toll and ferry deficit revenues no longer included in the Road Fund

Whatcom County Public Works

ATTACHMENT "C3"

8/31/2021

Road Fund

EXPENDITURES

Cash Flow Projections (\$ in millions)

1	2	3	5	6	7	8	9	10	11	12	13	14
	108100	108110	10890		10851	10852/ 10855	10853/ 10854		108131/ 108920		90000.99999	
Year	M & O	Noxious Weed	Undist. Admin.	Admin. & Acct.	Eng. Admin.	Undist. Const. Eng.	Eng. Traffic & Develop.	Reimb. Work	Other	Total Non- Const.	CRP & PBB Const.	Total Expense
act. 2010	\$10.005	\$0.212	\$0.043	\$2.772	\$0.982	\$0.668	\$1.355	\$0.441	\$2.014	\$18.494	\$4.481	\$22.975
act. 2011	\$10.900	\$0.246	\$0.336	\$2.478	\$0.869	\$0.861	\$1.282	\$0.580	\$0.181	\$17.733	\$2.038	\$19.771
act. 2012	\$11.316	\$0.224	(\$0.099)	\$2.486	\$0.934	\$1.009	\$1.333	\$0.517	\$0.184	\$17.904	\$2.953	\$20.857
act. 2013	\$11.557	\$0.213	\$6.851	\$2.529	\$0.868	\$1.239	\$1.272	\$0.531	\$0.023	\$25.083	\$5.210	\$30.293
act. 2014	\$12.019	\$0.209	(\$0.119)	\$2.333	\$0.865	\$1.054	\$1.310	\$0.477	\$0.000	\$18.147	\$9.450	\$27.597
act. 2015	\$13.345	\$0.180	\$0.231	\$2.978	\$0.900	\$0.917	\$1.410	\$0.432	\$0.013	\$20.406	\$13.315	\$33.721
act. 2016	\$13.858	\$0.220	\$0.008	\$3.357	\$0.971	\$1.187	\$1.495	\$0.317	\$0.041	\$21.455	\$7.064	\$28.519
act. 2017	\$14.175	\$0.240	\$0.526	\$3.293	\$1.009	\$1.183	\$1.466	\$0.555	\$0.012	\$22.458	\$7.008	\$29.466
act. 2018	\$13.939	\$0.249	\$0.295	\$3.361	\$1.010	\$1.416	\$1.508	\$0.862	\$0.017	\$22.657	\$3.954	\$26.611
act. 2019	\$14.201	\$0.263	\$0.109	\$3.649	\$1.117	\$1.189	\$1.738	\$0.767	\$0.000	\$23.033	\$7.580	\$30.613
act. 2020	\$13.020	\$0.251	\$0.107	\$3.942	\$1.044	\$1.044	\$1.724	\$0.628	\$0.000	\$21.760	\$15.928	\$37.688
est. 2021	\$13.215	\$0.257	\$0.110	\$4.041	\$1.070	\$1.070	\$1.767	\$0.644	\$0.000	\$22.174	\$12.534	\$34.708
proj. 2022	\$13.414	\$0.264	\$0.112	\$4.142	\$1.097	\$1.097	\$1.811	\$0.660	\$0.000	\$22.596	\$29.070	\$51.666
proj. 2023	\$13.615	\$0.270	\$0.115	\$4.245	\$1.124	\$1.124	\$1.857	\$0.676	\$0.000	\$23.027	\$11.841	\$34.868
proj. 2024	\$13.819	\$0.277	\$0.118	\$4.351	\$1.152	\$1.152	\$1.903	\$0.693	\$0.000	\$23.466	\$22.165	\$45.631
proj. 2025	\$14.026	\$0.284	\$0.121	\$4.460	\$1.181	\$1.181	\$1.951	\$0.711	\$0.000	\$23.915	\$17.583	\$41.498
proj. 2026	\$14.237	\$0.291	\$0.124	\$4.572	\$1.211	\$1.211	\$1.999	\$0.728	\$2.500	\$26.872	\$11.651	\$38.523
proj. 2027	\$14.450	\$0.298	\$0.127	\$4.686	\$1.241	\$1.241	\$2.049	\$0.746	\$0.000	\$24.839	\$2.240	\$27.079

2021
Whatcom County
Priority Rating Program

2021

Rating	Road Name	From	To	Length	FFC
UC	Birch Bay Lynden Road	Enterprise Road (N)	Rathbone Road	2.03	7
UC	Marine Drive	Alderwood Avenue	McAlpine Rd	0.51	16
29	Lake Louise Road	Gate 13 (SV)	Austin Street	1.97	16
30	North Shore Road	Bellingham C/L	Y Road	2.87	16
31	Lake Louise Road	Gate 5 (SV)	Gate 13 (SV)	1.59	16
31	Marine Drive	Wynn Road	Alderwood Avenue	0.66	16
33	Lake Louise Road	Lake Whatcom Boulevard	Gate 5 (SV)	0.50	16
33	Lake Whatcom Boulevard	UAB	South Bay Drive	1.95	7
35	Marine Drive	Bridge #5	Rural Avenue	1.16	7
37	South Pass Road	Goodwin Road	North Pass Road	1.74	7
37	Yew Street Road	Tacoma Av (private)	Samish Way	0.71	17
38	Cain Lake Road	NE Cain Lk Rd	Lake Whatcom Boulevard	0.37	7
38	South Pass Road	North Pass Road	Frost Road	4.16	7
39	Beach Way	Slater Road	Sucia Drive	0.36	8
40	Birch Bay Drive	Alderson Road	Harborview Road	1.14	17
40	Hovander Road	Smith Road (W)	Ferndale C/L	0.29	16
40	Lake Whatcom Boulevard	Lake Louise Road	UAB	0.93	17
40	Rural Avenue	Curtis Road	Ferndale C/L	0.58	17
40	Silver Lake Road	SR 542	Rock Quarry	3.22	8
41	Mountain View Road	Olson Road	Ferndale C/L	0.77	16
41	Van Wyck Road	Hannegan Road	SR 542	2.15	7
41	Wiser Lake Road (E)	SR 539	Hannegan Road	2.12	18
42	Drayton Harbor Road	Blaine C/L	Harborview Road	1.16	18
42	Drayton Harbor Road	Harborview Road	Blaine Road	0.90	17
42	Ferndale Road	Marine Drive	Slater Road	1.89	7
42	Ferndale Road	Slater Road	Ulrich Road	1.05	7
42	Ferndale Road	Ulrich Road	Ferndale C/L	0.38	16
42	H Street Road	Axling Road	Sunrise Road	3.78	7
42	Harborview Road	Lincoln Road	Drayton Harbor Road	0.47	17
43	Bay Road	Kickerville Road	Bruce Road	2.76	7
43	Birch Bay Drive	Shintaffer Road	Birch Point Road	0.66	17
43	Lake Whatcom Boulevard	Cable Street	Strawberry Point Road	1.50	17
43	Lummi Shore Drive	Kwina Road	Haxton Way	1.08	8
43	North Telegraph Road	Sorenson Road	Badger Road (E)	2.19	8
43	North Telegraph Road	Badger Road (E)	SR 547	1.88	8
43	Silver Lake Road	Rock Quarry	South Pass Road	2.67	8
43	South Bay Drive	Lake Whatcom Boulevard	Brannigan Creek	2.77	8
43	Vista Drive	Ferndale C/L	Grandview Road	1.67	17
43	Wiser Lake Road (W)	Northwest Drive	Old Guide Road	2.18	8
44	Axton Road (E)	SR 539	Hannegan Road	1.97	7
44	Badger Road (W)	Sunrise Road	Markworth Road	2.01	7
44	Bancroft Road	Marine Drive	Country Lane	0.59	16
44	Bay Road	Blaine Road	Kickerville Road	0.98	7
44	Cedarville Road	Goshen Road	SR 542	1.39	8
44	Country Lane	Rural Avenue	Bancroft Road	0.82	16
44	Goshen Road	Fazon Road	Cedarville Road	1.23	8

Rating: 0 (worst) to 100 (best)

Incorporates; road geometrics, surface condition, ride,
 drainage, traffic volumes, surface types, accident history
 UC - Under construction

Federal Functional Classification (FFC):

7 & 8 - Rural collectors
 16, 17 & 18 - Urban arterials/collectors

2021
Whatcom County
Priority Rating Program

2021

Rating	Road Name	From	To	Length	FFC
44	H Street Road	Sunrise Road	Blaine C/L	2.72	7
44	Portal Way	Birch Bay Lynden Road	Hall Road	3.32	7
44	Portal Way	Hall Road	Blaine C/L	0.41	17
45	Alderwood Avenue	Marine Drive	Airport Drive	0.34	16
45	Goodwin Road	Sorenson Road	South Pass Road	1.00	8
45	Grandview Road	Point Whitehorn Way	Jackson Road	0.98	7
45	H Street Road	SR 539	Axling Road	1.24	7
45	Haxton Way	Kwina Road	Slater Road	1.82	7
45	Lake Whatcom Boulevard	Strawberry Point Road	Seaplane Road	1.53	17
45	Mountain View Road	Lake Terrell Road	Olson Road	2.00	7
45	Shintaffer Road	Lincoln Road	Birch Bay Drive	0.60	17
45	Smith Road (W)	Hovander Road	Ferndale C/L	0.17	16
45	Vista Drive	Grandview Road	Bay Road	1.61	7
46	Alderwood Avenue	Airport Drive	Bellingham C/L	0.71	17
46	Benson Road	Teller Road	Boundary Bay Road	1.75	8
46	Birch Bay Drive	Harborview Road	Shintaffer Road	0.95	17
46	Cain Lake Road	Skagit County Line	NE Cain Lk Rd	1.80	7
46	Halverstick Road	Crape Road	Garrison Road	1.00	8
46	Lake Samish Drive (W)	Nulle Road	Summerland Road	1.73	8
46	Lake Whatcom Boulevard	Seaplane Road	Lake Louise Road	1.39	17
46	Marine Dr/Lummi Shore Dr	Kwina Road	Bridge #5	0.41	7
46	Marine Drive	Bancroft Road	Wynn Road	0.20	16
46	Northwood Road	Hampton Road	Lynden C/L	0.75	8
46	Slater Road	Beach Way	Lake Terrell Road	1.09	8
46	South Bay Drive	Brannigan Creek	Park Road	0.94	8
46	Van Buren Road	Hampton Road	Lindsay Road	0.55	7
46	Van Buren Road	MP 3.34	Halverstick Road	1.41	8
47	Airport Drive	Alderwood Avenue	Bellingham C/L	0.53	16
47	Fazon Road	Goshen Road	Hemmi Road (E)	0.77	8
47	Goodman Road	Johnson Road	Meadow Lane	0.25	8
47	Goodwin Road	South Pass Road	Hopewell Road	2.54	8
47	Halverstick Road	Northwood Road	Van Buren Road	3.54	8
47	Hopewell Road	Siper Road	Goodwin Road	0.23	8
47	Jackson Road	Birch Bay Drive	UAB	0.92	18
47	Lake Samish Drive (W)	Summerland Road	Lake Samish Drive (N)	0.87	8
47	Mosquito Lake Road	North Fork Road	SR 542	0.95	8
47	Northwest Drive	Pole Road (W)	Wiser Lake Road (W)	0.84	8
47	Northwood Road	SR 546	Halverstick Road	2.01	8
47	Slater Road	Lake Terrell Road	Haxton Way	2.50	7
47	South Pass Road	Frost Road	SR 547	1.24	7
48	Curtis Road	Country Lane	Rural Avenue	1.50	17
48	Halverstick Road	Van Buren Road	Crape Road	1.02	8
48	Kickerville Road	Rainbow Road	Grandview Road	2.01	7
48	Lake Samish Drive (N)	Lake Samish Drive (E)	Old Samish Road	0.87	8
48	Pacific Highway	Bellingham C/L	Slater Road	1.34	17
48	Slater Road	Ferndale Road	Ferndale C/L	1.40	7

Rating: 0 (worst) to 100 (best)

Incorporates; road geometrics, surface condition, ride,
drainage, traffic volumes, surface types, accident history
UC - Under construction

Federal Functional Classification (FFC):

7 & 8 - Rural collectors

16, 17 & 18 - Urban arterials/collectors

2021
Whatcom County
Priority Rating Program

2021					
Rating	Road Name	From	To	Length	FFC
48	Van Dyk Road	Theil Road	Everson Goshen Road	2.62	8
48	Wiser Lake Road (W)	Old Guide Road	SR 539	0.50	18
49	Kickerville Road	Bay Road	Birch Bay Lynden Road	2.02	8
49	Laurel Road (E)	SR 539	Hannegan Road	1.97	8
49	Mosquito Lake Road	Hutchinson Creek	Middle Fork Bridge	3.89	8
49	Mosquito Lake Road	Middle Fork Bridge	Township Line	2.75	8
49	Mosquito Lake Road	Township Line	North Fork Road	1.94	8
49	Nugent Road	Ferry Dock	West Shore Drive	2.49	8
49	Pole Road (W)	Old Guide Rd	SR 539	0.51	17
49	Van Dyk Road	Hannegan Road	Theil Road	0.98	8
50	Birch Bay Drive	State Park (north gate)	Alderson Road	1.18	17
50	Hemmi Road (E)	Everson Goshen Road	Mission Road	1.00	8
50	Lake Samish Drive (N)	Lake Samish Drive (W)	Lake Samish Drive (E)	0.93	8
50	Laurel Road (W)	Aldrich Road	SR 539	1.51	8
50	Northwest Drive	Slater Road	Axton Road (W)	2.27	16
50	Semiahmoo Drive	Elderberry Lane	Blaine C/L	0.96	17
51	APA Road	Tyee Drive	Boundary Bay Road	1.50	8
51	Birch Bay Drive	Point Whitehorn Way	State Park (north gate)	0.76	17
51	Birch Bay Lynden Road	Berthusen Road	Lynden C/L	0.52	16
51	Breckenridge Road	Nooksack C/L	Sorenson Road	0.76	8
51	Enterprise Road (N)	Harksell Road	Birch Bay Lynden Road	2.00	7
51	Everson Goshen Road	Smith Road (E)	Hemmi Road (E)	2.01	7
51	Everson Goshen Road	Hemmi Road (E)	Pole Road (E)	2.08	7
51	Harborview Road	Birch Bay Drive	Lincoln Road	1.17	17
51	Hemmi Road (E)	Hannegan Road	Everson Goshen Road	3.05	8
51	Lincoln Road	Blaine C/L	0.05 m. west of Shintaffer Rd	0.39	17
51	Lindsay Road	Van Buren Road	Van Buren Road	0.31	7
51	Loomis Trail Road	Blaine Road	Portal Way	1.75	8
51	Loomis Trail Road	Bertrand Creek Bridge #30	Berthusen Road	0.62	18
51	Lummi View Drive	Gooseberry Spur	Mackenzie Rd / Haxton Wy	0.44	7
51	Mosquito Lake Road	SR 9	Dike Road DNR	1.68	8
51	Mosquito Lake Road	Dike Road DNR	Hutchinson Creek	3.17	8
51	Mountain View Road	Rainbow Road	Lake Terrell Road	0.50	7
51	Samish Way	Old Samish Road	Galbraith Lane	1.51	8
51	Samish Way	Galbraith Lane	Bellingham C/L	1.52	17
51	Siper Road	MP 0.81	Hopewell Road	0.99	8
51	Sunrise Road	Badger Road (W)	H Street Road	2.02	8
52	Badger Road (E)	Garrison Road	North Telegraph Road	0.33	8
52	Birch Bay Lynden Road	Harborview Road	UAB	1.25	17
52	Birch Bay Lynden Road	Rathbone Road	Berthusen Road	1.01	7
52	Birch Point Road	Semiahmoo Drive	Birch Bay Village Entrance	1.58	17
52	Cedarwood Avenue	Bennett Drive	Bellingham C/L	0.10	17
52	Everson Goshen Road	SR 542	Smith Road (E)	1.99	7
52	Harksell Road	Enterprise Road	Enterprise Road (N)	0.38	7
52	Jackson Road	UAB	Grandview Road	0.51	8
52	Lake Terrell Road	Slater Road	Mountain View Road	2.00	7

Rating: 0 (worst) to 100 (best)

Incorporates; road geometrics, surface condition, ride,
drainage, traffic volumes, surface types, accident history
UC - Under construction

Federal Functional Classification (FFC):

7 & 8 - Rural collectors
16, 17 & 18 - Urban arterials/collectors

2021
Whatcom County
Priority Rating Program

2021

Rating	Road Name	From	To	Length	FFC
52	Laurel Road (W)	Northwest Drive	Aldrich Road	0.99	17
52	Loomis Trail Road	Bob Hall Road	Bertrand Creek Bridge #30	1.43	8
52	Marine Dr / Edwards Dr	Gulf Road	Marina Drive	1.27	8
52	Nulle Road	Lake Samish Drive (W)	I-5	0.62	8
52	Olson Road	Aldergrove Road	Mountain View Road	1.99	8
52	Slater Road	Haxton Way	Imhof Road	0.98	7
52	South Pass Road	Nooksack C/L	Goodwin Road	1.23	7
52	Sucia Drive	BMP	Beach Way	1.87	8
52	Van Buren Road	Everson C/L	Hampton Road	1.09	7
52	Van Buren Road	Lindsay Road	SR 546	1.00	7
52	Weidkamp Road	Badger Road (W)	H Street Road	1.96	8
53	Berthusen Road	Loomis Trail Road	West Main Street	0.26	18
53	Birch Bay Lynden Road	UAB	Portal Way	2.41	7
53	Birch Bay Lynden Road	Delta Line Road	Enterprise Road (N)	1.90	7
53	Birch Point Road	Birch Bay Village Entrance	Birch Bay Drive	0.40	17
53	Hannegan Road	Smith Road (E)	Hemmi Road (E)	2.07	7
53	Johnson Road	Tyee Drive	Boundary Bay Road	1.51	8
53	Northwest Drive	Axton Road (W)	Pole Road (W)	2.76	7
53	Nugent Road	Sunrise Road	Granger Road	1.33	8
53	Old Samish Road	Lake Samish Drive (N)	Bellingham C/L	3.20	8
53	Portal Way	Ferndale C/L	Faris Road	1.16	16
53	Portal Way	Faris Road	Birch Bay Lynden Road	2.85	7
53	Rainbow Road	Mountain View Road	Kickerville Road	1.20	7
53	Rock Road	Sumas Road	Nims Road	2.90	8
53	Siper Road	SR 9	MP 0.81	0.81	8
53	South Pass Road	SR 547	Silver Lake Road	4.99	8
53	West Shore Drive	Legoe Bay Road	Nugent Road	2.31	8
54	Austin Street	Lake Louise Road	Cable Street	0.37	16
54	Bennett Drive	Marine Drive	Bellingham C/L	1.09	17
54	Birch Bay Lynden Road	MP 4.20	Delta Line Road	1.82	7
54	Grandview Road	Ferndale C/L	UAB	0.40	17
54	Hampton Road	UAB	Northwood Road	1.66	7
54	Hampton Road	Northwood Road	Van Buren Road	2.99	7
54	Hannegan Road	Bellingham C/L	Smith Road E	2.27	7
54	Haxton Way	Mackenzie Road	Balch Road	0.94	7
54	Lakeway Drive	Bellingham C/L	Terrace Avenue (N)	0.63	16
54	Marine Drive	Gulf Road	Roosevelt Road	1.27	8
54	Olson Road	Vista Drive	Aldergrove Road	1.90	8
54	Smith Road (E)	SR 539	Hannegan Road	1.96	7
54	Y Road	North Shore Road	Jensen Road	1.87	8
54	Y Road	Jensen Road	SR 542	2.55	8
55	Hemmi Road (E)	SR 539	Hannegan Road	1.97	8
55	Valleyview Road	Birch Bay Lynden Road	Haynie Road	2.45	8
55	Van Wyck Road	BMP	Hannegan Road	0.40	7
55	Weidkamp Road	Loomis Trail Road	Badger Road (W)	1.02	8
56	Boundary Bay Road	APA Road	Johnson Road	1.00	8

Rating: 0 (worst) to 100 (best)

Incorporates; road geometrics, surface condition, ride,
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 UC - Under construction

Federal Functional Classification (FFC):

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2021
Whatcom County
Priority Rating Program

2021					
Rating	Road Name	From	To	Length	FFC
56	Cottonwood Avenue	Bennett Drive	Bellingham C/L	0.09	17
56	Grandview Road	UAB	Dahlberg Road	0.33	7
56	Haxton Way	Balch Road	Kwina Road	3.28	7
56	Lummi View Drive	Lummi Shore Road	Goosebery spur	1.69	8
56	Marine Drive	McAlpine Rd	Bennett Drive	0.62	16
56	Marine Drive	Bennett Drive	Bellingham C/L	0.29	16
56	Pole Road (W)	Northwest Drive	Old Guide Rd	2.22	7
56	Smith Road (E)	Noon Road	Mission Road	2.01	7
56	Yew Street Road	Spring Valley Dr (private)	Tacoma Av (private)	0.28	17
57	Baker Lake Road	Skagit County Line	MP 3.93	3.93	7
57	Britton Road	Bellingham C/L	Bellingham C/L	1.32	16
57	Bruce Road	Bay Road	Main Street	0.74	8
57	Custer School Road	Creasy Road	Birch Bay Lynden Road	0.50	8
57	Smith Road (E)	Mission Road	SR 542	2.24	7
57	Sorenson Road	Breckenridge Road	North Telegraph Road	0.47	8
57	Terrace Avenue (N)	Lakeway Drive	Cable Street	0.16	16
57	Tyee Drive	APA Road	Johnson Road	1.05	7
58	Alderson Road	Birch Bay Drive	Blaine Road	0.85	18
58	Axton Road (W)	Ferndale C/L	Northwest Drive	0.86	16
58	Cable Street	Terrace Avenue (N)	Lake Whatcom Boulevard	0.51	16
58	Gooseberry Spur	Lummi view Drive	Ferry Dock	0.05	7
58	Kickerville Road	Grandview Road	Bay Road	1.00	7
58	Lummi Shore Drive	Cagey Road	Marine Drive	2.76	8
58	Park Road	South Bay Drive	SR 9	2.78	8
58	Smith Road (W)	Ferndale C/L	Northwest Drive	0.57	16
58	Van Buren Road	SR 546	MP 3.34	0.63	8
58	Yew Street Road	Bellingham C/L	Spring Valley Dr (private)	1.06	17
59	Bender Road	Boundary Road (E)	Visser Road	0.37	8
59	Hampton Road	Lynden C/L	UAB	0.04	17
59	Meadow Lane	Goodman Road	Roosevelt Road	0.26	8
59	Smith Road (W)	Northwest Drive	Waschke Road	0.50	17
59	Tyee Drive	Johnson Road	Roosevelt Road	0.40	7
60	Benson Road	Visser Road	Boundary Road (E)	0.36	8
60	Boundary Road (E)	SR 539	Benson Road	0.96	8
60	Hannegan Road	Beard Rd	UAB	0.71	17
60	Legoe Bay Road	Nugent Road	West Shore Drive	1.67	8
60	Main Street	Bruce Road	Custer School Road	0.24	8
60	Northwest Drive	Bellingham C/L	Slater Road	1.27	16
60	Point Whitehorn Road	Grandview Road	Birch Bay Drive	0.57	17
61	Axton Road (W)	UAB	SR 539	2.25	7
61	Boundary Road (E)	Bender Road	Northwood Road	1.49	8
61	Enterprise Road	Ferndale C/L	Harksell Road	1.79	17
61	Enterprise Road (N)	Birch Bay Lynden Road	Loomis Trail Road	1.01	8
61	Haynie Road	Valleyview Road	Delta Line Road	2.01	7
61	Lummi Shore Road	Lummi View Drive	Smokehouse Road	2.38	8
61	Lummi Shore Road	Smokehouse Road	Cagey Road	1.01	8

Rating: 0 (worst) to 100 (best)

Incorporates; road geometrics, surface condition, ride,
drainage, traffic volumes, surface types, accident history
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2021
Whatcom County
Priority Rating Program

2021					
Rating	Road Name	From	To	Length	FFC
61	Northwood Road	Halverstick Road	Boundary Road (E)	0.62	8
61	Smith Road (W)	Waschke Road	SR 539	2.00	7
61	Stadsvold Road	Haynie Road	Sweet Road	0.52	7
61	Sweet Road	Blaine C/L	Stadsvold Road	1.44	7
62	Axton Road (W)	Northwest Drive	UAB	0.25	16
62	Birch Bay Lynden Road	Portal Way	MP 4.20	0.54	7
62	Custer School Road	Main Street	Creasy Road	0.77	8
62	Haynie Road	Stadsvold Road	Valleyview Road	1.24	7
62	Kickerville Road	Birch Bay Lynden Road	Loomis Trail Road	1.00	8
62	Nulle Road	I-5	Skagit County Line	0.59	7
62	Semiahmoo Drive	Birch Point Road	Elderberry Lane	1.49	17
62	Slater Road	Ferndale C/L	Northwest Drive	1.03	16
63	Delta Line Road	Badger Road (W)	Haynie Road	0.48	7
63	Hannegan Road	UAB	Nooksack Bridge #252	2.88	7
63	Roosevelt Road	Tyee Drive	Meadow Lane	1.37	8
63	Seacrest Drive	Sunrise Road	Scenic Estates	1.21	8
63	Sunrise Road	Nugent Road	Seacrest Drive	0.75	8
64	Badger Road (W)	Delta Line Road	Sunrise Road	0.86	7
64	Hannegan Road	Hemmi Road (E)	Beard Rd	1.51	7
64	Hannegan Road	Nooksack Bridge #252	Lynden C/L	0.43	17
64	Kwina Road	Haxton Way	Lummi Shore Road	0.96	7
65	Badger Road (W)	Markworth Road	SR 539	3.05	7
65	Grandview Road	Jackson Road	Blaine Road	1.02	7
65	Gulf Road	Marine Drive	Tyee Drive	0.65	7
65	Lincoln Road	0.05 m. west of Shintaffer Rd	Harborview Road	0.79	17
66	Marina Drive	Edwards Drive	APA Road	0.56	8
66	Slater Road	Imhof Road	Ferndale Road	0.49	7
66	Smith Road (E)	Hannegan Road	Noon Road	2.02	7
67	Country Lane	Bancroft Road	Curtis Road	0.07	17
67	Loomis Trail Road	Sunrise Road	Bob Hall Road	2.00	8
67	Roosevelt Road	Marine Drive	Tyee Drive	0.93	8
68	Nugent Road	Granger Road	Ferry Dock	0.19	8
68	Visser Road	Bender Road	Benson Road	1.00	8
73	Sunrise Road	Birch Bay Lynden Road	Badger Road (W)	2.01	8

Total miles = 356.28

Rating: 0 (worst) to 100 (best)
Incorporates; road geometrics, surface condition, ride,
drainage, traffic volumes, surface types, accident history
UC - Under construction

Federal Functional Classification (FFC):
7 & 8 - Rural collectors
16, 17 & 18 - Urban arterials/collectors



2020 Annual Bridge Report



Prepared by the Whatcom County Public
Works Bridge and Hydraulic Group
Submitted September 2021

Whatcom County

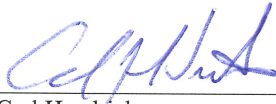
2020 Bridge Report

Submitted: September 2021

This bridge report is prepared by Whatcom County Public Works Bridge and Hydraulic Section under the direction of the County Engineer each year to fulfill requirements of the Washington Administrative Code (WAC) 136-20-060. This WAC requires the County Engineer's report of bridge inspections as follows:

"Each county engineer shall furnish the county legislative authority with a written report of the findings of the bridge inspection effort. This report shall be made available to said authority and shall be consulted during the preparation of the proposed six-year transportation program revision. The report shall include the county engineer's recommendations as to replacement, repair or load restriction for each deficient bridge. The resolution of adoption of the six-year transportation program shall include assurances to the effect that the county engineer's report with respect to deficient bridges was available to said authority during the preparation of the program. It is highly recommended that deficient short span bridges, drainage structures, and large culverts be included in said report."

Prepared by:



Carl Hendricks
Bridge Inspection Team Leader – Bridge & Hydraulics

Reviewed by:



James E. Lee, P.E.
Engineering Manager – Bridge & Hydraulics

Approved by:



James P. Karcher, P.E.
County Engineer

Cover Photo:

Hannegan Road Nooksack River Bridge No. 252 spanning the lower Nooksack River near Lynden, Washington. This 320' span bridge was constructed in 1961.

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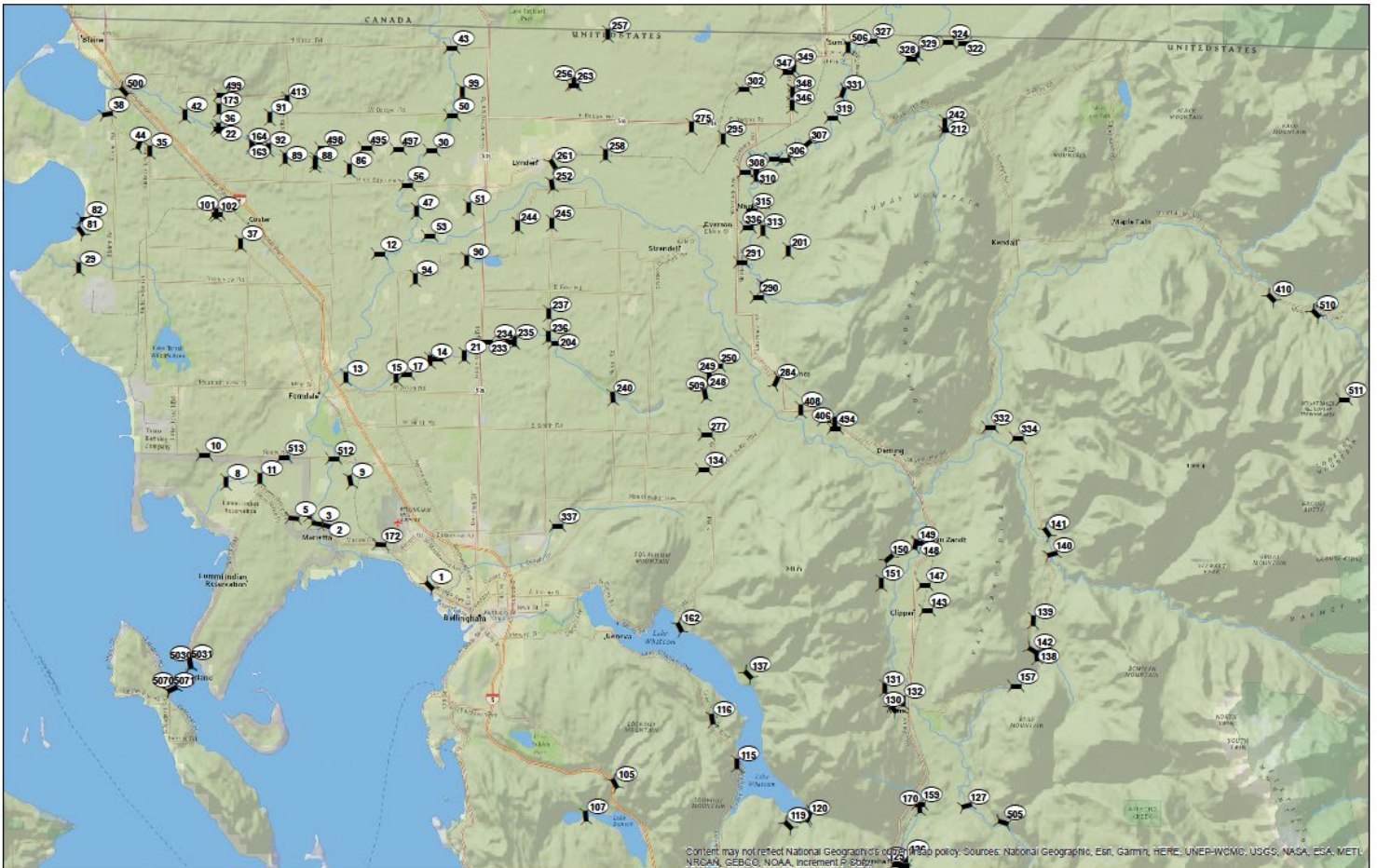
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Acronyms

The following is a list of common acronyms widely used in the bridge inspection field:

ADT	Average Daily Traffic
BRAC	Bridge Replacement Advisory Committee
FHWA	Federal Highway Administration
FO	Functionally Obsolete
HBRRP	Highway Bridge Replacement and Rehabilitation Program
NBIS	National Bridge Inspection Standards
SD	Structurally Deficient
SID	Structure Identification Number
SR	Sufficiency Rating
UBIT	Under Bridge Inspection Truck
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation

Whatcom County Bridge Location Map



Executive Summary

This report has been completed in compliance with WAC 136-20-060, which requires that each County Engineer furnish a written resume of the county's bridge inspection efforts to the county legislative authority. It is also the intention of this report that information presented here be incorporated into a comprehensive program strategy to preserve the county's roadways. This report summarizes the status of the Whatcom County Bridge Program for calendar year 2020.

Whatcom County's bridge inventory is vital in connecting the nearly 974 miles of County roads and providing for the safe and efficient movement of people and freight. Specifically, bridges on key transportation and freight corridors are monitored closely to prevent bridges on these routes from becoming restricted.

One of the key overall Bridge Program goals is to replace or rehabilitate bridges that are considered structurally deficient (SD) per the National Bridge Inspection Standards (NBIS). At the end of 2020 Whatcom County had a total of 163 bridges in the overall inventory and 8 of these bridges were designated as SD. Of those 8 bridges, 4 were actively worked on in 2020 for future replacement or rehabilitation. For a comprehensive list of the SD bridges please see Exhibit C.

As recommended in WAC 136-20-060 Whatcom County also inspects large culverts with a diameter of 4' or larger. Bridge Program staff inspected 152 of these structures in 2016 and 2017 which are listed in Appendix B. Work started in 2020 on the next round of large diameter culvert inspections which will be increased to include culverts with a diameter of 4' diameter or greater. This next round of culvert inspections was initiated in 2020 and will be completed in 2021.

2020 Bridge Program Highlights

- Whatcom County bridge inventory consists of 163 structures.
- A total of 91 Whatcom County bridge condition inspections were completed in 2020.
- Whatcom County provided bridge inspection services for 7 structures owned by outside local agencies.
- Whatcom County began work on the next cycle of large diameter culvert inspections which will now include 4' diameter and greater structures.
- A total of 26 bridge repair and maintenance work orders were completed by the Maintenance & Operations Bridge Crew.
- Structural repairs were completed to the Flynn Road/Fishtrap Creek Bridge No. 51 to address deterioration in the timber girders.
- The Lummi Island Terminal Preservation Project was completed during the Whatcom Chief dry dock period.
- The 2020 Small Area Paving Project was completed which repaired approach settlement at 17 bridges across Whatcom County and provided HMA paving support to other Public Works projects as needed.

Bridge Inventory Summary

Of the 163 structures in the Whatcom County inventory 5 are all timber construction, 101 are of primarily concrete construction, 7 are predominately steel (all of which are fracture critical) and the remainder are a combination of these materials. See Appendix A for a complete list of Whatcom County Bridges.



Goshen Road/Anderson Creek Bridge No. 248 is typical of the concrete channel beam girder with timber pile and cap construction which is the most prevalent bridge type in the county inventory.

Lummi Island Ferry Terminals

The Gooseberry Point and Lummi Island Ferry Terminal structures are considered bridge structures and are inspected and maintained just like the other bridges in the county inventory. These consist of a steel transfer span and a timber approach span at the Gooseberry Point terminal and a steel transfer span and a reinforced concreted girder approach span at the Lummi Island terminal.



Gooseberry Point Terminal

Short Span Bridges

The National Bridge Inspection Standards do not require short span bridges (span length of 20 feet or less) be reported to FHWA. Out of the 163 bridges in the Whatcom County inventory, 25 of these bridges are classified as short span bridges. Even though the inspection reports and bridge information for short span bridges are not reported to WSDOT or FHWA, Whatcom County inspects and operates these bridges the same as the larger, federally reported bridges in our inventory.

Outside Local Agency Bridges

The Whatcom County Bridge program provides inspection services to local agencies upon request and when there is sufficient capacity and no compromise to the county program. The county works with cities under inter-local agreements (ILA), with conditions set forth in the Revised Code of Washington (RCW) Chapter 39.34. The county's services are provided primarily to local agencies that lack expertise and resources to inspect and maintain their bridge inventory. In 2020 the county provided inspection services on 7 structures for outside local agencies.

Local Agency	Number of bridges inspected in 2020
City of Everson	1
City of Sumas	1
San Juan County	4
Port of Bellingham	1 (ferry terminal)

Summary of outside local agency bridges inspected in 2020

Oversize/Overweight Load Permits

There were 137 oversize/overweight permits issued in 2020 and of those 48 involved routes over county owned bridges. Bridge program staff reviews these applications to ensure that these oversize/overweight loads can cross these bridges without causing any harm to the structure.



Height restriction sign posted on the Slater Road/Nooksack River Bridge No. 512

Bridge Inspections and Findings

Bridge inspections are performed in accordance with the National Bridge Inspection Standards (NBIS) in conformance with 23 CFR 650.3. The standards mandate that all public agencies with a bridge inventory inspect and report the findings at a minimum of once every two years (routine inspection). Special inspections are required for bridges that cannot be given close or adequate inspection from the ground. For these bridges an Under-Bridge Inspection Truck (UBIT) is required. Steel bridges with fracture critical members may also require special inspections with special inspection equipment. A third category of special inspections are the Under Water Inspections which are required every five years for bridges with piers that extend below ordinary low-water levels.

During bridge inspections, the current condition of each bridge element is noted. The deficiencies are coded to NBIS standards and show the degree of deterioration in various elements, the three primary elements being:

- Deck,
- Superstructure, and
- Substructure.

As deterioration accelerates, the coding values drop and work orders for repairs are issued. In the case where the coding factors are extremely low, recommendations are made for repair, replacement or rehabilitation. Bridges with identified deficiencies may be inspected or monitored at more frequent intervals. The results of our inspection program are forwarded to the Washington State Department of Transportation (WSDOT) for review. Once the report has been accepted by WSDOT it is made available to the Federal Highway Administration (FHWA).

The NBIS utilizes information from the latest bridge inspection to determine the Sufficiency Rating (SR) which is a calculated rating based on information from the most recent bridge inspection. The SR is a number from 0 to 100 with 100 being an entirely sufficient bridge, and 0 being an entirely insufficient or deficient bridge. Items that factor into the determination of the SR include: load bearing capacity, average daily traffic, availability and length of detour, the geometry of the bridge and the risk of scour on bridge foundations at waterway crossings.

Whatcom County owns 2 bridges located on designated truck freight routes with a T-2 classification (there are no T-1 routes currently designated on Whatcom County roads). T-2 freight routes are defined as carrying 4 million to 10 million annual gross tonnage and serve as vital transportation corridors in Whatcom County. Hannegan Road from State Route 542 (Mt. Baker Highway) north to State Route 544 (Pole Road) is classified as a T-2 freight route and includes two county owned bridges; Hannegan Road/Ten Mile Creek Bridge No. 236 and Hannegan Road/Four Mile Creek Bridge No. 237. Both of the bridges are open unrestricted to full legal loads allowing for the efficient and safe movement of freight and goods.

See Exhibit A for our master list of special inspections and details on inspection frequencies and schedules for all of our UBIT and underwater bridge inspections.



Photo of M&O's bridge inspection platform in use on Mosquito Lake Road/NF Nooksack River Bridge No. 332

Exhibit “A” - Master List of Special Inspection and Equipment Needs

Bridge #	Bridge Name	Most Recent Fracture Critical Inspection Date	Most Recent Underwater Inspection Date	UBIT/Platform Frequency
3	MARIETTA	-	September 2017	72 months
107	NORTH LAKE SAMISH	-	July 2020	
140	MIDDLE FORK	August 2020	-	24 months
252	NOOKSACK RIVER	March 2020	September 2020	24 months
332	NORTH FORK	April 2019	-	24 months
421	ROCKY CREEK	April 2019	-	24 months
500	DAKOTA CREEK	-	-	48 months
503	GOOSEBERRY FERRY SLIP	October 2020	March 2020	-
507	LUMMI ISLAND FERRY SLIP	October 2020	March 2020	-
512	NOOKSACK RIVER	April 2019	-	24 Months

Load, Height and Width Restricted Bridges

Each bridge is required to have a "Load Rating" calculation. The Load Rating establishes how much weight the bridge can carry for several standard configurations of vehicle axle loads. Bridges which have load rating factors less than 1 are required to have the applicable weight restriction posted. At the end of 2020 Whatcom County had 35 bridges posted for weight restrictions.

In 2017 WSDOT introduced new load posting requirements issued by FHWA regarding the load rating and posting of Single Unit Vehicles (SUV) and Emergency Vehicles for bridges which fall under the NBIS. SUV's are single unit trucks with tightly spaced axles such as garbage trucks and construction equipment which have become more prevalent during the last decade. SUV truck configurations range from 4 to 7-axles.

FHWA requires that all Group 1 bridges, defined as a bridge with an AASHTO 1, 2 or 3 rating factor of less than 1.3, have a new load rating completed by June 2020. Whatcom County has approximately 58 bridges which fall in this Group 1 category. Whatcom County completed all of these Group 1 bridges in August of 2019, well ahead of schedule. The remainder of the bridge inventory will be included in the Group 2 load rating effort which begin in 2020 and is scheduled to be completed in 2022.

Bridges that have height restrictions of 15'-3" or less are required to be posted with the allowable height. Whatcom County has two roads passing through height restricted bridge structures, both of which are steel truss structures. They are Slater Road/Nooksack River Bridge No. 512 and Mosquito Lake Road/Middle Fork Nooksack River Bridge No. 140. The list of current load, height and width restricted bridges is shown in Exhibit 'B'.

Exhibit “B” – Load, Height and Width Restricted Bridges

Bridge No.	Road Name	Features Crossed	Restricted Width (FT)	Restricted Vertical Clearance (FT)	Bridge Posted for Load Restriction
13	BARRETT ROAD	BARRETT CREEK			Yes
14	ALDRICH ROAD	TENMILE CREEK			Yes
15	NORTHWEST DRIVE	TENMILE CREEK			Yes
30	LOOMIS TRAIL ROAD	BERTRAND CREEK			Yes
44	BRIDGE WAY	CALIFORNIA CREEK	16		Yes
51	FLYNN ROAD	FISHTRAP CREEK	16		Yes
53	RIVER ROAD	FISHTRAP CREEK			Yes
81	JACKSON ROAD.	TERRELL CREEK			Yes
91	STEIN ROAD	DAKOTA CR. TRIB.			Yes
105	MANLEY ROAD	SILVER CREEK	11.3		
106	NULLE ROAD	FRIDAY CREEK			Yes
107	N. LAKE SAMMISH DRIVE	LAKE SAMMISH	12		Yes
130	TURKINGTON ROAD	JONES CREEK			Yes
147	NELSON ROAD	BLACK SLOUGH			Yes
132	HUDSON ROAD	JONES CREEK	15		
140	MOSQUITO LK ROAD	MIDDLE FORK	13.2	18	
149	POTTER ROAD	SLOUGH			Yes
151	HILLSIDE ROAD	SIGITOWITZ CREEK			Yes
163	CUSTER SCHOOL ROAD	DAKOTA CR TRIB			Yes
164	CUSTER SCHOOL ROAD	DAKOTA CREEK			Yes
173	VALLEY VIEW ROAD	HAYNIE CREEK			Yes
206	GARRISON ROAD	SUMAS RIVER			Yes
250	MARTIN ROAD	ANDERSON CREEK			Yes
256	ASSINK ROAD	FISHTRAP CREEK			Yes
284	LIND ROAD	SMITH CREEK			Yes
290	MACK ROAD	SUMAS RIVER			Yes
295	VAN BUREN ROAD	JOHNSON CREEK			Yes
303	LINDSAY ROAD	SUMAS RIVER			Yes
308	ALM ROAD	SUMAS RIVER			Yes
309	GILLIES ROAD	SUMAS RIVER			Yes
310	GILLIES ROAD	SUMAS RIVER			Yes
313	OAT COLES ROAD	SWIFT CREEK	15		
327	JONES ROAD	SUMAS RIVER			Yes
332	MOSQUITO LK RD	NORTH FORK			Yes
413	DELTA LINE ROAD	DAKOTA CREEK			Yes
503	FERRY–LUMMI TRANSFER SPAN	HALE PASSAGE	12		Yes
503A	FERRY-LUMMI APPROACH	HALE PASSAGE			Yes
506	HERON LANE	JOHNSON CREEK	12		
507	FERRY–GP TRANSFER SPAN	HALE PASSAGE	14		Yes
507A	FERRY–GP APPROACH	HALE PASSAGE	14		Yes
510	COAL CREEK ROAD	GALLOP CREEK	14		
512	SLATER ROAD	NOOKSACK RIVER		15	



Posted weight restrictions for Jackson Road/Terrell Creek Bridge No. 81 showing AASHTO 1, 2 & 3 and single unit vehicles 4-axes through 7-axes restrictions.

Bridge Replacement and Rehabilitation Plans for Structurally Deficient Bridges

One area of emphasis within the Bridge Program is to address bridges that are classified as structurally deficient (SD) per NBIS. This is typically done via either replacement or rehabilitation of the structurally deficient structure. The 4 SD bridges listed below were actively worked on in 2020:

1. North Lake Samish Bridge No. 107 Replacement - TS&L completed in 2017, design, permitting and real estate work to be completed in 2021. Approximately \$9 million in federal bridge replacement funds have been secured for the construction phase of this project which will occur in either 2022 or 2023.
2. Jackson Road/Terrell Creek Bridge No. 81 Replacement – TS&L initiated in 2020 including community engagement and preliminary engineering work. Outside funds will be pursued for the construction phase of this project. Construction year is yet to be determined for this project.
3. Goshen Road/Anderson Creek Bridge No. 248 Replacement – approximately \$4 million in federal bridge replacement funds have been received for the design and construction phases of this project. Design work began in late 2020 with construction scheduled in 2024.

4. Gooseberry Pt Approach Span, No. 503A – design work completed in 2020 for repairs to this all timber structure which include cap repairs, cross bracing replacement, pedestrian structure support repairs and timber decking replacement. Work will be accomplished by M&O forces over the next few years as schedule allows.

The list of current SD bridges is shown in Exhibit 'C.'

2020 Bridge Program Construction Projects

Flynn Road/Fishtrap Creek Bridge No. 51 Repair Project

This project included adding three new steel I-beams, new timber decking and associated work to strengthen this bridge in response to deterioration found in three of the timber stringers. The work was completed in May of 2020.



Photo of the completed repairs to the Flynn Road/Fishtrap Creek Bridge No. 51.

Lummi Island Terminal Preservation Project

This project included preparation work and application of new paint systems on the transfer span, tower assemblies and apron at the Lummi Island ferry terminal. Work was completed during the 3-week dry dock period for the Whatcom Chief in September of 2020.



Picture of terminal preservation work at the Lummi Island ferry terminal.

2020 Small Area Paving Project

This work included addressing settlement at bridge approaches on 17 bridges. Work also included providing hot mix asphalt support on the Central Road Culvert Replacement and the Harborview Road Shoulder paving projects.



Photo of typical bridge approach repair completed as part of the 2020 Small Area Paving Project.

Exhibit “C” – Structurally Deficient Bridges

Bridge No.	Bridge Name	Deficiency's	Sufficiency Rating	Status
1	LITTLE SQUALICUM	Delamination of Deck, Cap Beam Capacity	59.95	Monitoring
81	JACKSON RD.	Timber Cap and Pile Deterioration	24.19	TS&L study initiated in 2020.
107	NORTH LAKE SAMISH	Timber Girder Section Loss	14.02	TS&L Study Complete – Design for replacement bridge underway. Federal bridge replacements funds secured in 2019 for construction phase which is scheduled for either 2022 or 2023.
172	BNSF RR	Deck Deterioration	75.45	Monitoring
248	ANDERSON CR	Timber Cap and Pile Deterioration	37.16	Federal bridge replacement funds secured in 2019 for replacement of existing bridge. Preliminary engineering work began in 2020 with construction scheduled in 2024.
250	ANDERSON CR	Timber Cap and Pile Deterioration	41.00	Monitoring
503A	GOOSEBERRY PT APPROACH SPAN	Timber Deck Deterioration	22.56	Deck replacement work scheduled and on-going as schedule allows.
509	SALAKANUM WAY	Timber Cap Deterioration	54.30	Monitoring

Large Culvert Inventory

In 2016 and 2017 Whatcom County Bridge Program staff inspected all culverts with a diameter of 5' or greater located on the County road system. All told 152 structures were inspected as part of this effort. In 2020 the second round of these culvert inspections were started with the targeted inventory increased to include all culverts with a diameter of 4' or greater. This increased the number of culverts targeted to about 240 structures. These culvert inspections and associated reports will be completed in 2021.

All culvert inspections are completed using FHWA publication No. FHWA-CFL/TD-10-005 titled “*Culvert Assessment and Decision Making Procedures Manual*” dated September 2010. As part of the inspection effort each culvert is given an overall condition rating and any needed repairs or maintenance work was forwarded to Maintenance & Operations. These large

diameter culverts will continue to be inspected moving forward on a regular basis. For a detailed list of the large diameter culverts inspected in 2016 and 2017 please Appendix "B".

Maintenance and Repair Activities

The majority of bridge repair and maintenance work is done by Whatcom County Maintenance & Operation crews, with support from outside contractors and vendors as needed. During 2020 Maintenance & Operation crews washed all of the bridges in the County inventory. In addition, the majority of the bridges were brushed to support ongoing maintenance, repair and inspection activities. The Maintenance & Operations crews also provide support for routine bridge inspections by utilizing the county owned hydra platform for access to bridges as needed.

Twenty six (26) maintenance work orders were completed in 2020 which are listed in Exhibit D.

Exhibit "D" – Maintenance Work Orders Completed in 2020

Bridge No.	Bridge Name	Work Completed	Date Repaired
81	Jackson Road	Remove log Jam	February 2020
303	Lindsay Road	Remove Woody Debris	February 2020
499	Haynie Road	Repair Bridge Post	February 2020
510	Coal Creek Road	Regrade Bridge Approaches	February 2020
126	Innis Creek	Remove Log Jam	February 2020
249	Roberts Road	Install Bridge Tags	March 2020
236	Hannegan Road	Install Bridge Tags	March 2020
29	Jackson Road	Repair Pot Holes	April 2020
81	Jackson Road	Repair Pot Holes	April 2020
91	Stein Road	Key Way Repairs	May 2020
204	Ten Mile Road	Key Way Repairs	May 2020
1	Marine Drive	Repair Damaged Approach	May 2020
44	Bridge Way	Reset Guardrail	June 2020
44	Bridge Way	Repair Erosion on Bulkheads	June 2020
252	Hannegan Road	Repair Drain	July 2020
91	Stein Road	Install Earthquake Brackets	July 2020
233	Ten Mile Road	Key Way Repairs	July 2020
503	Gooseberry Terminal	Repair Bird Wire	July 2020
99	Jackman Road	Key Way Repairs	July 2020
263	Pangborn Road	Key Way Repairs	July 2020
3	Marine Drive	Log Jam Removal	August 2020
503	Gooseberry Terminal	Replace Wood Decking	September 2020

Bridge No.	Bridge Name	Work Completed	Date Repaired
499	Haynie Road	Dredge Rock from Under Bridge	October 2020
510	Coal Creek Road	Repair Gravel Approaches	November 2020
513	Slater Road	Repair East Approach	November 2020
206	Garrison Road	Key Way Repair	December 2020

Glossary of Bridge Terms

Abutment – a substructure supporting the end of a single span, or the extreme end of a multi-span super-structure and, in general, retaining or supporting the bridge approach fill.

Approach span – the span or spans connecting the abutment with the main span or spans.

Back wall – the top-most portion of an abutment functioning primarily as a retaining wall to contain approach roadway fill.

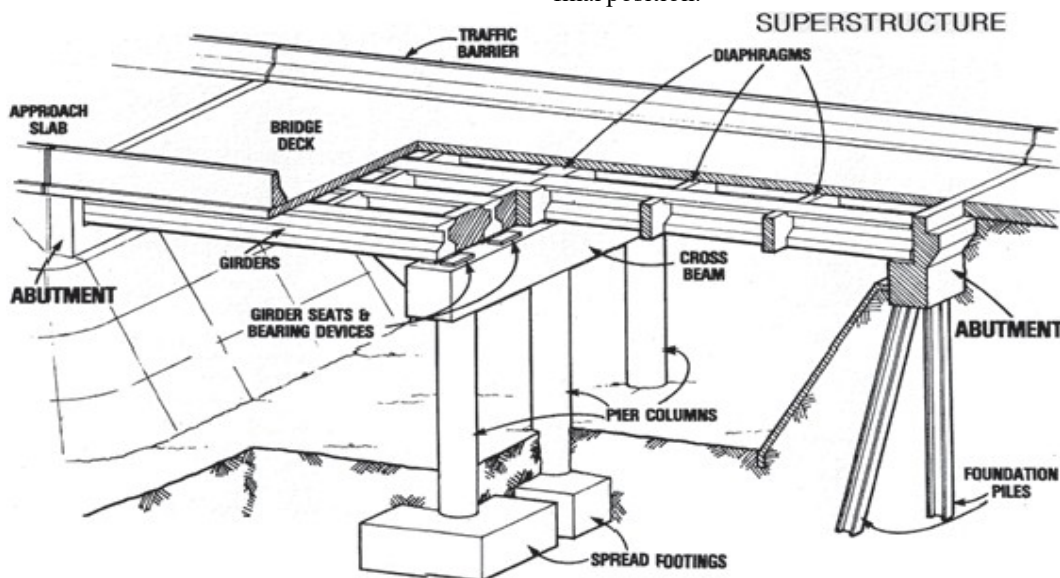
Beam – a linear structural member designed to span from one support to another.

Bent – a supporting unit of the beams of a span made up of one or more column or column-like members connected at their top-most ends by a cap, strut, or other horizontal member.

Bracing – a system of tension or compression members, or a combination of these, connected to the parts to be supported or strengthened by a truss or frame. It transfers wind, dynamic, impact, and vibratory stresses to the substructure and gives rigidity throughout the complete assemblage. Can also refer to diagonal members that tie two or more columns of a bent together.

Cap – the horizontally-oriented, top-most piece or member of a bent serving to distribute the beam loads upon the columns and to hold the beams in their proper relative positions.

Cast-in-Place – concrete poured within form work on site to create a structural element in its final position.



Catwalks – temporary foot bridges, used by bridge inspectors

Box Girder – a support beam that is a hollow box; Its cross-section is a rectangle or square.

Chord – in a truss, the upper-most and the lower-most longitudinal members, extending the full length of the truss.

Column – a vertical structural member that transfers dead and live load from the bridge deck and girders to the footings or shafts.

Column crosses brace – transverse brace between two main longitudinal members.

Compression – a type of stress involving a pressing or squeezing together; tends to shorten a member; opposite of tension.

Culvert – a pipe or small structure used for drainage under a road, railroad or other embankment. A culvert with a span length greater than 20 feet is included in the National Bridge Inventory and receives a rating using the NBI scale.

Dead load – a static load due to the weight of the structure itself.

Deck – the roadway portion of a bridge that provides direct support for vehicular and pedestrian traffic.

Deck bridge – a bridge in which the supporting members are all beneath the roadway.

Deck truss – a bridge whose roadway is supported from beneath by a truss.

Diagonal – a sloping structural member of a truss or bracing system.

Elastomeric pads – rectangular pads made of neoprene, found between the sub-structure and superstructure that bears the entire weight of the superstructure. Elastomeric pads can deform to allow for thermal movements of the superstructure.

End wall – the wall located directly under each end of a bridge that holds back approach roadway fills. The end wall is part of the abutment.

Expansion joint – A joint designed to provide means for expansion and contraction movements produced by temperature changes, load, or other forces.

Fatigue – Cause of structural deficiencies, usually due to repetitive loading over time.

Footing – The enlarged, lower portion of a sub-structure that distributes the structure load either to the earth or to supporting piles; the most common footing is the concrete slab; "footer" is a colloquial term for footing.

Fracture critical member – a member in tension or with a tension element whose failure would probably cause a portion of or the entire bridge to collapse.

Girder – a main support member for the structure that usually receives loads from floor beams and stringers; also, any large beam, especially if built up.

Hanger – a tension member serving to suspend an attached member.

Hinge – a point in a structure at which a member is free to rotate.

Live load – vehicular traffic, wind, water; and/or earthquakes.

Lower chord – the bottom horizontal member of a truss.

Main beam – a beam supporting the spans and bearing directly onto a column or wall.

Member – an individual angle, beam, plate, or built piece intended to become an integral part of an assembled frame or structure.

Oscillation – a periodic movement back and forth between two extreme limits. An example is the string of a guitar that has been plucked. Its vibration back and forth is one oscillation. A vibration is described by its size (amplitude), its oscillation rate (frequency), and its timing (phase). In a suspension bridge, oscillation results from energy collected and stored by the bridge. If a part of the bridge has to store more energy than it is capable of storing, that part will probably fail.

Pier – a structure comprised of stone, concrete, brick, steel, or wood that supports the ends of the spans of a multispan superstructure at an intermediate location between abutments. A pier is usually a solid structure as opposed to a bent, which is usually made up of columns.

Pile – a linear (vertical) member of timber, steel, concrete, or composite materials driven into the earth to carry structure loads into the soil.

Pile bent – A row of driven or placed piles with a pile cap to hold them in their correct positions; see "Bent."

Plate girder – a large, solid web plate with flange plates attached to the web plate by flange angles or fillet welds. Typically fabricated from steel.

Post or column – a member resisting compressive stresses, in a vertical or near vertical position.

Pre-cast girder – fabricated off site of Portland Cement Concrete, reinforcing steel and post-tensioning cables. These girders are shipped to the construction site by truck and hoisted into place by cranes.

Reinforced concrete – concrete with steel reinforcing bars bonded within it to supply increased tensile strength and durability.

Scour – erosive action of removing streambed material around bridge substructure due to water flow. Scour is of particular concern during high-water events.

Short span bridge – these bridges have a single NBIS span length of 20 feet or less. They are typically supported by timber piles or shallow concrete footings.

Soffit – the underside of the bridge deck or sidewalk.

Spall – a concrete deficiency wherein a portion of the concrete surface is popped off from the main structure due to the expansive forces of corroding steel rebar underneath. This is especially common on older concrete bridges.

Span – The distance between piers, towers, or abutments.

Steel – A very hard and strong alloy of iron and carbon.

Stringer – a longitudinal beam (less than 30 feet long) supporting the bridge deck, and in large bridges, framed into or upon the floor beams.

Sufficiency rating – the sufficiency rating is a numeric value from 100 (a bridge in new condition) to 0 (a bridge incapable of carrying traffic). The sufficiency rating is the summation of four calculated values: Structural Adequacy and Safety, Serviceability and Functional Obsolescence, Essentiality for Public Use, and Special Reductions.

Substructure – the abutment, piers, grillage, or other structure built to support the span or spans of a bridge superstructure, and distributes all bridge loads to the ground surface. Includes abutments, piers, bents, and bearings.

Superstructure – the entire portion of a bridge structure which primarily receives and supports traffic loads and in turn transfers the reactions to the bridge substructure; usually consists of the deck and beams or, in the case of a truss bridge, the entire truss.

Tension – type of stress involving an action which pulls apart.

Tie – a member carrying tension.

Torsion – a twisting force or action.

Truss bridge – a bridge having a pair of trusses for the superstructure.

Upper chord – the top longitudinal member of a truss.

Web – the portion of a beam located between and connected to the flanges.

Welded joint – a joint in which the assembled elements and members are united through fusion of metal.

Wheel rail – a timber curb fastened directly to the deck, most commonly found on all-timber bridges.

Wing wall – walls that slant outward from the corners of the overall bridge that support roadway fill of the approach.

Appendix “A” – 2020 Whatcom County Bridge Inventory
Total of 163 Bridges Including 25 Short Spans

Bridge No.	Bridge Name	Year Built	Structure Length	Structure Width	Traffic (adt)	Detour Length
1	LITTLE SQUALICUM	1933	270	35	3796	2
2	MARIETTA SLOUGH	1978	105	32	3746	7
3	MARIETTA	1936	420	32.9	3746	7
5	PORTAGE SLOUGH	1997	90	42	3700	6
7	SLOUGH BRIDGE	1979	90	32.1	1099	6
8	Red River	1997	82	31	284	3
9	SILVER CREEK	1953	31	25.5	70	0
10	Jordan Creek	2017	142	41	15000	4
11	RED RIVER	1920	126	25.5	5592	5
12	SCHNEIDER DITCH	1950	19	21.3	230	99
13	BARRETT CREEK	1969	57	25.5	1316	3
14	TEN MILE CR	1924	38	25.8	1192	2
15	TEN MILE CR	1935	83	43.2	4900	3
16	TEN MILE CR	1986	80	31	441	3
17	TEN MILE CR	1933	61	25.5	1185	2
19	SILVER CR	2020	16	33	6553	5
21	TEN MILE CR	1933	31	25.5	887	3
22	DAKOTA CR.	1930	31	25.7	167	4
29	TERRELL CREEK	2003	31	34	833	4
30	BERTRAND CR.	1938	126	33.1	1839	4
35	CALIFORNIA CR	1956	169	32.6	951	4
36	DAKOTA CR.	1934	75	25.5	820	4
37	CALIFORNIA CR	1923	40	32	558	3

Bridge No.	Bridge Name	Year Built	Structure Length	Structure Width	Traffic (adt)	Detour Length
38	DRAYTON HARBOR	1933	104	25.5	5082	3
42	DAKOTA CR.	1995	131	31.1	275	4
43	BERTRAND CR.	1995	118	37.4	924	5
44	Bridge Way	1922	85	16	10	99
47	BERTRAND CREEK	1950	82	36	1251	6
50	BERTRAND CR	2019	100	40	2988	4
51	FISHTRAP CR	1988	36	17	120	2
53	RIVER ROAD	2004	50	23.8	125	99
56	BERTRAND CREEK	1949	83	27	9097	6
81	JACKSON RD.	1975	62	25.5	977	4
82	TERRELL CREEK	1987	50	46.9	2766	3
86	DAKOTA CREEK	1956	18	36	1245	3
87	DAKOTA CREEK	2005	53	37	729	4
88	S. FORK DAKOTA CREEK	2005	53	37	729	4
89	DAKOTA CR.	1950	31	25.5	644	3
90	COUGAR CR	1947	19	25.5	433	2
91	DAKOTA CR TRIB	1906	50	25.5	150	4
92	DAKOTA CREEK	2000	55	32	720	4
94	COUGAR CR	1931	18	25.5	135	2
99	DRAINAGE DITCH	1932	19	25.5	190	5
101	CALIFORNIA CR	1949	31	25.9	365	3
102	CALIFORNIA CREEK	2004	31	25.5	190	4
105	MANLEY	2011	19	12.8	10	6

Bridge No.	Bridge Name	Year Built	Structure Length	Structure Width	Traffic (adt)	Detour Length
106	FRIDAY CR	1934	76	27	851	7
107	LAKE SAMISH	1953	251	29.9	955	7
115	HIGH BRIDGE	2006	228	37.5	2123	19
116	AUSTIN CREEK	2004	82	42.8	2481	7
119	BRANNIAN CREEK	2008	40	32.2	542	0
120	FIR CREEK	1944	20	25.5	545	0
121	DIVERSION CHANNEL	1944	20	25.5	545	0
124	NP RR	1955	126	31.4	120	5
125	Samish River	1998	69	32.3	114	3
126	INNIS CREEK	2007	40	24	103	3
127	SOUTH FORK	1998	276	31	250	99
130	JONES CR.	1951	31	25.9	338	0
131	MCCARTY CR	1975	70	23.8	338	99
132	HUDSON	1950	15	15	5	0
134	ANDERSON CR	1939	31	25.5	402	3
137	SMITH CREEK	1989	99	30.6	1010	99
138	HUTCHINSON CREEK	1945	31	25.5	337	21
139	MOSQUITO LK	1951	19	25	160	21
140	MIDDLE FORK	1915	423	16	117	21

Bridge No.	Bridge Name	Year Built	Structure Length	Structure Width	Traffic (adt)	Detour Length
141	PORTER CREEK	1936	31	25.5	135	21
142	JOHNSON CREEK	2004	24	0	337	21
143	BLACK SLOUGH	1934	19	25.6	170	99
147	BLACK SLOUGH	1934	31	21.3	66	4
148	SOUTH FORK	2015	360	30	700	99
149	SLOUGH	1934	76	25.5	636	99
150	LOW WATER CROSSING	1969	24	26	194	99
151	SIGITOWITZ CREEK	1950	31	25.5	250	0
157	HUTCHINSON CREEK	2005	72	32.2	818	21
159	DOREN RD	1958	19	29.5	224	3
162	OLSON CR	1940	19	25.5	1171	99
163	DAKOTA CR TRIB	1954	31	25.5	843	5
164	DAKOTA CR	1950	31	25.5	844	5
170	N. INNIS CREEK	1999	31	25.5	180	4
172	GN RR OVERPASS	1940	196	32.3	4200	1
173	HAYNIE CR	1956	38	25.5	820	4
174	SILVER CR	1958	19	21.3	194	99
201	SWIFT CR	1934	38	27	1425	6
204	TEN MILE CR	1934	38	25.5	372	5
206	SUMAS RIVER	1935	69	25.5	252	3
212	SAAR CREEK	2016	53	32.5	867	3
233	TEN MILE CR TRIB	1900	31	25.5	841	4
234	TEN MILE CR	1947	31	25.5	841	4
235	TEN MILE CR	1946	38	25.5	68	99

Bridge No.	Bridge Name	Year Built	Structure Length	Structure Width	Traffic (adt)	Detour Length
236	TEN MILE CR	1944	31	36	11198	5
237	FOUR MILE CREEK	1954	37	44	9411	6
240	TEN MILE CREEK	2012	40	32.2	645	3
242	SAAR CREEK	2004	104	29.7	118	3
244	SCOTT DITCH	1951	31	25.5	72	5
245	Scott Ditch	2009	77	42.7	9000	4
248	ANDERSON CR	1973	62	25.5	1114	4
249	ANDERSON CR	2019	82	30	150	4
250	ANDERSON CR	1958	31	30	80	0
252	NOOKSACK RIVER	1934	320	30	9332	12
256	ASSINK RD	1949	31	25.5	185	4
257	FISH TRAP CR	1950	31	27	300	5
258	KAMM SLOUGH	1956	19	25.5	838	5
261	Kamm Slough	2010	145	50	2400	4
263	FISH TRAP CR	1954	38	30.1	700	4
275	SQUAW CREEK	1963	19	25.5	866	4
277	ANDERSON CREEK	2005	53	40	4147	4
284	LIND	1955	31	25.5	50	99
288	SUMAS RIVER	1959	19	25.5	131	3
290	SUMAS RIVER	1932	31	25.5	106	3
291	SUMAS RIVER	2019	31	30	326	4
295	JOHNSON	1950	31	25.5	1031	2
302	JOHNSON CREEK	2010	53	32	240	5
303	SUMAS RIVER	1956	76	25.5	267	4
304	SUMAS RIVER	1993	60	32	263	3

Bridge No.	Bridge Name	Year Built	Structure Length	Structure Width	Traffic (adt)	Detour Length
306	SUMAS RIVER	1997	75	31	267	4
307	SUMAS RIVER	1953	60	25.5	1032	4
308	SUMAS RIVER	1947	69	25.5	261	2
309	SUMAS RIVER	1932	76	25.5	269	2
310	SUMAS RIVER	1947	57	25.5	209	2
313	SWIFT CR	2017	31	17.2	223	4
319	SUMAS RIVER	1949	31	25.5	250	3
322	SLEASMAN SLOUGH	1935	31	21.3	131	99
324	SLEASMAN SLOUGH	1935	19	25.5	120	5
325	SAAR CR	1946	31	27	113	6
327	SUMAS RIVER	1917	152	27	206	4
328	SAAR CR	1966	31	29.7	524	6
329	LENHART RD BR	1953	31	21.5	30	99
331	SUMAS RIVER	1943	82	25.5	922	3
332	NORTH FORK	1930	210	28	800	22
334	CANYON CR	1937	80	27	1050	23
336	SWIFT CR	1935	82	27	2340	3
337	SQUALICUM CR	1934	19	21.5	58	99
346	BONE CREEK	1946	10	0	270	4
347	JOHNSON CR	1955	31	21.3	40	99
348	DRAINAGE RELIEF	2002	12	23.5	172	40
349	JOHNSON CR	1945	47	29.3	567	2
406	SMITH CR	1974	19	22	149	99
408	SMITH CR	1958	31	21.5	56	99
410	HENDRICKS CREEK	1967	60	23.4	62	1
411	SMITH CR	1945	20	29	280	2
413	DAKOTA CR	1965	31	25.5	1485	4

Bridge No.	Bridge Name	Year Built	Structure Length	Structure Width	Traffic (adt)	Detour Length
421	ROCKY CREEK	1956	180	33.2	911	2
422	SULPHUR CREEK	2010	112	33	916	99
423	SANDY CREEK	1957	127	31.3	916	99
494	SMITH CREEK OVERFLOW	1946	84	27.5	1112	2
495	SOUTH FORK DAKOTA CREEK	1950	30	44.4	1500	4
497	BERTRAND CR TRIB	1950	21	30	1156	3
498	DAKOTA CREEK	2006	40	32	604	3
499	DAKOTA CREEK TRIB	1950	16	28	1434	4
500	DAKOTA CR	1928	335	31.5	1221	2
503	GOOSEBERRY FERRY SLIP	1950	70	13	1100	99
505	SKOOKUM CR	1980	101	26	100	99
506	JOHNSON CR	1944	72	14	25	99
507	LUMMI ISLAND FERRY SLIP	1978	96	17.5	1100	99
508	JOHNSON CREEK	1996	53	20	30	99
509	ANDERSON CREEK	1954	31	22.7	50	99
510	GALLOP CREEK	1952	65	16.6	16	99
511	DEEP CREEK	2000	31	21.3	15	99
512	NOOKSACK RIVER	1957	246	32.6	11192	7
513	RED RIVER	1900	104	36	11365	7
503A	FERRY SLIP APPR	1950	158	23.8	1250	99
507A	FERRY SLIP APPR	1978	60	17.5	1250	99

Appendix “B” – 2020 Whatcom County Large Culvert Inventory
Total of 152 Structures

Culvert ID No.	Road Name	Location	Stream Name	Shape	Material	Diameter
LC202	CORNELL CREEK RD	0.37 MI FROM SR 542 (EAST END)	HENDRICK CREEK	RND	CMP	8
LC207	COAL CREEK RD	1.2 MILES FROM SR 542		RND	CMP	10
LC206	COAL CREEK RD	.74 MI SOUTH OF VAUGHN	GLACIER CREEK	RND	CMP	5
LC643	LAKEWAY DR	35' EAST OF EUCLID	GENEVA CREEK	RND	CON	5
LC623	LAKE LOUISE RD	120' EAST OF WESTERN LANE	BEAVER CREEK	RND	CMP	6
LC622	LAKE LOUISE RD	300' WEST OF POLO PARK DR	BEAVER CREEK	BOX	CON	6X4
LC621	LAKE LOUISE RD	525' WEST OF LAKE LOUISE DR		BOX	CON	8X8
LC211	NOON RD	0.48 MI NORTH OF E SMITH RD		RND	CMP	8
LC616	NOON RD	0.30 MI SOUTH OF E SMITH RD		RND	CMP	6
LC615	NOON RD	0.20 MI SOUTH OF HUNTLEY RD		BOX	CON	3X6
LC614	NOON RD	0.39 MI NORTH OF SR 542		RND	CMP	5
LC633	VAN WYCK RD	0.68 MILES WEST OF NOON RD		RND	CMP	5
LC635 & LC636	DEWEY RD	0.18 MI SOUTH OF VAN WYCK RD	SQUALICUM CREEK	RND	CMP	6
LC203	NORTHFORK RD	0.95 MI NORTH OF MOSQUITO LAKE RD		RND	CMP	5
LC607	MOSQUITO LAKE RD	SOUTH OF SR 542		RND	CMP	11
LC610	MOSQUITO LAKE RD	SOUTH OF SR 9		RND	CON	5
LC406	SUNSET AVE	WEST OF NORTHWEST RD		SQSH	CMP	8X7
LC404	GRAVELINE RD	0.17 MI NORTH OF SUNSET AVE	SILVER CREEK	SQSH	CMP	8X7
LC403	NORTHWEST RD	200' SOUTH OF SUNSET AVE	SILVER CREEK	RND	CON	5
LC410	SLATER RD	225' WEST OF NORTHWEST RD.	BEAR CREEK	RND	CON	6
LC634	HORTON RD	0.35 MI EAST OF SR 539	SPRING CREEK	RND	CON	5
LC411	SEACREST DR	0.14 MILES SOUTH OF SUNRISE RD (LUMMI ISLAND)		BOX	CON	5X6

Culvert ID No.	Road Name	Location	Stream Name	Shape	Material	Diameter
LC205	CHASTEEN RD	AT TEN MILE RD		RND	CON	5
LC209	E LAURAL RD	0.42 MI EAST OF SR 539	CRYSTAL SPRINGS CREEK	RND	CMP	6
LC1	ALDRICH RD	0.17 MI SOUTH OF WEST AXTON RD	DEER CREEK	RND	CMP	10
LC11	NORTHWEST RD	0.17 MI SOUTH OF WEST AXTON RD	DEER CREEK	RND	CMP	7
LC41	CLARKSON RD	0.37 MI WEST OF NORTHWEST RD		RND	CON	5
LC40	CLARKSON RD	0.16 MI WEST OF NORTHWEST RD		RND	CON	5
m,	AXTON RD	JUST EAST OF FERNDALE CITY LIMITS		RND	CON	6
LC418	KWINA RD	0.27 MI WEST OF HAXTON RD		BOX	CON	5X7
LC417	HAXTON WAY	0.5 MI SOUTH OF RED RIVER		RND	CON	5
LC413	IMHOF RD	100' NORTH OF SLATER RD		RND	CMP	8
LC408 & LC409	SLATER RD	0.33 MI EAST OF BRIDGE 512)	TENNANT CREEK	RND	CMP	10
LC16	HAM RD	0.12 MI SOUTH OF ARNIE RD	CAMPBELL CREEK	SQSH	CMP	6
LC31	ARNIE RD	250' WEST OF HAM RD		RND	CMP	6
LC33	BIRCH BAY LYNDEN RD	JUST EAST OF HAM RD	CALIFORNIA CREEK	SQSH	CMP	12
LC18	HAM RD	0.62 MI SOUTH OF BIRCH BAY LYNDEN RD		RND	CMP	5
LC17	HAM RD	0.71 MI SOUTH OF BIRCH BAY LYNDEN RD	TARTE CREEK	RND	CMP	7
LC12	NORTHWEST RD	0.52 MI SOUTH OF WEST WISER LAKE RD	COUGAR CREEK	RND	CMP	7
LC39	WEST BADGER RD	AT GLENDALE RD		RND	CON	5
LC24	LOOMIS TRAIL RD	0.23 MI WEST OF WEIDCAMP RD		RND	CON	6
LC22	BIRCH BAY LYNDEN RD	0.12 MI EAST OF BOB HALL RD		RND	CON	6
LC10	STEIN RD	0.62 MI NORTH OF BIRCH BAY LYNDEN RD		RND	CMP	5
LC3	CUSTER SCHOOL RD	0.93 MI NORTH OF BIRCH BAY LYNDEN RD		RND	CMP	9
LC20	LOOMIS TRAIL RD	0.32 MI WEST OF PORTAL WAY		RND	CON	6
LC27	PORTAL WAY	0.17 MI NORTH OF ARNIE		BOX	CON	12X6

Culvert ID No.	Road Name	Location	Stream Name	Shape	Material	Diameter
LC26	PORTAL WAY	0.11 MI NORTH OF MAIN		BOX	CON	5X5
LC30	FOX RD	0.28 MI EAST OF VISTA		RND	CMP	6
LC13	VISTA DR	0.40 MI NORTH OF GRANDVIEW		RND	CMP	7
LC43	ENTERPRISE RD	0.17 MI SOUTH OF WILLEY'S LAKE RD	SCHNEIDER CREEK	RND	CMP	5
LC402	NORTHWEST RD	SOUTH OF SLATER RD	BEAR CREEK	SQSH	CMP	16
LC613	HENDERSON RD	0.10 MI EAST OF Y RD	SOUTH FORK ANDERSON CREEK	RND	CMP	11
LC602	KELLY RD	AT SAND RD		RND	CMP	6
LC246	VAN DYKE RD	360' WEST OF THEIL RD	ELDER DITCH	RND	CON	6
LC250	THEIL RD	280' SOUTH OF VAN DYKE RD	SCOTT DITCH	RND	CON	6
LC245	THEIL RD	0.35 MI NORTH OF VAN DYKE RD	SCOTT DITCH	BOX	CON	6X5
LC213	NOON RD	0.57 MI NORTH OF VAN DYKE RD	SCOTT DITCH	BOX	CON	6X5
LC248	NOLTE RD	0.35 MI NORTH OF VAN DYKE RD	SCOTT DITCH	RND	CMP	12
LC212	NOON RD	0.48 MI NORTH OF POLE RD		RND	CMP	6
LC214	STARRY RD	0.61 MILES NORTH OF E SMITH RD	STARRY CREEK	RND	CMP	11
LC214B	STARRY RD	NORTH OF E SMITH RD		SQSH	CMP	12
LC210	EAST RD	0.14 MI SOUTH OF E AXTON RD	DEER CREEK	RND	CMP	5
LC48	OLSON RD	0.18 MI SOUTH OF DOUGLAS RD		RND	CON	5
LC49	CHURCH RD	0.33 MI SOUTH OF DOUGLAS RD	SCHELL CREEK	RND	CON	5
LC236	PANGBORN RD	0.99 MI EAST OF HAMMER RD	SQUAW CREEK	SQSH	CMP	9
LC225	CLEARBROOK RD	0.22 MI EAST OF VAN BUREN RD	JOHNSON CREEK	RND	CMP	15
LC226	CLEARBROOK RD	0.23 MI WEST OF HILL RD.	SUMAS RIVER	RND	CON	6
LC232	HILL RD	0.30 MI NORTH OF CLEARBROOK RD	SUMAS RIVER	RND	CMP	7
LC234	JONES RD	0.51 MI EAST OF CONCHMAN RD		RND	CMP	5
LC233	JONES RD	1 MI EAST OF NIMS RD	SAAR CREEK	RND	CMP	6
LC235	NIMS RD	375' NORTH OF ROCK RD	SAAR CREEK	RND	CMP	8

Culvert ID No.	Road Name	Location	Stream Name	Shape	Material	Diameter
LC242	ROCK RD	285' WEST OF NIMS RD	SAAR CREEK	RND	CMP	8
LC241	ROCK RD	350' EAST OF HILLVIEW RD	ARNOLD SLOUGH	SQSH	CMP	5
LC201	SILVER LAKE RD	1.02 MI SOUTH OF BLACK MOUNTIAN RD	MAPLE CREEK	RND	CON	5
LC624	LINDQUIST RD	0.1 MI NORTHEAST OF Y RD	CARPENTER CREEK	RND	CON	5
LC625	NORTHSHORE RD	0.14 MI SOUTH OF Y RD	CARPENTER CREEK	RND	CON	5
LC617	Y ROAD	0.10 MI SOUTHEAST OF NORTHSHORE RD	CARPENTER CREEK	RND	CON	5
LC642	MANLEY RD	1 MI NORTH OF PACIFIC RD	BARNES CREEK	RND	CON	5
LC38	VALLEY VIEW RD	0.29 MI SOUTH OF MCGEE		RND	CMP	7
LC8	HAYNIE RD	0.15 MI WEST OF 34TH AVE		RND	CON	5
LC4	GILES RD	0.10 MI SOUTH OF HAYNIE RD		RND	CMP	5
LC21	ROGER RD	SOUTH OF HOIER RD		RND	CON	6
LC9	HOIER RD	0.15 MI EAST OF HARVEY RD		RND	CON	6
LC7	HARVEY RD	0.15 MI NORTH OF SWEET RD	SPOONER CREEK	RND	CMP	5
LC37	SWEET RD	0.2 MI WEST OF HARVEY RD		RND	CMP	6
LC28	KICKERVILLE RD	0.5 MI SOUTH OF BAY RD	TERRELL CREEK	BOX	CON	8X8
LC45	BROWN RD	0.39 MI EAST OF KICKERVILLE RD	TERRELL CREEK	RND	CON	6
LC44	BROWN RD	234' WEST OF JACKSON RD.		BOX	CON	5X5
LC47	NORTH STAR RD	0.33 MI SOUTH OF ALDERGROVE RD		RND	CMP	13
LC35	SUNRISE RD	0.46 MI SOUTH OF H STREET RD	NORTH FORK DAKOTA CREEK	RND	CON	6
LC36	SUNRISE RD	0.13 MI SOUTH OF H STREET RD		RND	CMP	6
LC5	H STREET RD	0.22 MI WEST OF SUNRISE RD		RND	CMP	6.5
LC6	H STREET RD	0.38 MI WEST OF SUNRISE RD		RND	CMP	11
LC2	BURK RD	0.15 MI EAST OF DELTA LINE RD	NORTH FORK DAKOTA CREEK	RND	CMP	14
LC29	ZELL RD	AT WILLEY'S LAKE RD		RND	CMP	6

Culvert ID No.	Road Name	Location	Stream Name	Shape	Material	Diameter
LC34	LOOMIS TRAIL RD	JUST WEST OF I-5		RND	CMP	6
LC32	ARNIE RD	0.3 MI EAST OF VALLEY VIEW RD		BOX	CON	8X5
LC25	PORTAL WAY	280' SOUTH OF FARIS (THE SOUGH LEG OF FARIS)		BOX	CON	6X5
LC50	UNICH RD	0.17 MI EAST OF BARR RD	JORDAN CREEK	BOX	CON	6X4
LC414	LAMPMAN RD	0.20 MI EAST OF HAXTON WAY		RND	CON	5
LC412	ELDER RD	0.2 MI NORTH OF SLATER RD	JORDAN CREEK	RND	CMP	12
LC416	NORTH RED RIVER RD	0.66 MI WEST OF HILLAIRES RD	JORDAN CREEK	RND	CMP	9
LC415	NORTH RED RIVER RD	0.74 MI WEST OF HILLAIRES RD		RND	CMP	5
LC637	E SMITH RD	0.77 MI EAST OF SR 542		RND	CON	5
LC204	HILLARD RD	175' SOUTH OF DEMING RD		RND	CMP	5
LC612	LINNELL RD	0.25 MI NORTH OF POTTER RD		RND	CMP	6
LC603	NELSON RD	0.50 MI SOUTH OF POTTER RD		RND	CMP	8
LC608	CLIPPER RD	0.54 MI SOUTH OF STRAND RD		BOX	CON	6X4
LC609	CLIPPER RD	0.14 MI SOUTH OF STRAND RD	TINGLING CREEK	BOX	CON	6X4
LC604	STRAND RD	0.52 MI EAST OF SR 9	TINGLING CREEK	BOX	CON	6X4
LC605	TRUCK RD	0.14 MI EASTERLY OF DEAL RD		RND	CON	5
LC638	PARK RD	1.18 MI EAST OF BLUE CANYON RD		RND	CMP	6
LC644	PARK RD	0.38 MI EAST OF BLUE CANYON RD		BOX	CON	8X4
LC620	BLUE CANYON RD	1 MILE FROM PARK RD		RND	CMP	5
LC619	BLUE CANYON RD	0.62 MI FROM PARK RD	BLUE CONYON CREEK	RND	CMP	5
LC618	RAINBOW DR	BETWEEN BROOK AND CEDAR	SILVER CREEK	RND	CMP	6
LC601	GLENHAVEN	BETWEEN RAINBOW RD AND LAKESIDE DR	SILVER CREEK	BOX	CON	8X3
LC631	SAMISH WAY	0.64 MI NORTHWEST OF MANLEY RD	CHUCKANUT CREEK	BOX	CON	8X8

Culvert ID No.	Road Name	Location	Stream Name	Shape	Material	Diameter
LC630	SAMISH WAY	0.46 MI NORTHWEST OF MANLEY RD	BEAR CREEK	RND	CON	5
LC632	SAMISH WAY	500' EAST OF YEW STREET RD		RND	CON	5
LC405	LANGE RD	0.22 MI EAST OF WASHKE RD	ANDREASEN DITCH	RND	CON	9
LC407	WASHKE RD	350' NORTH OF LANGE RD	ANDREASEN DITCH	RND	CMP	5
LC639	EAST LAKE SAMISH DR	0.24 MI NORTH OF CEDAR ACRES	BARNES CREEK	BOX	CON	6X8
LC640	NORH LAKE SAMISH	0.11 MI WEST OF EAST LAKE SAMISH	FINNEY CREEK	RND	CON	6
LC641	ROY RD	0.53 MI WEST OF AXELSON		BOX	CON	4X6
LC626 & LC627	OLD SAMISH RD	0.55 MI WEST OF LAKE SAMISH DR		RND	CON	5
LC628 & LC629	OLD SAMISH RD	0.73 MI WEST OF FALLS DR	CHUCKANUT CREEK	RND	CMP	6
LC228	GOODWIN RD	0.32 MI NORTH OF SOUTH PASS RD	GOLD CREEK	BOX	CON	7X3
LC227	GOODWIN RD	0.07 MI SOUTH OF SORENSON RD	BRECKENRIDGE CREEK	RND	CMP	10
LC222	LINDSAY RD	67' WEST OF TELEGRAPH RD	KINNEY CREEK	RND	CMP	8
LC223	TELEGRAPH RD	0.10 MI SOUTH OF LINDSAY RD	KINNEY CREEK	RND	CMP	8
LC24	SORRENSON RD	0.20 MI EAST OF TELEGRAPH RD	KINNEY CREEK	RND	CMP	8
LC237	SOUTH PASS RD	0.32 MI NORTH OF SEALUND RD	BRECKENRIDGE CREEK	BOX	CON	8X10
LC238	MACK RD	100' FROM SR 9		BOX	CON	3X6
LC240	OAT COLES RD	0.13 MI NORTH OF MACK RD		RND	CMP	5
LC239	MASSEY RD	0.37 MI EAST OF OAT COLES RD	GOODWIN CREEK	RND	CMP	6
LC229	GOODWIN RD	AT MASSEY RD		RND	CON	5
LC230	GOODWIN RD	AT GILMORE RD	POWER CREEK	RND	CMP	10
LC231	GOODWIN RD	0.38 MI NORTH OF HOPEWELL RD	DALE CREEK	RND	CMP	6
LC221	LINDSAY RD	60' WEST OF VAN BUREN RD	JOHNSON CREEK	RND	CMP	5
LC220	LINDSAY RD	0.22 MI WEST OF VAN BUREN RD	SUMAS RIVER	RND	CMP	5
LC243	VAN BUREN	0.12 MI NORTH OF HAMPTON RD	SUMAS RIVER	RND	CMP	5

Culvert ID No.	Road Name	Location	Stream Name	Shape	Material	Diameter
LC247	HAMPTON RD	45' WEST OF VAN BUREN	JOHNSON CREEK	RND	CON	7
LC244	STICKNEY ISLAND RD	0.12 MI SOUTH OF TIMON RD	MORMON DITCH	RND	CMP	9
LC249	NORTHWOOD RD	0.25 MI NORTH OF HAMPTON RD	KAMM SLOUGH	RND	CON	5
LC215	ASSINK RD	1 MI NORTH OF PANGBORN RD	FISHTRAP CREEK	RND	CMP	7.5
LC219	PANGBORN RD	20' EAST OF BENDER RD	FISHTRAP CREEK TRIB	BOX	CON	6X3
LC218	PANGBORN RD	AT BENSON RD	FISHTRAP CREEK	BOX	CON	6X3
LC216	PRARIE RD	WEST OF DOUBLE DITCH RD	DOUBLE DITCH	BOX	CON	6X4
LC217	PRARIE RD	EAST OF DOUBLE DITCH RD	DOUBLE DITCH	BOX	CON	6X4
LC23	H STREET RD	AT JACKMAN RD	JACKMAN DITCH	RND	CMP	6
LC604B	STRAND RD	0.46 MI EAST OF SR 9		RND	CMP	5

Exhibit "A"
Draft Six Year
Transportation
Improvement Program
2022-2027

FUNG. CLASS	TIP PROJECT NO.	PROJECT IDENTIFICATION A. PIN/Federal Aid No. B. Bridge Number C. Project Title D. Street/Road Name or Number E. Beginning MP or Road-Ending MP or Road F. Describe Work to be Done	IMPROVEMENT TYPE(S)	PROJECT COSTS IN THOUSANDS OF DOLLARS											EXPENDITURE SCHEDULE											FEDERALLY FUNDED PROJECTS ONLY	
				STATUS	TOTAL LENGTH (mi.)	UTILITY CODES	PROJECT PHASE	FUNDING SOURCE INFORMATION			OTHER REVENUES	LOCAL FUNDS	TOTAL	YEAR 1 2022	YEAR 2 2023	YEAR 3 2024	Years 4th Thru 6th	TOTAL 2022-2027	Grant Total 2022-2027	Local Total 2022-2027	ENVIRON- MENTAL TYPE	RW REQ? Y/N DATE COMPLETE MONTH / YEAR					
								MONTH / YEAR PHASE STARTS	FEDERAL FUND CODE	FEDERAL COST BY PHASE													STATE FUND CODE	STATE FUNDS			
17	R1	Birch Bay Drive & Pedestrian Facility 20010 from Lora Lane to Cedar Avenue Pedestrian & Non-motorized Enhancements	12053206	S	1.58	T P C W S	PE RW CN Total	1/2022 1/2022	 0	0	0	0	300	300	200	90	10	0	300	0	300	CE	No 5/2019				
07	R2	East Smith Road & Hannegan Road 55080 / 55110 Intersection Improvements	060712	S	0.40	C G P T	PE RW CN Total	1/2022 1/2022 5/2022	 ST/HSIP	0	0	0	400	400	400	0	0	0	400	0	400	CE	Yes				
16	R3	Marine Drive, Locust Avenue to Alderwood Avenue 12790 From MP 4.57 to MP 3.92 Reconstruction & bike/pedestrian facilities	03061232	S	0.65	C G P T W	PE RW CN Total	1/2022 1/2022 4/2022	 STBG	0	0	0	400	50	591	0	0	0	400	0	591	CE	Yes				
17	R4	Samish Way & Galbraith Lane 44060 from MP 1.41. to 1.68 Pedestrian Crosswalk Coordination with the City of Bellingham Parking Lot Development	061232	S	0.27	C G P T W	PE RW CN Total	1/2022 1/2022 1/2022	 0	0	0	0	10	10	40	0	0	0	10	0	40		Yes				
09	R5	Marshall Hill Road Slide Rpr/Culvert Rplc 89260 from MP 0.60 to 0.70 Replace Culvert & Repair Slide Damage	0607	S	0.20	C P T	PE RW CN Total	1/2022 1/2022 6/2022	 0	0	0	0	100	25	600	0	0	0	100	0	600		Yes				
17	R6	Birch Bay Lynden Rd. & Blaine Rd. 21580 from MP 1.00 to UAB MP 1.25 Intersection Improvements	060712	P	0.25	C G P T W	PE RW CN Total	1/2022 1/2023 5/2024	 STBG	0	0	0	950	500	2,799	400	200	3,600	0	500	801	950	500	2,799	CE	Yes	
16	R7	Smith Road & Northwest Drive 75080 / 74050 Intersection Improvements	030612	P	0.40	C G P T W	PE RW CN Total	1/2022	0	0	0	0	35	0	0	25	5	5	0	35	0	0		Yes			
09	R8	Chief Martin Road, Cagey Road to Kwina Road 14110 from MP 0.00 to MP 2.50 Pavement Rehabilitation	050607	P	2.50	C P T	PE RW CN Total	1/2022	0	0	0	0	100	0	0	100	0	0	0	100	0	0		No			
16	R9	Slater Road & Northwest Drive 14760/74050 Intersection Improvements with WSDOT as lead agency	030612	S	0.40	C G P T W	PE RW CN Total	1/2022	0	0	0	0	15	0	0	5	5	5	0	15	0	0	CE	Yes			
17	R10	Birch Bay Drive Crosswalk 20010 from MP 3.29 to MP 3.30	0612	S	0.10	C P	PE RW	1/2022	0	0	0	0	195	0	50	70	75	0	195	0	0		No				

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				STATUS	TOTAL LENGTH (mi.)	UTILITY CODES	PROJECT PHASE	FUNDING SOURCE INFORMATION			OTHER REVENUES	LOCAL FUNDS	TOTAL	YEAR 1 2022	YEAR 2 2023	YEAR 3 2024	Years 4th Thru 6th	TOTAL 2022-2027	Grant Total 2022-2027	Local Total 2022-2027	ENVIRON- MENTAL TYPE	RW REQ? Y/N DATE COMPLETE MONTH / YEAR			
								MONTH / YEAR PHASE STARTS	FEDERAL FUND CODE	FEDERAL COST BY PHASE													STATE FUND CODE	STATE FUNDS	
		New Crosswalk from Berm to Parks Facility	32		T W	CN Total	5/2024		0		0	0	300	300	0	0	300	0	300	0	300				
07	R11	Lummi Nation Transportation Projects Various locations on Reservation	12 03 06 07 32	S		PE RW CN Total	1/2022 1/2022 6/2022		0		0	0	350 150 1,500 2,000	350 150 1,500 2,000	350 150 1,500 2,000	0 0 0 0	0 0 0 0	350 150 1,500 2,000	0 0 0 0	350 150 1,500 2,000		Yes			
07	R12	Point Roberts Transportation Improvements Project locations to be determined in 2021	06 32	S	0.25	P T W C	PE RW CN Total	1/2022 6/2022		0		0	50 0 100 150	50 0 100 150	50 0 100 150	0 0 0 0	0 0 0 0	50 0 100 150	0 0 0 0	50 0 100 150		No			
08	R13	Hemmi Road Flood Mitigation 56320 From MP 2.3 to MP 2.6 Raise roadway	07 06	S	0.30	C P T	PE RW CN Total	1/2022 1/2022		0		0	25 0 100 125	25 0 100 125	25 0 100 125	0 0 0 0	0 0 0 0	25 0 100 125	0 0 0 0	25 0 100 125		No			
09	R14	Innis Creek Road 88850 from MP 2.45 to MP 2.65 Raise roadway	07 06	P	0.20	T P C W S	PE RW CN Total	1/2022 		0		0	10 0 0 10	10 0 0 10	10 0 0 10	0 0 0 0	0 0 0 0	10 0 0 10	0 0 0 0	10 0 0 10		Yes			
17	R15	Birch Bay Drive, Jackson Rd to Shintaffer Rd 20010 from MP 2.10 to MP 4.53 Pavement Rehabilitation	07 06	P	2.43	T P C W S	PE RW CN Total	1/2022 6/2022		0		0	250 0 1,500 1,750	250 0 1,500 1,750	250 0 1,500 1,750	0 0 0 0	0 0 0 0	250 0 1,500 1,750	0 0 0 0	250 0 1,500 1,750		No			
16	R16	Marine Drive II, Alderwood Ave to Brdg No. 172 12790 From MP 3.92 to MP 3.37 Reconstruction & bicycle/pedestrian facilities	03 06 12 32	P	0.55	C G P S TW	PE RW CN Total	1/2022 		0		0	25 0 0 25	25 0 0 25	15 5 5 15	5 5 5 5	5 5 5 5	0 0 0 0	25 0 0 25	0 0 0 0	25 0 0 25	CE	Yes		
09	R17	Turkington Road/Jones Creek 89200 from MP 0.4 to MP 0.6 Road Grade Modification and creek channelization R&F Lead	03 06	P	0.20	P T C	PE RW CN Total	1/2022 1/2022 		0		0	54 0 0 54	54 0 0 54	54 0 0 54	0 0 0 0	0 0 0 0	54 0 0 54	0 0 0 0	54 0 0 54		Yes			

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								MONTH / YEAR PHASE STARTS	FEDERAL FUND CODE	FEDERAL COST BY PHASE	STATE FUND CODE	STATE FUNDS															
09	R18	Truck Road 89370 From MP 0.4 to MP 0.6 2020 Flood Damage Repair / R&F Lead	06 07 13	P	0.20	P T C	PE RW CN Total	1/2022		0		0		0	37	37	37	0	0	0	0	37	0	37		Yes	
09	R19	Abbott Road/Levee Improvements 55560 from MP 1.7 to MP 1.9 Levee Improvements / R&F Lead	03 06	P	0.20	C P T	PE RW CN Total	1/2022		0		0		0	155	155	155	0	0	0	0	155	0	155		No	
16	R20	Ferndale Road/Levee Improvements 12800 from MP 2.50 to MP 3.82 Levee Improvements / R&F Lead	03 06	P	1.32	C P T	PE RW CN Total	1/2022		0		0		0	50	50	50	0	0	0	0	50	0	50		No	
16	R21	Lake Louise, Austin St to Lake Whatcom Blvd. 46010 from MP 0.00 to MP 4.06 Pavement Rehabilitation	07 06	P	4.06	C G P S T W	PE RW CN Total	1/2022		0		0		0	240	240	25	215	0	0	240	0	240		Yes		
								1/2023		0		0		10	10	0	10	0	0	10	0	10					
								6/2023		0		0		1,800	1,800	0	1,800	0	0	1,800	0	1,800					
							Total			0		0		2,050	2,050	25	2,025	0	0	2,050	0	2,050					
16	R22	Austin Street, Lake Louise to Cable 46020 from MP 0.00 to MP 0.37 Pavement Rehabilitation w/ ADA Improvements	07 06	P	0.37	C P T	PE RW CN Total	1/2022		0		0		0	125	125	25	100	0	0	125	0	125		Yes		
								1/2023		0		0		10	10	0	10	0	0	10	0	10					
								6/2023		0		0		400	400	0	400	0	0	400	0	400					
							Total			0		0		535	535	25	510	0	0	535	0	535					
16	R23	Northwest Drive, Slater Rd. to Axton Rd. 74050 from MP 2.38 to MP 4.65 Pavement Rehabilitation	07 06	P	2.27	T P C W S	PE RW CN Total	1/2022		0		0		0	90	90	15	75	0	0	90	0	90		Yes		
								1/2023		0		0		10	10	0	10	0	0	10	0	10					
										0		0		0	0	0	0	0	0	0	0	0					
							Total			0		0		100	100	15	85	0	0	100	0	100					
16	R24	Axton Road, City of Ferndale to SR 539 73680 from MP 0.81 to MP 4.17 Pavement Rehabilitation	07 06	P	3.36	C P T	PE RW CN Total	1/2024		0		0		0	175	175	0	0	15	160	175	0	175		No		
										0		0		0	0	0	0	0	0	0	0	0					
								6/2025		0		0		1,360	1,360	0	0	0	1,360	1,360	0	1,360					
							Total			0		0		1,535	1,535	0	0	15	1,520	1,535	0	1,535					
07	R25	Hampton Road, City of Lynden UAB to Van Buren 61700 From MP 0.14 to MP 4.79 Pavement Rehabilitation	06 07	P	4.65	C P T	PE RW CN Total	1/2022		0	RATA	20	0	200	220	25	10	185	0	220	20	200		No			
										0		0		0	0	0	0	0	0	0	0	0					
								6/2024		0		150	0	1,700	1,850	0	0	1,850	0	1,850	150	1,700					
							Total			0		170	0	1,900	2,070	25	10	2,035	0	2,070	170	1,900					
07	R26	Everson Goshen Road, Smith Rd. to Pole Rd 55230 from MP 1.99 to 6.08 Pavement Rehabilitation	06 07	P	4.09	C P T	PE RW CN Total	1/2025		0		0		0	215	215	0	0	0	215	215	0	215		No		
										0		0		0	0	0	0	0	0	0	0	0					
								6/2026		0		0		2,000	2,000	0	0	0	2,000	2,000	0	2,000					
							Total			0		0		2,215	2,215	0	0	0	2,215	2,215	0	2,215					
16	R27	Lakeway Drive/Terrace, COB to Cable 45690 from MP 0.00 to MP 0.63 44200 from MP 0.00 to MP 0.16 Pavement Rehabilitation	06 07	P	0.79	C P T	PE RW CN Total	1/2025		0		0		0	125	125	0	0	0	125	125	0	125		No		
										0		0		0	0	0	0	0	0	0	0	0					
								6/2026		0		0		600	600	0	0	0	600	600	0	600					
							Total			0		0		725	725	0	0	0	725	725	0	725					
16	R28					C																		No			

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		Lakeway Drive Corridor Improvements 45690 from MP 0.00 to MP 1.39 Safety and Multimodal Improvements	06 12 32	P	1.39	G P T W	PE RW CN Total	1/2022		0		0		0	100	100	50	50	0	0	100	0	100		
19	R29	Lincoln Road II, Harborview Rd to Blaine Rd 26190 from MP 0.00 to MP 1.00 Reconstruction & new road, non-motorized enhancement	01 06 07	P	1.00	C P T	PE RW CN Total	1/2022		0		0		0	10	10	5	5	0	0	10	0	10		Yes
07	R30	Slater Road, Lake Terrell Rd to Haxton Wy 14760 from MP 1.19 to MP 3.69 Pavement Rehabilitation	05 06 07	P	2.50	C P T	PE RW CN Total	1/2026 6/2027		0		0		0	125 1,000	125 1,125	0 0	0 0	0 1,000	125 1,000	0 0	125 1,125		No	
00	R31	Small Area Paving Various locations	06 07	P		C P T	PE RW CN Total	1/2022 6/2022		0		0		0 300	50 300	50 300	0 0	0 0	0 0	50 300	0 0	50 300		No	
16	R32	Birch Bay Lynden Rd, Rathbone to Lynden 21580 from MP 9.95 to MP 11.45 Pavement Rehabilitation	06 07	P	1.5	C P T	PE RW CN Total	1/2023 6/2024		0		0		0 750	110 750	110 860	0 0	10 0	100 750	0 0	110 860	0 0	110 860		No
16	R33	Northshore Road, Bellingham City Limits to Y Rd 47051 From MP 0.00 to MP 2.87 Roadway surface, spot safety and stormwater improvements	06 07 12 13	P	2.87	C P T	PE RW CN Total	1/2025		0		0		0 0 0	10 0 0	10 0 0	0 0 0	0 0 0	10 0 0	10 0 0	0 0 0	10 0 0		Yes	
07	R34	South Pass Road 66040 from MP 3.50 to MP 3.65 2020 Flood Damage Repair	06 07	P	0.15	P C T	PE RW CN Total	1/2022 6/2023		0	ER	62		0	53	115	40	75	0	0	115	62	53	CE	No

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07	R35	Everson Goshen Road & E. Smith Road 55230 / 55080 Intersection Improvements	06 07 12	P	0.40	C P T	PE RW CN Total	1/2024		0		0		0	10	10	0	0	5	5	10	0	10		Yes	
17	R36	Birch Bay Drive / Lora Lane Culvert Replc 20010 from MP2.68 to MP 2.69 Replace large culvert under BB Dr @ Lora Ln	03 06 07	P	0.01	C P T	PE RW CN Total	1/2022		0		0		0	40	40	30	0	0	0	10	40	0	40		Yes
07	R37	Birch Bay Lynden Rd / Kickerville Rd 21580 from MP 1.89 to MP 2.09 21850 from MP 5.43 to MP 5.63 Intersection Improvements	06 07 12	P	0.40	C P T	PE RW CN Total	1/2022		0		0		0	15	15	5	5	5	0	15	0	15	CE	Yes	
07	R38	Corridor Intersection Alts Analysis (6 ea) BBL/Berthusen; BBL/Enterprise; Bay/Kicker- ville; Bay/V.View; Hann/Hemmi; Hann/VanWyck Intersection Improvements	06 07 12	P	0.40	C P T	PE RW CN Total	1/2022		0		0		0	360	360	5	355	0	0	360	0	360		No	
07	R39	Deer Trail Slide Damage Repair 25350 from MP .035 to MP .091 Repair slide damage	03	S	0.06	C P T	PE RW CN Total	1/2022 1/2022		0 0		0 0		0 100	30 100	30 100	30 100	0 0	0 0	0 0	0 0	30 100	0 0	30 100		No

Bridge and Fish Passage Capital Construction

16	B1	Marine Drive/Little Squalicum Bridge No.1 12790 From MP 5.24 to 5.34 Rehabilitation	10	P	0.10		PE RW CN Total	1/2025		0		0	0	20	20	0	0	0	20	20	0	20	CE	Yes
18	B2	Jackson Road/Terrell Creek/Bridge No. 81 21950 From MP 0.00 to MP 0.10 Replacement	09	P	0.10	P T C W	PE RW CN Total	1/2022 1/2022		0		0	0	350	350	200	150	0	0	350	0	350		No
08	B3	Mosquito Lk Rd/Porter Crk/Bridge No. 141 84190 From MP 9.55 to MP 9.65 Replacement	09	P	0.10	T C P	PE RW CN Total	1/2026		0		0	0	5	5	0	0	0	5	5	0	5		No
08	B4	North Lake Samish Road/Bridge No. 107 44170 From MP 0.01 to MP 0.11 Replacement	09	S	0.10	P C T G	PE RW CN Total	1/2022 1/2022 1/2022	BR	500		0	0	25	525	425	100	0	0	525	500	25	CE	Yes
08	B5	Goshen Road/Anderson Crk/Bridge No. 248 56140 From MP 0.56 to MP 0.76 Replacement	09	S	0.10	P T	PE RW CN	1/2022 1/2022 1/2024	BR	650		0	0	0	650	200	100	350	0	650	650	0	CE	Yes

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								MONTH / YEAR PHASE STARTS	FEDERAL FUND CODE	FEDERAL COST BY PHASE														STATE FUND CODE	STATE FUNDS
09	B6	Martin Rd/Anderson Crk/Bridge No. 250 56340 From MP 0.20 to 0.21 Replacement	09	P	0.10		Total			3,950		0	40	3,990	220	120	3,650	0	3,990	3,950	40		No		
							PE	1/2026		0		0	5	5	0	0	0	5	5	0	5				
							RW			0		0	0	0	0	0	0	0	0	0	0				
							CN			0		0	0	0	0	0	0	0	0	0	0				
							Total			0		0	5	5	0	0	0	5	5	0	5				
07	B7	Loomis Trail Rd/Bertrand Crk Trib Brdg No. 497 26502 From MP 3.84 to 3.94 Scour Mitigation	09	P	0.10		PE	1/2025		0		0	5	5	0	0	0	5	5	0	5		No		
							RW			0		0	0	0	0	0	0	0	0	0	0				
							CN			0		0	0	0	0	0	0	0	0	0	0				
							Total			0		0	5	5	0	0	0	5	5	0	5				
09	B8	Flynn Road/Fishtrap Creek Bridge No. 51 31630 From MP 0.55 to 0.56 Replacement	09	P	0.10		PE	1/2025		0		0	5	5	0	0	0	5	5	0	5		Yes		
							RW			0		0	0	0	0	0	0	0	0	0	0				
							CN			0		0	0	0	0	0	0	0	0	0	0				
							Total			0		0	5	5	0	0	0	5	5	0	5				
09	B9	Salakanum Wy/Anderson Crk Brdg No. 509 56050 from MP 0.4 to MP 0.5 Replacement	09	P	0.10		PE	1/2025		0		0	5	5	0	0	0	5	5	0	5		Yes		
							RW			0		0	0	0	0	0	0	0	0	0	0				
							CN			0		0	0	0	0	0	0	0	0	0	0				
							Total			0		0	5	5	0	0	0	5	5	0	5				
08	B10	Mosquito Lake Rd/ Hutchinson Crk Tributary 84190 from MP 3.10 to MP 3.20 Fish Passage	06 07	S	0.10	P C T	PE	1/2022		0		0	50	50	50	0	0	0	50	0	50		Yes		
							RW	1/2022		0		0	10	10	10	0	0	0	10	0	10				
							CN	1/2022		0		0	550	550	550	0	0	0	550	0	550				
							Total			0		0	610	610	610	0	0	0	610	0	610				
09	B11	North Fork Road/Kenney Creek 89510 from MP 1.0 to 1.10 Fish Passage	06 08	S	0.10	P C T	PE	1/2022		0	FBRB	625	0	125	750	250	500	0	0	750	625	125	CE	Yes	
							RW	1/2022		0		0	20	20	20	0	0	0	20	0	20				
							CN	1/2023		0		2550	0	450	3,000	0	3,000	0	0	3,000	2,550	450			
							Total			0		3175	0	595	3,770	270	3,500	0	0	3,770	3,175	595			
09	B12	Deal Road 89300 from MP 0.0 to 0.10 Fish Passage	03 06	P		P C T	PE	1/2022		0		0	75	75	75	0	0	0	75	0	75				
							RW	1/2022		0		0	20	20	20	0	0	0	20	0	20				
							CN			0		0	0	0	0	0	0	0	0	0	0				
							Total			0		0	95	95	95	0	0	0	95	0	95				

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2022-2027

FUNC. CLASS	TIP PROJECT NO.	PROJECT IDENTIFICATION A. PIN/Federal Aid No. B. Bridge Number C. Project Title D. Street/Road Name or Number E. Beginning MP or Road-Ending MP or Road F. Describe Work to be Done	IMPROVEMENT TYPE(S)	2022-2027 PROJECT COSTS IN THOUSANDS OF DOLLARS										EXPENDITURE SCHEDULE										FEDERALLY FUNDED PROJECTS ONLY	
				STATUS	TOTAL LENGTH (mi.)	UTILITY CODES	PROJECT PHASE	FUNDING SOURCE INFORMATION					OTHER REVENUES	LOCAL FUNDS	TOTAL	YEAR 1 2022	YEAR 2 2023	YEAR 3 2024	Years 4th Thru 6th	TOTAL 2022-2027	Grant Total 2022-2027	Local Total 2022-2027	ENVIRON- MENTAL TYPE	R/W REQ? Y/N DATE COMPLETE MONTH / YEAR	
								MONTH / YEAR PHASE STARTS	FEDERAL FUND CODE	FEDERAL COST BY PHASE	STATE FUND CODE	STATE FUNDS													
	B13	Fox Road/California Creek 22920 at MP 1.07 to 1.17 Fish Passage	03 06	P	0.10	PE RW CN Total	1/2022 1/2022 Total	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	400 25 0 425	400 25 0 425	150 5 0 155	150 10 0 160	100 10 0 110	0 0 0 0	400 25 0 425	0 0 0 0	400 25 0 425		Yes			
	B14	Nulle Road/Friday Creek Bridge No. 106 41830 at MP 0.15 to 0.25 Rehabilitation	03 06	P	0.10	PE RW CN Total	1/2022 5/2022 Total	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	100 0 500 600	100 0 500 600	100 0 500 600	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	100 0 500 600	0 0 0 0	100 0 500 600				

Ferry Capital Construction

00	F1	Replacement of Whatcom Chief & Terminal Modification New Ferry and Terminal Modifications	06	P			PE	1/2022		896	0	0	1,312	2,208	649	1,076	387	96	2,208	896	1,312		No			
								RW		0	0	0	0	0	0	0	0	0	0	0	0			0	0	0
								CN	1/2024		19,104	2000	0	10,067	31,171	0	0	9,168	22,003	31,171	21,104			10,067		
								Total			20,000	2000	0	11,379	33,379	649	1,076	9,555	22,099	33,379	22,000			11,379		
00	F2	Lummi Island Breakwater Replacement Terminal Modifications	06	S	0.10		PE	1/2022		0	0	0	150	150	150	0	0	0	0	150	0	150	CE	No		
								RW		0	0	0	0	0	0	0	0	0	0	0	0	0			0	
								CN	7/2022	FBP	885	0	0	1,115	2,000	2,000	0	0	0	2,000	885	1,115				
								Total			885	0	0	1,265	2,150	2,150	0	0	0	2,150	885	1,265				
00	F3	Relocation of Gooseberry Terminal	06	P			PE	1/2022		0	0	0	150	150	50	50	50	0	150	0	150		Yes			
								RW		0	0	0	0	0	0	0	0	0	0	0	0			0	0	
								CN		0	0	0	0	0	0	0	0	0	0	0	0			0	0	
								Total			0	0	0	150	150	50	50	50	0	150	0			150		

Yearly Capital Construction

00	Y1	Various Bridges Rehabilitation/Replacement As prioritized	09 10	S			PE	1/2022		0		0	0	300	300	50	50	50	150	300	0	300		Yes
										0		0	0	0	0	0	0	0	0	0				
										0		0	0	1,500	1,500	250	250	250	750	1,500	0	1,500		
								Total		0		0	0	1,800	1,800	300	300	300	900	1,800	0	1,800		
00	Y2	Right of Way Acquisition Various locations		S			PE			0		0	0	0	0	0	0	0	0	0	0	0		Yes
								1/2022		0		0	0	150	150	50	20	20	60	150	0	150		
										0		0	0	0	0	0	0	0	0	0	0			
								Total		0		0	0	150	150	50	20	20	60	150	0	150		
00	Y3	Unanticipated Site Improvements As prioritized	06 07 12	S			PE	1/2022		0		0	0	180	180	30	30	30	90	180	0	180		
										0		0	0	0	0	0	0	0	0	0				
										0		0	0	1,620	1,620	270	270	270	810	1,620	0	1,620		
								Total		0		0	0	1,800	1,800	300	300	300	900	1,800	0	1,800		
00	Y4	Unanticipated Stormwater Quality Improvements Various locations	06 13	S			PE	1/2022		0		0	0	120	120	20	20	20	60	120	0	120		
										0		0	0	0	0	0	0	0	0	0	0			
										0		0	0	600	600	100	100	100	300	600	0	600		
								Total		0		0	0	720	720	120	120	120	360	720	0	720		
00	Y5	Unanticipated Non-motorized Transportation Improv					PE	1/2022		0		0	35	35	10	5	5	15	35	0	35	Q13		
										0		0	0	0	0	0	0	0	0	0	0			

Exhibit "A"
Draft Six Year
Transportation
Improvement Program
2022-2027

FUNC. CLASS	TIP PROJECT NO.	PROJECT IDENTIFICATION A. PIN/Federal Aid No. B. Bridge Number C. Project Title D. Street/Road Name or Number E. Beginning MP or Road-Ending MP or Road F. Describe Work to be Done	IMPROVEMENT TYPE(S)	2022-2027 PROJECT COSTS IN THOUSANDS OF DOLLARS										EXPENDITURE SCHEDULE										FEDERALLY FUNDED PROJECTS ONLY	
				STATUS	TOTAL LENGTH (mi.)	UTILITY CODES	PROJECT PHASE	FUNDING SOURCE INFORMATION			OTHER REVENUES	LOCAL FUNDS	TOTAL	YEAR 1 2022	YEAR 2 2023	YEAR 3 2024	Years 4th Thru 6th	TOTAL 2022-2027	Grant Total 2022-2027	Local Total 2022-2027					
								MONTH / YEAR PHASE STARTS	FEDERAL FUND CODE	FEDERAL COST BY PHASE											STATE FUND CODE	STATE FUNDS			
		Various locations	06 12 32	P			RW CN Total	1/2022		0		0	0	0	0	50	15	15	45	125	0	125			
00	Y6	Fish Passage Project Various locations	06 13	P			PE RW CN Total	1/2022		0		0	0	0	0	50	50	50	150	300	0	300			
00	Y7	Swift Creek Transportation Impacts Various projects related to Sumas Mountain/Swift Creek Slide	06 12	S			PE RW CN Total	1/2022		0		0	0	0	0	10	10	10	30	60	0	60			
00	Y8	Railroad Crossing Improvements Various locations	12 07	P			PE RW CN Total	1/2022		0		0	0	0	0	50	5	5	10	70	0	70			
00	Y9	Beam Guardrail Replacements/Upgrades Various locations Upgrades/Replacements		P			PE RW CN Total	1/2022		0		0	0	0	0	50	50	50	150	300	0	300			
00	Y10	ADA Barrier Removal ADA Transition Plan Priorities Multiple locations	06 12 32	P			PE RW CN Total	1/2022		0		0	0	0	0	50	50	50	150	300	0	300			

PE		2,108	645	0	10,041	12,794	5,610	3,621	1,967	1,596	12,794	2,753	10,041
RW		0	0	0	1,280	1,280	810	330	80	60	1,280	0	1,280
CN		37,417	4,700	0	38,359	80,476	22,650	7,890	20,118	29,818	80,476	42,117	38,359
Total		39,525	5,345	0	49,680	94,550	29,070	11,841	22,165	31,474	94,550	44,870	49,680



WHATCOM COUNTY
2022-2035 FOURTEEN-YEAR
FERRY CAPITAL PROGRAM

Overview

This program provides a blueprint for the effective, efficient, and continuing operation of the Whatcom County Ferry System within existing financial constraints. Capital improvements are scheduled based on many years of experience operating and maintaining the system while complying with applicable regulations.

Inevitably, priorities and available funds for the ferry system will change over the fourteen years projected in this program. Therefore, the program intends to be a guide indicating long-range improvements and anticipated revenues and expenditures. Strict adherence is not required.

Enacted in 1975, Revised Code of Washington (**RCW**) **36.54.015** states “The legislative authority of every county operating ferries shall prepare, with the advice and assistance of the county engineer, a fourteen-year long-range capital improvement plan embracing all major elements of the ferry system. Such plan shall include a listing of each major element of the system showing its estimated current value, its estimated replacement cost, and its amortization period.”

Table 1: Ferry System Current and Replacement Values – meets applicable requirements, showing the current value, replacement cost, and amortization periods for the vessels and facilities. The current value of the M/V Whatcom Chief is the insured value, the closest approximation of true worth. The facilities’ current value is book value; original cost less depreciation plus depreciated improvements.

RCW 36.81.121 (1) states “...the legislative authority of each county, after one or more public hearings thereon, shall prepare and adopt a comprehensive transportation program for the ensuing six calendar years....and for those counties operating ferries shall also include a separate section showing proposed capital expenditures for ferries, docks, and related facilities. Copies of the program shall be filed with the county road administration board and the secretary of transportation not more than thirty days after its adoption by the legislative authority...” Subsection (2) requires expanded information on how a county will spend all its money on the various facets of the transportation program. This RCW Section was enacted in 1961. The capital expenditure portion of Subsection (1) is satisfied by:

Table 2: Projected Revenues defines the known and/or anticipated sources of operating and capital project funding for the 14-Year Plan.

Table 3: Projected Expenditures include all other expenditures on the system that meet Subsection (2) requirements. Operational expenditures are delineated between the vessel and non-vessel costs. U.S. Coast Guard regulations currently require the ferries to be dry-docked every two years, however, to extend the life, improve reliability, and protect our capital investment Whatcom County schedules dry-docking or an a out-of-service maintenance every year for its vessel. The terminal structures are inspected

regularly as required by the National Bridge Inspection Standards administered through the Washington State Department of Transportation. The inspection report helps identify and schedule major maintenance and replacement of these facilities.

This RCW section also provides the reporting requirement and timing of program submission, as well as establishing the annual update requirement.

Additionally, the Federal Highway Administration requires all agencies within a Metropolitan Planning Organization to develop and annually update the long-range Transportation Improvement Plans and their Biennial Element. Whatcom County updates this 14-Year plan each year and incorporates the results into the Six-Year Transportation Improvement Program.

Level-of-Service

On July 24, 2018, the Whatcom County Council passed resolution #2018-026. This resolution established a level of service for the Lummi Island Ferry System. Also, the resolution enacts an action plan to achieve the recommended improvements including:

1. Vessel

- A. Balancing capacity against operating costs (fuel, personnel, etc.) to ensure affordable fares over the long run, including needs-based fares, while optimizing vehicle demand, deck space, and trip frequency to minimize wait times, the design of a 34 car vessel is in the 2022-2027 Six-Year Transportation Improvement Program. The timing of the design and construction shall coincide with the next cycle of funding by the County Road Administration Board.
- B. The design of the vessel shall accommodate all walk-on passengers during typical peak times, accommodate legal loads of vehicles per Washington State Commercial Vehicle Guide and comply with U.S. Coast Guard safety standards and the Americans with Disabilities Act.
- C. To approach the goal of a carbon-neutral vessel and provide flexibility for future electric conversion and reliability, the design of the vessel shall be a hybrid diesel-electric.

2. Terminals

- A. The design of the marine structure modifications to the Gooseberry Point terminal and Lummi Island terminal to accommodate the new vessel are included in the 2022-2027 Six-Year Transportation Improvement Program and take into consideration the plan, listed 2E-2H below, to move the Gooseberry terminal at a future date. The timing of the design and construction shall coincide with the next cycle of funding by the County Road Administration Board and the construction of the new vessel.
- B. In addition to the modifications to accommodate a new vessel, improvements to the Lummi Island terminal shall include: reconfigure the queuing lanes, install ADA restrooms, and improve bicycle and pedestrian loading by locating the queuing area as close to the vessel as possible to reduce the time required to load onto the ferry.

- C. Implement remote ferry queue monitoring.
- D. Implement self-service ticketing.
- E. Whatcom County will initiate an intergovernmental agreement with the Lummi Nation to confirm the location of the Gooseberry Point Terminal as shown on the 2015 Lummi Nation TIGER grant application. Upon the finalization of the agreement, Whatcom County Public Works shall initiate the environmental review and permitting process for the Gooseberry Point terminal relocation.
- F. Construction of the new Gooseberry Point terminal relocation is to be accomplished before the end of the Uplands Lease Agreement with the Lummi Nation (October 2046). The design shall include dual lane loading and improve bicycle and pedestrian loading by locating the queuing area as close to the vessel as possible to reduce the time required to load onto the ferry.
- G. Whatcom County shall coordinate the Gooseberry Point terminal relocation with the Lummi Nation's permitting, funding, and construction of the future Fisherman's Cove Improvements.
- H. As property becomes available, Whatcom County shall purchase lands adjacent and near the new location of the Gooseberry Point terminal. The property will be utilized for off-street queuing, parking, and passenger amenities.
- I. All infrastructures shall be designed to accommodate the 100-year sea-level rise prediction by NOAA.

3. Operations

- A. A Whatcom County ferry district may be created to increase grant opportunities. This district shall be funded by a seasonal surcharge on single cash fares for the capitalization of future vessels.
- B. The long-term improvements shall be phased over time to allow for a complete funding portfolio to leverage a variety of funding sources and mechanisms.

Minor Maintenance

General minor maintenance is continual on the ferry, terminals, aprons, approaches, and waiting facilities. The costs and extent of the work is unpredictable, and frequently problems must be repaired immediately upon detection. Routine maintenance such as building painting and roof cleaning is more predictable and scheduled in advance.

History of the Ferry System

The ferry system is the only public transportation link for the majority of Lummi Island residents and vehicles to the mainland at Gooseberry Point. In the event of an emergency ferry outage or mechanical failure, the County has contracted pedestrian-only ferry services while the vessel is being repaired.

Following is a brief chronology outlining the history of the Whatcom County Ferry System.

GP denotes work occurred at the Gooseberry Point Terminal

LI denotes work occurred at the Lummi Island Terminal

- 1926 Lummi Shore Road from Bellingham was completed and a ferry, the Central, owned by Whatcom County and large enough to hold six small Model-T Fords started making scheduled runs between Lummi Island and Gooseberry Point.
- 1929 The slightly larger Chief Kwina replaces the Central.
- 1950 Gooseberry Point terminal built (**GP**)
- 1962 The M/V Whatcom Chief begins service
- 1977 Lummi Island terminal is relocated (**LI**)
- 1981 New transfer span and tower superstructure installed (**LI**)
- 1982 Approach span trestle refurbished (**GP**)
- 1986 Transfer span, tower structures, and marine structures replaced (**GP**)
- 1993 South inner and mid-ship timber dolphins replaced/installed (**LI**)
- 1999 Emergency South outer dolphin and breakwater repair (**LI**)
- 1999 Electrical feeder replacement (**GP**)
- 2001 Major maintenance on both terminals including painting, new aprons, electrical work, new hydraulics, tower bolt replacement (**LI** and **GP**)
- 2002 20-Year Plan Phase 1 Process and report completed
- 2005 South outer timber dolphin replaced with steel structure (**LI**)
Major Status Report on the Ferry System
- 2006 Emergency bearing seat pedestal replacement (**LI**)
Parking lot improvements (**LI**)
Major corrosion repair to vessel hull
Completed design package for a 35-car replacement vessel
Completed design package for urgent electrical/structural terminal repairs
First Rate Increase in 5 years
- 2007 Bridge bearings replaced (**LI**)
Electrical repairs (**LI** and **GP**)
- 2008 Two North timber dolphins replaced with steel doughnut dolphins designed for larger 35-car ferry boat design (**LI**)
Counterweight sheaves replaced (**GP** and **LI**)
Rate increase
- 2009 Emergency North wingwall replacement (**LI**)

- Traffic Gates Installed (**LI** and **GP**)
 Rate adjustment
- 2010 Emergency South wingwall replacement (**LI**)
- 2011 New live load hangers and pins installed (**GP**)
- 2013 Steel apron flaps replaced with rubber-coated flaps (**LI**)
 Timber wingwalls replaced with steel structures (**GP**)
 Terminal remote control system installed, electrical and hydraulic equipment updates (**LI**)
- 2014 Terminal remote control system installed (**GP**)
 All four timber dolphins replaced with steel structures (**GP**)
- 2015 Steel apron flaps replaced with rubber-coated flaps (**GP**)
 Emergency temporary repair to outer timber dolphin (**LI**)
 Rate adjustment
- 2017 Electrical system overhaul (**GP**)
- 2018 Structural steel repair work including new lifting beam, new live load hangars, and replacement of corroded high-strength bolts and diagonal bracing (**GP**)
 Structural steel repair work including replacement of corroded high-strength bolts and diagonal bracing (**LI**)
- 2019 Commenced public outreach and preliminary vessel and terminal designs
 Completed Lummi Island Preservation Project which included application of new paint system on transfer span, tower assemblies and apron (**LI**)
- 2020 COVID 19 significantly impacted operations resulting in lost revenue, reduced ridership, and conversion to cashless fares to mitigate risk
 Completed propulsion study for new vessel
 Applied for federal Build Grant and state Consolidated Grant Program
 Whatcom County obtained approval from USCG to modify the annual dry-docking schedule with a dockside maintenance substitution. This will be continued for future dry dockings when eligible.
 Terminal structural improvements and full paint job (**LI**)

Table 1

FERRY SYSTEM CURRENT AND REPLACEMENT VALUES - 2021						
VESSELS						
Current Statistics		M/V Whatcom Chief				
LENGTH (ft)		94				
BEAM (ft)		44				
DISPLACEMENT (tons)		78				
YEAR BUILT		1962				
CAPACITY -- Passengers		100				
CAPACITY -- Cars		20				
CURRENT INSURED VALUE - 2020		\$890,000				
TOTAL CURRENT VALUE - 2020						\$890,000
Replacement Statistics						
YEAR		2024				
LENGTH (ft)		184				
BEAM (ft)		54				
DISPLACEMENT (tons)		100				
CAPACITY -- Passengers		150				
CAPACITY -- Cars		34				
REPLACEMENT VALUE ⁽¹⁾		\$18,500,000				
TOTAL - REPLACEMENT VALUE						\$18,500,000
FACILITIES						
LOCATION	YEAR BUILT OR REBUILT	AMORTIZATION PERIOD END	SCHEDULED REPLACEMENT /MODIFICATION YEAR	CURRENT BOOK VALUE ⁽⁴⁾	ESTIMATED REPLACEMENT COST 2021 \$'s ⁽²⁾	
Lummi Island Terminal						
Transfer Span and Dock	1982	2022	2040	\$421,345	\$11,255,088	
Dolphins/Wingwall/Breakwater	1978	2018	2024	\$1,269,282	\$7,878,562	
Upland Facilities	1978	2018	2024	\$60,000	\$4,502,035	
Subtotal - Lummi Island Terminal				\$1,750,627	\$23,635,685	
Gooseberry Point Terminal						
Transfer Span and Dock	1987	2027	2024-2046	\$552,345	\$26,449,457	
Dolphins/Wingwall ⁽³⁾	2013, 2014	2053, 2054	2024-2046	\$2,945,405	\$3,376,526	
Upland Facilities				\$0	\$10,692,334	
Subtotal - Gooseberry Point Terminal				\$3,497,750	\$40,518,317	
TOTAL FACILITIES VALUE				\$5,248,377	\$64,154,002	
TOTAL VESSEL & FACILITIES VALUE				\$6,138,377	\$82,654,002	
NOTES:						
⁽¹⁾ Cost based on figures from the RAISE Grant Submission						
⁽²⁾ Per 2018 LOS Alternatives Analysis by KPFF Consulting (Costs have been escalated 3% per year and represent a 2021 replacement cost of the full structure, not the retrofit for a new boat.)						
⁽³⁾ Replacement requires relocation. A phased approach to relocation will include modifications to existing facilities prior to completion of the new facility.						
⁽⁴⁾ Estimated using a 40-year life and straight-line depreciation (including depreciated improvements)						

Table 2

Lummi Island Ferry 14-Year Capital Program							
All \$ in 000's Revenues 2022-2028							
Category	2022	2023	2024	2025	2026	2027	2028
Multi-Ride Fares (3)	\$ 1,450	\$ 1,477	\$ 1,510	\$ 1,543	\$ 1,578	\$ 1,613	\$ 1,649
Single-Ride Fares (4)	363	369	377	386	394	403	412
(Memo 55% of Operating Cost) (1)	1,813	1,846	1,887	1,929	1,972	2,017	2,062
MVFT Deficit Subsidy	250	255	260	265	271	276	282
County Road Fund Operating Subsidy	1,596	1,625	1,661	1,698	1,736	1,774	1,814
County Road Fund Capital Subsidy	1,765	29	1,591	4,219	4,174		
Outside Funding	885	896	7,811	10,409	2,884		
Ferry Replacement Fund	199	201	203	205	208	211	214
CRAB Capital Ferry Funding					500	500	500
Total Revenues	6,508	4,852	13,414	18,726	11,745	4,778	4,871
Total Expenditures (2)	6,395	4,738	13,296	18,606	11,123	3,943	4,030
Net Unfunded (Funded) (5)	(113)	(115)	(117)	(119)	(622)	(835)	(841)

Lummi Island Ferry 14-Year Capital Program							
All \$ in 000's Revenues 2029-2035							
Category	2029	2030	2031	2032	2033	2034	2035
Multi-Ride Fares (3)	\$ 1,687	\$ 1,724	\$ 1,763	\$ 1,803	\$ 1,844	\$ 1,889	\$ 1,932
Single-Ride Fares (4)	422	431	441	451	461	472	483
(Memo 55% of Operating Cost) (1)	2,108	2,156	2,204	2,254	2,305	2,361	2,415
MVFT Deficit Subsidy	287	293	299	305	311	317	323
County Road Fund Operating Subsidy	1,854	1,895	1,938	1,981	2,026	2,075	2,121
County Road Fund Capital Subsidy	-	-	-	-	-	-	-
Outside Funding	-	-	-	-	-	-	-
Ferry Replacement Fund	217	220	222	224	226	228	230
CRAB Capital Ferry Funding	500	500	500	500	500	500	500
Total Revenues	4,966	5,064	5,163	5,264	5,368	5,481	5,590
Total Expenditures (2)	4,120	4,212	4,307	4,403	4,502	4,610	4,714
Net Unfunded (Funded) (5)	(846)	(852)	(856)	(861)	(866)	(871)	(876)

Note 1: Fare revenue is not calculated on ridership and is instead calculated based on a 55% recovery of expenditures as outlined in farebox recovery legislation.

Note 2: As Shown On Table 2, including capital expenditures.

Note 3: Equal to 80% of Fares

Note 4: Equal to 20% of Fares

Note 5: Unfunded ferry capital is generally covered using road fund revenue. In the case of years 2023 and 2026 grant funds are being actively sought as the road fund does not have the capacity to cover these deficits

Table 3

Lummi Island Ferry 14-Year Capital Program All in 000's Table 2 Expenditures 2022-2028 Page 1							
Category	2022	2023	2024	2025	2026	2027	2028
Operating Expenses							
Vessel Operations							
Personnel	1,400	1,428	1,457	1,486	1,515	1,546	1,577
Fuel & Operating Supplies	1,038	1,069	1,101	1,134	1,168	1,196	1,231
Insurance	72	74	76	79	81	90	93
Other Operating Expenses	100	104	108	112	117	122	127
Total Vessel Operations	2,610	2,675	2,742	2,811	2,881	2,953	3,027
Other Operations							
Administration	411	413	415	417	419	421	423
Parking Lots							
Lummi Island	10	10	10	11	11	11	11
Gooseberry Pt.	9	9	9	10	10	10	10
Staging Areas							
Lummi Island	28	29	30	31	32	32	33
Gooseberry Pt.	8	8	8	9	9	9	10
Docks							
Lummi Island	69	69	70	72	73	75	76
Gooseberry Pt.	401	398	406	414	422	431	439
Total Operating Expenses	3,546	3,612	3,691	3,773	3,857	3,943	4,030
Capital Expenditures							
Replacement of Whatcom Chief	-	396	7,311	9,909	965	-	-
Terminal Modifications	649	680	2,244	4,924	6,301		
Lummi Island Breakwater Replacement	2,150	-	-	-	-	-	-
Relocation of Gooseberry Terminal	50	50	50				
Total Capital Program Costs	2,849	1,126	9,605	14,833	7,266	-	-
Total Costs	6,395	4,738	13,296	18,606	11,123	3,943	4,030

Table 3 (continued)

Lummi Island Ferry 14-Year Capital Program All in 000's Table 2 Expenditures 2029-2035 Page 2							
Category	2029	2030	2031	2032	2033	2034	2035
Operating Expenses							
Vessel Operations							
Personnel	1,608	1,640	1,673	1,707	1,741	1,776	1,811
Fuel & Operating Supplies	1,267	1,305	1,343	1,382	1,422	1,465	1,510
Insurance	95	98	101	104	107	111	114
Other Operating Expenses	132	137	142	148	154	159	163
Total Vessel Operations	3,102	3,180	3,260	3,341	3,425	3,510	3,598
Other Operations							
Administration	426	428	430	432	434	436	438
Parking Lots							
Lummi Island	11	12	12	12	13	13	13
Gooseberry Pt.	10	11	11	11	12	12	12
Staging Areas							
Lummi Island	34	35	37	38	39	40	41
Gooseberry Pt.	10	10	10	11	11	18	19
Docks							
Lummi Island	78	79	81	82	84	86	88
Gooseberry Pt.	448	457	466	476	485	495	505
Total Operating Expenses	4,120	4,212	4,307	4,403	4,502	4,610	4,714
Capital Expenditures							
Replacement of Whatcom Chief	-	-	-	-	-	-	-
Terminal Modifications							
Lummi Island Breakwater Replacement	-	-	-	-	-	-	-
Relocation of Gooseberry Terminal	-	-	-	-	-	-	-
Total Capital Program Costs	-	-	-	-	-	-	-
Total Costs	4,120	4,212	4,307	4,403	4,502	4,610	4,714



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-522

File ID:	AB2021-522	Version:	1	Status:	Agenda Ready
File Created:	09/02/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Resolution (FCZDBS)		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Resolution amending the Flood Control Zone District 2021 budget, request no. 3, in the amount of \$175,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #3 requests from the Flood Control Zone District Fund:

1. To appropriate \$175,000 in Public Works - Natural Resources to fund 2021 collaborative water process from grant proceeds.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Resolution, Budget request

PROPOSED BY: Public Works
INTRODUCTION DATE: 9/14/21

RESOLUTION NO. _____

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

AMENDMENT NO. 3 OF THE 2021 BUDGET

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

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

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

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

	Expenditures	Revenues	Net Effect
Flood Control Zone District Fund	175,000	(175,000)	-
Total Supplemental	<u>175,000</u>	<u>(175,000)</u>	<u>-</u>

ADOPTED this ____ day of _____, 2021

ATTEST:

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of Board of Supervisors

APPROVED AS TO FORM:

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

Supplemental Budget Request

Status: Pending

Public Works

Natural Resources

Suppl ID # 3297

Fund 169

Cost Center 169121

Originator: Gary Stoyka

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: 2021 Collaborative Water Process

X



9/1/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4333.6612	Puget Sound Watershed Grant	(\$50,000)
	4334.0310	DOE Grants	(\$125,000)
	6630	Professional Services	\$175,000
	Request Total		\$0

1a. Description of request:

Whatcom County has been awarded grant funding to implement a collaborative process and conduct related technical studies to resolve our region's water challenges. The Washington State Legislature is providing \$125,000 in funding to implement the collaborative process and conduct related technical studies. This money will come to the County in the form of a grant from the Department of Ecology. Public Works also received a grant from the Washington Department of Fish & Wildlife to conduct drainage-based management (DBM) in three pilot sub-basins in 2020. It was anticipated that \$50,000 would be used in 2020 and \$50,000 would be used in 2021; however, no grant funds were utilized in 2020. This budget supplemental is to reallocate the \$50,000 in 2020 grant funds to 2021 to continue the DBM work.

1b. Primary customers:

All residents of Whatcom County.

2. Problem to be solved:

Whatcom County has been plagued with long standing conflicts over water and other related environmental issues. The County has been engaged in watershed management processes for more than 20 years. While much good work has been accomplished during this time, including the adoption of a Watershed Management Plan, many technical studies, and an attempt at resolving water rights issues, resolution of these issues has been elusive. The Department of Ecology is preparing to implement an adjudication of water rights in the Nooksack Basin to determine their extent and validity. Implementing an adjudication without addressing related issues will have significant impacts on the community. The Executive is proposing that the County take the lead on implementing a collaborative process to resolve these problems. While the primary focus of the initiative is to resolve water quantity and instream flow issues, it is recognized that these issues are inextricably linked to water quality, salmon habitat and other issues. Consequently, the proposed process includes attempting to resolve all of these issues simultaneously. The proposed process involves bringing key parties together to determine what each party's needs are and finding ways to meet those needs.

3a. Options / Advantages:

Many other processes have been attempted over the past 20+ years without success.

3b. Cost savings:

Certainty regarding water supply, water quality, instream flows, and fish habitat will save people, businesses, and governments money in the long run.

4a. Outcomes:

The work included in this budget request will support the Executive's proposed collaborative water

Supplemental Budget Request

Status: Pending

Public Works

Natural Resources

Suppl ID # 3297

Fund 169

Cost Center 169121

Originator: Gary Stoyka

process by providing facilitation services and technical information. These services will be provided during the latter part of 2021 and potentially into early 2022.

4b. Measures:

The information and services provided will allow the collaborative process to be initiated and make progress on resolving the community's water conflicts. Success will be measured by making progress on finding solutions to meet our water needs.

5a. Other Departments/Agencies:

Implementing this request will require involvement from the Department of Planning and Development Services. Other agencies that are anticipated to participate in the collaborative process include: Whatcom PUD, Lummi Nation, Nooksack Indian Tribe, City of Bellingham, Ag Water Board, Washington Departments of Ecology and Fish & Wildlife.

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

Mark Personius would need to provide staff to participate in the process.

6. Funding Source:

\$125,000 from the Washington State Legislature through a grant from the Washington Department of Ecology

\$50,00 in National Estuary Program funding through a grant from the Washington Department of Fish and Wildlife



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-516

File ID:	AB2021-516	Version:	1	Status:	Agenda Ready
File Created:	08/31/2021	Entered by:	LCumming@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Resolution (FCZDBS) Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	09/14/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Resolution adopting the Whatcom County Flood Control Zone District Six-Year Water Resources Improvement Program for the years 2022 through 2027 (Council acting as the Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution by the Whatcom County Flood Control Zone District Board of Supervisors adopting the Six-Year Water Resources Improvement Program (WRIP) for 2022-2027. The adoption by resolution is pursuant to the Revised Code of Washington (RCW 86.15.100)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, 2022-2027 WRIP Resolution.pdf, 2022-2027 WRIP Exhibit A.pdf, 2022-2027 WRIP Project Narratives.pdf

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

JON HUTCHINGS
Director




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

Memorandum

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Program Manager 

DATE: August 31, 2021

RE: Six-Year Water Resources Improvement Program (WRIP), 2022-2027

Requested Action:

Public Works requests that the 2022-2027 Six-Year Water Resources Improvement Program (WRIP) resolution and its associated exhibits be introduced at the County Council/Flood Control Zone District meeting on September 14, 2021. We then request that a public hearing be advertised for and held at the September 28, 2021 County Council/Flood Control Zone District meeting, with the resolution potentially adopted at said meeting.

Background and Purpose:

Each year the County updates its Six-Year Water Resources Improvement Program (WRIP) in accordance with RCW 86.15.110.

Enclosures:

- Resolution adopting the 2022-2027 Water Resources Improvement Program
- "Exhibit A" 2022-2027 Water Resources Improvement Program

PROPOSED BY: _____

INTRODUCED: 9/14/21

RESOLUTION NO. _____

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

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
SIX-YEAR WATER RESOURCES IMPROVEMENT PROGRAM
FOR THE YEARS 2022 THROUGH 2027**

WHEREAS, pursuant to RCW 86.15.110, flood control or storm water control improvements may be extended, enlarged, acquired, or constructed by a flood control zone pursuant to a resolution adopted by its Board of Supervisors; and

WHEREAS, Whatcom County Public Works Department on behalf of the Whatcom County Flood Control Zone District has prepared a Six-Year Water Resources Improvement Program for adoption; and

WHEREAS, pursuant to RCW 86.15.120, the Supervisors shall hold a public hearing prior to adopting the resolution; and

WHEREAS, the Six-Year Water Resources Improvement Program attached hereto as Exhibit "A" has been reviewed and determined to be consistent with Whatcom County's comprehensive plan and is consistent with the following plans:

- Lower Nooksack River Comprehensive Flood Hazard Management Plan, October 1999
- Jones Creek Debris Flow Study, March 2004
- WRIA 1 Salmon Recovery Plan, October 2005
- Birch Bay Comprehensive Stormwater Plan, July 2006
- Lake Whatcom Comprehensive Stormwater Plan, March 2008
- Lake Samish Basin Comprehensive Stormwater Plan, July 2012
- Birch Bay Central North Subwatershed Master Plan, December 2013
- Birch Bay Central South Subwatershed Master Plan, January 2015
- Nooksack River System-Wide Improvement Framework, June 2016

- Birch Point, Terrell Creek Urban Area, and Point Whitehorn Subwatershed Master Plan, November 2016
- Lake Whatcom Comprehensive Plan: Stormwater Capital Program Update, September 2017
- Lake Whatcom Management Program 2020-2024 Work Plan, July 2020; and
- Lake Whatcom East Geneva Subwatershed Master Plan, January 2021

WHEREAS, pursuant to RCW 86.15.110, the preliminary engineering studies for constructed improvements are on file with the Whatcom County Public Works Department; and

WHEREAS, pursuant to RCW 86.15.110, the estimated cost of the acquisition or construction of the improvement, together with supporting data, is included in the Six-Year Water Resources Improvement Program; and

WHEREAS, the improvements will benefit one or more flood control zones, subzones and the county as a whole;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors as follows:

That the Whatcom County Flood Control Zone District Six-Year Water Resources Improvement Program for the years 2022 through 2027, which is attached hereto as Exhibit "A", is hereby adopted.

APPROVED this ____ day of _____, 2021.

ATTEST:

Flood Control Zone District Board of
Supervisors
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Chair

APPROVED AS TO FORM:

Approved Via Email-CQ/LC 8/31/21
Christopher Quinn, Senior Deputy Prosecuting Attorney – Civil Division

Project Description		Database ID No.	BES	Previous Expenditures			2022			2023			2024			2025			2026			2027			Total
No.				Phase	Amount	Source	Phase	Amount	Source	Phase	Amount	Source	Phase	Amount	Source	Phase	Amount	Source	Phase	Amount	Source	Phase	Amount	Source	
LAKE WHATCOM STORMWATER																									
1	Sudden Valley Stormwater Improvements: Drainage system upgrades, water quality treatment and outfall retrofits in partnership with Sudden Valley HOA	13-004	46.3	PE	\$ 100,000	REET	PE			PE			PE			PE			PE			PE			\$ 700,000
				PE			PE			PE			PE			PE			PE			PE			
				RW			RW			RW			RW			RW			RW			RW			
				CN			CN	\$ 600,000	REET	CN			CN			CN			CN			CN			
				CN			CN			CN			CN			CN			CN			CN			
2	Academy Road Stormwater Improvements: Evaluate the water quality performance of the existing Academy stormwater system and provide recommended retrofits.	20-005	63.9	PE	\$ 80,000	SW Funds	PE	\$ 50,000	LWSU	PE			PE			PE			PE			PE			\$ 533,000
				PE	\$ 40,000	LWSU	PE			PE			PE			PE			PE			PE			
				PE	\$ 63,000	REET	RW			RW			RW			RW			RW			RW			
				CN			CN			CN	\$ 100,000	REET	CN			CN			CN			CN			
				CN			CN			CN	\$ 200,000	LWSU	CN			CN			CN			CN			
3	Geneva Bioretention Pilot Project: Install new water quality treatment media, evaluate the effectiveness and constructability of new water quality treatment media	20-006	63.9	PE	\$ 20,000	LWSU	PE	\$ 25,000	REET	PE	\$ 40,000	LWSU	PE	\$ 2,500	REET	PE	\$ 2,500	REET	PE			PE			\$ 1,021,000
				PE			PE	\$ 118,000	DOE Grant	PE			PE	\$ 7,500	DOE Grant	PE	\$ 7,500	DOE Grant	PE			PE			
				RW			RW	\$ 15,000	REET	RW			RW			RW			RW			RW			
				CN			CN			CN	\$ 610,000	DOE Grant	CN			CN			CN			CN			
				CN			CN			CN	\$ 173,000	REET	CN			CN			CN			CN			
4	Silver Beach Creek Phase 2: Main channel restoration below Hillsdale using natural vegetation	07-095	60.5	PE	\$ 50,000	REET	PE	\$ 80,000	REET	PE			PE			PE			PE			PE			\$ 750,000
				PE			PE			PE			PE			PE			PE			PE			
				RW	\$ 20,000	REET	RW			RW			RW			RW			RW			RW			
				CN			CN			CN			CN	\$ 600,000	REET	CN			CN			CN			
				CN			CN			CN			CN			CN			CN			CN			
5	Eagleridge Stormwater Improvements: Install a water quality system to treat stormwater from the Eagleridge development.	20-007	61.4	PE			PE			PE	\$ 40,000	REET	PE	\$ 100,000	REET	PE			PE			PE			\$ 480,000
				PE			PE			PE			PE			PE			PE			PE			
				RW			RW			RW	\$ 15,000	REET	PE			PE			PE			PE			
				CN			CN			CN			CN			CN	\$ 325,000	REET	CN			CN			
				CN			CN			CN			CN			CN			CN			CN			
6	Strawberry Point/Lake Whatcom Blvd Stormwater Improvements: System upgrades to improve water quality including vaults, biofiltration swales, and channel restoration	17-001	62.2	PE			PE			PE			PE	\$ 70,000	REET	PE	\$ 140,000	REET	PE			PE			\$ 910,000
				PE			PE			PE			PE			PE			PE			PE			
				RW			RW			RW			RW	\$ 50,000	REET	PE			PE			PE			
				CN			CN			CN			CN			CN			CN	\$ 650,000	REET	CN			
				CN			CN			CN			CN			CN			CN			CN			
7	Austin Court Stormwater Improvements: Install water quality system on the discharge from Austin Court.	20-008	58.8	PE			PE			PE			PE			PE	\$ 30,000	REET	PE	\$ 80,000	REET	PE			\$ 442,000
				PE			PE			PE			PE			PE			PE			PE			
				RW			RW			RW			RW			RW	\$ 12,000	REET	RW			RW			
				CN			CN			CN			CN			CN			CN			CN	\$ 320,000	REET	
				CN			CN			CN			CN			CN			CN			CN			
8	Viewhaven Lane Water Quality & Conveyance Improvements: Install water quality systems and improve conveyance near Viewhaven Lane.	20-009	58.8	PE			PE			PE			PE			PE	\$ 10,000	REET	PE	\$ 50,000	REET	PE			\$ 251,000
				PE			PE			PE			PE			PE			PE			PE			
				RW			RW			RW			RW			RW	\$ 16,000	REET	RW			RW			
				CN			CN			CN			CN			CN			CN			CN	\$ 175,000	REET	
				CN			CN			CN			CN			CN			CN			CN			
9	Geneva Street & Lake Louise Road Culvert Replacement: Replace culverts along Geneva Street and Lake Louise Road to improve water quality and conveyance	20-010	58.8	PE			PE			PE			PE			PE			PE	\$ 40,000	REET	PE	\$ 40,000	LWSU	\$ 115,000
				PE			PE			PE			PE			PE			PE			PE	\$ 25,000	Road Funds	
				RW			RW			RW			RW			RW			RW			RW	\$ 10,000	Road Funds	
				CN			CN			CN			CN			CN			CN			CN			
BIRCH BAY WATERSHED & AQUATIC RESOURCES MNGT. DIST. (BBWARM)																									
10	Semiahmoo Drive Stormwater Improvements (BP-2&5): Upsize culverts and re-establish roadside ditch on east side of Semiahmoo Drive	18-009 18-010	50.3	PE	\$ 135,000	BBWARM	PE	\$ 105,000	BBWARM	PE			PE			PE			PE			PE			\$ 625,000
				RW	\$ 50,000	BBWARM	RW			RW			RW			RW			RW			RW			
				CN			CN	\$ 135,000	BBWARM	CN			CN			CN			CN			CN			
				CN			CN	\$ 200,000	REET	CN			CN			CN			CN			CN			
11	Charel Terrace Stormwater Outfall Improvements: Marine outfall stabilization to protect a bluff slope	20-011	29.8	PE	\$ 10,000	BBWARM	PE	\$ 11,875	BBWARM	PE	\$ 37,500	BBWARM	PE			PE			PE			PE			\$ 520,000
				PE	\$ 70,000	Fed Grant	PE	\$ 73,125	Fed Grant	RW			RW			RW			RW			RW			
				RW			RW			RW			RW			RW			RW			RW			
				CN	\$ 5,000	BBWARM	CN	\$ 10,000	Fed Grant	CN			CN			CN			CN			CN			
				CN	\$ 40,000	Fed Grant	CN			CN	\$ 262,500	Fed Grant	CN			CN			CN			CN			
12	Holeman Avenue Stormwater Improvements (PW-1): Replace CBs, upsize culverts, re-establish ditch on Holeman Ave near Birch Bay Dr	07-242	37.8	PE	\$ 40,000	BBWARM	PE	\$ 90,000	BBWARM	PE	\$ 45,000	BBWARM	PE			PE			PE			PE			\$ 475,000
				RW			RW			RW			RW			RW			RW			RW			
				CN			CN			CN	\$ 100,000	BBWARM	CN			CN			CN			CN			
				CN			CN			CN	\$ 200,000	REET	CN			CN			CN			CN			
13	Normar Place Stormwater Improvements (BP-1): Upsize pipes, replace CBs and install energy dissipater at pipe outfall on Normar Place	19-004	52.0	PE			PE	\$ 75,000	BBWARM	PE	\$ 75,000	BBWARM	PE			PE			PE			PE			\$ 450,000
				RW			RW			RW			RW			RW			RW			RW			
				CN			CN			CN			CN			CN	\$ 100,000	BBWARM	CN			CN			
				CN			CN			CN			CN	\$ 200,000	REET	CN			CN			CN			
14	Birch Point Road and Outfall Improvements (BP-3 & BP-6): Upsize culverts and replace outfall to the beach to reduce bluff erosion	21-001	33.3	PE			PE			PE	\$ 50,000	BBWARM	PE	150,000	BBWARM	PE			PE			PE			\$ 665,000
				RW			RW			RW			RW			RW			RW			RW			
				CN			CN			CN			CN			CN	\$ 265,000	BBWARM	CN			CN			
				CN			CN			CN			CN			CN	\$ 200,000	REET	CN			CN			
15	Lora Lane Drainage & Tide Gate Modifications (TC1-2): Replace tide gate structure and repair embankment; install Type 2 CB and culvert under Birch Bay Dr	18-008	42.5	PE	\$ 35,000	BBWARM	PE	\$ 50,000	BBWARM	PE			PE			PE	\$ 150,000	BBWARM	PE			PE			\$ 1,500,000
				RW			RW	\$ 30,000	Road Fund	CN			RW			RW			RW	\$ 35,000	Road Funds	RW			
				CN			CN			CN			CN			CN			CN	\$ 400,000	BBWARM	CN			
				CN			CN			CN			CN			CN			CN	\$ 200,000	REET	CN			
				CN			CN</																		

935

Sudden Valley Stormwater Improvements

Database ID No. 13-004

Construction Funding Year(s): 2022

Project Narrative:

This project will construct drainage system upgrades and outfall retrofits in the Sudden Valley area of the Lake Whatcom watershed.

Project Status:

Design is anticipated in 2021 and construction scheduled to take place in 2022.

Total Estimated Project Cost: \$700,000



Academy Road Stormwater Improvements

Database ID No. 20-005

Construction Funding Year(s): 2023

Project Narrative:

Whatcom County and the City of Bellingham jointly developed this project to improve water quality from the Academy sub-basin of the Lake Whatcom Watershed. This project, originally constructed during the summer of 2015, will undergo an evaluation and perform recommended modifications to improve phosphorus removal. City of Bellingham will adopt the facility after the evaluation and improvements.

Project Status:

Design is anticipated in 2021-2022 and construction scheduled to take place in the summer of 2023.

Total Estimated Project Cost: \$533,000



Geneva Bioretention Pilot Project

Database ID No. 20-006

Construction Funding Year(s): 2023

Project Narrative:

This project will utilize a Washington State Department of Ecology grant to install and monitor the performance of new bioretention soil media. The existing swales are approaching the end of the media's effective life. New media will be required to replace the existing depleted media in the near future.

A portion of the existing swales will be used to test the new media, which is designed to reduce the amount of phosphorus and other pollutants entering the lake. Preliminary testing has shown the new media is much more effective in removal of phosphorus than more traditional media. If tests show significant improvement over the original media, the media will be adopted as a Best Management Practice (BMP) and be included in the updated WDOE Stormwater Manual.

Project Status:

Design is anticipated in 2021-2022, construction in 2023, and monitoring performance in 2024 and 2025.

Total Estimated Project Cost: \$1,021,000



Silver Beach Creek Phase 2

Database ID No. 07-095

Construction Funding Year(s): 2024

Project Narrative:

This project will address the stream bank erosion found on Silver Beach Creek and other tributaries. The project will reduce the amount of erosion and bank material that has been generally associated with the sediment-laden phosphorus loading to Lake Whatcom. The project will reconfigure approximately 950 linear feet of stream channels with a more stable cross-section to reduce erosion and the export of sediment.

Project Status:

Design is anticipated to occur in 2021-2022 and construction scheduled to take place in 2024.

Total Estimated Project Cost: \$750,000



Eagleridge Stormwater Improvements

Database ID No. 20-007

Construction Funding Year(s): 2025

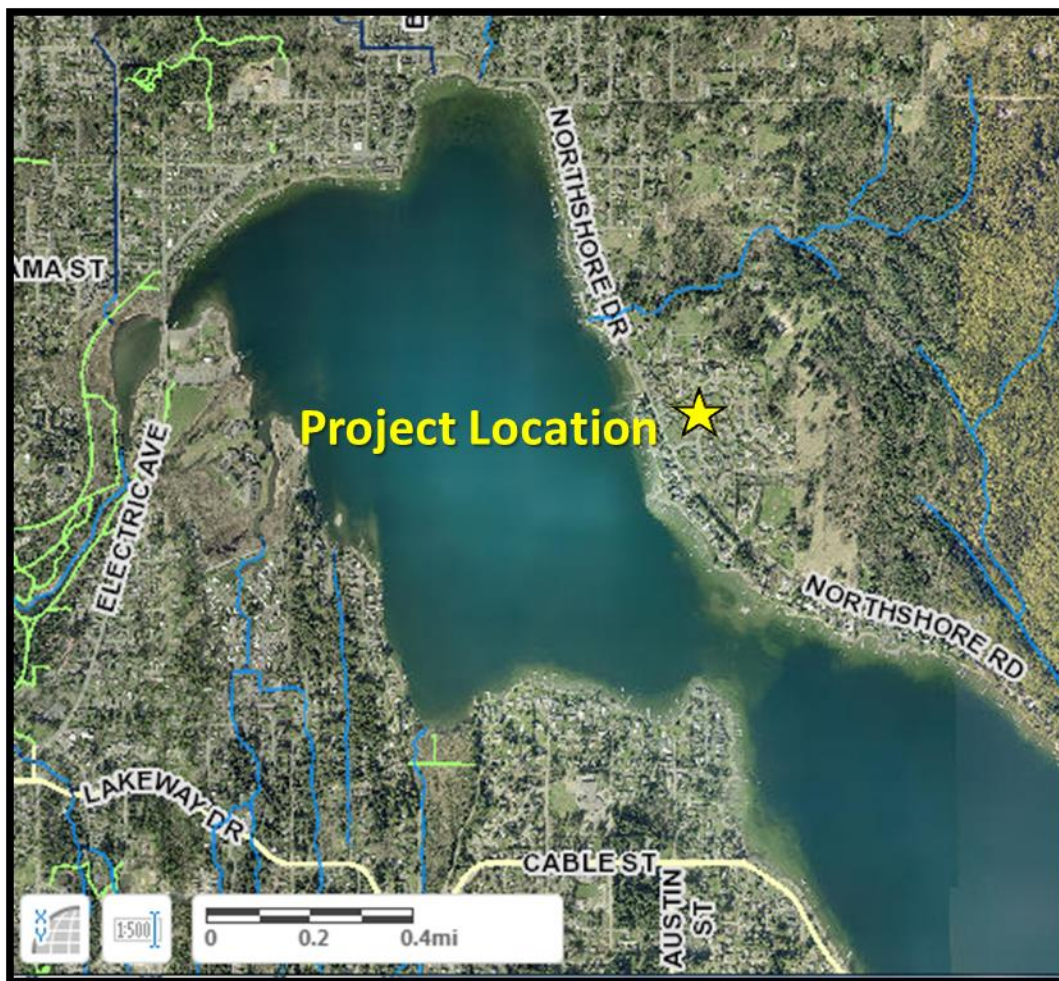
Project Narrative:

This project includes the installation of a water quality treatment facility associated with the Eagleridge neighborhood in the Lake Whatcom watershed. The Eagleridge development is approximately 34 acres and runoff from this development will be routed through a water quality facility to help remove sediments and phosphorus before entering Lake Whatcom.

Project Status:

Design is anticipated in 2023-2024 and construction scheduled to take place in 2025.

Total Estimated Project Cost: \$480,000



Strawberry Point/ Lake Whatcom Blvd Stormwater Improvements

Database ID No. 17-001

Construction Funding Year(s): 2026

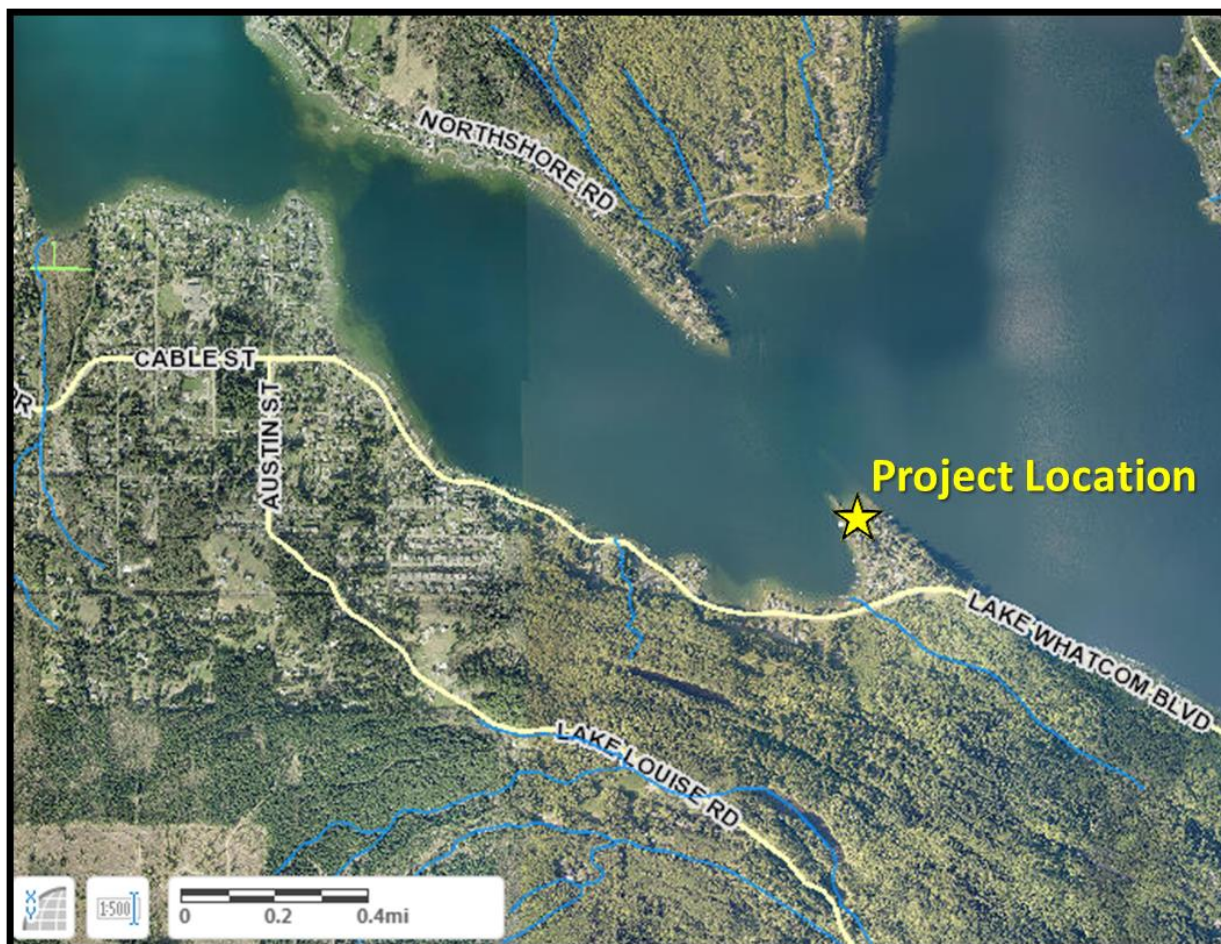
Project Narrative:

This project will involve the installation of a water quality facility to treat approximately three acres of residential area. Project elements may include: bioinfiltration swales, filter vaults, media filter drains, and rain gardens in order to improve water quality.

Project Status:

Design is anticipated in 2024-2025 and construction scheduled to take place in 2026.

Total Estimated Project Cost: \$910,000



Austin Court Stormwater Improvements

Database ID No. 20-008

Construction Funding Year(s): 2027

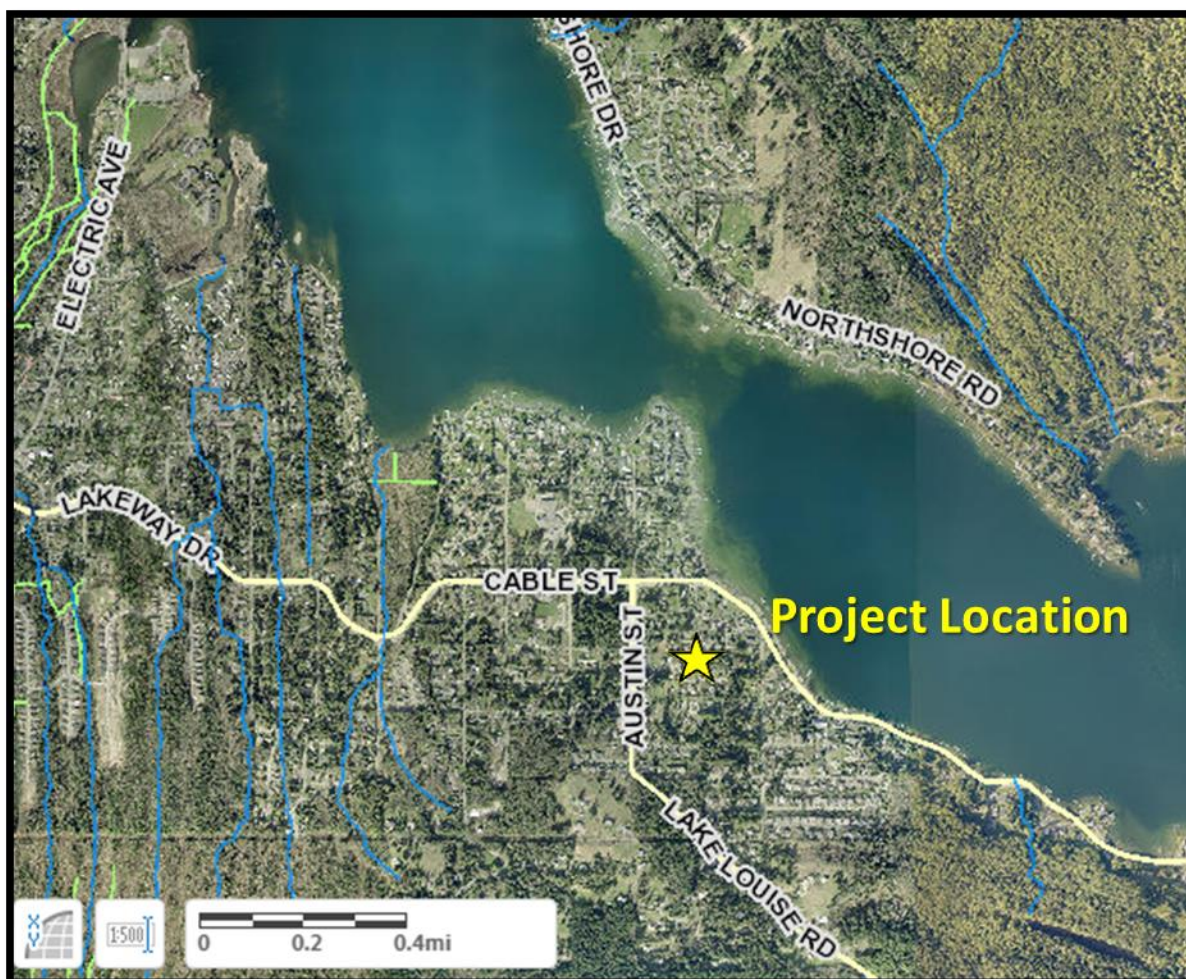
Project Narrative:

This project includes the installation of a large filter vault to improve water quality in the existing Austin Court stormwater system. The tributary area is approximately three acres and the water quality system will remove sediments and phosphorus prior to entering Lake Whatcom.

Project Status:

Design is anticipated in 2025-2026 and construction scheduled to take place in 2027.

Total Estimated Project Cost: \$442,000



Viewhaven Lane Water Quality & Conveyance Improvements

Database ID No. 20-009

Construction Funding Year(s): 2027

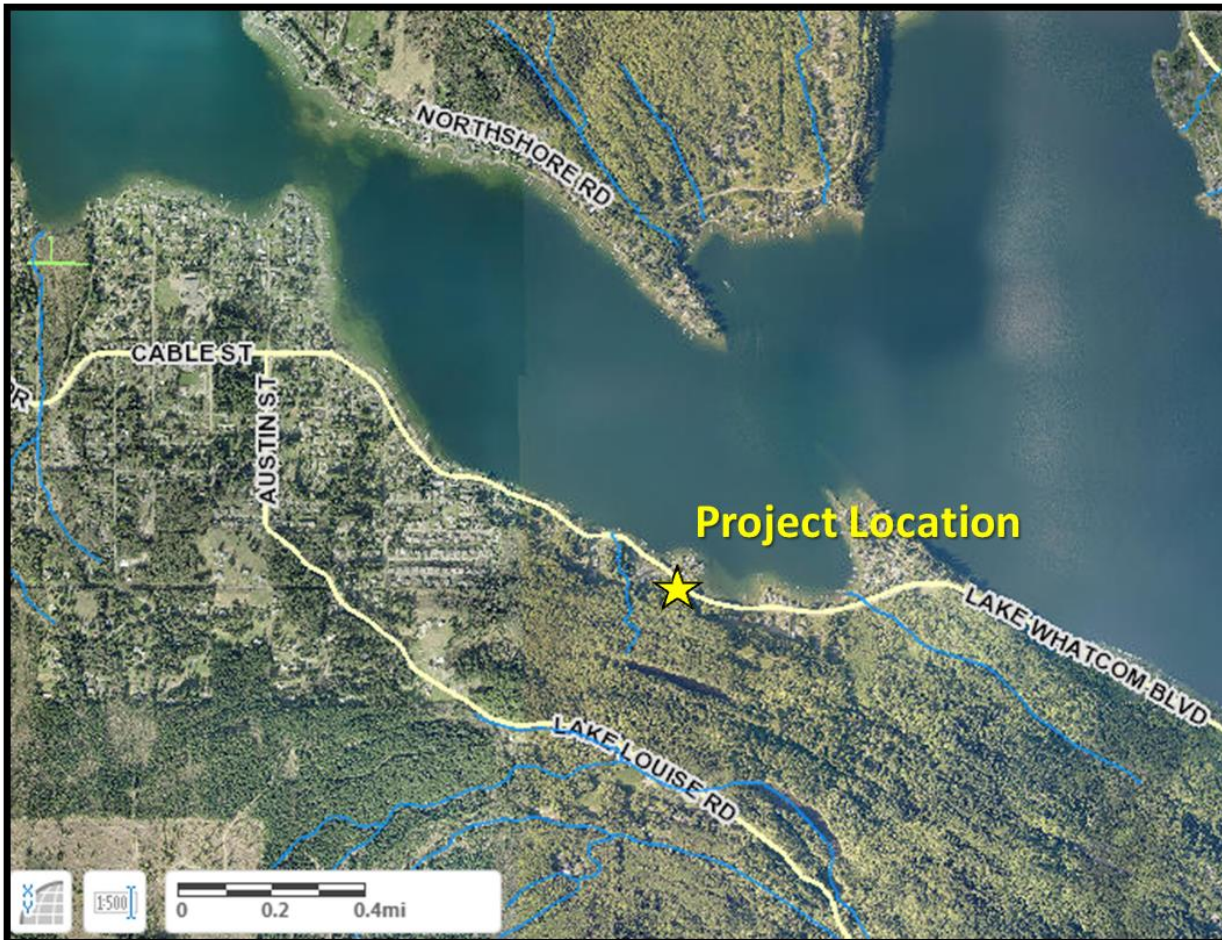
Project Narrative:

This project will improve conveyance and water quality near Viewhaven Lane and Lake Whatcom Blvd intersection. Project will include approximately 100 linear feet of conveyance improvements by replacing two undersized culverts and regrading a ditch. The project will also install approximately 135 linear feet of water quality facility. Project elements may include: bioinfiltration swales, filter vaults, media filter drains, and rain gardens.

Project Status:

Design is anticipated in 2025-2026 and construction scheduled to take place in 2027.

Total Estimated Project Cost: \$251,000



Geneva Street & Lake Louise Road Culvert Replacement

Database ID No. 20-010

Construction Funding Year(s): 2028

Project Narrative:

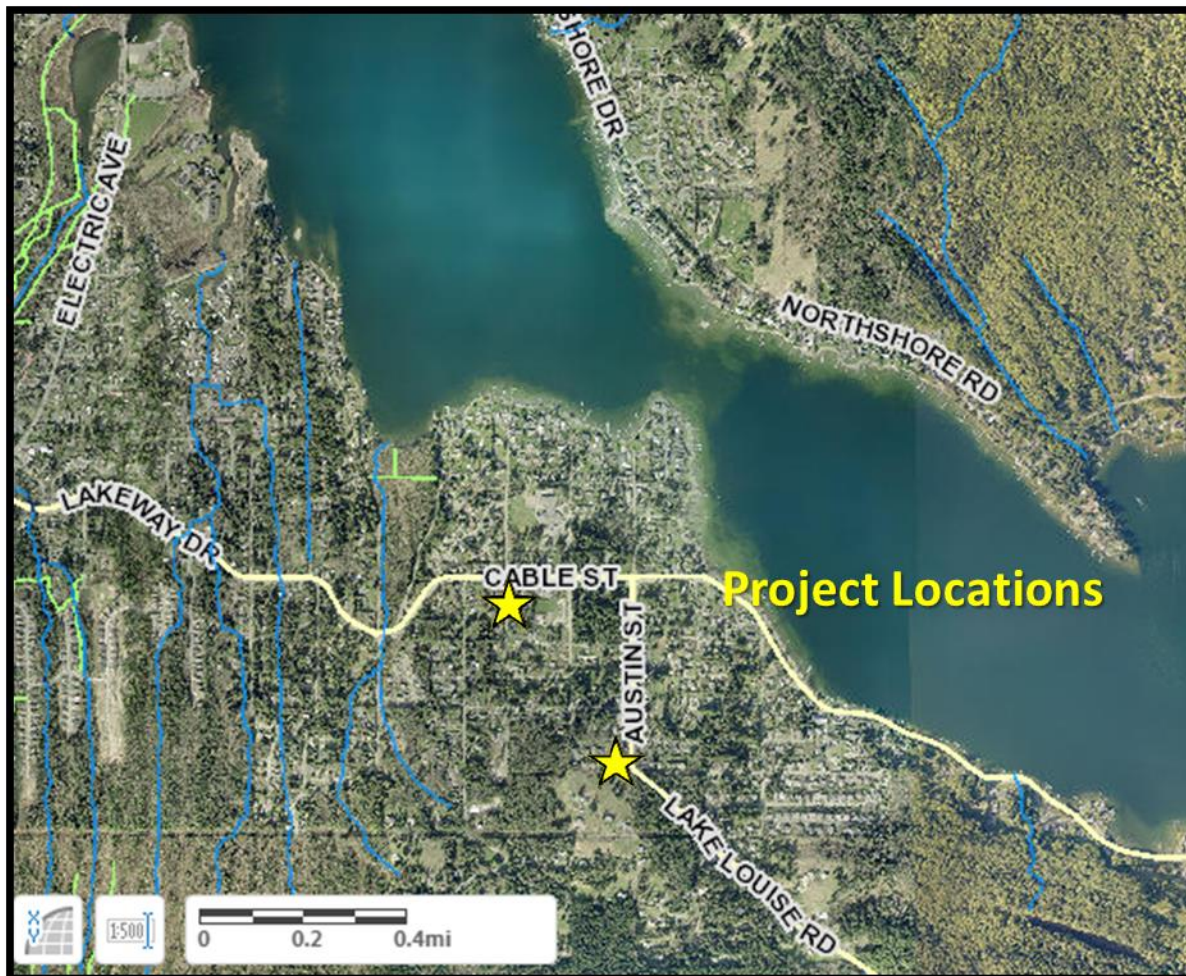
Project will improve conveyance of roadside ditches and culverts along Geneva Street and Lake Louise Road. The project will replaced approximately 200 linear feet of undersized or damaged culverts.

Project Status:

Design is anticipated in 2026-2027 and construction scheduled to take place in 2028.

Total Estimated Project Cost: \$265,000*

*\$115,000 shown on WRIP for design costs.



Semiahmoo Drive Stormwater Improvements (BP-2, BP-5)

Database ID No. 18-009 & 18-010

Construction Funding Year(s): 2022

Project Narrative:

This project will improve the conveyance system along the east side of Semiahmoo Drive by upsizing pipes and re-establishing/deepening ditches to reduce flooding and increase traffic safety.

Project Status:

Design is anticipated in 2020, permitting in 2021 and construction scheduled to take place in 2022.

Total Estimated Project Cost: \$625,000



Charel Terrace Stormwater Outfall Improvements

Database ID No. 20-011

Construction Funding Year(s): 2023

Project Narrative:

The December 20, 2018 “Solstice Eve” windstorm caused damage to the stormwater outfall on Birch Point installed as part of the Charel Terrace project in 2011. In March 2019 a “Major Disaster Declaration” that covered Whatcom County for the December storm was granted. In December 2019, the Consolidated Resource Center approved the Washington State Emergency Management Division’s \$110,887 request for Architectural & Engineering Services to assess the site and develop conceptual design options. An RFP was advertised by Whatcom County in March 2020 and Herrera Environmental Consultants completed a preliminary study that assessed the outfall stabilization approaches to maintain a functional outfall. From this study, a temporary repair will be constructed in early fall 2021 to secure the catch basin to the bluff and reposition the outfall tee. The permanent repair will be constructed in the summer of 2023, which may consist of hard armoring of the slope to protect cultural resources.

Project Status:

Design is anticipated in 2021-2022 and construction scheduled to take place in 2021 (temporary repair) and 2023 (permanent repair).

Total Estimated Project Cost: \$520,000



Holeman Avenue Stormwater Improvements (PW-1)

Database ID No. 07-242

Construction Funding Year(s): 2023

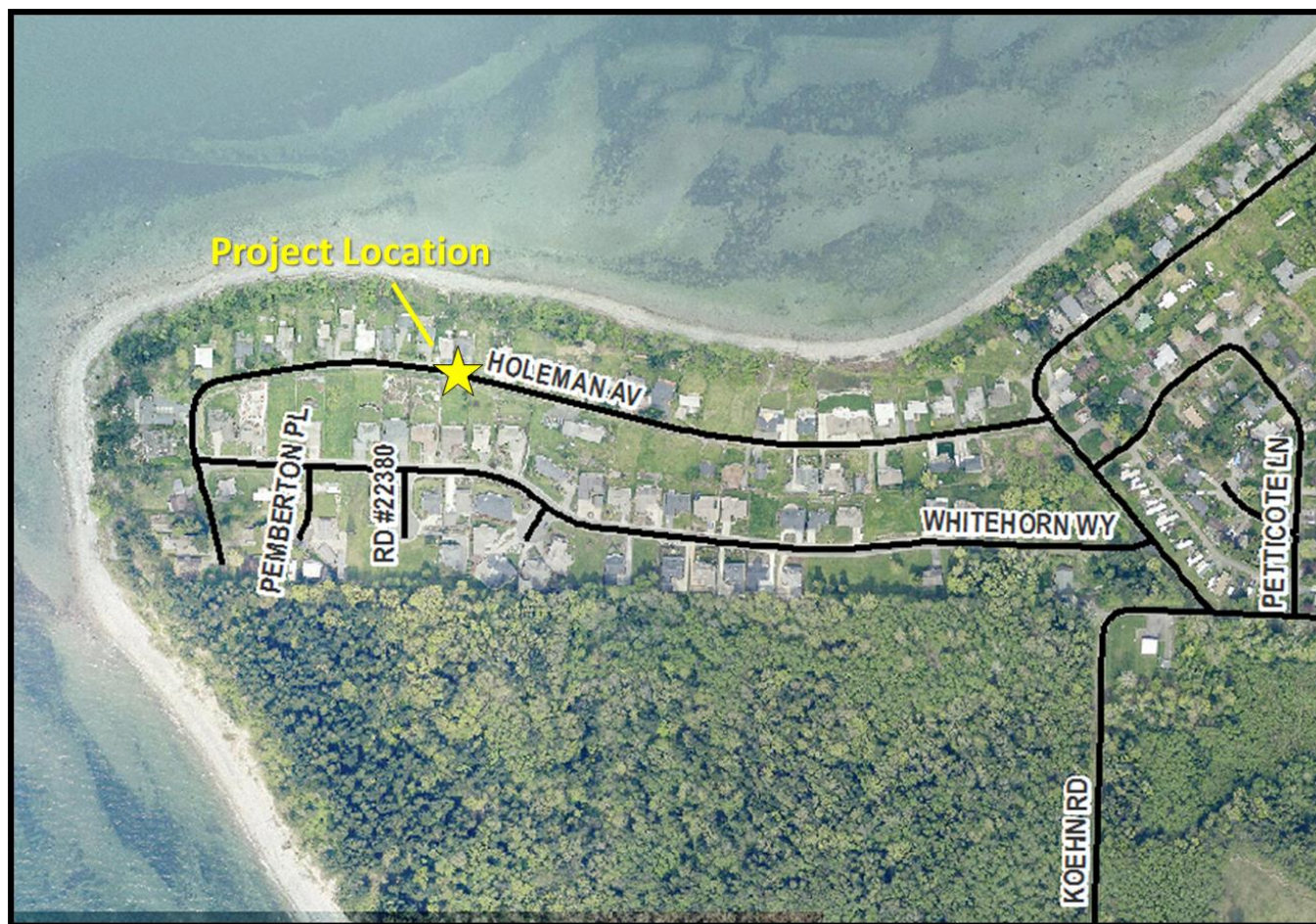
Project Narrative:

The project goal is to reduce roadway flooding on Holeman Avenue by replacing undersized pipe and catch basins and re-establish existing ditch to match pipe invert elevations. This area is particularly sensitive due to the steep, unstable bluff along the shoreline and the concern is that flooding could lead to bluff failure and property damage. This is a critical public safety issue.

Project Status:

Design is anticipated in 2022 and construction scheduled to take place in 2023.

Total Estimated Project Cost: \$475,000



Normar Place Stormwater Improvements (BP-1)

Database ID No. 19-004

Construction Funding Year(s): 2024

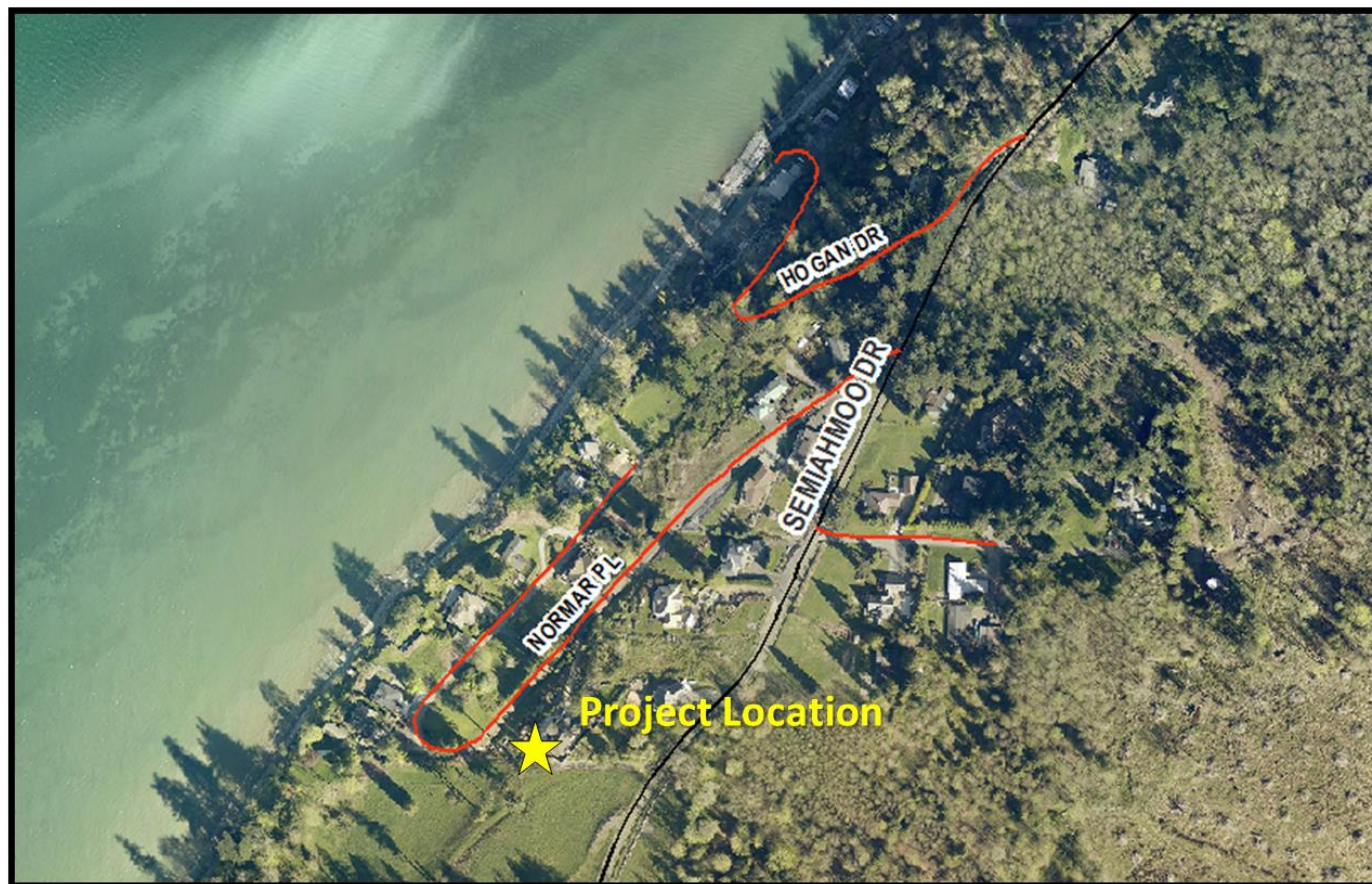
Project Narrative:

This project involves upsizing pipes, replacing catch basins and installing an outfall pipe over the bluff with an energy dissipater at Normar Place to reduce roadway flooding, scour and sediment transport.

Project Status:

Design is anticipated in 2022-23 and construction in 2024.

Total Estimated Project Cost: \$450,000



Birch Point Road Stormwater & Outfall Improvements (BP-3 & BP-6)

Database ID No. 21-001

Construction Funding Year(s): 2025

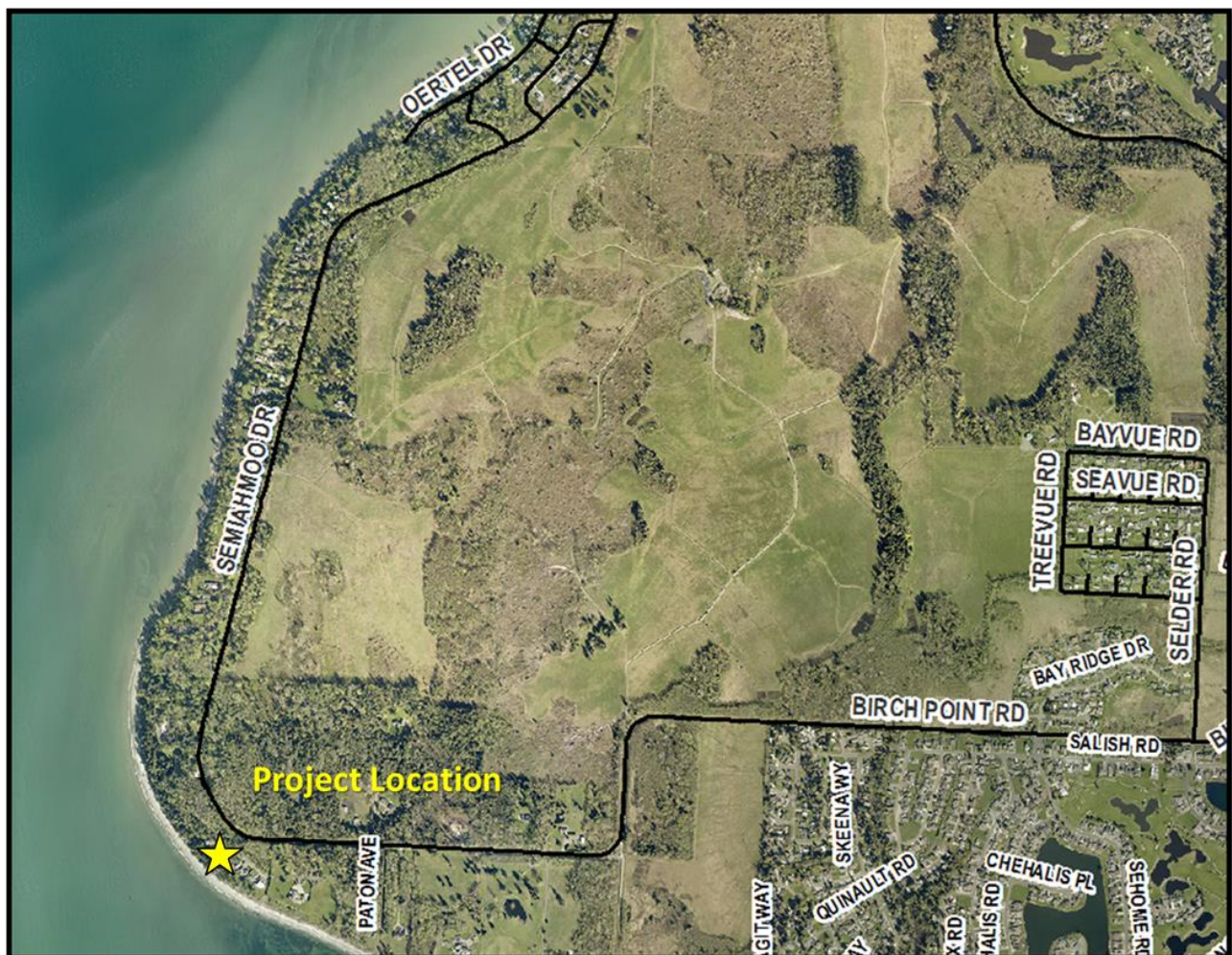
Project Narrative:

A corrugated metal outfall pipe over a steep bluff on Birch Point collapsed due to undermining. The driveway culverts, ditches and upstream storm drain system leading to the outfall are undersized and cause flooding and erosion during storm events. This project will involve upsizing culverts, reestablishing ditches and replacing the halfpipe outfall with an HDPE tightline, anchor and energy dissipater.

Project Status:

Design will be completed in 2023-24. Construction is scheduled to take place in 2025.

Total Estimated Project Cost: \$665,000



Lora Lane Drainage & Tide Gate Modifications (TC1-2)

Database ID No. 18-008

Construction Funding Year(s): 2026

Project Narrative:

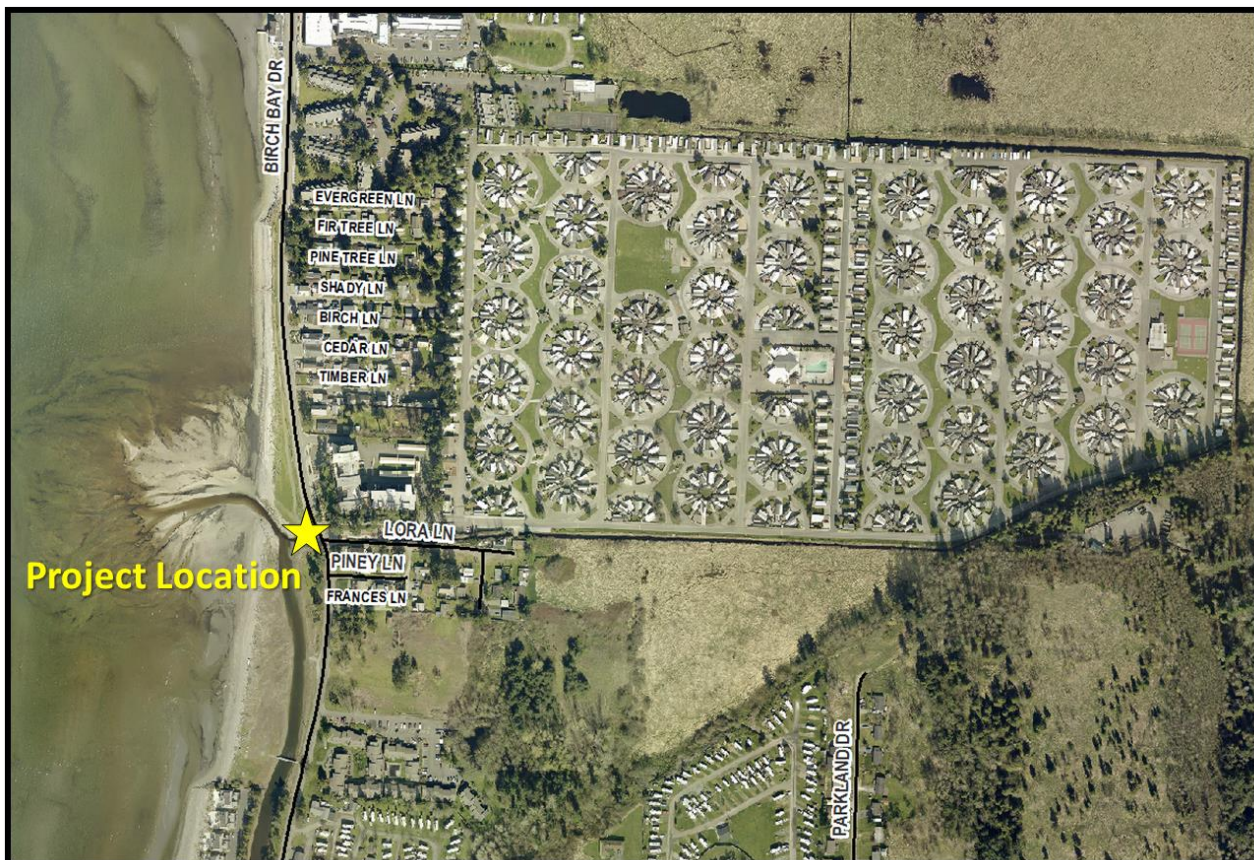
The purpose of this project is to replace the existing 48" corrugated metal pipe culvert under Birch Bay Drive with a fish passage culvert that is anticipated to be an 8-ft wide box culvert, remove the existing tide gate on the water side of Birch Bay Drive, install a new side hinge tide gate on the east side of Birch Bay Drive on the new 8-ft wide culvert, and install shoreline armoring at the outfall area.

Project Status:

Preliminary engineering design will begin in 2021 and be completed prior to construction in 2026. Construction is scheduled to take place in 2026, but there is uncertainty if private property owners will be willing to grant easements. If they are willing to sign, this project may be re-scheduled for construction prior to 2026 through next year's WRIP process.

Total Estimated Project Cost: \$1,500,000*

*Road Fund contributions are tentative until easements are obtained.



Wooldridge Avenue & Sunset Drive Stormwater Improvements (TC-2)

Database ID No. 13-007

Construction Funding Year(s): 2027

Project Narrative:

This project will improve the conveyance system along Wooldridge Avenue, Jackson Road and Sunset Drive by upsizing pipes, installing or replacing catch basins and culverts, reestablishing roadside ditches, installing a water quality filter vault and 100 linear feet of water quality treatment swale.

Project Status:

Design is anticipated in 2025-2026 and construction is scheduled to take place in 2027.

Total Estimated Project Cost:

DOE Water Quality Grant:	\$750,000*
BBWARM:	\$470,000
Total:	\$1,220,000

*Unsecured grant funding



Hillsdale Stormwater Improvements, Phase 1 (HL-C-1)

Database ID No. 19-002

Construction Funding Year(s): 2028

Project Narrative:

This project involves upsizing pipes, replacing catch basins, installing new drain line, and replacing blind tee connections on Morgan, Cottonwood and Birch Bay Drives to reduce flooding and allow for maintenance.

Project Status:

Pre-design was completed in 2014, final design will be completed in 2027 and construction of Phase 1 scheduled to take place in 2028.

Total Estimated Project Cost: \$750,000*

*\$150,000 shown on WRIP for design portion



Shallow Shore Culvert Relocation

Database ID No. 18-007

Construction Funding Year(s): 2022

Project Narrative:

The existing cross-culvert located at 326 Shallow Shore Drive discharges onto the western edge of the lakefront parcel. During heavy storm events, discharge from the cross-culvert overwhelms an existing private culvert which conveys stormwater to the lake, resulting in regular flooding and inundation throughout the rainy season.

The County currently has an undeveloped right-of-way (Bass Street) to the lake approximately 300 feet north of the existing outfall along Shallow Shore Drive which could serve as an alternate to the existing outfall. The project will evaluate water quality alternatives that may be installed prior to discharging in Lake Samish

Project Status:

Design is anticipated in 2021 and construction scheduled to take place in 2022.

Total Estimated Project Cost: \$365,000



Marietta Acquisition Database ID No. 07-002

Construction Funding Year(s): 2001 - Present

Project Narrative:

Acquisition of residential properties in the frequently-flooded repetitive flood loss area of Marietta, removal of existing structures and restoration of properties with native vegetation.

Project Status:

Property acquisition began in 2001 and is ongoing. As properties are acquired, structures are removed and native vegetation is planted. All acquisitions are voluntary and the project is ongoing as current property owners decide to sell their properties. Total project cost will need to include funding for cleanup of up to four former gas stations, though the exact nature of the work is still undefined.

Total Estimated Project Cost: TBD

Expenditures to Date: \$1,851,000



Marine Drive Levee 2020 Damage Repair

Database ID No. 20-001

Construction Funding Year(s):

2022

Project Narrative:

The Marine Drive Levee provides flood protection during smaller, more frequent floods to the Marietta area and Slater Road. The levee is located on property owned by the Washington Department of Wildlife who is managing the property for wildlife. The levee backslope was damaged in several locations during flooding in 2020. The project involves restoring the levee crest and backslope to the original geometry while trying to minimize the impacts to existing vegetation.

Project Status:

The project is in the design phase. Construction is anticipated for summer of 2022. The FCZD is utilizing FEMA funds to partially fund the project.

Total Estimated Cost: \$393,000

Expenditures to Date: \$43,000



Abbott Levee Protection and Improvement Project

Database ID No. 16-007

Construction Funding Years: 2021 and 2024

Project Narrative:

The project is located along Abbott Road about 1.7 miles east of Hannegan Road. Recent erosion along the Nooksack River has removed a section of riprap that previously protected the land adjacent to the Abbott Levee and Abbott Road. Phase 1 of this project addressed the ongoing erosion in this location. The FCZD is also investigating possible road and levee setback options to improve the upstream tie-in of the levee and address a deficiency identified by the US Army Corps of Engineers to maintain the levee's eligibility in the PL 84-99 Levee Rehabilitation Program. This work will be implemented as a second phase of the project.

Project Status:

Construction of Phase 1 was completed during Summer or 2021. The FZCD is developing a scope of work with the project consultant for Phase 2. Phase 2 will include a reach assessment to provide the technical basis for developing alternatives for upstream improvements. The FZCD will utilize this reach scale analysis to develop a capital project for Phase 2. Phase 2 construction is anticipated during 2024.

Total Estimated Cost:	TBD
Expenditures to Date:	\$1,030,000



**Lynden Levee Improvement
Database ID No. 16-003**

Construction Funding Year(s):

2021 - 2022

Project Narrative:

One 24" culvert and one 48" culvert are located less than 50 feet apart providing interior drainage through the Lynden Levee. One of the pipes drains a channel that flows through the City of Lynden's wastewater treatment plant. The levee has overtopped where the culverts are located, damaging the levee backslope and the small berm that separates the drainage channel from a water treatment settling pond. The conceptual design developed as part of the System-wide Improvement Framework (SWIF) planning process includes relocating the treatment plant drainage channel through a forested area further away from the pond, connecting the two drainages, and replacing the two culverts with a single larger fish-passable culvert with a side-hinge flood gate.

Project Status:

Primary construction of the project was completed during summer of 2021. This project was implemented collaboratively by the FCZD and the USACE. Construction in 2022 will include planting and stabilization of the new channel. Total project cost includes USACE construction as a direct contribution.

Total Estimated Cost: \$1,766,000

Expenditures to Date: \$1,711,000



Jones Creek Debris Flow Protection Database ID No. 07-105

Construction Funding Year(s): 2023-2024

Project Narrative:

This project includes acquisition of residential properties in the high hazard area of the Jones Creek alluvial fan and construction of a setback deflection berm to route debris flows around the town of Acme. The project includes realignment of Turkington Road at the location where it crosses the proposed berm.

Project Status:

Property acquisition began in 2005 and is ongoing. Preliminary design has been performed for the deflection berm and a preferred alternative for Turkington Road has been selected. Detailed design and acquisition of additional lands needed are underway.

Total Estimated Cost: \$6,872,000

Expenditures to Date: \$3,107,000



Cougar Creek Early Action Project / Neevel Levee Bank Stabilization

Database ID No. 16-008

Construction Funding Year(s): 2023

Project Narrative:

The Neevel Levee provides varying levels of protection to a significant amount of agricultural land. Approximately 250 feet of the levee running along Cougar Creek is over-steepened and experiencing sloughing of the riverward face. A stabilization project incorporating large woody debris at the toe and reducing the slope of the riverward face is proposed in the System-wide Improvement Framework (SWIF) to resolve the deficiency identified by the US Army Corps of Engineers and keep the levee eligible for repair under the Public Law (PL) 84-99 Program. An early action project developed through the Floodplain Integrated Planning (FLIP) process includes replacement of the Cougar Creek flood gate and installation of large woody debris in the channel downstream.

Project Status:

Design of the project has been advanced to an approximate 90% design level. Completion of the design to produce a bid-ready package will be proposed as an early action project under the current Floodplains by Design grant. Construction may occur in 2023 if funding can be secured through NRCS's EQIP program or other grants.

Total Estimated Cost: \$1,660,000

Expenditures to Date: \$175,000



Everson Overflow Pipeline Stabilization

Database ID No. 20-002

Construction Funding Year(s): 2024

Project Narrative:

A portion of the bank within the Everson overflow corridor was damaged during the 2020 flood season. The damage site is located near a petroleum pipe crossing the Nooksack River. The FCZD is exploring options to stabilize the bank and protect the high ground divide that controls how much overflow occurs at Everson.

Project Status:

The project is in the initial design phase. Construction is anticipated for summer of 2024. The FCZD is planning on utilizing FEMA funds to partially fund the project.

Total Estimated Cost: TBD

Expenditures to Date: \$139,000



Truck Road 2020 Flood Damage Database ID No. 20-003

Construction Funding Year(s): 2023

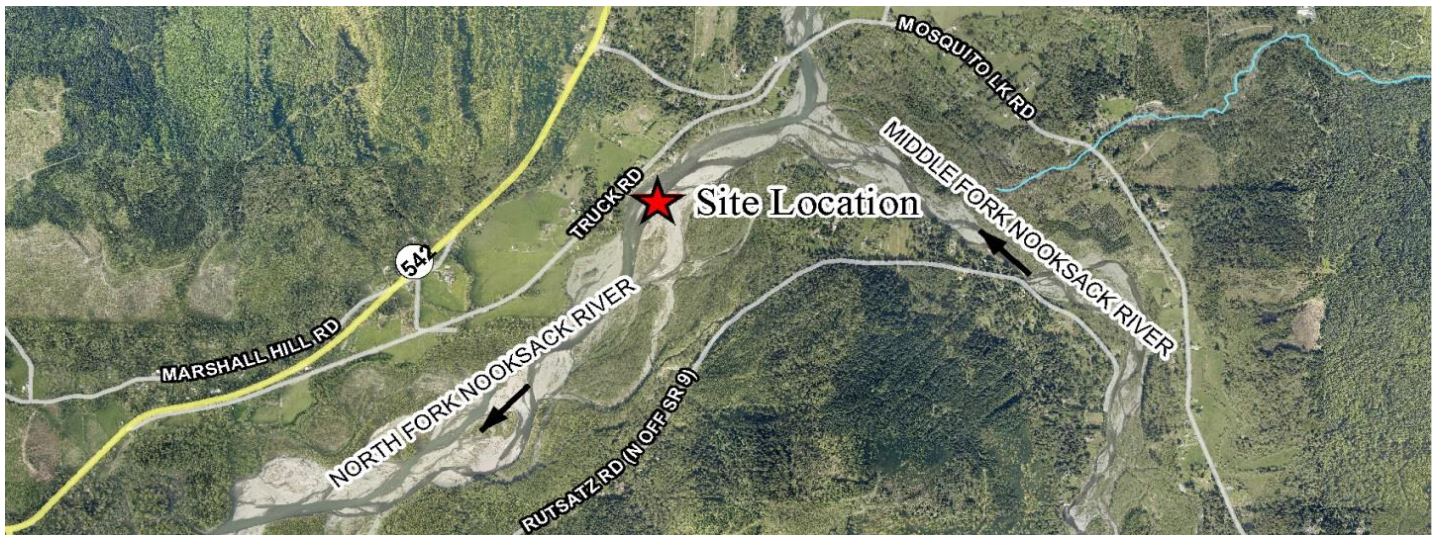
Project Narrative:

The project is located along Truck Road about 0.3 miles easterly from Mt. Baker Highway (SR 542). During high-water events of the 2017/2018 winter, the North Fork Nooksack River eroded the unprotected bank of Truck Road to within 13 feet of the roadway surface. This prompted an emergency project to construct a passive riprap revetment underneath a section of the roadway to provide immediate protection. Flooding during 2020 eroded the remaining bank exposing the recently constructed riprap revetment and destabilizing a portion of the north bound lane. Jersey barriers were placed by county crews to block off this lane to traffic. The FCZD is evaluating road realignment and bank stabilization alternatives to provide a long-term solution in this area.

Project Status:

The FCZD has hired a consultant to analyze road realignment and bank stabilization alternatives. The consultant will develop a repair project based on the preferred alternative. Construction of the project is anticipated to occur in 2023. The FCZD has secured FEMA funds to partially fund the project.

Total Estimated Cost:	TBD
Expenditures to Date:	\$256,000



Bertrand Creek Levee Stabilization
Database ID No. 16-005

Construction Funding Year(s): 2022

Project Narrative:

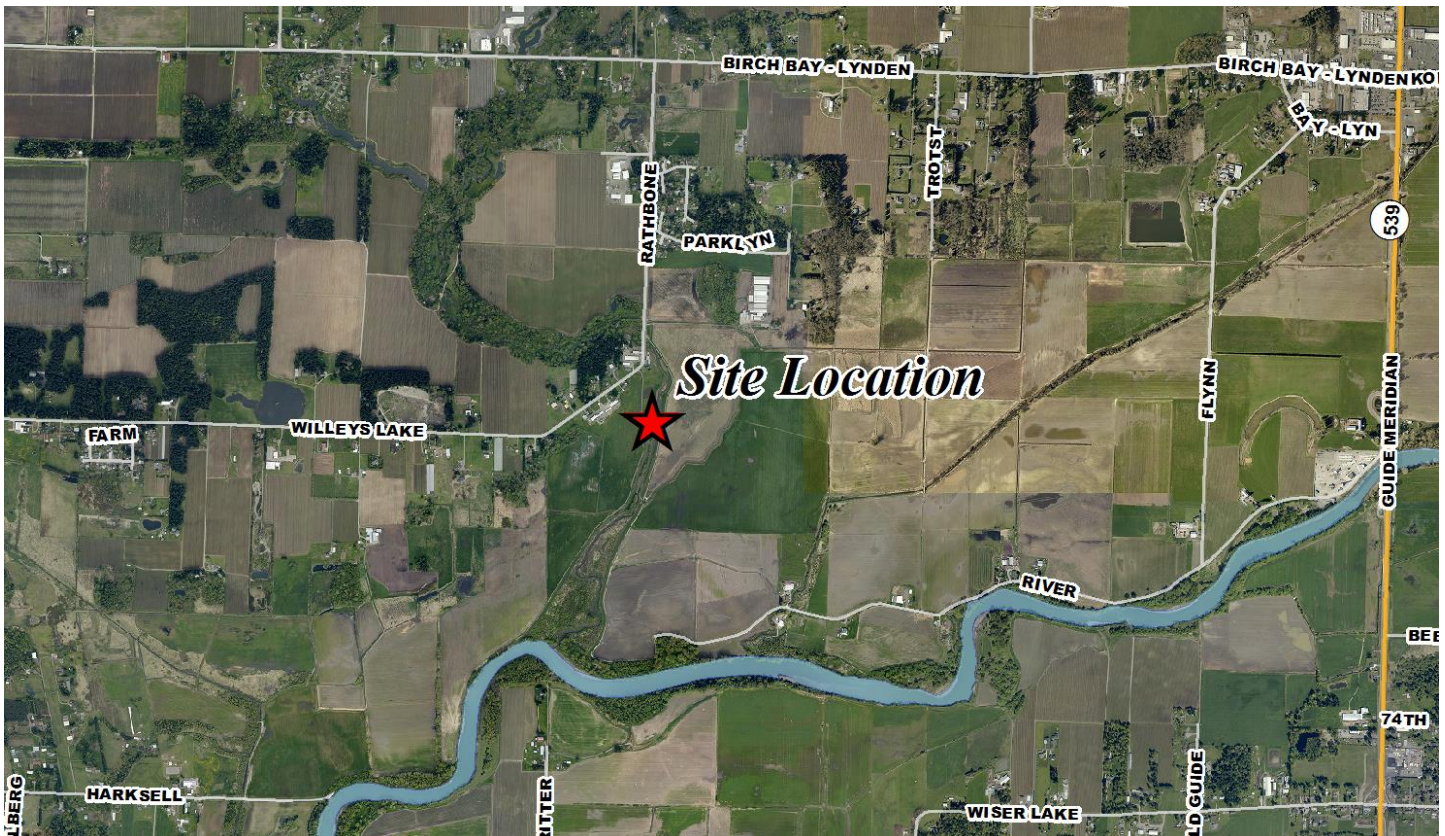
The Bertrand Creek right and left bank Levees are designed to overtop during larger floods, but provide protection to agricultural land during the growing season. The left bank levee has a 250 foot long section where erosion is threatening the levee prism. The right bank levee face is sloughing at three locations with a total length of approximately 250 feet. The levees will have to be repaired to remain eligible for rehabilitation through the Public Law (PL) 84-99 program.

Project Status:

A conceptual design has been developed as part of the System-wide Improvement Framework (SWIF) planning process. The project will be designed by the FCZD. Construction is anticipated in the Summer of 2022.

Total Estimated Cost: \$320,000

Expenditures to Date: \$20,000



Devries Levee Improvements

Database ID No. 19-001

Construction Funding Year(s): 2025

Project Narrative:

This project involves widening the levee crest and backsloping the levee to meet the USACE's levee geometry standards (SWIF project).

Project Status:

A conceptual design has been developed as part of the SWIF planning process. Detailed design has not been initiated yet.

Total Estimated Cost: \$235,000

Expenditures to Date: \$0



Upper Hampton Levee Improvements

Database ID No. 16-006

Construction Funding Year(s): 2024, 2027

Project Narrative:

Several deficiencies were identified by the US Army Corps of Engineers on the Upper Hampton Levee. Improvements to the levee geometry are proposed in two locations and improvement to address seepage is proposed at a third location.

Project Status:

A conceptual design has been developed as part of the System-wide Improvement Framework (SWIF) planning process. Detailed design has not been initiated yet. However, we were able to complete a portion of the levee backsloping work at one site using excess material generated at the 2021 Abbott and Lynden Levee Improvement projects.

Total Estimated Cost:	TBD
Expenditures to Date:	\$7,000



Ferndale Levee Improvement Project

Database ID No. 07-104

Construction Funding Year(s): 2025 - 2027

Project Narrative:

Two levee segments, one sponsored by the City of Ferndale and one by the FCZD and Diking District #1, provide protection to the three treatment facilities along Ferndale Road. The US Army Corps of Engineers has identified several deficiencies along these two levee segments, including a gap in which super sacks filled with sand have been placed. The 1999 Comprehensive Flood Hazard Management Plan recommended improving these levees to provide 100-year protection to the City and the treatment facilities. The System-wide Improvement Framework (SWIF) also includes this project to address the identified levee deficiencies.

Project Status:

This project is currently in the design phase. An alternative analysis is being conducted by the project consultant. A 60 percent design level plan of the proposed levee configuration is anticipated Fall of 2022. A 100 Percent design level plan is anticipated in 2024. Grant funding through the State's Floodplain's by Design program has been secured to complete the design. Construction is anticipated to be phased with construction beginning in 2025 and lasting through 2027.

Total Estimated Construction Cost: TBD

Expenditures to Date: \$372,000



Glacier-Gallup Creeks Alluvial Fan Restoration

Database ID No. 18-006

Construction Funding Year(s): 2026

Project Narrative:

The Glacier Creek Levee on the left (west) bank of the creek was constructed in the 1960s to prevent overflows into Gallup Creek and damage to State Route (SR) 542. Since construction, the levee has been subject to ongoing damage. Constriction of the Glacier-Gallup channel migration zone (CMZ) has exacerbated aggradation upstream of SR 542 and severely degraded fish habitat. WSDOT replaced the Gallup Creek bridge and is working to construct a new bridge over Glacier Creek and the alluvial fan between the two creeks. The FCZD is developing a project in coordination with WSDOT and is evaluating the feasibility of full or partial removal of levees blocking natural channel migration on the Glacier and Gallup Creeks alluvial fan and construction of a setback levee on Gallup Creek to protect the Community of Glacier.

Project Status:

A feasibility study and alternatives analysis for evaluating levee removal and setback alternatives was initiated in late 2018. Preliminary design of the preferred alternative will be initiated once the preferred alternative is selected. Construction of the levee removal and setback is anticipated to occur concurrently with the Glacier Creek bridge replacement in 2026.

Total Estimated Project Cost:	TBD
Expenditures to Date:	\$317,000



Dahlberg Wetland Mitigation Site

Database ID No. 20-004

Construction Funding Year(s): 2024 - 2027

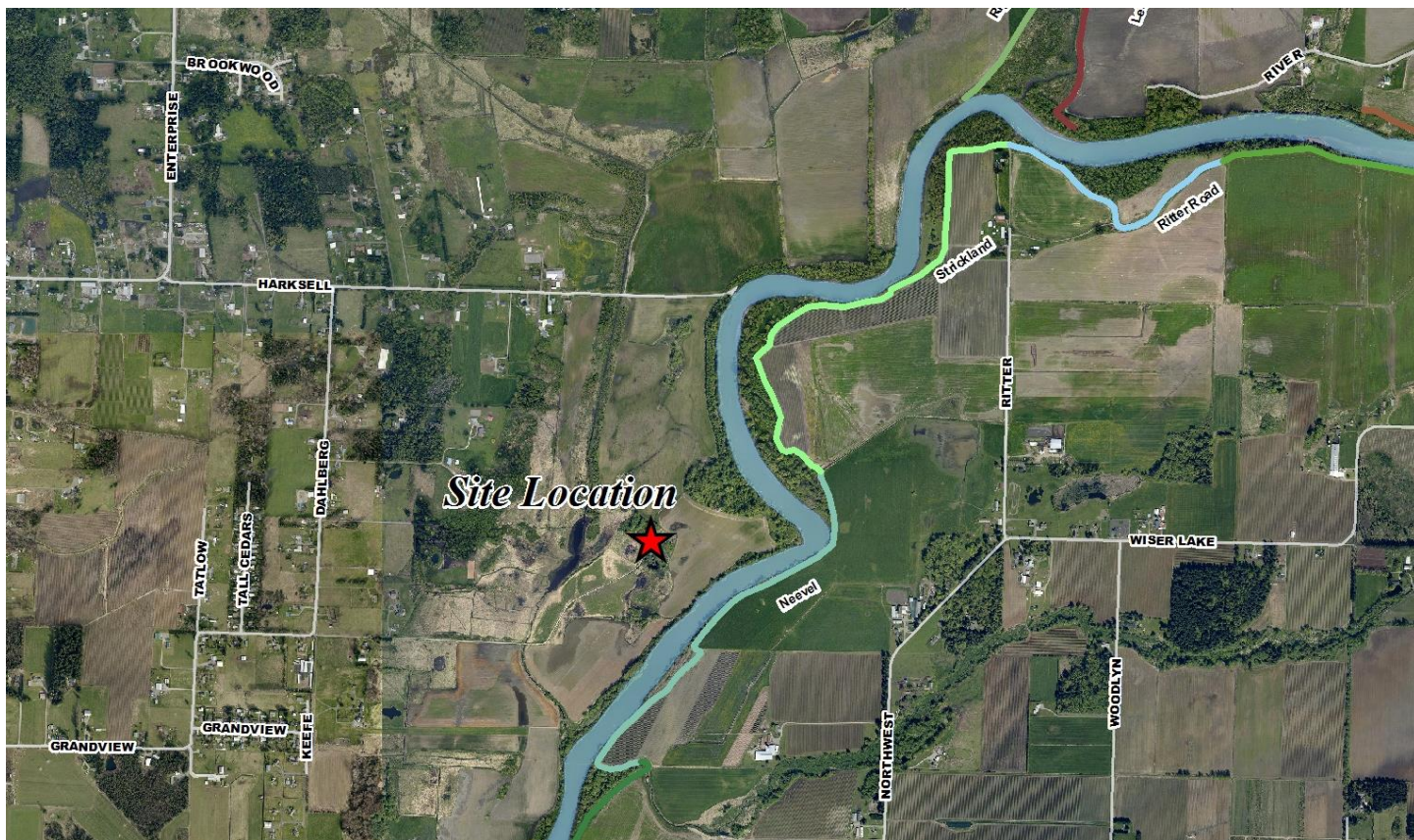
Project Narrative:

The FCZD purchased a property northeast of Ferndale as a mitigation site for future projects having wetland or riparian impacts. The property contained a dilapidated farm house.

Project Status:

FCZD purchased the subject property and demolished the farm house in Fall of 2020. The FCZD is installing a monitoring network on the site to support developing a long-term restoration plan for the site.

Total Estimated Cost:	TBD
Expenditures to Date:	\$849,000



Floodplain Acquisition Database ID No. 07-002

Acquisition Funding Year(s): 2017- TBD

Project Narrative:

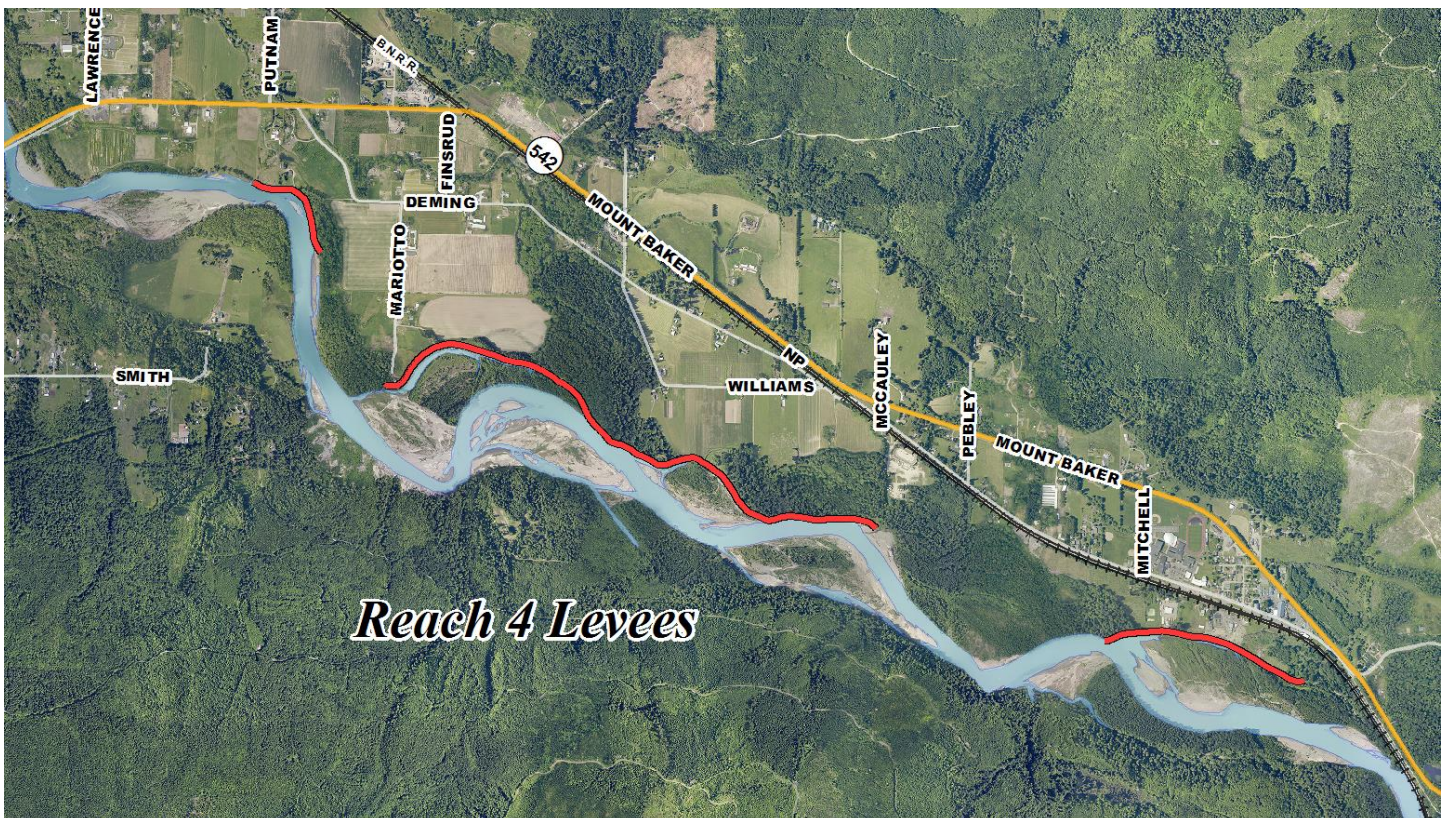
Reach-scale projects to reconfigure flood infrastructure are being evaluated through the integrated planning processes that started with the System-wide Improvement Framework (SWIF) and has transitioned into the Floodplain Integrated Planning (FLIP) process. The goal of this work is to reduce flood risk and expenditures and restore habitat and the processes that form it.

Voluntary acquisition of lands is proposed to enable future levee reconfigurations to reduce flood risk and future levee repairs, while improving habitat.

Project Status:

Acquisition of one property in Reach 4 was completed in 2020. Discussions with additional property owners will occur in 2021 and 2022.

Total Estimated Cost:	TBD
Expenditures to Date:	\$1,128,000



Emergency/New Projects
Database ID No. 08-003

Construction Funding Year(s): 2022 - 2027

Project Narrative:

This item provides funding to address unanticipated projects resulting from new damage to flood control facilities.

Project Status:

Design and construction to occur as necessary.

Total Estimated Project Cost: \$425,000/year

Expenditures to Date: \$425,000/year

Due to the nature of this item, no map exists. Board of Supervisors review and prioritization will be sought at the appropriate time.